FEDERAL RECLAMATION AND RELATED LAWS ANNOTATED
(PRELIMINARY)

UNITED STATES BUREAU OF RECLAMATION
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


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

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

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

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

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

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

October 2001
Secretaries of the Interior, since 1902

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Solicitors, Department of the Interior, since 1902

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### Commissioners of Reclamation, since 1902

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### Secretaries of Energy, 1977-2001

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# TABLE OF CONTENTS

## SUPPLEMENT II

### 1983-1998 SUPPLEMENT TO VOLUMES I-IV

<table>
<thead>
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<th>Date</th>
<th>Act</th>
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<td><strong>Volume I</strong></td>
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<td>Feb. 25, 1920</td>
<td>Mineral Leasing Act</td>
<td>S808</td>
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<td>June 10, 1920</td>
<td>Federal Water Power Act</td>
<td>S813</td>
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<td>Dec. 21, 1928</td>
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<td>S839</td>
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<td>Aug. 26, 1935</td>
<td>Federal Power Act</td>
<td>S841</td>
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<td>Aug. 30, 1935</td>
<td>Parker and Grand Coulee Dams Authorized</td>
<td>S851</td>
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<tr>
<td>Aug. 26, 1937</td>
<td>Central Valley Project, California, and Colorado River Project, Texas</td>
<td>S852</td>
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<td>July 19, 1940</td>
<td>Boulder Canyon Project Adjustment Act</td>
<td>S857</td>
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<td>Dec. 22, 1944</td>
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<td>S861</td>
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<td>Oct. 7, 1949</td>
<td>Rehabilitation and Betterment Act</td>
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<td>Sept. 26, 1950</td>
<td>Sacramento Valley Canals</td>
<td>S866</td>
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<td>July 31, 1953</td>
<td>Interior Department Appropriations Act, 1954</td>
<td>S869</td>
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<td>Aug. 10, 1954</td>
<td>Sabine River Compact</td>
<td>S870</td>
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<td>April 11, 1956</td>
<td>Colorado River Storage Project</td>
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<td>Aug. 6, 1956</td>
<td>Small Reclamation Projects Act</td>
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<td>S884</td>
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<td>July 9, 1965</td>
<td>Federal Water Project Recreation Act</td>
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<td>Aug. 5, 1965</td>
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# TABLE OF CONTENTS

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# INDEX

Consolidated index to Volumes I, II, III, IV, V, and Supplements I and II .................................................. 1115
Sec. 35. [Disposition of moneys received.] (a) All money received from
sales, bonuses, royalties including interest charges collected under the Federal
Oil and Gas Royalty Management Act of 1982 (30 U.S.C. § 1701 et seq.), and
rentals of the public lands under the provisions of this chapter and the
Geothermal Steam Act of 1970 (30 U.S.C. § 1001 et seq.), shall be paid into the
Treasury of the United States; and, subject to the provisions of subsection (b) of
this section, 50 per centum thereof shall be paid by the Secretary of the Treasury
to the State other than Alaska within the boundaries of which the leased lands
or deposits are or were located; said moneys paid to any of such States on or
after January 1, 1976, to be used by such State and its subdivisions, as the
legislature of the State may direct giving priority to those subdivisions of the
State socially or economically impacted by development of minerals leased
under this chapter, for (i) planning, (ii) construction and maintenance of public
facilities, and (iii) provision of public service; and excepting those from Alaska,
40 per centum thereof shall be paid into, reserved, appropriated, as part of the
reclamation fund created by the Act of Congress known as the Reclamation Act,
approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall
be paid to the State of Alaska for disposition by the legislature thereof: Provided,
That all moneys which may accrue to the United States under the provisions of
this chapter and the Geothermal Steam Act of 1970 from lands within the naval
petroleum reserves shall be deposited in the Treasury as "miscellaneous
receipts", as provided by section 7433(b) of title 10. All moneys received under
the provisions of this chapter and the Geothermal Steam Act of 1970 not
otherwise disposed of by this section shall be credited to miscellaneous receipts.
Payments to States under this section with respect to any moneys received by the
United States, shall be made not later than the last business day of the month in
which such moneys are warranted by the United States Treasury to the Secretary
as having been received, except for any portion of such moneys which is under
challenge and placed in a suspense account pending resolution of a dispute. Such
warrants shall be issued by the United States Treasury not later than 10 days
after receipt of such moneys by the Treasury. Moneys placed in a suspense
account which are determined to be payable to a State shall be made not later
than the last business day of the month in which such dispute is resolved. Any
such amount placed in a suspense account pending resolution shall bear interest
until the dispute is resolved.

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

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

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

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

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

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

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

1993 Amendment. Act of August 10, 1993 (Public Law 103-66, Sec. 10201, 107 Stat. 407) struck out last sentence, designated remaining provisions as subsection (a), and in first sentence inserted "and, subject to the provisions of subsection (b) of this section," before "50 per centum", and added subsection (b). Prior to amendment, the last sentence read as follows: "In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States." Extracts from the 1987 Act appear in Volume V at page 3564.


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


1976 Amendment. Section 5109 of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, Act of December 22, 1987 (Public Law 100-203, 101 Stat.1330) amended section 35 by inserting at end "In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States." Extracts from the 1987 Act appear in Volume V at page 3564.

October 1976 Amendment. Section 317(a) of Act of October 21, 1976 (Public Law 94-579, title III, 90 Stat. 2770) substituted provisions setting forth determination of amount, time for payments, and manner of expenditure by the States of all moneys received from sales, etc., under provisions of this chapter and the
Geothermal Steam Act of 1970, and proviso relating to naval petroleum reserve moneys, for provisions setting forth determination of amount and time for payment to the States of all moneys received from sales, etc., under the provisions of this chapter, and provisos relating to naval petroleum reserve moneys, additional moneys from sales, etc., under this chapter and the Geothermal Steam Act of 1970, and expenditure of State oil shale funds. The October 1975 Act appears in Volume IV at page 2962.

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

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

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


1958 Amendments. Subsection 6(k) of the Act of July 7, 1958 (Public Law 85-508, 72 Stat. 343, 351), the Alaska Statehood Act, repealed the last sentence of section 35 as amended by the Act of May 27, 1947, which read: "Nothing herein contained shall be construed to affect the disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska as provided for in the Act of March 4, 1915 (38 Stat. 1214, 1215; 48 U.S.C. § 353, as amended)," Subsection 28 (b) of the Act struck out provisions which related to disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska and substituted ", and of those from Alaska 52-1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislators thereof" for ", and of those from Alaska 52-1/2 per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska" before proviso.

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

MINERAL LEASING ACT—SEC. 35

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

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

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

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

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

PART I—SEC. 3

* * * * *

Pages 264, 556

Sec. 3. [Definitions.]—

* * * * *

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

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

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


EXPLANATORY NOTES


Sec. 4. [General powers of Commission.]

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

S814
any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality. (41 Stat. 1065, 100 Stat. 1243; 16 U.S.C. § 797.)

EXPLANATORY NOTE


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

EXPLANATORY NOTE

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

(b) [Recommendation for development by United States. ]—Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the
Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find, appropriate concerning such development. (41 Stat. 1067; § 205, Act of August 26, 1935, 49 Stat. 842; 16 U.S.C. § 800.)

Explanatory Note

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

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

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

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

(2) [Applicant to submit evidence of compliance with State law.]—Satisfactory evidence that the applicant has complied with the
requirements of the laws of the State or States within which the proposed project is to be located with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power, and in any other business necessary to effect the purposes of a license under this Act.

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

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

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

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

NOTE OF OPINION

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

EXPLANATORY NOTE

1986 Amendment. Section 14 of the Electric Consumers Protection Act of 1986, Act of October 16, 1986 (Public Law 99-495, 100 Stat.1243) amended section 9 by inserting “(a)” after “9”, by redesignating existing subsections (a) and (b) as paragraphs (1) and (2), and by adding subsection (b) at the end thereof, as it appears above. Section 14 of the 1986 Act appears in Volume V at page 3503.
waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e); and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

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

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

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

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

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

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

(3) [Solicitation of recommendations required.—] Upon receipt of an application for a license, the Commissions shall solicit recommendations from the agencies and Indian tribes identified in subparagraphs (A) and (B) of paragraph (2) for proposed terms and conditions for the Commission’s consideration for inclusion in the license. (41 Stat. 1068, 100 Stat. 1243)
1986 Amendment. Section 3(b) of the Act of October 16, 1986 (Public Law 99-495, 100 Stat. 1243) amended subsection 10(a) by:

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

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

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

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

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

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

(d) [Amortization reserves.—After the first twenty years of operation, out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the net investment of a licensee in any project or projects under license, the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the Commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return and the proportion of such surplus earnings to be paid into and held in such reserves shall be set forth in the license.
(e) [Annual charges payable by licensees.]—(1) The licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part, including any reasonable and necessary costs incurred by Federal and State fish and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out by such agencies for purposes of administering their responsibilities under this Part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require: Provided, That, subject to annual appropriations acts, the portion of such annual charges imposed by the Commission under this subsection to cover the reasonable and necessary costs of such agencies shall be available to such agencies (in addition to other funds appropriated for such purposes) solely for carrying out such studies and reviews and shall remain available until expended: Provided, That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the Commission shall, subject to the approval of the Secretary of the Interior in the case of such dams or structures in reclamation projects and, in the case of such tribal lands, subject to the approval of the Indian tribe having jurisdiction of such lands as provided in section 16 of the Act of June 18, 1934 (48 Stat. 984), fix a reasonable annual charge for the use thereof, and such charges may with like approval be readjusted by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter upon notice and opportunity for hearing: Provided further, That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except, that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation, licenses therefor shall be issued without charge; and that licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than two thousand horsepower installed capacity may be issued without charge, except on tribal lands within Indian reservations; but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that
the amount charged therefor in any license shall be such as determined by the Commission: Provided however, That no charge shall be assessed for the use of any Government dam or structure by any licensee if, before January 1, 1985, the Secretary of the Interior has entered into a contract with such licensee that meets each of the following requirements:
(A) The contract covers one or more projects for which a license was issued by the Commission before January 1, 1985.
(B) The contract contains provisions specifically providing each of the following:
(i) A powerplant may be built by the licensee utilizing irrigation facilities constructed by the United States.
(ii) The powerplant shall remain in the exclusive control, possession, and ownership of the licensee concerned.
(iii) All revenue from the powerplant and from the use, sale, or disposal of electric energy from the powerplant shall be, and remain, the property of such licensee.
(C) The contract is an amendatory, supplemental and replacement contract between the United States and:
(i) the Quincy-Columbia Basin Irrigation District (Contract No. 14-06100-6418);
(ii) the East Columbia Basin Irrigation District (Contract No. 14-06-100-6419); or,
(iii) the South Columbia Basin Irrigation District (Contract No. 14-06-100-6420).
This paragraph shall apply to any project covered by a contract referred to in this paragraph only during the term of such contract unless otherwise provided by subsequent Act of Congress. In the event an over payment of any charge due under the section shall be made by a licensee, the Commission is authorized to allow a credit for such overpayment when charges are due for any subsequent period.
(2) In the case of licenses involving the use of Government dams or other structures owned by the United States, the charges fixed (or readjusted) by the Commission under paragraph (1) for the use of such dams or structures shall not exceed 1 mill per kilowatt-hour for the first 40 gigawatt-hours of energy a project produces in any year, 1 ½ mills per kilowatt-hour for over 40 up to and including 80 gigawatt-hours in any year, and 2 mills per kilowatt-hour for any energy the project produces over 80 gigawatt-hours in any year. Except as provided in subsection (f), such charge shall be the only charge assessed by any agency of the United States for the use of such dams or structures.
(3) The provisions of paragraph (2) shall apply with respect to—
(A) all licenses issued after the date of the enactment of this paragraph; and
(B) all licenses issued before such date which—
   (i) did not fix a specific charge for the use of the Government dam or structure involved; and
   (ii) did not specify that no charge would be fixed for the use of such dam or structure.

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

EXPLANATORY NOTES

1992 Amendments. Section 1701(a)(1) of the Energy Policy Act of 1992, Act of October 24, 1992 (Public Law 102-486, 106 Stat 2921) amended section 10(e)(1) by striking the semicolon after "Part" and inserting the following: ", including any reasonable and necessary costs incurred by Federal and State fish and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out by such agencies for purposes of administering their responsibilities under this Part:“. Section 1701 of the 1992 Act appears in Volume V at page 3784.


(f) [Headwater benefits.]—Whenever any licensee hereunder is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by any licensee shall be determined by the Commission. The licensees or permittees affected shall pay to the United States the cost of making
such determination as fixed by the Commission. Whenever such reservoir or other improvement is constructed by the United States the Commission shall assess similar charges against any licensee directly benefited thereby, and any amount so assessed shall be paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvements as provided in section 17 hereof. Whenever any power project not under license is benefited by the construction work of a licensee or permittee, the United States or any agency thereof, the Commission, after notice to the owner or owners of such unlicensed project, shall determine and fix a reasonable and equitable annual charge to be paid to the licensee or permittee on account of such benefits, or to the United States if it be the owner of such headwater improvement.

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

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

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

EXPLANATORY NOTE

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

(i) [Waiver of conditions.]—In issuing licenses for a minor part only of a complete project, or for a complete project of not more than two thousand horsepower installed capacity, the Commission may in its discretion waive such conditions, provisions, and requirements of this Part, except the license period of fifty years, as it may deem to be to the public interest to waive under the
Provided, That the provisions hereof shall not apply to annual charges for use of lands within Indian reservations.

(j) [Fish and wildlife protection, mitigation, and enhancement.]

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

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

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

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

Subsection (i) shall not apply to the conditions required under this subsection.

1986 Amendments. Section 3(c) of the Act of October 16, 1986 (Public Law 99-495, 100 Stat. 1243) amended section 10 by adding subsections (j)(1) and (2) at the end thereof as they appear above. Section 3(c) of the 1986 Act appears in Volume V at page 3487.
Sec. 14. (a) [Right of Government to take over project at expiration of license—Payment to licensee—Determination of value of project—Right of condemnation reserved to Federal, State, and local governments.]

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

Explanatory Notes


Sec. 15. (a) [Relicensing procedures.]—(1) [Reissuance of license to existing licensee at expiration of license upon such terms as authorized or required under then existing laws and regulations—Provision for
annual renewal of license until property is taken over by Government or a new license is issued.]—If the United States does not, at the expiration of the existing license, exercise its right to take over, maintain, and operate any project or projects of the licensee, as provided in section 14 hereof, the Commission is authorized to issue a new license to the existing licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee, which license may cover any project or projects covered by the existing license, and shall be issued on the condition that the new licensee shall, before taking possession of such project or projects, pay such amount, and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof: Provided, That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the existing licensee, upon reasonable terms, then the Commission shall issue from year to year an annual license to the then licensee under the terms and conditions of the existing license until the property is taken over or a new license is issued as aforesaid.

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

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

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

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

(D) The need of the applicant over the short and long term for the electricity generated by the project or projects to serve its customers, including, among other relevant considerations, the reasonable costs and reasonable availability of alternative sources of power, taking into consideration conservation and other relevant factors and taking into
consideration the effect on the provider (including its customers) of the alternative source of power, the effect on the applicant's operating and load characteristics, the effect on communities served or to be served by the project, and in the case of an applicant using power for the applicant's own industrial facility and related operations, the effect on the operation and efficiency of such facility or related operations, its workers, and the related community. In the case of an applicant that is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the need of such tribe for electricity generated by the project to foster the purposes of the reservation may be included.

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

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

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

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

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

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

Explanatory Note


(b)(1) [Notification procedures for relicensing.—] Each existing licensee shall notify the Commission whether the licensee intends to file an application for a new license or not. Such notice shall be submitted at least 5 years before the expiration of the existing license.
(2) [Required public information associated with relicensing.]-At the time notice is provided under paragraph (1), the existing licensee shall make each of the following reasonably available to the public for inspection at the offices of such licensee: current maps, drawings, data, and such other information as the Commission shall, by rule, require regarding the construction and operation of the licensed project. Such information shall include, to the greatest extent practicable pertinent energy conservation, recreation, fish and wildlife, and other environmental information. Copies of the information shall be made available at reasonable costs of reproduction.

Within 180 days after the enactment of the Electric Consumers Protection Act of 1986, the Commission shall promulgate regulations regarding the information to be provided under this paragraph.

EXPLANATORY NOTE


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

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

(c)(1) [When to file application for new license—Consultation required—Notice of procedures.]-Each application for a new license pursuant to this section shall be filed with the Commission at least 24 months before the expiration of the term of the existing license. Each applicant shall consult with the fish and wildlife agencies referred to in subsection(b) and, as appropriate, conduct studies with such agencies. Within 60 days after the statutory deadline for the submission of applications, the Commission shall issue a notice establishing expeditious procedures for relicensing and a deadline for submission of final amendments, if any, to the application.
(2) [Adjustment of time requirements.]—The time periods specified in this subsection and in subsection (b) shall be adjusted, in a manner that achieves the objectives of this section, by the Commission by rule or order with respect to existing licensees who, by reason of the expiration dates of their licenses, are unable to comply with a specified time period.

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

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

(A) shall not compel the existing licensee to enlarge generating facilities, transmit electric energy other than to the distribution system (providing service to customers) of the new licensee identified as of the date one day preceding the date of license award, or require the acquisition of new
facilities, including the upgrading of existing facilities other than any reasonable enhancement or improvement of existing facilities controlled by the existing licensee (including any acquisition related to such enhancement or improvement) necessary to carry out the purposes of this paragraph;

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

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

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

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

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

(e) [License term on relicensing.—]

(f) [Issuance of licenses for nonpower use—Payment and assumption of contracts by a new licensee—Termination of license—Accounting and reporting.—] In issuing any licenses under this section except an annual license, the Commission, on its own motion or upon application of any licensee, person, State, municipality, or State commission, after notice to each State commission and licensee affected, and after opportunity for hearing, whenever it finds that in conformity with a comprehensive plan for improving or developing a waterway or waterways for beneficial public uses all or part of any licensed project should no longer be used or adapted for use for power purposes, may license all or part of the project works for nonpower use. A license for nonpower use shall be issued to a new licensee only on the condition that the new licensee shall, before taking possession of the facilities encompassed thereunder, pay such amount and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof. Any license for nonpower use shall be a temporary license. Whenever, in the judgment of the Commission, a State, municipality, interstate agency, or another Federal agency is authorized and willing to assume regulatory supervision of the lands and facilities included under the nonpower license and does so, the Commission shall thereupon terminate the license. Consistent with the provisions of the Act of August 15, 1953 (67 Stat. 587), every licensee for nonpower use shall keep such accounts and file such annual and other periodic or special reports concerning the removal, alteration,
nonpower use, or other disposition of any project works or parts thereof covered by the nonpower use license as the Commission may by rules and regulations or order prescribe as necessary or appropriate. (41 Stat. 1072; Act of August 3, 1968, 82 Stat. 617; Act of October 16, 1986, 100 Stat. 1245; 16 U.S.C. § 808.)

**Explanatory Notes**

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

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


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

* * * * *

Sec. 21. [Licensee may acquire property through the exercise of the right of eminent domain—Jurisdiction of Federal district court where owner of property claims amount in excess of $3,000—Procedure to conform as nearly as may be with State court procedure.]—When any licensee cannot acquire by contract or pledges an unimproved dam site or the right to use or damage the lands or property of others necessary to the construction, maintenance, or operation of any dam, reservoir, diversion structure, or the works appurtenant or accessory thereto, in conjunction with an improvement which in the judgment of the Commission is desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such land or other property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall
conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: Provided, That United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000: Provided further, That no licensee may use the right of eminent domain under this section to acquire any lands or other property that, prior to the date of enactment of the Energy Policy Act of 1992, were owned by a State or political subdivision thereof and were part of or included within any public park, recreation area or wildlife refuge established under State or local law. In the case of lands or other property that are owned by a State or political subdivision and are part of or included within a public park, recreation area or wildlife refuge established under State or local law on or after the date of enactment of such Act, no licensee may use the right of eminent domain under this section to acquire such lands or property unless there has been a public hearing held in the affected community and a finding by the Commission, after due consideration of expressed public views and the recommendations of the State or political subdivision that owns the lands or property, that the license will not interfere or be inconsistent with the purposes for which such lands or property are owned. (41 Stat. 1074; 106 Stat. 3008; 16 U.S.C. § 814.)

Explanatory Note

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

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Page 281

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

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Pages 282, S63

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

FEDERAL WATER POWER ACT—SEC. 23

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

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

EXPLANATORY NOTES

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

1935 Amendment. The Federal Power Act, Act of August 26, 1935 (49 Stat. 846) amended section 23 by designating the first paragraph as subsection (a), and the second paragraph as subsection (b). Subsection (a) was amended by substituting the word "Part" for "Act" wherever it appeared and by substituting the last sentence.
of subsection (a) for the following: "Such fair value may, in the discretion of the Commission, be determined by mutual agreement between the Commission and the applicant or, in case they cannot agree, jurisdiction is hereby conferred upon the district court of the United States in the district within which such project or projects may be located, upon the application of either party to hear and determine the amount of such fair value."

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

*          *          *          *          *

Pages 285, S64

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

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

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

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

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

(1) such terms and conditions as the Fish and Wildlife Service, National Marine Fisheries Service, and the State agency each determine are appropriate
to prevent loss of, or damage to, such resources and to otherwise carry out the purposes of such Act, and

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

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

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

Explanatory Notes

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

Section 7(b) of the 1986 Act amended section 30(c) by inserting "National Marine Fisheries Service" after "the Fish and Wildlife Service" in both places such term appears.


Sec. 31. [Enforcement.].—(a) [Monitoring and investigation.]—The Commission shall monitor and investigate compliance with each license and permit issued under this Part and with each exemption granted from any requirement of this Part. The Commission shall conduct such investigations as may be necessary and proper in accordance with this Act. After notice and opportunity for public hearing, the Commission may issue such orders as necessary to require compliance with the terms and conditions of licenses and permits issued under this Part and with the terms and conditions of exemptions granted from any requirement of this Part.
(b) [Revocation orders.]—After notice and opportunity for an evidentiary hearing, the Commission may also issue an order revoking any license issued under this Part or any exemption granted from any requirement of this Part where any licensee or exemptee is found by the Commission:

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

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

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

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

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Commission
assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Commission, or the court may remand the proceeding to the Commission for such further action as the court may direct. (5 U.S.C. § 701 et seq.)

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

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

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

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

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

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

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

**Explanatory Note**

BOULDER CANYON PROJECT ACT

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

* * * * *

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

* * * * *


Sec. 3. [Appropriation not exceeding $242,000,000 authorized.]

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

EXPLANATORY NOTE


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

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

Section 103 of the 1984 Act appears in Volume V at page 3404.
Sec. 211 [Certain wheeling authority.]—(a) Any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale, may apply to the Commission for an order under this subsection requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) to the applicant. Upon receipt of such application, after public notice and notice to each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency, and after affording an opportunity for an evidentiary hearing, the Commission may issue such order if it finds that such order meets the requirements of section 212, and would otherwise be in the public interest. No order may be issued under this subsection unless the applicant has made a request for transmission services to the transmitting utility that would be the subject of such order at least 60 days prior to its filing of an application for such order.

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

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

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

(B) currently provided to the applicant by the utility subject to the order pursuant to a rate schedule on file during such period with the Commission:
Provided, That nothing in this subparagraph shall prevent an application for an order hereunder to be filed prior to termination of modification of an existing rates schedule: Provided, That such order shall not become effective until termination of such rate schedule or the modification becomes effective. (100 Stat. 1257)

**EXPLANATORY NOTE**


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

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

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

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

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

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

(A) provide for any appropriate compensation, and

(B) provide the affected electric utilities adequate opportunity and time to—
August 26, 1935

FEDERAL POWER ACT—SEC. 211

(i) make suitable alternative arrangements for any transmission services terminated or modified, and
(ii) insure that the interests of ratepayers of such utilities are adequately protected.

(3) No order may be issued under this subsection terminating or modifying any order issued under subsection (a) or (b) if the order under subsection (a) or (b) includes terms and conditions agreed upon by the parties which—
(A) fix a period during which transmission services are to be provided under the order under subsection (a) or (b), or
(B) otherwise provide procedures or methods for terminating or modifying such order (including, if appropriate, the return of the transmission capacity when necessary to take into account an increase, after the issuance of such order, in the needs of the transmitting utility subject to such order for transmission capacity).

EXPLANATORY NOTE


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

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

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

(4) Subsection (c) was amended by—
(A) Striking out paragraph (1),
(B) Striking from paragraph (2) “which requires the electric” and inserting “which requires the transmitting”.
(C) Striking out paragraphs (3) and (4).
(5) In subsection (d)—
(A) The first sentence of paragraph (1) was amended by striking “electric” and inserting “transmitting” in each place it appears.
(B) The second sentence of paragraph (1) was amended by inserting “each affected transmitting utility,” before “and each affected electric utility.”.
(C) Paragraph (3) was amended by striking “electric” and inserting “transmitting”.
(D) Subparagraph (1)(B) was amended by striking the period and inserting “or” and by inserting the new subparagraph (C) as it appears above after subparagraph (B).

Section 721 of the 1992 Act appears in Volume V at page 3776.
Sec. 212. (a) [Rates, charges, terms, and conditions for wholesale transmission services.]—An order under section 211 shall require the transmitting utility subject to the order to provide wholesale transmission services at rates, charges, terms, and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services, including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities. Such rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential. Rates, charges, terms, and conditions for transmission services provided pursuant to an order under section 211 shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for such order and not from a transmitting utility’s existing wholesale, retail, and transmission customers.

* * * * *

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

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

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

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

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

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

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

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

Explanatory Note


(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—
FEDERAL POWER ACT—SEC. 212

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

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

EXPLANATORY NOTE


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

(4) To the extent the Administrator of the Bonneville Power Administration cannot be required under section 211, as a result of the Administrator’s other statutory mandates, either to (A) provide transmission service to an applicant which the Commission would otherwise order, or (B) provide such service under rates, terms, and conditions which the Commission would otherwise require, the applicant shall not be required to provide similar transmission services to the Administrator or to provide such services under similar rates, terms, and conditions.
(5) The Commission shall not issue any order under section 210, section 211, this section, or section 213 requiring the Administrator of the Bonneville Power Administration to provide transmission service if such an order would impair the Administrator’s ability to provide such transmission service to the Administrator’s power and transmission customers in the Pacific Northwest, as that region is defined in section 3(14) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839a(14)), as is needed to assure adequate and reliable service to loads in that region.

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

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

(2) [Definitions.—]—For purposes of this subsection—
(A) the term ‘ERCOT’ means the Electric Reliability Council of Texas; and
(B) the term ‘ERCOT utility’ means a transmitting utility which is a member of ERCOT.

EXPLANATORY NOTE

(1) By striking subsections (a) and (b) and inserting subsection (a) as it appears above.
(2) Subsection (e) is amended to read as it appears above.
(3) By adding the new subsections (g), (h), (i), (j), and (k) at the end as they appear above. Section 722 of the 1992 Act appears in Volume V at page 3777.
Sec. 213. [Information requirements.]

(a) [Requests for wholesale transmission services.]

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

(b) [Transmission capacity and constraints.]

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

Explanatory Note


Sec. 214. [Sales by exempt wholesale generators.]

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

Explanatory Note

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

Section 725(a) of the 1992 Act appears in Volume V at page 3782.

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

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

PARKER AND GRAND COULEE DAMS AUTHORIZED

* * * * *

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

EXPLANATORY NOTES


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

* * * * *
Sec. 2. [Central Valley project reauthorized—$12,000,000 authorization transferred to Secretary of Interior as a nonreimbursable expenditure—Otherwise Reclamation law to govern—Priorities.]—(a) The $12,000,000 recommended for expenditure for a part of the Central Valley project, California, in accordance with the plans set forth in Rivers and Harbors Committee Document Numbered 35, Seventy-third Congress, and adopted and authorized by the provisions of section 1 of the Act of August 30, 1935 (49 Stat. 1028, at 1038), entitled "an Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," shall, when appropriated, be available for expenditure in accordance with the said plans by the Secretary of the Interior instead of the Secretary of War: Provided, That the transfer of authority from the Secretary of War to the Secretary of the Interior shall not render the expenditure of this fund reimbursable under the reclamation law: Provided further, That the entire Central Valley project, California, heretofore authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), is hereby reauthorized and declared to be for the purposes of improving navigation, regulating the flow of the San Joaquin River and the Sacramento River, controlling floods, providing for storage and for the delivery of the stored waters thereof, for construction under the provisions of the Federal reclamation laws of such distribution systems as the Secretary of the Interior deems necessary in connection with lands for which said stored waters are to be delivered, for the reclamation of arid and semiarid lands and lands of Indian reservations, and mitigation, protection, and restoration of fish and wildlife and other beneficial uses, and for the generation and sale of electric energy as a means of financially aiding and assisting such undertakings and in order to permit the full utilization of the works constructed to accomplish the aforesaid purposes: Provided further, That, except as herein otherwise specifically provided, the provisions of the reclamation law, as amended, shall govern the repayment of expenditures and the construction, operation, and maintenance of the dams, canals, power plants, pumping plants, transmission lines, and incidental works deemed necessary to said entire project, and the Secretary of the Interior may enter into repayment
contracts, and other necessary contracts, with State agencies, authorities, associations, persons, and corporations, either public or private, including all agencies with which contracts are authorized under the reclamation law, and may acquire by proceedings in eminent domain, or otherwise, all lands, rights-of-way, water rights, and other property necessary for said purposes: And provided further, That the said dam and reservoirs shall be used, first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and fish and wildlife mitigation, protection and restoration purposes; and, third, for power and fish and wildlife enhancement. The mitigation for fish and wildlife losses incurred as a result of construction, operation, or maintenance of the Central Valley project shall be based on the replacement of ecologically equivalent habitat and shall take place in accordance with the provisions of this title and concurrent with any future actions which adversely affect fish and wildlife populations or their habitat but shall have no priority over them. (50 Stat. 850; § 2, Act of October 17, 1940, 54 Stat. 1199; § 3406, Act of October 30, 1992, Public Law 102-575, 106 Stat. 4714)

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

(2) [State water project.—] The Secretary is further directed to operate the Central Valley project, in conjunction with the State water project, so that water supplied at the intake of the Contra Costa Canal is of a quality equal to the water quality standards contained in the Water Right Decision 1485 of the State of California Water Resources Control Board, dated August 16, 1978, except under drought emergency water conditions pursuant to a declaration by the Governor of California. Nothing in the previous sentence shall authorize or require the relocation of the Contra Costa Canal intake. (100 Stat. 3050)
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 reimbursable 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.

Reference in the Text. The Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley project and the State Water Project dated May 20, 1985, does not appear herein.

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)

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
August 26, 1937

CENTRAL VALLEY PROJECT—SEC. 2

President of the Senate for reference to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The report must outline the reasons for terminating the agreement and, in the case of the report by the Secretary of the Interior, include the views of the Administrator of the Environmental Protection Agency and the Governor of the State of California on the Secretary's decision. (100 Stat. 3051)

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

EXPLANATORY NOTES

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

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

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

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

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

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

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

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

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

BOULDER CANYON PROJECT ADJUSTMENT ACT

Page 697

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

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

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

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

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

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

Explanatory Notes

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

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

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

* * * * *

Page 700


Explanatory Note

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

* * * * *

Page 701

Sec. 6. [Interest to be computed a 3 per centum.]—Whenever by the terms of the Project Act or this Act payment of interest is provided for, and whenever interest shall enter into any computation thereunder, such interest shall be
computed at the rate of 3 per centum per annum, compounded annually:
Provided, That the respective rates of interest on appropriated funds advanced for
the visitor facilities program, as described in section 101(a) of the Hoover Power
Plant Act of 1984, shall be determined by the Secretary of the Treasury, taking
into consideration average market yields on outstanding marketable obligations
of the United States with remaining periods to maturity comparable to the
reimbursement period of the program during the month preceding the fiscal year
in which the costs of the program are incurred. To the extent that more than one
interest rate is determined pursuant to the preceding sentence, the Secretary of
the Treasury shall establish for repayment purposes an interest rate at a weighted
618e.)

**Explanatory Note**

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

* * * * *

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

* * * * *

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

* * * * *

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

NOTES OF OPINIONS

Existing uses 1
Judicial proceedings 2
Reclamation laws 3
Revenues 5
Studies 4

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

2. Judicial proceedings
A suit against officials of the Bureau of Reclamation for injunctive relief in connection with the operation of a project is not barred on the grounds that it is a suit against the United States without its consent, because the officials are acting within their statutory authority. The proper remedy of the plaintiffs is an action in the Court of Claims for damages for the taking of property rights. Turner v. Kings River Conservation Dist., 360 F. 2d 184 (9th Cir. 1966).

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

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

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

In order to give effect to the intent of Congress, section 8 of the Flood Control Act of 1944 requires that the reclamation laws apply to any contract for the disposition of irrigation benefits from the Isabella reservoir on the Kern River and the Pine Flat reservoir on the Kings River, California, both of which are projects of the Department of the Army, even though no additional works need to be constructed to make irrigation benefits available from the projects, and notwithstanding any contrary implication that might be drawn from section 10. 41 Op. Atty. Gen. 377, 65 I.D. 549 (1958).
December 22, 1944

FLOOD CONTROL ACT OF 1944—SEC. 8

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

4. Studies


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

5. Revenues

An appropriate share of revenues received in connection with contracts for irrigation service from Pine Flat Dam and other Department of the Army developments from which the Secretary of the Interior disposes of irrigation benefits pursuant to section 8 of the Flood Control Act of 1944, should be deposited in the general fund of the Treasury as miscellaneous receipts. Letter of Administrative Assistant Secretary Beasley to Mr. A. T. Samuelson, General Accounting Office, April 22, 1957, reprinted in Missouri Basin Water Problems: Joint Hearings Before the Senate Committees on Interior and Insular Affairs and Public Works, 85th Cong., 1st Sess., pt. 1, at 364–66 (1957).
Sec. 1. [Rehabilitation and betterment of Federal Reclamation projects, including small reclamation projects—Return of costs as determined by Secretary—Interest—Determination not effective until 60 days after submission to Congressional Committees—Definitions—Performance of work by contract or force account.]—Expenditures of funds hereafter specifically appropriated for rehabilitation and betterment of any project constructed under authority of the Small Reclamation Projects Act (Act of August 6, 1956, 70 Stat. 1044, and Acts amendatory thereof and supplementary thereto) and of irrigation systems on projects governed by the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), shall be made only after the organizations concerned shall have obligated themselves for the return thereof, in installments fixed in accordance with their ability to pay, as determined by the Secretary of the Interior in the light of their outstanding repayment obligations, and which shall, to the fullest practicable extent, be scheduled for return with their construction charge installments or otherwise scheduled as he shall determine: Provided, That repayment of such loans made for small reclamation projects shall include interest in accordance with the provisions of said Small Reclamation Projects Act. No such determination of the Secretary of the Interior shall become effective until the expiration of sixty days after it has been submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives; except that, any such determination may become effective prior to the expiration of such sixty days in any case in which each such committee approves an earlier date and notifies the Secretary, in writing, of such approval: Provided, That when Congress is not in session the Secretary’s determination, if accompanied by a finding by the Secretary that substantial hardship to the water users concerned or substantial further injury to the project works will result, shall become effective when the chairman and ranking minority member of each such committee shall file with the Secretary their written approval of said findings. The term "rehabilitation and betterment", as used in this section, shall mean maintenance, including replacements, which cannot be financed currently, as otherwise contemplated by the Federal reclamation laws in the case of operation and maintenance costs, but shall not include construction, the costs of which are returnable, in whole or in part, through "construction charges" as that term is defined in section 2(d) of the Reclamation Project Act of 1939 (53 Stat. 1187). Such rehabilitation and betterment
October 7, 1949

REHABILITATION AND BETTERMENT ACT—SEC. 1

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

EXPLANATORY NOTES

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

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

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

SACRAMENTO VALLEY CANALS

Pages 1032, S202

Sec. 1. [Central Valley project reauthorized.—

*          *          *          *          *

EXPLANATORY NOTE

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

Pages 1032-1033

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

The features herein authorized shall also include an irrigation canal, generally known as the Chico Canal, to be located on the east side of the Sacramento River and equipped with all necessary pumping plants and other appurtenant
works, beginning at the Sacramento River near Vina, California, and extending through Tehama and Butte Counties to a point near Durham, California, so as to permit the most effective irrigation of the lands lying in the vicinity of said canal and supply water for industrial, domestic, and other beneficial uses for these lands lying within Tehama and Butte Counties or such alternate canals and pumping plants as the Commissioner of Reclamation and the Secretary of the Interior may deem necessary to accomplish the aforesaid purposes. (64 Stat. 1036; Act of August 19, 1967, 81 Stat. 167; §2, Act of December 22, 1980, Public Law 96-570, 94 Stat. 3339; § 3412, A ct of October 30, 1992, 106 Stat. 4731)

**Explanatory Notes**

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

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


**Note of Opinion**

1. **Tehama-Colusa Canal, authorized service area.**

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

   Because the express language of the Act only authorizes the Tehama-Colusa Canal to service irrigable lands in "Tehama, Glenn and Colusa Counties," lands in Dunnigan Water District in
Yolo County are not within the authorized service area even though the District executed a water service contract in 1963 and a distribution system repayment contract in 1975 for the delivery of canal water and notwithstanding the fact that the maps in the feasibility report show the canal's service area extending 5 1/2 miles into Yolo County.

Memorandum of Associate Solicitor Leshy and Acting Regional Solicitor Dauber to Commissioner, Water and Power Resources Service, June 20, 1980.

EXPLANATORY NOTES


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

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

Prior to amendment, proviso read as follows:

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


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

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

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

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

The 1986 Act appears in Volume V at page 3474.
[Sec. 1. Sabine River Compact—Consent of Congress.]—The consent of the Congress is hereby given to the interstate compact relating to the waters of the Sabine River and its tributaries authorized by the Act of November 1, 1951 (Public Law Numbered 252, Eighty-second Congress, first session), which was signed by the representatives for the States of Louisiana and Texas and approved by the representative of the United States, at Logansport, Louisiana, on January 26, 1953, and thereafter ratified, and approved by the Legislatures of the States of Louisiana and Texas, which compact reads as follows:

SABINE RIVER COMPACT

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

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

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

and consent to negotiate and enter into the said Compact having been granted by Act of Congress of the United States approved November 1, 1951 (Public Law No. 252; 82nd Congress, First Session), and pursuant thereto the President having designated Louis W. Prentiss as the representative of the United States, the said representatives for Texas and Louisiana, after negotiations participated in by the representative of the United States, have for such Compact agreed upon Articles as hereinafter set forth. The major purposes of this Compact are to provide for an equitable apportionment between the States of Louisiana and Texas of the waters of the Sabine River and its tributaries, thereby removing the causes of present and future controversy between the States over the conservation and utilization of said waters; to encourage the development, conservation and utilization of the water resources of the Sabine River and its tributaries; and to establish a basis for cooperative planning and action by the States for the construction, operation and maintenance of projects for water
August 10, 1954

SABINE RIVER COMPACT—SEC. 1

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

EXPLANATORY NOTE


ARTICLE I

As used in this Compact:

*          *          *          *          *

EXPLANATORY NOTE

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

*          *          *          *          *

ARTICLE VII

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

(b) The Administration shall consist of two members from each State and of one member as representative of the United States, chosen by the President of the United States, who is hereby requested to appoint such a representative. The United States member shall be ex-officio chairman of the Administration without vote and shall not be a domiciliary of or reside in either State. The appointed members for Texas and Louisiana shall be designated within thirty days after the effective date of this Compact.
(c) The Texas members shall be appointed by the Governor for a term of six years; Provided, That one of the original Texas members shall be appointed for a term to establish a half-term interval between the expiration dates of the terms of such members, and thereafter one such member shall be appointed each three years for the regular term. The Louisiana members shall be residents of the Sabine Watershed and shall be appointed by the Governor for a term of four years, which shall run concurrent with the term of the Governor.

**EXPLANATORY NOTE**

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

Sec. 5. (a) [Basin fund.]—

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

(c) [Availability of revenues.]—

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

(e) [Apportionment of revenues.]—

(f) [Interest rate.]—

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


[Sec. 1. Small Reclamation Projects Act of 1956.]—The purpose of this Act is to encourage State and local participation in the development of projects under the Federal reclamation laws, with emphasis on rehabilitation and betterment of existing projects for purposes of significant conservation of water, energy and the environment and for purpose of water quality control, and to provide for Federal assistance in the development of similar projects in the seventeen western reclamation States by non-Federal organizations. (70 Stat. 1044; 100 Stat. 3053; 43 U.S.C. § 422a.)

EXPLANATORY NOTE


* * * * *

Pages 1332, S271

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

EXPLANATORY NOTE

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

* * * * *

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

(2) [Gifts and property.]—The Secretary shall require each organization to contribute toward the cost of the project (other than by loan and/or grant of Federal funds) an amount equal to 25 percent or more of the allowable estimated cost of the project: Provided, That the Secretary, at his discretion, may reduce the amount of such contribution to the extent that he determines that the organization is unable to secure financing from other sources under reasonable terms and conditions, and shall include letters from lenders or other written evidence in support of any funding of an applicant's inability to secure such financing in any project proposal transmitted to the Congress: Provided further, That under no circumstances shall the Secretary reduce the amount of such contribution to less than 10 percent of the allowable estimated total project costs. In determining the amount of the contribution as required by this paragraph, the Secretary shall credit toward that amount the cost of investigations, surveys, engineering, and other services necessary to the preparation of proposals and plans for the project as required by the Secretary, and the costs of lands and rights-of-way required for the project, and the $5,000 fee described in section 3 of this Act. In determining the allowable estimated cost of the project, the Secretary shall not include the amount of grants accorded to the organization under section 5(b). (100 Stat. 3053, 43 U.S.C. § 422d.)
1986 Amendment. Section 304 of the Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3053) amended section 4(b) of the Act of August 6, 1956, 70 Stat. 1044, as amended, by (a) inserting "(1)" after (b) and striking "by loan and grant under this Act" and inserting in lieu thereof "by loan and grant of Federal funds" and (b) by adding the new paragraph (2) regarding gifts and property at the end thereof. Section 304 of the 1986 Act appears in Volume V at page 3516.

NOTE OF OPINION

1. Cost of land acquisition

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

(c) [Project proposals found feasible to be transmitted to Congress.]—At such time as a project is found by the Secretary and the Governor of the State in which it is located (or an appropriate State agency designated by him) to be financially feasible, is determined by the Secretary to constitute a reasonable risk under the provisions of this Act, and is approved by the Secretary, such findings and approval shall be transmitted to the Congress. Each project proposal transmitted by the Secretary to the Congress shall include a certification by the Secretary that an adequate soil survey and land classification has been made, or that the successful irrigability of those lands and their susceptibility to sustained production of agricultural crops by means of irrigation has been demonstrated in practice. Such proposal shall also include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows. The Secretary, at the time of submitting the project proposal to Congress or at the time of his provisions of this Act, may reserve from use or disposition inimical to the project administrative jurisdiction and subject to disposition by him and which are required for use by the contract provided for in section 5 of this Act shall have been executed. Act of August 6, 1956, 70 Stat. 1044, as amended; 100 Stat. 3054; 43 U.S.C. § 422d.)

1986 Amendment. Section 305 of the Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3054) amended section 4(c) of the Act of August 6, 1956, 70 Stat. 1044, as amended, by inserting, following the first sentence, the following two sentences: "Each project proposal transmitted . . . demonstrated in practice." "Such proposal shall . . . or hazardous irrigation return flows." Section 305 of the 1986 Act appears in Volume V at page 3516.
(d) [Secretary authorized to increase loan and/or grant amount.]—At the time of his submitting the project proposal to the Congress, or at any subsequent time prior to completion of construction of the project, including projects heretofore approved, the Secretary may increase the amount of the requested loan and/or grant to an amount within the maximum allowed by subsection (a) of section 5 as amended, to compensate for increases in construction costs due to price escalation. (Added by Act of December 27, 1975, 89 Stat. 1049; 43 U.S.C. § 422d)

EXPLANATORY NOTE

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

NOTE OF OPINION

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

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

EXPLANATORY NOTES

1994 Amendment. Section 16(b) of the Act of November 2, 1994 (Public Law 103-437, 108 Stat. 4594) amended section 4(e) by striking "House nor the Senate Interior and Insular..."
August 6, 1956

SMALL RECLAMATION PROJECTS ACT 1335, S272

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

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

Pages 1335-1336, S272

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

EXPLANATORY NOTES

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

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

NOTE OF OPINION

1. Projects, eligibility of

The language in section 4(e) of the Small Reclamation Projects Act of 1956 requiring the Secretary to consider "whether the proposed project is primarily for irrigation" clearly evidences that Congress did not intend the term "project", as defined by section 2(e) (prior to the 1971 amendment) to be restricted only to complete undertakings used exclusively for irrigation purposes. If such an undertaking is to be "primarily" for irrigation then it is acceptable to have the undertaking also serve a secondary compatible purpose. Thus the Act does not prevent the Board of Land and Natural Resources of Hawaii from entering into a contract providing for the rental and use by the Kauakoi Corporation of water facilities and space within the pipelines of the Molokai Irrigation System to convey the corporation’s well water to its proposed resort
complex, even though the irrigation system is financed, in part, under the Act. Molokai Homesteaders Cooperative Association v. Morton, 506 F.2d 572 (9th Cir. 1974).

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

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

(b) the maximum amount of any grant to be accorded the organization. Said grant shall not exceed the sum of the following: (1) the costs of investigations, surveys, and engineering and other services necessary to the preparation of proposals and plans for the project allocable to fish and wildlife enhancement or public recreation; (2) one-half the costs of acquiring lands or interests therein to serve exclusively the purposes of fish and wildlife enhancement or public recreation, plus the costs of acquiring joint use lands and interests therein properly allocable to fish and wildlife enhancement and public recreation; (3) one-half the costs of basic public outdoor recreation facilities or facilities serving fish and wildlife enhancement purposes exclusively; (4) one-half the costs of construction of joint use facilities properly allocable to fish and wildlife enhancement or public recreation; (5) that portion of the estimated cost of constructing the project which, if it were constructed as a Federal reclamation project, would be properly allocable to functions, other than recreation and fish and wildlife enhancement and flood control, which are nonreimbursable under general provisions of law applicable to such projects; and (6) that portion of the estimated cost of constructing the project which is allocable to flood control and which would be nonreimbursable under general provisions of law applicable to projects constructed by the Secretary of the Army. (Act of August 6, 1956, 70 Stat. 1046; 100 Stat. 3054, 43 U.S.C. § 422e.)

Explanatory Note

August 6, 1956

SMALL RECLAMATION PROJECTS ACT

(c) a plan of repayment by the organization of (1) the sums lent to it in not more than forty years from the date when the principal benefits of the project first become available; (2) interest, as determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which the contract is executed, on the basis of the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the applicable reimbursement period of the project, adjusted to the nearest one-eighth of 1 percent on the unamortized balance of any portion of the loan—
(A) which is attributable to furnishing irrigation benefits in each particular year to land held in private ownership by a qualified recipient or by a limited recipient, as such terms are defined in section 202 of the Reclamation Reform Act of 1982 (43 U.S.C. § 390bb.) in excess of three hundred and twenty irrigable acres; or,
(B) which is allocated to domestic, industrial, or municipal water supply, commercial power, fish and wildlife enhancement, or public recreation except that portion of such allocation attributable to furnishing benefits to a facility operated by an agency of the United States, which portion shall bear no interest. (Act of August 6, 1956, 70 Stat. 1046; 100 Stat. 3054, 43 U.S.C. § 422e.)

EXPLANATORY NOTES


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Page 1339

Sec. 8. [Fish and wildlife factors of projects.]—The planning and construction of projects undertaken pursuant to this Act shall be subject to all procedural requirements and other provisions of the Fish and Wildlife Coordination Act (48 Stat. 401) as amended (16 U.S.C. § 661 et seq.). The Secretary shall transfer to the Fish and Wildlife Service or to the National Marine Fisheries Service, out of appropriations or other funds made available under this Act, such funds as may be necessary to conduct the investigations required to
SMALL RECLAMATION PROJECTS ACT


EXPLANATORY NOTES


* * * * *

Pages 1339, S277

Sec. 10 [Appropriation.]—There are hereby authorized to be appropriated, such sums as may be necessary, but not to exceed $600,000,000 to carry out the provisions of this Act and, effective October 1, 1986, not exceed an additional $600,000,000: Provided, That the Secretary shall advise the Congress promptly on the receipt of each proposal referred to in section 3, and no contract shall become effective until appropriated funds are available to initiate the specific proposal covered by each contract. All such appropriations shall remain available until expended and shall, insofar as they are used to finance loans made under this Act, be reimbursable in the manner herein above provided. Not more than 20 percent of the total amount of additional funds authorized to be appropriated effective October 1, 1986, for loans and grants pursuant to this Act shall be for projects in any single State: Provided, That beginning five years after the date of enactment of this Act, the Secretary is authorized to waive the 20 percent limitation for loans and grants which meet the purposes set forth in section 1 of this Act: Provided further, That the decision of the Secretary to waive the limitation shall be submitted to the Congress together with the project proposal pursuant to section 4(c) of this Act and shall become effective only if the Congress has not, within 60 legislative days, passed a joint resolution of disapproval for such a waiver. (70 Stat. 1047; Act of September 2, 1966, 80 Stat. 376 § 1 (7); Act of November 24, 1971, 85 Stat. 488; Act of December 27, 1975, 89 Stat. 1050; Act of September 4, 1980, 94 Stat. 1065; Act of October 27, 1986, 100 Stat. 3055, 43 U.S.C. § 422j.)
August 6, 1956

SMALL RECLAMATION PROJECTS ACT 1339, S277

EXPLANATORY NOTE

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

Page 1354

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

EXPLANATORY NOTE

1994 Amendment. Subsection 501(a) of the Act of October 31, 1994, Public Law 103-434 (108 Stat. 4538) amended the first section of the San Angelo Federal reclamation project Act by striking "ten thousand acres" and inserting "fifteen thousand acres". Further, subsection 501(b) authorizes the Secretary to amend contract numbered 14-06-500-369 to reflect the amendment made by subsection (a), except that such amendment shall not be construed to require a change in the proportionate amount of all remaining payments due and payable to the United States by Tom Green County Water Control Improvement District No. 1. Title V of the 1994 Act appears in Volume V at page 4025.
Sec. 301. (a) [Congressional policy.]

(b) [Storage.]-In carrying out the policy set forth in this section, it is hereby provided that storage may be included in any reservoir project surveyed, planned, constructed or to be planned, surveyed and/or constructed by the Corps of Engineers or the Bureau of Reclamation to impound water for present or anticipated future demand or need for municipal or industrial water, and the reasonable value thereof may be taken into account in estimating the economic value of the entire project: Provided, That the cost of any construction or modification authorized under the provisions of this section shall be determined on the basis that all authorized purposes served by the project shall share equitably in the benefits of multiple purpose construction, as determined by the Secretary of the Army or the Secretary of the Interior, as the case may be: Provided further, That before construction or modification of any project including water supply provisions for present demand is initiated, State or local interests shall agree to pay for the cost of such provisions in accordance with the provisions of this section: And provided further, That (1) for Corps of Engineers projects, not to exceed 30 percent of the total estimated cost of any project may be allocated to anticipated future demands, and, (2) for Bureau of Reclamation projects, not to exceed 30 per centum of the total estimated cost of any project may be allocated to anticipated future demands where State or local interests give reasonable assurances, and there is reasonable evidence, that such demands for the use of such storage will be made within a period of time which will permit paying out the costs allocated to water supply within the life of the project: And provided further, That for Corps of Engineers projects, the Secretary of the Army may permit the full non-Federal contribution to be made, without interest, during construction of the project, or, with interest, over a period of not more than thirty years from the date of completion, with repayment contracts providing for recalculation of the interest rate at, five-year intervals, and for Bureau of Reclamation projects, the entire amount of the construction costs, including interest during construction, allocated to water supply shall be repaid within the life of the project but in no event to exceed fifty years after the project.
is first used for the storage of water for water supply purposes, except that (1) no payment need be made with respect to storage for future water supply until such supply is first used, and (2) no interest shall be charged on such cost until such supply is first used, but in no case shall the interest-free period exceed ten years. For Corps of Engineers projects, all annual operation, maintenance, and replacement costs for municipal and industrial water supply storage under the provisions of this section shall be reimbursed from State or local interests on an annual basis. For Corps of Engineers projects, any repayment by a State or local interest shall be made with interest at a rate to be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which costs for the construction of the project are first incurred (or, when a recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs. For Bureau of Reclamation projects, the interest rate used for purposes of computing interest during construction and interest on the unpaid balance shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. The provisions of this subsection insofar as they relate to the Bureau of Reclamation and the Secretary of the Interior shall be alternative to and not a substitute for the provisions of the Reclamation Project Act of 1939 (53 Stat. 1187) relating to the same subject.

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

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

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

(3) after the first sentence, inserting the following: "For Corps of Engineers projects, all annual operation, maintenance, and replacement costs for municipal and industrial water supply storage under the provisions of this section shall be reimbursed from State or local interests on an annual basis. For Corps of Engineers projects, any repayment by a State or local interest shall be made with interest at a rate to be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining
periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which costs for the construction of the project are first incurred (or, when a recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs," and
(4) striking out "The interest rate used" and insert in lieu thereof: "For Bureau of Reclamation projects, the interest rate used".

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


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

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

EXPLANATORY NOTES

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

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


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

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

Explanatory Notes

FLOOD CONTROL ACT OF 1962

Sec. 203. [Authorization of projects.]—

SAN JOAQUIN RIVER BASIN

The New Melones project, Stanislaus River, California, authorized by the Flood Control Act approved December 22, 1944 (58 Stat. 887), is hereby modified substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 453, Eighty-seventh Congress, at an estimated cost of $113,717,000: Provided, That upon completion of construction of the dam and powerplant by the Corps of Engineers, the project shall become an integral part of the Central Valley project and be operated and maintained by the Secretary of the Interior pursuant to the Federal reclamation laws, except that the flood control operation of the project shall be in accordance with the rules and regulations prescribed by the Secretary of the Army: Provided further, That the Stanislaus River Channel, from Goodwin Dam to the San Joaquin River, shall be maintained by the Secretary of the Army to a capacity of at least eight thousand cubic feet per second subject to the condition that responsible local interests agree to maintain private levees and to prevent encroachment on the existing channel and floodway between the levees: Provided further, That before initiating any diversions of water from the Stanislaus River Basin in connection with the operation of the Central Valley project, the Secretary of the Interior shall determine the quantity of water required to satisfy all existing and anticipated future needs within that basin and the diversions shall at all times be subordinate to the quantities so determined: Provided further, That the Secretary of the Army adopt appropriate measures to insure the preservation and propagation of fish and wildlife in the New Melones project and shall allocate to the preservation and propagation of fish and wildlife, as provided in the Act of August 14, 1946 (60 Stat. 1080), an appropriate share of the cost of
constructing the Stanislaus River diversion and of operating and maintaining the same: Provided further, That the Secretary of the Army, in connection with the New Melones project, construct basic public recreation facilities, acquire land necessary for that purpose, the cost of constructing such facilities and acquiring such lands to be nonreimbursable and nonreturnable: Provided further, That contracts for the sale and delivery of the additional electric energy available from the Central Valley project power system as a result of the construction of the plants herein authorized and their integration with that system shall be made in accordance with preferences expressed in the Federal reclamation laws except that a first preference, to the extent as needed and as fixed by the Secretary of the Interior, but not to exceed 25 per centum of such additional energy, shall be given, under reclamation law, to preference customers in Tuolumne and Calaveras Counties, California, for use in that county, who are ready, able, and willing, within twelve months after notice of availability by the Secretary of the Interior, to enter into contracts for the energy and that Tuolumne and Calaveras County preference customers may exercise their option in the same date in each successive fifth year providing written notice of their intention to use the energy is given to the Secretary not less than eighteen months prior to said dates: And provided further, That the Secretary of the Army give consideration during the preconstruction planning for the New Melones project to the advisability of including storage for the regulation of streamflow for the purpose of downstream water quality control: And provided further, That the Secretary of the Interior is authorized to make available to the Oakdale and South San Joaquin irrigation districts, at the current contract rate, unallocated storage of such districts carried over from the previous year. (76 Stat. 1191, 102 Stat. 959)

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

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

Explanatory Notes

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

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


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

Background: Buchanan Dam and Reservoir. Both House and Senate committee reports note in part: "Local cooperation.—(a) Buchanan Dam and Reservoir: (1) Prior to construction of the dam and reservoir, the Secretary of the Interior [will] make necessary arrangements for repayment, under the provisions of reclamation law, of that part of the construction cost and annual operation and maintenance cost allocated to irrigation, presently estimated at $6,341,000 and $43,000, respectively, the final cost allocation to be made by the Secretary of the Army, with the assistance of the Secretary of the Interior; such payment to be financially integrated into the Central Valley project of the Bureau of Reclamation." H.R. Rept. No. 2504 on H.R. 13273, at 217, and S. Rept. No. 2258 on S. 3773, at 292, 87th Cong., 2d Sess. (1962).
Sec. 2. [Establishment of fund—Designation of specified revenues to fund—Proceeds from disposal of surplus property—Revenues from motorboat fuels taxes—Annual appropriations]—During the period ending September 30, 2015, there shall be covered into the land and water conservation fund in the Treasury of the United States, which fund is hereby established and is hereinafter referred to as the "fund", the following revenues and collections:

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

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

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

(2) To the extent that any such sums so appropriated are not sufficient to make the total annual income of the fund equivalent to the amounts provided in clause (1), an amount sufficient to cover the remainder thereof shall be credited to the fund from revenues due and payable to the United States for deposit in the Treasury as miscellaneous receipts under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. § 1331 et seq.): Provided, That notwithstanding the provisions of section 3 of this Act, moneys covered into the fund under this paragraph shall remain in the fund until appropriated by the Congress to carry out the purpose of this Act. (78 Stat. 897; § 11, Act of...
September 3, 1964

LAND AND WATER CONSERVATION FUND  1785, S359


EXPLANATORY NOTES

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

(A) In the matter preceding subsection (a), strike "1989" and substitute "2015".
(B) In subsection (c)(1), strike "1989" and substitute "2015".

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

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

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


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

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

1968 Amendment. Section 1(a) of the Act of July 15, 1968 (Public Law 90-401, 82 Stat. 354) repealed all of subsection (2)(a) except the fourth paragraph, redesignated that paragraph as section 10 of the Land and Water Conservation Fund Act, and redesignated former subsections (2)(b) and (2)(c) as (2)(a) and (2)(b), respectively. Section 1(d) of the 1968 Act, as amended by section 1 of the Act of July 7, 1970, 84 Stat. 410, made the provisions amending section 2 effective December 31, 1971, and stated that until that date, "revenues derived from the subsection (a) that is repealed by [Section 1(a) of the 1968 Act] shall continue to be covered into the fund." Section 2 of the
1785, S359  LAND AND WATER CONSERVATION FUND

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


Note of Opinion

1. Disposition of recreation revenues

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

With regard to revenues derived from the entrance, admission and other recreation user fees and charges collected by the Forest Service at areas administered by it for recreation, the Act of March 4, 1907 (34 Stat. 1295), which provides that Forest Service and national forest revenues shall be covered into miscellaneous receipts in the Treasury, was rendered ineffective by section 2(a) of the Land and Water Conservation Fund Act and remains ineffective after the amendment provided by section 11 of the Federal Water Project Recreation Act. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.
The Act of May 23, 1908, 16 U.S.C. § 500, which mandates that twenty five percent of all revenues from each national forest be returned to the State in which the forest is situated for the benefit of public schools and public roads, is not affected by section 2(a) of the Land and Water Conservation Fund Act of 1965 when Reclamation land is transferred to the Forest Service for administration pursuant to section 7(c) of the Federal Water Project Recreation Act. It is clear from the language and the legislative history of the Land and Water Conservation Fund Act that section 2(a) of that Act was expressly intended to exempt revenues, including recreation revenues, already allocated under the 1908 Act from being diverted into the conservation fund. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

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

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

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

Revenues from the sale or rental of surplus water under the Warren Act continue to be credited to the project or division of the project to which the construction cost has been charged, as provided by subsection J of the Fact Finders’ Act, and are not diverted to the Land and Water Conservation Fund by section 2(a) of the Land and Water Conservation Fund Act even though project lands have been transferred to the administration of the Forest Service for recreation purposes pursuant to section 7(c) of the Federal Water Project Recreation Act. Revenues under subsection J from the sale or rental of surplus water, and revenues from entrance, admission and recreation user fees under section 2(a) are derived from totally different uses of different forms of property. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.
Sec. 3. [Appropriations.]—Moneys covered into the fund shall be available for expenditure for the purposes of this Act only when appropriated therefor. Such appropriations may be made without fiscal-year limitation. Moneys made available for obligation or expenditure from the fund or from the special account established under section 4(i)(1) may be obligated or expended only as provided in this Act. (78 Stat. 899; 101 Stat. 1330-267; Act of December 22, 1987, 101 Stat. 1330-267; 16 U.S.C. § 460l-6)

Explanatory Note


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

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

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

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

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

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

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

(B) Following submittal of the report to the respective committees, any proposed changes to matters covered in the report, including the addition
or deletion of park units or the increase or decrease of fee levels at park units shall not take effect until 60 days after notice of the proposed change has been submitted to the committees.

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

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

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

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

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

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

(b) [Collection of recreation use fees—Campgrounds under jurisdiction of Corps of Engineers—Reduced fee for Golden Age Passport holders.]—Each Federal agency developing, administering, providing or furnishing at Federal expense, specialized outdoor recreation sites, facilities, equipment, or services shall, in accordance with this subsection and subsection (d) of this section, provide for the collection of daily recreation use fees at the place of use or any reasonably convenient location: Provided, That in no event shall there be a charge by any such agency for the use, either singly or in any combination, of drinking water, wayside exhibits, roads, overlook sites, visitors’ centers, scenic drives, toilet facilities, picnic tables, or boat ramps: Provided, however, That a fee shall be charged for boat launching facilities only where specialized facilities or services such as mechanical or hydraulic boat lifts or
facilities are provided: And provided further, That in no event shall there be a charge for the use of any campground not having the following—tent or trailer spaces, drinking water, access road, refuse containers, toilet facilities, personal collection of the fee by an employee or agent of the Federal agency operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted). At each lake or reservoir under the jurisdiction of the Corps of Engineers, United States Army, where camping is permitted, such agency shall provide at least one primitive campground, containing designated campsites, sanitary facilities, and vehicular access, where no charge shall be imposed. Any Golden Age Passport permittee, or permittee under paragraph (5) of subsection (a) of this section, shall be entitled upon presentation of such permit to utilize such special recreation facilities at a rate of 50 per centum of the established use fee.

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

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

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

(e) [Agencies may prescribe rules and regulations—Enforcement powers—Penalties for violations.]—In accordance with the provisions of this section, the heads of appropriate departments and agencies may prescribe rules and regulations for areas under their administration for the collection of any fee established pursuant to this section. Persons authorized by the heads of such Federal agencies to enforce any such rules or regulations issued under this subsection may, within areas under the administration or authority of such agency head and with or, if the offense is committed in his presence, without a warrant, arrest any person who violates such rules and regulations. Any person so arrested may be tried and sentenced by the United States magistrate specifically designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in title 18, United States Code, section 3401, subsections (b), (c), (d), and (e), as
amended. Any violations of the rules and regulations issued under this subsection shall be punishable by a fine of not more than $100.

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

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

(h) [Annual reports to Congress.]—Repealed.

Explanatory Note


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

(i)(1) [Fees covered into a special account.]—Except in the case of fees collected by the United States Fish and Wildlife Service or the Tennessee Valley Authority, all receipts from fees collected pursuant to this section by any Federal agency (or by any public or private entity under contract with a Federal agency) shall be covered into a special account for that agency established in the Treasury of the United States. Fees collected by the Secretary of Agriculture pursuant to this subsection shall continue to be available for the purposes of distribution to States and counties in accordance with applicable law.
(2) Amounts covered into the special account for each agency during each fiscal year shall, after the end of such fiscal year, be available for appropriation solely for the purposes and in the manner provided in this subsection. No funds shall be transferred from fee receipts made available under this Act to each unit of the national park system: Provided, however, That in making appropriations, funds derived from such fees may be used for any purpose authorized therein. Funds credited to the special account shall remain available until expended.

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

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

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

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

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

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

(ii) [Use of amounts.]—Amounts withheld under clause (i) shall be retained by the Secretary and shall be available, without further Act of appropriation, for expenditure by the Secretary for the unit with respect to which the amounts were collected for the purposes of enhancing the
quality of the visitor experience, protection of resources, repair and maintenance, interpretation, signage, habitat or facility enhancement, resource preservation, annual operation (including fee collection), maintenance, and law enforcement.

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

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

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

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

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

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

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

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

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

The Secretary shall require a surety bond for any such volunteer performing services under this subsection. Funds available to the collecting agency may be used to cover the cost of any such surety bond. The head of the collecting agency may enter into arrangements with qualified public or private entities pursuant to which such entities may sell (without cost to the United States) annual admission
permits (including Golden Eagle Passports) at any appropriate location. Such arrangements shall require each such entity to reimburse the United States for the full amount to be received from the sale of such permits at or before the agency delivers the permits to such entity for sale.

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

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

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

EXPLANATORY NOTES


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

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

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

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

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

(4) Paragraph (3) is amended by adding the new sentence at the end thereof.
beginning with the words
"Notwithstanding any other provision of
this Act, . . ." as it appears above.
(5) Adding new paragraphs (6)(A) through
12 as they appear above.

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

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

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

1974 Amendments. Section 1 (a) of the Act
192) amended the heading of section 4 by
deleting "SPECIAL RECREATION". Section
1(b) of the Act amended subsection (a) by
inserting into the second sentence "which are
operated and maintained by a Federal agency"
following "Federally owned areas". Section 1(c)
of the Act amended paragraph (a)(1) by: in the
second sentence substituting "The permittee"
for "Any person purchasing the annual permit";
inserting "or alternatively, the permittee and his
spouse, children, and parents accompanying
him where entry to the area is by any means
other than private, noncommercial vehicle"
following "single, private, noncommercial vehicle";
and deleting all that follows "pursuant
to this subsection". Section 1(c) of the 1974 Act
also: inserted immediately thereafter two
sentences reading "the annual permit shall be
charged pursuant to subsections (b) and (c) of
this section:"; in the former third sentence,
substituted "(e)" for "(d)"; in the former fourth
sentence, deleted all that follows "purchase" and
substituted therefor "at any such designated
area"; and deleted the former fifth sentence,
which read "The Secretary of the Interior shall
transfer to the Postal Service from the receipts
thereof such funds as are adequate for the
reimbursement of the cost of the service so
provided." Section 1 (d) amended subsection
(a)(2) by deleting, in the first sentence, "or who
enter such an area by means other than by
private, noncommercial vehicle.".

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

Section 1(f) of the 1974 Act amended the first
sentence of subsection (b) by: inserting 11, at
Federal expense," preceding "specialized" and
"outdoor recreation" preceding "sites, facilities,
equipment, or services"; deleting "related to
outdoor recreation" and inserting ", in
accordance with this subsection and subsection
(d) of this section" following, "shall"; substituting
"daily" for "special"; and substituting "at the
place of use or any reasonably convenient
location" for "for the use of sites, facilities,
equipment, or services furnished at Federal
expense" immediately prior to the first proviso.
The first sentence of subsection (b) was further
amended by: inserting the present language of
the first proviso, which formerly stated,
"provided, that in no event shall there be a
charge for the day use or recreational use of
those facilities or combination of those facilities
or areas which virtually all visitors might reasonably be expected to utilize, such as, but not limited to, picnic areas, boat ramps where no mechanical or hydraulic equipment is provided, drinking water, wayside exhibits, roads, trails, overlook sites, visitors' centers, scenic drives, and toilet facilities. 

Section 1(g) of the 1974 Act redesignated former subsection (b)(2) as subsection "(c) RECREATION PERMITS--", and redesignated subsequent subsections accordingly.

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

The 1974 Act does not appear herein.


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

Reference in the Text. Section 101 of title 23 of the United States Code, referred to in subsection (a)(3) of the text, defines the national Federal-aid highway system to include any one of the Federal-aid highway systems described in 23 U.S.C. § 103. These systems include the Federal-aid primary system, the Federal-aid urban system, the Federal-aid secondary system, and the Interstate System. These provisions do not appear herein.
Reference in the Text. Subsections (b) through (e) of section 3401 of title 18 of the U.S. Code, referred to in subsection (e) of the text, outline the procedure for trial on misdemeanor charges by a United States Magistrate. These provisions do not appear herein.

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

(1) the National Park System;
(2) national scenic trails;
(3) the national wilderness preservation system;
(4) federally administered components of the National Wild and Scenic Rivers System; and
(5) national recreation areas administered by the Secretary of Agriculture.


Explanatory Notes


1976 Amendment. Section 101(2) of the Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1314) amended section 5 by: deleting "AUTHORIZATION FOR ADVANCE APPROPRIATIONS" from the heading; deleting the second sentence of subsection (a) and substituting therefor "Not less than 40 per centum of such appropriations shall be available for Federal purposes."; deleting subsection (b); and striking out the subsection (a) heading in the remaining text. The 1976 Act does not appear herein.
Sec. 6. [Financial assistance to States.—(a) [Secretary of Interior authorized to make payments to States to carry out purposes of Act.]—The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to provide financial assistance to the States from moneys available for State purposes. Payments may be made to the States by the Secretary as hereafter provided, subject to such terms and conditions as he considers appropriate and in the public interest to carry out the purposes of this Act, for outdoor recreation: (1) planning, (2) acquisition of land, waters, or interests in land or waters, or (3) development.

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

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

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

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

(4) The Secretary shall notify each State of its apportionments; and the amounts thereof shall be available thereafter for payment to such State for planning, acquisition, or development projects as hereafter prescribed. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two
fiscal years thereafter shall be reapportioned by the Secretary in accordance with paragraph (2) of this subsection, without regard to the 10 per centum limitation to an individual State specified in this subsection.

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

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

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

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

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

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

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

The plan shall take into account relevant Federal resources and programs and shall be correlated so far as practicable with other State, regional, and local plans. Where there exists or is in preparation for any particular State a comprehensive plan financed in part with funds supplied by the Housing and Home Finance Agency, any statewide outdoor recreation plan prepared for purposes of this Act shall be based upon the same population, growth, and other pertinent factors as are used in formulating the Housing and Home Finance Agency financed plans.
The Secretary may provide financial assistance to any State for projects for the preparation of a comprehensive statewide outdoor recreation plan when such plan is not otherwise available or for the maintenance of such plan.

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

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

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

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

(f) [Requirements and conditions for project approval—Payments to Governors or State officials—State transfer of funds to public agencies—Conversion of property to other uses—Reports to Secretary—Evaluation by States—Discrimination prohibited.]—

(1) Payments may be made to States by the Secretary only for those planning, acquisition, or development projects that are approved by him. No payment may be made by the Secretary for or on account of any project with respect to which financial assistance has been given or promised under any other Federal program or activity, and no financial assistance may be given under any other Federal program or activity for or on account of any project with respect to which such assistance has been given or promised under this Act. The Secretary may make payments from time to time in keeping with the rate of progress.
September 3, 1964

LAND AND WATER CONSERVATION FUND

1793, S368

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

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

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

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

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

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

(7) Each State shall evaluate its grant programs annually under guidelines set
forth by the Secretary and shall transmit, so as to be received by the Secretary
no later than December 31, such evaluation to the Secretary, together with a
list of all projects funded during that fiscal year, including, but not limited to, a description of each project, the amount of Federal funds employed in such project, the source of other funds, and the estimated cost of completion of the project. Such evaluation and the publication of same shall be eligible for funding on a 50-50 matching basis. The results of the evaluation shall be annually reported on a fiscal year basis to the Bureau of Outdoor Recreation, which agency shall forward a summary of such reports to the Committees on Interior and Insular Affairs of the United States Congress by no later than March 1 of each year. Such report to the committees shall also include an analysis of the accomplishments of the fund for the period reported, and may also include recommendations as to future improvements for the operation of the Land and Water Conservation Fund program.

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

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

Explanatory Notes

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

1976 Amendment. Section 101(3) of the Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1314) amended section 6 by: deleting from subsection (b) former paragraphs (1) and (2), and the three sentences subsequent thereto, and substituting therefor present paragraphs (1) through (5); inserting in subsection (d) the proviso to the second sentence and the third
sentence; inserting in subsection (e)(2) "of basic outdoor recreation facilities to serve the general public" following "For development" and inserting the proviso; and inserting in subsection (f) appropriate paragraph numbers to previously existing paragraphs, deleting "of the Interior" following "Secretary" in paragraphs (5) and (6), and inserting paragraphs (7) and (8). The 1976 Act does not appear herein.


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

NOTE OF OPINION

1. Concurrent funding under Federal Water Project Recreation Act

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

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

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

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

National Forest System—In holdings within (a) wilderness areas of the National Forest System, and (b) other areas of national forests as the boundaries of those forests exist on the effective date of this Act, or purchase units approved by the National Forest Reservation Commission subsequent to the date of this Act,
September 3, 1964

1794, S373  LAND AND WATER CONSERVATION FUND

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

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

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

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

(b) [Restrictions on acquisitions.]—Appropriations from the fund pursuant to this section shall not be used for acquisition unless such acquisition is otherwise authorized by law: Provided, however, That appropriations from the
The fund may be used for preacquisition work in instances where authorization is imminent and where substantial monetary savings could be realized.

(c) [Secretary of the Interior authorized to make minor boundary changes—Restrictions—Donations.]—Whenever the Secretary of the Interior determines that to do so will contribute to, and is necessary for, the proper preservation, protection, interpretation, or management of an area of the National Park System, he may, following timely notice in writing to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate of his intention to do so, and by publication of a revised boundary map or other description in the Federal Register, (i) make minor revisions of the boundary of the area, and moneys appropriated from the fund shall be available for acquisition of any lands, waters, and interests therein added to the area by such boundary revision subject to such statutory limitations, if any, on methods of acquisition and appropriations thereof as may be specifically applicable to such area: Provided, however, That such authority shall apply only to those boundaries established subsequent to January 1, 1965; and (ii) acquire by donation, purchase with donated funds, transfer from any other Federal agency, or exchange, lands, waters, or interests therein adjacent to such area, except that in exercising his authority under this clause (ii) the Secretary may not alienate property administered as part of the National Park System in order to acquire lands by exchange, the Secretary may not acquire property without the consent of the owner, and the Secretary may acquire property owned by a State or political subdivision thereof only by donation. Prior to making a determination under this subsection, the Secretary shall consult with the duly elected governing body of the county, city, town, or other jurisdiction or jurisdictions having primary taxing authority over the land or interest to be acquired as to the impacts of such proposed action, and he shall also take such steps as he may deem appropriate to advance local public awareness of the proposed action. Lands, waters, and interests therein acquired in accordance with this subsection shall be administered as part of the area to which they are added, subject to the laws and regulations applicable thereto. (Formerly § 6, 78 Stat. 903; § 1(6), Act of July 15, 1968, 82 Stat. 355; redesignated as § 7 by § 2, Act of July 11, 1972, 86 Stat. 459; § 13(c), Act of December 28, 1973, 87 Stat. 902; § 101(4), Act of September 28, 1976, 90 Stat. 1317; § 1(3)-(5), Act of June 10, 1977, 91 Stat. 210, 211; § 2, Act of March 10, 1980, 94 Stat. 81; 16 U.S.C. § 460l-9.)
Sec. 8. [Moneys in fund not available for publicity purposes—Exceptions.—]

Moneys derived from the sources listed in section 2 of this Act shall not be available for publicity purposes: Provided, however, that in each case where significant acquisition or development is initiated, appropriate standardized temporary signing shall be located on or near the affected site, to
the extent feasible, so as to indicate the action taken is a product of funding made available through the Land and Water Conservation Fund. Such signing may indicate the per centum and dollar amounts financed by Federal and non-Federal funds, and that the source of the funding includes moneys derived from Outer Continental Shelf receipts. The Secretary shall prescribe standards and guidelines for the usage of such signing to assure consistency of design and application. (Formerly § 7, 78 Stat. 903; redesignated as § 8 by § 2, Act of July 11, 1972, 86 Stat. 459; § 101(5), Act of September 28, 1976, 90 Stat. 1318; 16 U.S.C. § 460l-10.)

**Explanatory Notes**


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

**Explanatory Notes**


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

Sec. 11. [Repeal of provisions prohibiting or restricting collection of recreation user fees or charges—Exception.]—All provisions of law that prohibit the collection of entrance, admission, or other recreation user fees or charges authorized by this Act or that restrict the expenditure of funds if such fees or charges are collected are hereby repealed: Provided, That no provision of any law or treaty which extends to any person or class of persons a right of free access to the shoreline of any reservoir or other body of water, or to hunting and fishing along or on such shoreline, shall be affected by this repealer. (Formerly § 10 as added by § 1 (a), Act of July 15, 1968, 82 Stat. 354; redesignated as § 11 by § 2, Act of July 11 1972, 86 Stat. 459; 16 U.S.C. § 460l-10c.)
LAND AND WATER CONSERVATION FUND ACT  S379

EXPLANATORY NOTES


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

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

EXPLANATORY NOTE


Sec. 201. [Transfers to and from land and water conservation fund.]—(a) [Motorboat fuel taxes—Set aside in land and water conservation fund.]—There shall be set aside in the land and water conservation fund in the Treasury of the United States provided for in title I of this Act the amounts specified in section 209(f)(5) of the Highway Revenue Act of 1956 (relating to special motor fuels and gasoline used in motorboats).
(b) [Refund of gasoline taxes for certain nonhighway purposes.]—There shall be paid from time to time from the land and water conservation fund into the general fund of the Treasury amounts estimated by the Secretary of the Treasury as equivalent to—

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


Explanatory Notes


FEDERAL WATER PROJECT RECREATION ACT

Pages 1820, S389

[Sec. 1. Congressional policy.]—

* * * * *

NOTES OF OPINIONS

Projects, eligibility of 1
Relationship with other laws 2

1. Projects, eligibility of

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

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

2. Relationship with other laws

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

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

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

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

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

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

EXPLANATORY NOTES

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

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

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

2. Local contribution

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

3. Nonreservoir projects

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

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

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

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

*       *       *       *       *

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

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

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

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

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

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

(79 Stat. 214; § 77 (a)(3), Act of March 7, 1974, 88 Stat. 33; § 2804(b), Act of

EXPLANATORY NOTES

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

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

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

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

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

NOTE OF OPINION

2. Projects, eligibility of

Application by the Nevada Department of
Fish and Game for a grant of $100,000 under
the Federal Water Project Recreation Act to
construct and operate a trout hatchery at Lake
Mead, Boulder Canyon Project, must be denied
as this is not the type of project contemplated
by the Act. Moreover, the hatchery is proposed
July 9, 1965

FEDERAL WATER PROJECT RECREATION ACT 1823, S392

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

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

EXPLANATORY NOTE

1992 Amendment. Subsection 2804(c) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4691) amended section 4 by striking “costs of operation, maintenance, and replacement of existing” and inserting “not less than one-half the costs of operation, maintenance, and replacement of existing”.

* * * * *

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

* * * * *

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

EXPLANATORY NOTES

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


(e)

* * * * *

NOTES OF OPINIONS

1. Nonreservoir projects

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

2. Projects, eligibility of

Application by the Nevada Department of Fish and Game for a grant of $100,000 under the Federal Water Project Recreation Act to construct and operate a trout hatchery at Lake Mead, Boulder Canyon Project, must be denied as this is not the type of project contemplated by the Act. Moreover, the hatchery is proposed for construction within the Lake Mead National Recreation Area and section 1 of the Act prohibits its application to areas or facilities within a national recreation area. Similarly, section 7 of the Act permits construction of such facilities only after entering into an agreement in accordance with subsection 3(b) of the Act, but subsection 6(e) of the Act makes section 3 inapplicable to areas within a national recreation area. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, July 1, 1971.
Sec. 7. [Existing reservoirs—Other agencies.]—(a) The Secretary is authorized, in conjunction with any reservoir heretofore constructed by him pursuant to the Federal reclamation laws or any reservoir which is otherwise under his control, except reservoirs within national wildlife refuges, to investigate, plan, construct, operate and maintain, or otherwise provide for public outdoor recreation and fish and wildlife enhancement facilities, to acquire or otherwise make available such adjacent lands or interests therein as are necessary for public outdoor recreation or fish and wildlife use, and to provide for public use and enjoyment of project lands, facilities, and water areas in a manner coordinated with the other project purposes. Lands, facilities and project modifications for the purposes of this subsection may be provided only after an agreement in accordance with subsection (b) or (c) of section 3 of this Act has been executed.

Explanatory Notes

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

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

(2) by striking "subsection 3(b)" and inserting "subsection (b) or (c) of section 3".
Section 2804(e) of the 1992 Act appears in Volume V at page 3916.

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

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

2. Limit on Federal expenditures

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

3. Local contribution

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

Acquisition of lands or interests in lands 4

Authority for development 1

1. Authority for development

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

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

4. Acquisition of lands or interests in lands

The Reclamation Project Authorization Act of 1972 authorizes the acquisition of less than fee title in Colorado State-owned lands taken for recreational areas, as section 106 of the 1972 Act incorporates by reference the Federal Water Project Recreation Act, which provides, at section 7(a), for the acquisition of "lands or interests therein." However, as Department regulations expressly require that fee title be obtained for lands needed for outdoor recreation, the Department should give notice through the Federal Register if it intends to deviate from this policy. Memorandum of Associate Solicitor Good to Field Solicitor,
FEDERAL WATER PROJECT RECREATION ACT 1825, S393


Page 1825

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

NOTE OF OPINION

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

(c) No lands under the jurisdiction of any other Federal agency may be included for or devoted to recreation or fish and wildlife purposes under the authority of this section without the consent of the head of such agency; and the head of any such agency is authorized to transfer any such lands to the jurisdiction of the Secretary of the Interior for purposes of this section. The Secretary of the Interior is authorized to transfer jurisdiction over project lands within or adjacent to the exterior boundaries of national forests and facilities thereon to the Secretary of Agriculture for recreation and other national forest system purposes; and such transfer shall be made in each case in which the project reservoir area is located wholly within the exterior boundaries of a national forest unless the Secretaries of Agriculture and Interior jointly determine otherwise. Where any project lands are transferred hereunder to the jurisdiction of the Secretary of Agriculture, the lands involved shall become national forest lands: Provided, That the lands and waters within the flow lines of any reservoir...
or otherwise needed or used for the operation of the project for other purposes shall continue to be administered by the Secretary of the Interior to the extent he determines to be necessary for such operation. Nothing herein shall limit the authority of the Secretary of the Interior granted by existing provisions of law relating to recreation or fish and wildlife development in connection with water resource projects or to disposition of public lands for such purposes. (79 Stat. 216; 16 U.S.C. § 4601-18.)

1. Disposition of revenues

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

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

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

When Reclamation land has been transferred to the Forest Service for administration pursuant to section 7(c) of the Federal Water Project Recreation Act, the Act of July 19, 1919 (41 Stat. 202) is superseded by section 2(a) of the
FEDERAL WATER PROJECT RECREATION ACT 1827, S395

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

Pages 1827, S394

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

1. Central Arizona Project, Orme Dam

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

Pages 1827, S395

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

1. Disposition of revenues

With regard to revenues derived from entrance, admission and other recreation user fees and charges collected by the Forest Service at areas administered by it for recreation, the Act of March 4, 1907 (34 Stat. 1295), which provides that Forest Service and national forest revenues shall be covered into miscellaneous receipts in the Treasury, was rendered ineffective by section 2(a) of the Land and Water Conservation Fund Act and remains ineffective after the amendment provided by section 11 of the Federal Water Project Recreation Act. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967. The clear import and intent of section 2(a) of the Land and Water Conservation Fund Act is that gross, and not net, revenues from recreation user fees are to be covered into the land and water conservation fund. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967. The legislative history of section 2(a) of the Land and Water Conservation Fund Act

S931
specifically states that revenues from the sale of auto stickers or similar devices good for admission to recreation areas generally are to be covered into the land and water conservation fund and are not subject to the two exceptions contained in section 2(a) of that Act. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.
August 5, 1965

EXPLANATORY NOTE

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

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

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

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

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

EXPLANATORY NOTE

Section 1. [Purpose and authorization.]

(a) The Congress declares that the purposes of this Act are to:

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

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

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

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

EXPLANATORY NOTE

Reference in the Text. The Boundary Waters Treaty of 1909, referenced above and in subsequent sections of this Act, appears in Volume I at page 129.
(5) assure more timely repayment of Federal funds expended for the Garrison Diversion Unit;

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

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

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

EXPLANATORY NOTE


(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.
August 5, 1965

GARRISON DIVERSION UNIT, MISSOURI BASIN

EXPLANATORY NOTE


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

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

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

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

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

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

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

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

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

Sec. 5. [Irrigation facilities.]—(a) [Irrigation development.]

(b) [Initiation of construction restricted.]

(A) the New Rockford Canal;
(B) the Oakes Test Area; and
(C) project features authorized in section 7 of this Act.
(c) [Report to Congress.]—(1) The Secretary is directed to submit a comprehensive report to the Congress as soon as practicable, but not later than the end of fiscal year 1988 on the effects on the James River in North Dakota and South Dakota of water resource development proposals recommended by the Garrison Diversion Unit Commission and authorized in this Act. The report shall include the findings of the Secretary with regard to:

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

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

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

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

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

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

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

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

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

Explanatory Note

(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


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

Explanatory Notes

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


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

(f) [Non-project drainage.]—The Secretary shall not permit the use of project facilities for non-project drainage not included in project design or required for project operations. (100 Stat. 419, 106 Stat. 4669)
Sec. 6. [Pick-Sloan Missouri Basin Program power.]—(a) Municipal, rural, and industrial water systems constructed with funds authorized by section 7 of this Act shall utilize power from the Pick-Sloan Missouri Basin Program, as established by section 9 of the Flood Control Act of 1944 (Act of December 22, 1944, 58 Stat. 891), for the operation of such systems.

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

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

Explanatory Note


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
1844  GARRISON DIVERSION UNIT, MISSOURI BASIN

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

(A) needs assessments;
(B) feasibility studies;
(C) engineering and design;
(D) construction;
(E) operation and maintenance; and
(F) the administration of contracts pertaining to any of the foregoing.

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

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

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

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

Sec. 8. [Specific features.]—(a)(1) In accordance with the recommendations of the Garrison Diversion Unit Commission Final Report and section 1 of this Act, the Sykeston Canal shall be constructed as a functional replacement for the Lonetree Dam and Reservoir. The Sykeston Canal shall be designed and
constructed to meet only the water delivery requirements of the irrigation areas and municipal, rural, and industrial water supply needs authorized in this Act. The Sykeston Canal shall be located, constructed, and operated so that, in the opinion of the Secretaries of the Interior and State, no violation of the Boundary Waters Treaty of 1909 (36 Stat. 2448) would result. The Secretary may not commence construction on the Sykeston Canal until a master repayment contract consistent with the provisions of this Act between the Secretary and the appropriate non-Federal entity has been executed.

(2) The Lonetree Dam and Reservoir shall remain an authorized feature of the Garrison Diversion Unit; however, construction funds may be requested by the Secretary for Lonetree Dam and Reservoir only after:

(A) the Secretary has determined that there is a need for the dam and reservoir based on a contemporary appraisal using procedures such as those employed in the preparation of feasibility studies for water resources development projects submitted to Congress;

(B) consultations with the Government of Canada have reached a conclusion satisfactory to the Secretary of State, after consultation with the Administrator of the Environmental Protection Agency, that no violation of the Boundary Waters Treaty of 1909 would result from the construction and operation of the dam and reservoir; and

(C) the Secretaries of the Interior and State have submitted the determinations required by subparagraphs (A) and (B) above to the Congress and 90 calendar days have elapsed.

(b) Taayer Reservoir is deauthorized as a project feature. The Secretary is directed to acquire up to 5,000 acres in the Kraft and Pickell Slough areas and to manage the area as a component of the National Wildlife Refuge System giving consideration to the unique wildlife values of the area. In acquiring the lands which comprise the Kraft and Pickell Slough complex, the Secretary is authorized to acquire wetlands in the immediate vicinity which may be hydrologically related and nearby uplands as may be necessary to provide for proper management of the complex. The Secretary is also authorized to provide for appropriate visitor access and control at the refuge. (100 Stat. 423)

Sec. 9. [Excess crops.]—Until the construction costs of the facilities authorized in section 5 are repaid, the Secretary is directed to charge a "surplus crop production charge" equal to 10 percent of full cost, as defined in section 202(3)(A)-(C) of the Reclamation Reform Act of 1982 (Public Law 97-293, 96 Stat. 1263, 43 U.S.C. § 390bb.), for the delivery of project water used in the production of any basic agricultural commodity if the total supply of such commodity for the marketing years in which the bulk of the crop would normally be marketed is in excess of the normal supply as determined by the Secretary of Agriculture. The Secretary of the Interior shall announce the
amount of the surplus crop production charge for the succeeding year on or before July 1 of each year. The surplus crop production charge shall not apply to crops produced in the 5,000 acre Oakes Test Area for research purposes under the direction of the Secretaries of the Interior or Agriculture. (100 Stat. 423)

Explanatory Note


Sec. 10. [Authorization of appropriations.]

(a)(1) There are [sic] authorized to be appropriated $270,395,000 for carrying out the provisions of section 5(a) through section 5(c) and section 8(a)(1) of this Act. Such sums shall remain available until expended.

(2) There is authorized to be appropriated $67,910,000 for carrying out the provisions of section 5(e) of this Act. Such sums shall remain available until expended.

(b)(1) There is authorized to be appropriated $200,000,000 to carry out the provisions of section 7(a) of this Act. Such sums shall remain available until expended.

(2) There are [sic] authorized to be appropriated $61,000,000 to carry out the provisions of section 7(b) through section 7(d) of this Act. Such sums shall remain available until expended.

(c) There is authorized to be appropriated for carrying out the remaining provisions of this Act $80,535,000. No funds are authorized for the construction of the Lonetree Dam and Reservoir. There are [sic] also authorized to be appropriated such additional funds as may be necessary for operation and maintenance of the unit.

(d) Any funds previously appropriated for the Garrison Diversion Unit may be expended to carry out any of the provisions of this Act.

(e) The portion of the $61,000,000 authorized for Indian municipal, rural, and industrial water features shall be indexed as necessary to allow for ordinary fluctuations of construction costs incurred after October 1, 1986, as indicated by engineering costs indices applicable for the type of construction involved. All other authorized cost ceilings shall remain unchanged. (100 Stat. 424, 106 Stat. 4669)
1992 Amendment. Section 1701(b) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4669) amended section 10 by adding subsection (e) as it appears above. Section 170(b) of the 1992 Act appears in Volume V at page 3889.

Sec. 11. [Wetlands Trust.-(a) [Federal contributions.]-From the sums appropriated under section 10 of this Act for the Garrison Diversion Unit, the Secretary of the Interior shall make an annual Federal contribution to a Wetlands Trust established by non-Federal interests in accordance with subsection (b), and operated in accordance with subsection (c), of this section. The amount of each such annual contribution shall be as follows:

1. For fiscal year 1986: $2,000,000.
2. For each of the fiscal years 1987 through 1990: 3 percent of the total amount appropriated under section 10 of this Act, but not to exceed $500,000 for each such fiscal year.
3. For each fiscal year after 1990: 5 percent of the total amount appropriated under section 10 of this Act, but only if a contribution to the Trust equal to 10 percent of all Federal contributions is provided or contracted for by the State of North Dakota from non-Federal funds. The contributions of the State of North Dakota may be paid to the Trust in such amounts and in such manner as may be agreed upon by the Governor and the Secretary.
4. The total Federal contribution pursuant to this Act shall not exceed $12,000,000.

(b) [Structure of the Trust.]-A Wetlands Trust shall be eligible to receive Federal contributions pursuant to subsection (a) if it complies with each of the following requirements:
1. The Trust is established by non-Federal interests as a non-profit corporation under the laws of North Dakota with its principal office in North Dakota.
2. The Trust is under the direction of a Board of Directors which has the power to manage all affairs of the corporation, including administration, data collection, and implementation of the purposes of the Trust.
3. The Board of Directors of the Trust is comprised of 6 persons appointed as follows, each for a term of 2 years:
   A) 3 persons appointed by the Governor of North Dakota.
   B) 1 person appointed by the National Audubon Society.
   C) 1 person appointed by the National Wildlife Federation.
   D) 1 person appointed by the North Dakota Chapter of the Wildlife Society.
Vacancies on the board are filled in the manner in which the original appointments were made. Any member of the Board of Directors is eligible for reappointment for successive terms. Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed is appointed only for the remainder of such term. A member may serve after the expiration of his or her term until his or her successor has taken office.

(4) Members of the Board of Directors serve without compensation.

(5) The corporate purposes of the Trust are to preserve, enhance, restore, and manage wetland and associated wildlife habitat in the State of North Dakota.

(c) [Operations of the Trust.]—A Wetland Trust established by non-Federal interests as provided in subsection (b) shall be deemed to be operating in accordance with this subsection if, in the opinion of the Secretary, each of the following requirements are met:

(1) The Trust is operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat in the State of North Dakota in accordance with its corporate purpose as provided in subsection (b)(5).

(2) Pursuant to its corporate charter, the Trust has the authority to exercise each of the following powers:

(A) The power to acquire lands and interests in land and power to acquire water rights. Lands or interests in lands may be acquired by the Trust only with the consent of the owner thereof and with the approval of the Governor of North Dakota.

(B) The power to finance wetland preservation, enhancement, restoration, and management or wetland habitat programs.

(3) All funds received by the Trust under subsection (a) are invested in accordance with the requirements of subsection (d). No part of the principal amount of such funds may be expended for any purpose. The income received by the Trust from the investment of such funds shall be used by the Trust exclusively for its purposes and operations in accordance with this subsection or, to the extent not required for current operations, reinvested in accordance with subsection (d).

(4) The Trust agrees to provide such reports as may be required by the Secretary or the Governor of North Dakota and makes its records available for audit by Federal and State agencies.

(d) [Investment of Trust funds.]—The Secretary of the Interior, in consultation with the Secretary of the Treasury and the Governor of North Dakota, shall establish requirements for the investment of all amounts received by the Trust under subsection (a) or reinvested under subsection (c)(3). Such requirements shall ensure that such amounts are invested in accordance with
August 5, 1965

GARRISON DIVERSION UNIT, MISSOURI BASIN 1844

sound investment principles and shall ensure that persons managing such investments will exercise their fiduciary responsibilities in an appropriate manner. (110 Stat. 424)
NATIONAL HISTORIC PRESERVATION ACT OF 1966

Editor's Note. This Act was inadvertently omitted from Volume III, included in Volume IV at page 2304, as amended through 1982, and is set forth here, as amended in 1992 by the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4753).

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

(b) The Congress finds and declares that—
(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;
(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;
(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and
(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United
NATIONAL HISTORIC PRESERVATION ACT

States to expand and accelerate their historic preservation programs and activities. (80 Stat. 915; Act of December 12, 1980, 94 Stat. 2987; 16 U.S.C. § 470a.)

EXPLANATORY NOTE

1980 Amendment. The Act of December 12, 1980 (Public Law 95-515, 94 Stat. 2987) amended section 1 by: adding subsection (a); designating the existing provision as subsection (b); redesignating paragraphs (a) through (d) of subsection (b) as (1), (2), (5), and (7), respectively; and by substituting the word "heritage" for the word "past" in paragraph (1) of subsection (b). The 1980 Act does not appear herein.

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

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

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments;

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

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

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

TITLE I

Sec. 101. (a) [Secretary authorized to expand and maintain National Register—Designation of properties as historic landmarks; properties deemed included—Criteria—Nomination of properties by States, local governments or individuals—Regulations.]

(1)(A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on December 12, 1980 shall be deemed to be included on the National Register as of their initial listing for purposes of this subchapter. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this Act and the Act of August 21, 1935 (49 Stat. 666); except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register and submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.
EXPLANATORY NOTE


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

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

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

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

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

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

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

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

(4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in a State where there is no program approved under subsection (b) of this section. The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such
determination shall be made within ninety days from the date of the nomination unless the nomination is appealed under paragraph (5).

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

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

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

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

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

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

(8) The Secretary shall, at least once every 4 years, in consultation with the Council and with State Historic Preservation Officers, review significant
October 15, 1966

NATIONAL HISTORIC PRESERVATION ACT  2307

threats to properties included in, or eligible for inclusion on, the National Register, in order to—
(A) determine the kinds of properties that may be threatened;
(B) ascertain the causes of the threats; and
(C) develop and submit to the President and Congress recommendations for appropriate action. (Paragraph 8 added by Act of October 30, 1992, 106 Stat. 4753)

EXPLANATORY NOTES


Reference in the Text. The Act of June 27, 1960 (Public Law 86-523, 74 Stat. 220) referred to in subsection (a) of the text is an Act for the preservation of historical and archaeological data, including relics and specimens, which might otherwise be lost as a result of the construction of a dam. The 1960 Act appears in Volume III at page 1533 and in Supplement I at page S298.


Page 2307

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

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

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

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and
(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

(2)(A) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council on the appropriate provisions of this Act, and in cooperation with the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with this Act.

(B) If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this Act, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State Historic Preservation Officer under this Act, until the program is consistent with this Act, unless the Secretary determines that the program will be made consistent with this Act within a reasonable period of time.

(C) The Secretary, in consultation with State Historic Preservation Officers, shall establish oversight methods to ensure State program consistency and quality without imposing undue review burdens on State Historic Preservation Officers.

(D) At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system—

(i) establishes and maintains substantially similar accountability standards; and

(ii) provides for independent professional peer review.

The Secretary may also conduct periodic fiscal audits of State programs approved under this section as needed and shall ensure that such programs meet applicable accountability standards.

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

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

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

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

(D) administer the State program of Federal assistance for historic preservation within the State;
(E) advise and assist, as appropriate, Federal and State agencies and local
governments in carrying out their historic preservation responsibilities;
(F) cooperate with the Secretary, the Advisory Council on Historic
Preservation, and other Federal and State agencies local governments, and
organizations and individuals to ensure that historic properties are taken into
consideration at all levels of planning and development;
(G) provide public information, education, and training and technical
assistance in historic preservation;
(H) cooperate with local governments in the development of local historic
preservation programs and assist local governments in becoming certified
pursuant to subsection (c) of this section;
(I) consult with appropriate Federal agencies in accordance with this Act—

(i) Federal undertakings that may affect historic properties; and
(ii) the content and sufficiency of any plans developed to protect,
manage, or reduce or mitigate harm to such properties; and
(j) advise and assist in the evaluation of proposals for rehabilitation
projects that may qualify for Federal assistance.
(4) Any State may carry out all or any part of its responsibilities under this
subsection by contract or cooperative agreement with any qualified nonprofit
organization or educational institution.
(5) Any State historic preservation program in effect under prior authority
of law may be treated as an approved program for purposes of this subsection
until the earlier of—

(A) the date on which the Secretary approves a program submitted by the
State under this subsection, or
(B) three years after December 12, 1992.
(6)(A) Subject to subparagraphs (C) and (D), the Secretary may enter into
contracts or cooperative agreements with a State Historic Preservation
Officer for any State authorizing such Officer to assist the Secretary in
carrying out one or more of the following responsibilities within that State—

(i) Identification and preservation of historic properties.
(ii) Determination of the eligibility of properties for listing on the
National Register.
(iii) Preparation of nominations for inclusion on the National Register.
(iv) Maintenance of historical and archaeological data bases.
(v) Evaluation of eligibility for Federal preservation incentives.
Nothing in this paragraph shall be construed to provide that any State
Historic Preservation Officer or any other person other than the Secretary
shall have the authority to maintain the National Register for properties in
any State.
B) The Secretary may enter into a contract or cooperative agreement under subparagraph (A) only if—
   (i) the State Historic Preservation Officer has requested the additional responsibility;
   (ii) the Secretary has approved the State historic preservation program pursuant to section 101(b) (1) and (2);
   (iii) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that such Officer is fully capable of carrying out such responsibility in such manner;
   (iv) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to such contract or cooperative agreement; and
   (v) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such responsibility.

C) For each significant program area under the Secretary’s authority, the Secretary shall establish specific conditions and criteria essential for the assumption by State Historic Preservation Officers of the Secretary’s duties in each such program.

D) Nothing in this subsection shall have the effect of diminishing the preservation programs and activities of the National Park Service. (Added by Act of October 30, 1992, 106 Stat. 4754)

Explanatory Note

1992 Amendment. Section 4004 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4753) amended subsection 101(b) as follows:
   (1) amend paragraph (2) to read as it appears above. Prior to amendment, paragraph (2) read as follows:
   *(2) Periodically, but not less than every four years after the approval of any State program under this subsection, the Secretary shall evaluate such program to make a determination as to whether or not it is in compliance with the requirements of this Act. If at any time, the Secretary determines that a State program does not comply with such requirements, he shall disapprove such program, and suspend in whole or in part assistance to such State under subsection (d)(1) of this section, unless there are adequate assurances that the program will comply with such requirements within a reasonable period of time. The Secretary may also conduct periodic fiscal audits of State programs approved under this section.*
   (2) Amend paragraph (3) as follows:
   (A) In subparagraph (G), strike “relating to the Federal and State Historic Preservation Programs; and” and insert “in historic preservation;”.
   (B) In subparagraph (H), strike the period at the end thereof and insert a semicolon.
   (C) Add at the end thereof the new subparagraphs (I) and (J) as they appear above.
   (3) Amend paragraph (5) by striking “1980” and inserting “1992”.

S954
(c) [Certification of local governments by State Historic Preservation Officer—Transfer of portion of grants—Certification by Secretary—Nomination of properties by local governments for inclusion on National Register.]

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

(A) enforces appropriate State or local legislation for the designation and protection of historic properties;
(B) has established an adequate and qualified historic preservation review commission by State or local legislation;
(C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b) of this section;
(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and
(E) satisfactorily performs the responsibilities delegated to it under this Act.

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

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

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

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

(4) For the purposes of this section the term—

(A) "designation" means the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government; and

(B) "protection" means a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to subsection (c).


Sections 4005 and of the 1992 Act appears in Volume V at page 3990.
(d)(1)(A) The Secretary shall establish a program and promulgate regulations to assist Indian tribes in reserving their particular historic properties. The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.

(B) The program under subparagraph (A) shall be developed in such a manner as to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this section to conform to the cultural setting of tribal heritage preservation goals and objectives. The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each tribe’s chief governing authority.

(C) The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservation Officers, and other interested parties and initiate the program under subparagraph (A) by not later than October 1, 1994.

(2) A tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (b)(2) and (b)(3), with respect to tribal lands, as such responsibilities may be modified for tribal program through regulations issued by the Secretary, if—

(A) the tribe’s chief governing authority so requests;

(B) the tribe designates a tribal preservation officer to administer the tribal historic preservation program, through appointment by the tribe’s chief governing authority or as a tribal ordinance may otherwise provide;

(C) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;

(D) the Secretary determines, after consulting with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106), and other tribes, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program—

(i) that the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (C);
(ii) that the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer;

(iii) that the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official may exercise the historic preservation responsibilities in accordance with subsections (b)(2) and (b)(3); and

(E) based on satisfaction of the conditions stated in subparagraphs (A), (B), (C), and (D), the Secretary approves the plan.

(3) In consultation with interested Indian tribes, other Native American organizations and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 103(a) with respect to tribal programs that assume responsibilities under paragraph (2).

(4) At the request of a tribe whose preservation program has been approved to assume functions and responsibilities pursuant to paragraph (2), the Secretary shall enter into contracts or cooperative agreements with such tribe permitting the assumption by the tribe of any part of the responsibilities referred to in subsection (b)(6) on tribal land, if—

(A) the Secretary and the tribe agree on additional financial assistance, if any, to the tribe for the costs of carrying out such authorities;

(B) the Secretary finds that the tribal historic preservation program has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this Act; and

(C) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by—

(i) the tribe's traditional cultural authorities;

(ii) representatives of other tribes whose traditional lands are under the jurisdiction of the tribe assuming responsibilities; and

(iii) the interested public.

(5) The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106, if the Council, after consultation with the tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

(6)(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.
(B) In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).

(C) In carrying out his or her responsibilities under subsection (b)(3), the State Historic Preservation Officer for the State of Hawaii shall—

(i) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate such property to the National Register;

(ii) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for such property; and

(iii) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate such property to the National Register and to carry out the cultural component of such preservation program or plan. (Added by Act of October 30, 1992, 106 Stat. 4755)

(e) [Grants-in-aid programs for States and for the National Trust for Historic Preservation—Direct grant program for properties included on National Register—Grants or loans to Indian tribes and ethnic or minority groups.]

(1) The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act.

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

Explanatory Note


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

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

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

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

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

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

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

(4) Grants may be made under this subsection for the preservation,
stabilization, restoration, or rehabilitation of religious properties listed in the
National Register of Historic Places, provided that the purpose of the grant is
secular, does not promote religion, and seeks to protect those qualities that are
historically significant. Nothing in this paragraph shall be construed to
authorize the use of any funds made available under this section for the
acquisition of any property referred to in the preceding sentence.

(5) The Secretary shall administer a program of direct grants to Indian tribes
and Native Hawaiian organizations for the purpose of carrying out this Act as
it pertains to Indian tribes and Native Hawaiian organizations. Matching fund
requirements may be modified. Federal funds available to a tribe or Native
Hawaiian organization may be used as matching funds for the purposes of the
tribe’s or organization’s conducting its responsibilities pursuant to this section.

(6)(A) As part of the program of matching grant assistance from the Historic
Preservation Fund to States, the Secretary shall administer a program of
direct grants to the Federated States of Micronesia, the Republic of the
Marshall Islands, the Trust Territory of the Pacific Islands, and upon
termination of the Trusteeship Agreement for the Trust Territory of the
Pacific Islands, the Republic of Palau (referred to as the Micronesian States)
in furtherance of the Compact of Free Association between the United States
and the Federated States of Micronesia and the Marshall Islands, approved
by the Compact of Free Association Act of 1985 (48 U.S.C. § 1681), the
October 15, 1966

NATIONAL HISTORIC PRESERVATION ACT

Trusteeship Agreement for the Trust Territory of the Pacific Islands, and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled "Joint Resolution to approve the "Compact of Free Association" between the United States and Government of Palau, and for other purposes" (48 U.S.C. § 1681). The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each Micronesian State so that at the termination of the compacts the programs shall be firmly established. The Secretary may waive or modify the requirements of this section to conform to the cultural setting of those nations.

(B) The amounts to be made available to the Micronesian States shall be allocated by the Secretary on the basis of needs as determined by the Secretary. Matching funds may be waived or modified. (106 Stat. 4758)

Explanatory Notes

1992 Amendments. Section 4007 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4758) amended the redesignated subsection 101(e) as follows:

(1) Amend paragraph (1) to read as it appears above. Prior to amendment, it read as follows: "(1) The Secretary shall administer a program of matching grants-in-aid to the States for historic preservation projects, and State historic preservation programs, approved by the Secretary and having as their purpose the identification of historic properties and the preservation of properties included on the National Register."

(2) Added paragraphs (4), (5), and (6) as they appear above at the end thereof. Section 4007 of the 1992 Act appears at page 3992.


Page 2311

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

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

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

(i) [Dissemination of information.]—The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations...
and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning, professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

(j) [Education and training.]—(1) The Secretary shall, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, develop and implement a comprehensive preservation education and training program.

(2) The education and training program described in paragraph (1) shall include—

(A) new standards and increased preservation training opportunities for Federal workers involved in preservation related functions;

(B) increased preservation training opportunities for other Federal, State, tribal and local government workers, and students;

(C) technical or financial assistance, or both, to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians, to establish preservation training and degree programs;

(D) coordination of the following activities, where appropriate, with the National Center for Preservation Technology and Training—

(i) distribution of information on preservation technologies;

(ii) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and

authorized the establishment of State Historic Preservation Programs, and set out guidelines for their operation. The 1980 Act does not appear herein.

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

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

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

(3) for more than 60 percent of the aggregate costs of carrying out projects and programs under the administrative control of the State Historic Preservation Officer as specified in section 101(b)(3) in any one fiscal year;

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

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

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

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

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States.

(c) Repealed.

(d) No State shall be permitted to utilize the value of real property obtained before October 15, 1966, in meeting the remaining cost of a project for which a grant is made under this Act.

(d) The Secretary shall make funding available to individual States and the National Trust for Historic Preservation as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States
and the National Trust each shall be considered to be one grant and shall be administered by the National Park Service as such.


EXPLANATORY NOTES

1992 Amendment. Section 4009 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4759) amended section 102 of this Act as follows:

(1) paragraph (3) of subsection (a) is amended to read as it appears above. Prior to amendment paragraph (3) read as follows: "(3) for more than 50 per centum of the aggregate cost of carrying out projects and programs specified in section 101 (d)(1) and (2) in any one fiscal year, except that for the costs of State or local historic surveys or inventories the Secretary shall provide 70 per centum of the aggregate cost involved in any one fiscal year."

(2) In subsection (b), strike ", in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory for the Secretary".

(3) Add at the end thereof the subsections (d) and (e) as they appear above.

Editors note. Two subsections designated "(d)" have been enacted in section 102. Section 4009 of the 1992 Act appears in Volume V at page 3994.

1980 Amendment. The Act of December 12, 1980 (Public Law 94-522, 90 Stat. 1519) amended section 102 by adding subsection (c) and redesignating former subsection (c) as subsection (d). The 1976 Act does not appear herein.

1976 Amendment. The Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1519) amended section 102 by adding section 102 by adding subsection (c) and redesignating former subsection (c) as subsection (d). The 1976 Act does not appear herein.


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

(b) The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States as the Secretary determines to be appropriate.

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

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

(d) The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) of this section to insure that no local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single local government. The guidelines shall not limit the ability of any State to distribute more than 10 per centum of its annual apportionment under subsection (c) of this section, nor shall the Secretary require any State to exceed the 10 per centum minimum distribution to local governments. (80 Stat. 916; Act of September 28, 1976; 90 Stat. 1319; Act of December 12, 1980, 94 Stat. 2993; Act of October 30, 1992, 106 Stat. 4759; 16 U.S.C. § 470c)

EXEMPLARY NOTES

1992 Amendment. Section 4010 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4759) amends section 103 of this Act as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXPLANATORY NOTE

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended section 104 by: (1) eliminating from subsection (a) a provision that had prohibited grants to surveys or projects receiving assistance from any other Federal program or activity and adding the provision authorizing the Secretary to establish and maintain a program of insured loans to finance any project for the preservation of a property listed on the National Register; (2) striking from subsection (b) a provision that had authorized the President to issue regulations to assure consistency in coordination of Federal programs and adding to subsection (b) the provision describing loan qualifications; and by (3) adding subsections (c) through (k). The 1980 Act does not appear herein.

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

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

EXPLANATORY NOTE


NOTE OF OPINION

1. Central Valley Project, San Felipe Division
   The Water and Power Resources Service is not responsible for insuring that the proposed Cross Valley Pipeline and Almaden Valley Pipeline Unit 11 comply with Section 106 of the National Historic Preservation Act as they are neither a Federal or Federally-assisted undertaking nor a reasonably foreseeable consequence of a Federal action in that: 1) the pipelines were not contemplated as part of the Central Valley Project, San Felipe Division, and if constructed will not require Federal permission nor be a part of the project; and 2) the pipelines will be located entirely on locally-owned land and constructed and controlled entirely by the local Santa Clara Valley Water District. The sole connection with the Central Valley Project is at the delivery point, the Coyote Pump Station. Memorandum of Associate Solicitor Little to Commissioner, Water and Power Resources Service, October 15, 1980.

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

* * * * *
Sec. 110. [Duties of Federal agencies for historic properties federally owned or controlled—Records for historic properties to be altered or destroyed—Agency preservation officer—Coordination with agency programs and projects—Review of plans of transferees of surplus federally owned historic properties—Minimization of harm to National Historical Landmarks—Costs of preservation activities—Annual preservation awards program—Environmental impact statements—Waiver of requirements for major natural disaster or imminent threat to national security.]—

(a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101a(g), any preservation, as may be necessary to carry out this section.

(2) Each Federal agency shall establish (unless exempted pursuant to section 214), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure—

(A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;

(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 and gives special consideration to the preservation of such values in the case of properties designated as having National significance;

(C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;

(D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and

(E) that the agency's procedures for compliance with section 106—

(i) are consistent with regulations issued by the Council pursuant to section 211;
(ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Grave Protection and Repatriation Act (25 U.S.C. § 3002(c)).

EXPLANATORY NOTE

Reference in the Text. The Native American Grave Protection and Repatriation Act does not appear herein.

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

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

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

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

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

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

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

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969 and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

(l) With respect to any undertaking subject to section 106 which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement with the Council, the head of such agency shall document any decision made pursuant to section 106. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 memorandum of agreement has been executed with respect to an undertaking, such

EXPLANATORY NOTES

1992 Amendments. Section 4006(b) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4757) amended subsection 110(c) by striking "101(g)" and inserting "101(h)".

Section 4006(g) of the 1992 Act appears in Volume V at page 3992.

Section 4012 of the 1992 Act (106 Stat. 4760) amends section 110 as follows:

(1) In subsection (a)(1), strike "101(f)" and insert "101(g)".

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

(3) Add at the end thereof the new subsections (k) and (l) as they appear above.

Section 4012 of the 1992 Act appears in Volume V at page 3995.


Sec. 111. [Lease or exchange of historic property—Proceeds of lease—Contracts for management of historic property.]—(a) Notwithstanding any other provision of law, any Federal agency after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

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

(c) The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of the historic property. (Added by Act of December 12, 1980, 94 Stat. 2996; Act of October 30, 1992, 106 Stat. 4761; 16 U.S.C. § 470h-3.)

EXPLANATORY NOTE

1992 Amendment. Section 4013 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4761) amends section 111(a) by striking “may, after consultation with the Advisory Council on Historic Preservation,” and inserting “after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may”. Section 4013 of the 1992 Act appears in Volume V at page 3996.

Sec. 112. [Professional standards.].—(a) [In general.]—Each Federal agency that is responsible for the protection of historic resources, including archaeological resources pursuant to this Act or any other law shall ensure each of the following—

(1)(A) All actions taken by employees or contractors of such agency shall meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.

(B) Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after the date of enactment of this Act for the disciplines involved, specifically archaeology, architecture, conservation, curation, history, landscape architecture, and planning. Such standards shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved. (16 U.S.C. § 470h-4.)
(2) Records and other data, including data produced by historical research and archaeological surveys and excavations are permanently maintained in appropriate data bases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.

(b) [Guidelines.]-In order to promote the preservation of historic resources on properties eligible for listing in the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to—

(1) provide information to the owners of properties containing historic (including architectural, curatorial, and archaeological) resources with demonstrated or likely research significance, about the need for protection of such resources, and the available means of protection;

(2) encourage owners to preserve such resources intact and in place and offer the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources;

(3) encourage the protection of Native American cultural items (within the meaning of section 2(3) and (9) of the Native American Grave Protection and Repatriation Act (25 U.S.C. § 3001 (3) and (9)) and of properties of religious or cultural importance to Indian tribes, Native Hawaiians, or other Native American groups; and

(4) encourage owners who are undertaking archaeological excavations to—

(A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;

(B) donate or lend artifacts of research significance to an appropriate research institution; and

(C) allow access to artifacts for research purposes;

(D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2)(B) or (C) of the Native American Grave Protection and Repatriation Act (25 U.S.C. § 3002(a)(2) (B) and (C)), give notice to and consult with such Indian tribe or Native Hawaiian organization.

Sec. 113. [Interstate and international traffic in antiquities.]-

(a) [Study.]-In order to help control illegal interstate and international traffic in antiquities, including archaeological, curatorial, and architectural objects, and historical documents of all kinds, the Secretary shall study and report on the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities. (16 U.S.C. § 470h-5.)

(b) [Consultation.]—In conducting the study described in subsection (a) the Secretary shall consult with the Council and other Federal agencies that conduct,
cause to be conducted, or permit archaeological surveys or excavations or that have responsibilities for other kinds of antiquities and with State Historic Preservation Officers, archaeological, architectural, historical, conservation, and curatorial organizations, Indian tribes, Native Hawaiian organizations, and other Native American organizations, international organizations and other interested persons.

(c) [Report. — Not later than 18 months after the date of enactment of this section, the Secretary shall submit to Congress a report detailing the Secretary’s findings and recommendations from the study described in subsection (a).]

(d) [Authorization. — There are authorized to be appropriated not more than $500,000 for the study described in subsection (a), such sums to remain available until expended. (Act of October 30, 1992, 106 Stat. 4761, 4762)]

EXPLANATORY NOTE

(11) one member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President.

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

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

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

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


Explanatory Notes

1992 Amendment. Section 4016 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4763) amended section 201(a) as follows:

(1) Strike "and" at the end of paragraph (9).

(2) Strike the period at the end of paragraph (10) and insert "and".

(3) Add at the end thereof the new paragraph (11) as it appears above.

Section 4019(b) of the 1992 Act (106 Stat. 4763) amended section 201(a) as follows:

(1) Strike "and" at the end of paragraph (9).
Sec. 202. [Functions of Council—Annual report.]—The Council shall—

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

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

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

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

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

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

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

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable.
Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act. (80 Stat. 918; Act of December 12, 1980, 94 Stat. 2999; 16 U.S.C. § 470j.)

Explanatory Note

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

Sec. 203. [Cooperation between Council and Federal agencies.]

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

Sec. 204. [Compensation of Council members.]

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

Sec. 205. [Executive director—General Counsel—Appointment and compensation of officers and employees—Services to be provided by Department of Interior—Funds, personnel, facilities, services provided by members.]

(a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence
of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

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

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

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

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

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

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

EXPLANATORY NOTES

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended section 205 by: (1) inserting in subsection (b) "including enforcement of agreements with Federal agencies to which the Council is a party" after "appropriate"; (2) substituting in subsection (g) "paragraphs (2) through (4)" for "paragraphs (1) through (16)"; and (3) inserting in subsection (g) the provision authorizing the Council to accept donations of money and authorizing the Executive Director, in his discretion, to accept, hold, use, expend, and administer such moneys. The 1980 Act does not appear herein.

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

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

* * * * * *

Sec. 211. [Rules and regulations—Participation by local governments.]—The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 in its entirety. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 106.
2325 NATIONAL HISTORIC PRESERVATION ACT


EXPLANATORY NOTE


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

Sec. 214. [Exemption for Federal programs or undertakings.]—The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties. (Added by Act of December 12, 1980, 94 Stat. 3000; 16 U.S.C. § 470v.)

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Page 2325

TITLE III

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

(1) "Agency" means agency as such term is defined in section 551 of title 5, United States Code.

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau.
(3) "Local government" means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.

(4) "Indian tribe" or "tribe" means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

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

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

(7) "Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

(A) those carried out by or on behalf of the agency;
(B) those carried out with Federal financial assistance;
(C) those requiring a Federal permit license, or approval; and
(D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

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

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

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

(11) "Secretary" means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

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

(A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law),
(B) a majority of the members of which are professionals qualified in the
following and related disciplines: history, prehistoric and historic archaeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture, and
(C) which has the authority to—
(i) review National Register nominations and appeals from nominations;
(ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;
(iii) provide general advice and guidance to the State Historic Preservation Officer, and
(iv) perform such other duties as may be appropriate.
(13) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B), and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among—
(A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation and landscape architecture or related disciplines, to the extent such professionals are available in the community concerned, and
(B) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission.
(14) "Tribal lands" means—
(A) all lands within the exterior boundaries of any Indian reservation; and
(B) all dependent Indian communities.
(15) "Certified local government" means a local government whose local historic preservation program has been certified pursuant to section 101(c).
(16) "Council" means the Advisory Council on Historic Preservation established by section 201.
(17) "Native Hawaiian" means any individual who is a descendant of the aboriginal people who (prior to 1778) occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.
(18) "Native Hawaiian organization" means any organization which—
(A) serves and represents the interests of Native Hawaiians;
(B) has as a primary and stated purpose the provision of services to Native Hawaiians; and
(C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians. The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai'i Nei, an organization.

EXPLANATORY NOTES

1992 Amendment. Section 4019(a) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4763) amended section 301 as follows:

(1) In paragraph (1) strike "Code," and all that follows through the end of the paragraph, and insert in lieu thereof "Code."

(2) In paragraph (2) strike "the Trust Territories of the Pacific Islands" and insert "the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau".

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

(4) In paragraph (5) strike "Register" and all that follows through the end of the paragraph and insert "Register, including artifacts, records, and material remains related to such a property or resource."

(5) Amend paragraph (7) to read as it appears above. Prior to amendment section (7) read as follows: "(7) "Undertaking" means any action as described in section 106." (6) In paragraph (8) strike "maintenance and reconstruction," and insert "maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities."

(7) In paragraph (9) strike "urban area" and insert "area."

(8) In paragraph (10) strike "urban area of one or more neighborhoods and" and insert "area."

(9) In paragraph (11) after "of the Interior" insert "acting through the Director of the National Park Service."

(10) In paragraph (12) strike "and architecture" and insert "architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture."

(11) In paragraph (13) strike "archaeology" and insert "prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture."

(12) Add at the end thereof the new paragraphs (14) through (18) as they appear above. Section 4019 of the 1992 Act appears in Volume V at page 3999.


Sec. 302. [A authorization for expenditure of appropriated funds.]—Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this
NATIONAL HISTORIC PRESERVATION ACT

Act, except to the extent appropriations legislation expressly provides otherwise.

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

(b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic property where the acceptance of such interests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this Act shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose. (Amended by Act of December 12, 1980, 94 Stat. 3002; 16 U.S.C. § 470w-2.)

Sec. 304. [Access to information.]

(a) Authority to withhold from disclosure.—The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may—

(1) cause a significant invasion of privacy;

(2) risk harm to the historic resources; or

(3) impede the use of a traditional religious site by practitioners.

(b) Access determination.—When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

(c) Consultation with Council.—When the information in question has been developed in the course of an agency’s compliance with section 106 or 110(f), the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b). (Amended by Act of December 12, 1980, 94 Stat. 3002; 16 U.S.C. § 470w-3.)

EXPLANATORY NOTE

1992 Amendment. Section 4020 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4765) amended section 304 to read as it appears above. Prior to amendment section 304 read as follows:
Sec. 304. [Disclosure of information concerning the location or character of historic resources.]—The head of any Federal agency, after consultation with the Secretary, shall withhold from disclosure to the public, information relating to the location or character of historic resources whenever the head of the agency or the Secretary determines that the disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located. Section 4020 of the 1992 Act appears in Volume V at page 4000.

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

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

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

(c) Except as provided in subsection (b) of this section, the regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Secretary dealing
with the matter of , which regulation was transmitted to Congress on ," the blank spaces therein being appropriately filled.

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

(e) For the purposes of this section—

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

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

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

TITLE IV—NATIONAL CENTER FOR PRESERVATION TECHNOLOGY AND TRAINING

Sec. 401. [Findings.]—The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial. (16 U.S.C. § 470x-1.)

Sec. 402. [Definitions.]—For the purposes of this title—

(1) the term "Board" means the National Preservation Technology and Training Board established pursuant to section 404.

(2) The term "Center" means the National Center for Preservation Technology and Training established pursuant to section 403.

(3) The term "Secretary" means the Secretary of the Interior.

Sec. 403. [Establishment of national center.]—(a) [Establishment.]-There is hereby established within the Department of the Interior a National Center for Preservation Technology and Training. The Center shall be located at
Northwestern State University of Louisiana in Natchitoches, Louisiana. (16 U.S.C. § 470x-2.)

(b) [Purposes.]—The purposes of the Center shall be to—

(1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources;

(2) develop and facilitate training for Federal, State and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;

(3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;

(4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and

(5) cooperate with related international organizations including, but not limited to the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

(c) [Programs.]—Such purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through a program of grants established under section 405.

(d) [Executive Director.]—The Center shall be headed by an Executive Director with demonstrated expertise in historic preservation appointed by the Secretary with advice of the Board.

(e) [Assistance from Secretary.]—The Secretary shall provide the Center assistance in obtaining such personnel, equipment, and facilities as may be needed by the Center to carry out its activities. (106 Stat. 4766; 16 U.S.C. § 470x-3.)

Sec. 404. [Preservation Technology and Training Board.]—(a) [Establishment.]—There is established a Preservation Technology and Training Board.

(b) [Duties.]—The Board shall—

(1) provide leadership, policy advice, and professional oversight to the Center;

(2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and

(3) submit an annual report to the President and the Congress.

(c) [Membership.]—The Board shall be comprised of—

(1) the Secretary, or the Secretary’s designee;

(2) 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations, and
(3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications who represent major organizations in the fields of archaeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

Sec. 405. [Preservation grants.]—(a) [In general.]—The Secretary, in consultation with the Board, shall provide preservation technology and training grants to eligible applicants with a demonstrated institutional capability and commitment to the purposes of the Center, in order to ensure an effective and efficient system of research, information distribution and skills training in all the related historic preservation fields.

(b) [Grant requirements.]—(1) Grants provided under this section shall be allocated in such a fashion to reflect the diversity of the historic preservation fields and shall be geographically distributed.

(2) No grant recipient may receive more than 10 percent of the grants allocated under this section within any year.

(3) The total administrative costs, direct and indirect, charged for carrying out grants under this section may not exceed 25 percent of the aggregate costs.

(c) [Eligible applicants.]—Eligible applicants may include Federal and non-Federal laboratories, accredited museums, universities, nonprofit organizations; offices, units, and C cooperative Park Study Units of the N ational Park System, State H istoric Preservation O ffices, tribal preservation offices, and N ative H awaiian organizations.

(d) [Standards.]—All such grants shall be awarded in accordance with accepted professional standards and methods, including peer review of projects.

(e) [Authorization of appropriations.]—There is authorized to be appropriated to carry out this section such sums as may be necessary.

Sec. 406. [General provisions.]—(a) [Acceptance of grants and transfers.]—The Center may accept—

(1) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and

(2) transfers of funds from other Federal agencies.

(b) [Contracts and cooperative agreements.]—Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public entities to carry out the Center’s responsibilities under this title.

(c) [Authorization of appropriations.]—There are authorized to be appropriated such sums as may be necessary for the establishment, operation, and maintenance of the Center. Funds for the Center shall be in addition to existing National Park Service programs, centers, and offices. (106 Stat. 4767; 16 U.S.C. § 470x-4; 16 U.S.C. § 470x-5.)
Sec. 407. [National Park Service preservation.]—In order to improve the use of existing National Park Service resources, the Secretary shall fully utilize and further develop the National Park Service preservation (including conservation) centers and regional offices. The Secretary shall improve the coordination of such centers and offices within the National Park Service, and shall, where appropriate, coordinate their activities with the Center and with other appropriate parties. (106 Stat. 4768; 16 U.S.C. § 470x-6.)

Explanatory Notes


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

[Sec. 1. Mountain Park project authorized.]—The Secretary of the Interior is authorized to construct, operate, and maintain the Mountain Park reclamation project, Oklahoma, under the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) for the principal purposes of storing, regulating, and furnishing water for municipal, domestic, and industrial uses conserving and developing fish and wildlife resources, providing outdoor recreation opportunities, and controlling floods, and environmental quality activities. As used in this Act, the term "environmental quality activity" means any activity that primarily benefits the quality of natural environmental resources. The principal features of the project shall consist of a dam and reservoir on the Otter Creek, a diversion dam on Elk Creek, a canal from the diversion dam to a storage reservoir on Otter Creek aqueduct from the storage reservoir to the cities of Altus, Snyder, and Frederick, Oklahoma, a wildlife management area, and basic public outdoor recreation facilities. Construction of the project may be undertaken in such units or stages as in the determination of the Secretary will best serve project requirements and meet water needs. (82 Stat. 853; Act of October 27, 1974, 88 Stat. 1486; Act of October 31, 1994, 108 Stat. 4536; 43 U.S.C. 616aaaa.)

EXPLANATORY NOTES


Sec. 7. [Environmental investigations—Reallocation of costs—Contract amendment—Prepayment of repayment obligations—Interest rate—Tax exempt financing—Title to the project.]

(a)(1) Not later than 180 days after the date of enactment of the Mountain Park Project Act of 1994, the Secretary of the Interior (referred to in this section as the "Secretary") shall—

(A) conduct appropriate investigations to determine environmental quality activities that could be carried out for the Mountain Park project; and

(B) on the basis of the determination made under subparagraph (A), make an appropriate reallocation of the costs of the project under sections 2 and 3 (referred to in this section as "project costs") to accommodate the environmental quality activities that the Secretary authorizes pursuant to this subsection.

(2) In conducting investigations under this subsection, the Secretary shall examine the benefits to natural environmental resources achievable from an environmental quality activity that requires reallocating water or using facilities or land of the Mountain Park project, including any of the following activities:

(A) Developing in-stream flows.

(B) Developing wetland habitat.

(C) Any other environmental quality activity that the Secretary determines to be appropriate to benefit the overall quality of the environment.

(b)(1) Upon completion of the investigations under subsection (a)(2), the Secretary shall carry out the following:

(A) The preparation of a proposed reallocation of project costs in conformance with subsection (a)(1)(B).

(B) Negotiations with the Mountain Park Master Conservancy District (referred to in this section as the 'District') to amend the contract executed by the District pursuant to this Act to adjust the obligation of the District to repay project costs, as described in section 2, to reflect the reallocation of nonreimbursable project costs.

(2) For the purposes of paragraph (1), project costs associated with an environmental quality activity specified by the Secretary pursuant to subsection (a)(2) shall be nonreimbursable project costs.

(c)(1) Notwithstanding any other provision of this Act, the Secretary is authorized to accept prepayment of the repayment obligation of the District for the reimbursable construction costs of the project allocated to municipal and industrial water supply for the city of Altus, Oklahoma, the city of Frederick, Oklahoma, or the city of Snyder, Oklahoma (or any combination
thereof), and, upon receipt of such prepayment, the District’s obligation to the United States shall be reduced by the amount of such costs, and any security held therefor, shall be released by the Secretary.

(2) Any prepayment made pursuant to subsection (c)(1) shall realize to the United States an amount calculated by discounting the remaining repayment obligation by the interest rate determined in accordance with subsection (d).

(d)(1) The Secretary of the Treasury shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget and the Department of Treasury Financial Manual. In determining the interest rate, the Secretary shall consider the price of the District’s obligation if it were to be sold on the open market to a third party.

(2) If the District uses tax-exempt financing to finance a prepayment under subsection (c)(1), then the interest rate by which the Secretary discounts the remaining payments due on the District’s obligation shall be adjusted by an amount that compensates the United States for the direct or indirect loss of future tax revenues.

(e) Notwithstanding any payment made by the District pursuant to this section or pursuant to any contract with the Secretary, title to the project facilities shall remain with the United States. (108 Stat. 4536; 43 U.S.C. § 616ffff-2.)
Sec. 304. (c) [Conservation of irrigation water.]—Each contract under which water is provided under the Central Arizona Project shall require that: (1) there be in effect measures, adequate in the judgment of the Secretary, to control expansion of irrigation from aquifers affected by irrigation in the contract service area; (2) the canals and distribution systems through which water is conveyed after its delivery by the United States to the contractors shall be provided and maintained with linings adequate in his judgment to prevent excessive conveyance losses; and (3) Repealed.

(82 Stat. 891, 106 Stat. 4751)

EXPLANATORY NOTE

1992 Amendment. Subsection 3710(k) of the Reclamation Projects Authorization and Adjustment Act of 1992, Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4751) repealed subsection 304(c)(3) of this Act. Prior to repeal, subsection 304(c)(3) read as follows: "neither the contractor nor the Secretary shall pump or permit others to pump ground water from within the exterior boundaries of the service area of a contractor receiving water from the Central Arizona Project for any use outside said contractor’s service area unless the Secretary and such contractor shall agree, or shall have previously agreed, that a surplus of ground water exists and that drainage is or was required. Such contracts shall be subordinate at all times to the satisfaction of all existing contracts between the Secretary and users in Arizona heretofore made pursuant to the Boulder Canyon Project Act (45 Stat. 1057).” Section 3710(k) of the 1992 Act appears in Volume V at page 3985.
(b)(1) All appropriations made for the purpose of carrying out the provisions of title III of this Act shall be credited to the development fund as advances from the general fund of the Treasury, and shall be available for such purpose.

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

(c) There shall also be credited to the development fund—

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

(2) any Federal revenues from the Boulder Canyon and Parker-Davis projects which, after completion of repayment requirements of the said Boulder Canyon and Parker-Davis projects, are surplus, as determined by the Secretary, to the operation, maintenance, and replacement requirements of those projects: Provided, however, That for the Boulder Canyon project commencing June 1, 1987, and for the Parker-Davis project commencing June 1, 2005, and until the end of the repayment period for the Central Arizona project described in section 301(a) of this Act (43 U.S.C. § 1521.), the Secretary of Energy shall provide for surplus revenues by including the equivalent of 4-1/2 mills per kilowatthour in the rates charged to purchasers in Arizona for application to the purposes specified in subsection (f) of this section and by including the equivalent 2-1/2 mills per kilowatthour in the rates charged to purchasers in California and Nevada for application to the purposes of subsection (g) of this section as amended and supplemented: Provided further, That after the repayment period for said Central Arizona project, the equivalent of 2-1/2 mills per kilowatthour shall be included by the Secretary of Energy in the rates charged to purchasers in Arizona, California, and Nevada to provide revenues for application to the purposes of said subsection (g) of this section: [sic] and

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Page 2415

(g) All revenues credited to the development fund in accordance with clause (c)(2) of this section (excluding only those revenues derived from the sale of power and energy for use in Arizona during the payout period of the Central
A rizona Project as authorized herein) and such other revenues as remain in the development fund after making the payments required by subsections (d) and (f) of this section shall be available (1) to make payments, if any, as required by sections 307 and 502 of this Act, (2) for repayment to the general fund of the Treasury the costs of each salinity control unit or separable feature thereof the costs of measures to replace incidental fish and wildlife values foregone, and the costs of on-farm measures payable from the Lower Colorado River Basin Development Fund in accordance with sections 205(a)(2), 205(a)(3), and 205(b)(1) of the Colorado River Salinity Control Act and (3) upon appropriation by the Congress, to assist in the repayment of reimbursable costs incurred in connection with units hereafter constructed to provide for the augmentation of the water supplies of the Colorado River for use below Lee Ferry as may be authorized as a result of the investigations and recommendations made pursuant to section 201 and subsection 203(a) of this Act.

* * * * *


EXPLANATORY NOTES


(a) Subsection 403(b) is amended by inserting "(1)" after "(b)" and adding paragraph "(2)" as it appears above at the end thereof.

(b) Paragraph (1) of subsection 403(c) is revised by the 1984 Act to read as it appears above. Prior to revision, subsection 403(c)(1) read as follows: "all revenues collected in connection with the operation of facilities authorized in title III in furtherance of the purposes of this Act (except entrance, admission, and other recreation fees or charges and proceeds received from recreation concessionaires), including revenues which, after completion of payout of the Central Arizona Project as required herein are surplus, as determined by the Secretary, to the operation, maintenance, and replacement requirements of said project;"

(c) Paragraph (2) of section 403(c) is revised by the 1984 Act by inserting, immediately preceding the existing proviso, the two additional provisos as they appear above. The August 1984 Act appears in Volume V at page 3403.


UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

TITLE I—GENERAL PROVISIONS

Sec. 101. [Definitions.]—As used in this Act—
(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.
(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.
(3) The term "State agency" means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of 2 or more States or of 2 or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.
(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, and any annual payment or capital loan to the District of Columbia.
(5) The term "person" means any individual, partnership, corporation, or association.
(6)(A) The term "displaced person" means, except as provided in subparagraph (B)—
(i) any person who moves from real property, or moves his personal property from real property—
(ii) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance; or
(II) on which such person is a residential tenant or conducts a small business, a farm operation, or a business defined in paragraph (7)(D), as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent; and

(ii) solely for the purposes of sections 4622(a) and (b) and 4625 of this title, any person who moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a Federal agency or with Federal financial assistance where the head of the displacing agency determines that such displacement is permanent.

(B) The term "displaced person" does not include—

(i) a person who has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this Act;

(ii) in any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 4622 of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not
such display or displays are located on the premises on which any of the
above activities are conducted.

(8) The term “farm operation” means any activity conducted solely or
primarily for the production of one or more agricultural products or
commodities, including timber, for sale or home use, and customarily
producing such products or commodities in sufficient quantity to be capable
of contributing materially to the operator's support.

(9) The term “mortgage” means such classes of liens as are commonly given
to secure advances on, or the unpaid purchase price of, real property, under
the laws of the State in which the real property is located, together with the
credit instruments, if any, secured thereby.

(10) The term “comparable replacement dwelling” means any dwelling that
is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the
occupants; (C) within the financial means of the displaced person; (D)
functionally equivalent; (E) in an area not subject to unreasonable adverse
environmental conditions; and (F) in a location generally not less desirable
than the location of the displaced person’s dwelling with respect to public
utilities, facilities, services, and the displaced person’s place of employment.

(11) The term “displacing agency” means any Federal agency carrying out
a program or project, and any State, State agency, or person carrying out a
program or project with Federal financial assistance, which causes a person to
be a displaced person.

(12) The term “lead agency” means the Department of Transportation.

(13) The term “appraisal” means a written statement independently and
impartially prepared by a qualified appraiser setting forth an opinion of
defined value of an adequately described property as of a specific date,
supported by the presentation and analysis of relevant market information. (84
Stat. 1894; Act of April 2, 1987, Public Law 100-17, Sec. 402, 101 Stat. 246; 42
U.S.C. § 4601.)
January 2, 1971

**EXPLANATORY NOTE**

1987 Amendments. Sec. 402(a) of the Uniform Relocation Act Amendments of 1978, Act of April 2, 1987 (Public Law 100-17, 101 Stat. 246) amended paragraph (1) generally. Prior to amendment, paragraph (1) read as follows: "The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof."

Sec. 402(b), amended paragraph (3) generally. Prior to amendment, paragraph (3) read as follows: "The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States."

Sec. 402(c) inserted ", any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual," after "insurance" in paragraph (4). Sec. 402(d) amended paragraph (6) generally. Prior to amendment, paragraph (6) read as follows: "The term 'displaced person' means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project."

Sec. 402(e), added paragraphs (10) to (13) as they appear above.

Sec. 402(f), substituted "section 4622" for "section 4622(a)" in paragraph (7)(D) above. Extracts from the 1987 Act appear in Volume V at page 3545.

**NOTE OF OPINION**

1. State agency

The Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Uniform Act) applies to acquisitions made by irrigation districts or other public agencies for construction of facilities financed under the Distribution Systems Loan Act. It is evident that a loan under the Distribution Systems Loan Act qualifies as Federal financial assistance within the meaning of the Uniform Act. Moreover, it is apparent from the overall scheme of the Distribution Systems Loan Act that loan recipients must be either irrigation districts, which have inherent taxing authority, or other public agencies which also enjoy the power to tax and, therefore, such loan recipients must be considered political subdivisions, bringing them within the definition of the term "State agency" in section 101(3) of the Uniform Act. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, June 28, 1971.
Sec. 102. [Effect upon property acquisition].—(a) The provisions of section 301 of title III of the Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of enactment of this Act. (84 Stat. 1895; 42 U.S.C. § 4602)

Sec. 103. [Certification].—(a) Notwithstanding sections 210 and 305 of this Act, the head of a Federal agency may discharge any of his responsibilities under this Act by accepting a certification by a State agency that it will carry out such responsibility, if the head of the lead agency determines that such responsibility will be carried out in accordance with State laws which will accomplish the purpose and effect of this Act.

(b)(1) The head of the lead agency shall issue regulations to carry out this section. (42 U.S.C. § 4604.)

(2) The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of this section. A State agency shall make available any information required for such purpose.

(3) Before making a determination regarding any State law under subsection (a) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within the State on the effects of such State law on the ability of local governments to carry out their responsibilities under this Act.

(c)(1) The head of a Federal agency may withhold his approval of any Federal financial assistance to or contract or cooperative agreement with any displacing agency found by the Federal agency to have failed to comply with the laws described in subsection (a) of this section.

(2) After consultation with the head of the lead agency, the head of a Federal agency may rescind his acceptance of any certification under this section, in whole or in part, if the State agency fails to comply with such certification or with State law. (101 Stat. 248; 42 U.S.C. § 4604.)
Sec. 104. [Displaced persons not eligible for assistance.]—(a) [In general.]—Except as provided in subsection (c), a displaced person shall not be eligible to receive relocation payments or any other assistance under this Act if the displaced person is an alien not lawfully present in the United States.

(b) [Determinations of eligibility.]—(1) [Promulgation of regulations.]—Not later than 1 year after the date of enactment of this section, after providing notice and an opportunity for public comment, the head of the lead agency shall promulgate regulations to carry out subsection (a).

(2) [Contents of regulations.]—Regulations promulgated under paragraph (1) shall—

(A) prescribe the processes, procedures, and information that a displacing agency must use in determining whether a displaced person is an alien not lawfully present in the United States;

(B) prohibit a displacing agency from discriminating against any displaced person;

(C) ensure that each eligibility determination is fair and based on reliable information; and

(D) prescribe standards for a displacing agency to apply in making determinations relating to exceptional and extremely unusual hardship under subsection (c).

(c) [Exceptional and extremely unusual hardship.]—If a displacing agency determines by clear and convincing evidence that a determination of the ineligibility of a displaced person under subsection (a) would result in exceptional and extremely unusual hardship to an individual who is the displaced person’s spouse, parent, or child and who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, the displacing agency shall provide relocation payments and other assistance to the displaced person under this Act if the displaced person would be eligible for the assistance but for subsection (a).

(d) [Limitation on statutory construction.]—Nothing in this section affects any right available to a displaced person under any other provision of Federal or State law. (111 Stat. 2384; 42 U.S.C. § 4605.)
TITLE II—UNIFORM RELOCATION ASSISTANCE

Sec. 201. [Declaration of findings and policy].—(a) The Congress finds and declares that—

(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

(2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;

(3) the displacement of businesses often results in their closure;

(4) minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities; and

(5) implementation of this Act has resulted in burdensome, inefficient, and inconsistent compliance requirements and procedures which will be improved by establishing a lead agency and allowing for State certification and implementation.

(b) This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this title is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.

(c) It is the intent of Congress that—

(1) Federal agencies shall carry out this title in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs borne by States and State agencies in providing relocation assistance;

(2) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this Act;

(3) the improvement of housing conditions of economically disadvantaged persons under this title shall be undertaken, to the maximum extent feasible,
in coordination with existing Federal, State, and local governmental programs for accomplishing such goals; and

(4) the policies and procedures of this Act will be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under title VIII of the Act of April 11, 1968 (Public Law 90-284), commonly known as the Civil Rights Act of 1968, and title VI of the Civil Rights Act of 1964. (101 Stat. 248; 42 U.S.C. § 4621.)

Explanatory Notes

1987 Amendment. Section 404 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 248) amended section 201 to read as it appears above. Prior to amendment, section 201 read as follows: "The purpose of this title is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole." (84 Stat. 1895; 42 U.S.C. § 4621)


Note of Opinion

1. Canal Act

In acquiring rights-of-way under the Canal Act, the Bureau of Reclamation must comply with the provisions of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 as the latter Act expressly applies to all real property acquisitions associated with Federal and federally-assisted programs and projects. Even though the Canal Act refers only to reservations of rights-of-ways, Congress has recognized that such reservations constitute an acquisition of land by enacting the Acts of September 2, 1964 (Public Law 88-561, 78 Stat. 808) and October 4, 1966 (Public Law 89-624, 80 Stat. 873) providing for the payment of just compensation for land taken under the Canal Act for projects initiated after January 1, 1961. Memorandum of Associate Solicitor Morthland to Commissioner, July 15, 1971.

Sec. 202. [Moving and related expenses].—(a) [Business reestablishment expenses.]—Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal
to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;

(3) actual reasonable expenses in searching for a replacement business or farm; and

(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed $10,000. (101 Stat. 249)

(b) [Alternative residential allowance.]—Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.

(c) [Alternative business allowance.]—Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than $1,000 nor more than $20,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

(d) [Certain utility relocation expenses.]—(1) Except as otherwise provided by Federal law—

(A) if a program or project (i) which is undertaken by a displacing agency, and (ii) the purpose of which is not to relocate or reconstruct any utility facility, results in the relocation of a utility facility;

(B) if the owner of the utility facility which is being relocated under such program or project has entered into, with the State or local government on whose property, easement, or right-of-way such facility is located, a franchise or similar agreement with respect to the use of such property, easement, or right-of-way; and

(C) if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation; the displacing agency may, in accordance with such regulations as the head of the lead agency may issue, provide to such owner a relocation payment which may not exceed the amount of such extraordinary cost (less any increase in the value of the new utility facility above the value of the old utility facility and less any salvage value derived from the old utility facility).
For purposes of this subsection, the term—

(A) "extraordinary cost in connection with a relocation" means any cost incurred by the owner of a utility facility in connection with relocation of such facility which is determined by the head of the displacing agency, under such regulations as the head of the lead agency shall issue—

(i) to be a non-routine relocation expense;

(ii) to be a cost such owner ordinarily does not include in its annual budget as an expense of operation; and

(iii) to meet such other requirements as the lead agency may prescribe in such regulations; and

(B) "utility facility" means—

(i) any electric, gas, water, steam power, or materials transmission or distribution system;

(ii) any transportation system;

(iii) any communications system (including cable television); and

(iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system; located on property which is owned by a State or local government or over which a State or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned. (101 Stat. 249; 42 U.S.C. § 4622.)
Sec. 203. [Replacement housing for homeowner].—(a)(1) In addition to payments otherwise authorized by this title, the head of the displacing agency shall make an additional payment not in excess of $22,500 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency’s obligation under section 205(c)(3) of this Act (42 U.S.C. § 4625) is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is
extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within 1 year of such date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage. (84 Stat. 1896, 101 Stat. 251; 42 U.S.C. §4623.)

Explanatory Note

1987 Amendments. Sec. 406 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 251) amended section 203(a) above as follows:

(1) by striking out "Federal" in the portion of paragraph (1) preceding subparagraph (A) and inserting in lieu thereof "displacing";

(2) by striking out "$15,000" and inserting in lieu thereof "$22,500";

(3) by striking out "acquired by" and all that follows through "the additional payment." in paragraph (1)(A) and inserting in lieu thereof "acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.";

(Prior to amendment, paragraph (1)(A) read as follows: "The amount, if any, which when added to the acquisition cost of the dwelling acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment.")

(4) by striking out paragraph (1)(B) and inserting a new paragraph (1)(B) as it appears above; and

(Prior to amendment paragraph (1)(B) read as follows: "The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.")

(5) by striking out paragraph (2) and inserting in lieu thereof a new paragraph (2) as it appears above.

Prior to amendment, paragraph (2) read as follows: "The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he would have occupied the acquired dwelling.")
UNIFORM RELOCATION ASSISTANCE

receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.” (84 Stat. 1896; 42 U.S.C. § 4623)

Section 406 of the 1987 Act appears in Volume V at page 3551.

Sec. 204. [Replacement housing for tenants and certain others—Disadvantaged persons.]—(a) In addition to amounts otherwise authorized by this title, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed $5,250. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person’s income.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (a), except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations. (101 Stat. 251; 42 U.S.C. § 4624.)
1987 Amendments. Section 407 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 251) amended section 204 to read as it appears above. Prior to amendment, section 204 read as follows: "In addition to amounts otherwise authorized by this title, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 203(a) (1) (C)) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment." (84 Stat. 1897; 42 U.S.C. § 4624.)

Sec. 205. [Relocation planning, assistance, coordination, and advisory services—Business and industry—Agriculture and agricultural commodities.]—(a) Programs or projects undertaken by a Federal agency or with Federal financial assistance shall be planned in a manner that (1) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(b) The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person such advisory services.

(c) Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—
(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

(2) provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of—

   (A) a major disaster as defined in section 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. § 5122.);

   (B) a national emergency declared by the President; or

   (C) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person;

(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply (A) information concerning other Federal and State programs which may be of assistance to displaced persons, and (B) technical assistance to such persons in applying for assistance under such programs; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(e) Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may agree that the procedures of one of such agencies shall be utilized to implement this title with respect to such activities. If such agreement cannot be reached, then the head of the lead agency shall designate one of such agencies as the agency whose procedures shall be utilized to implement this title with respect to such activities. Such related activities shall constitute a single program or project for purposes of this Act.

(f) Notwithstanding section 101(6) of this Act (42 U.S.C. § 4601.), in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the displacing agency. (84 Stat. 1897, 101 Stat. 252; 42 U.S.C. § 4625.)
January 2, 1971

UNIFORM RELOCATION ASSISTANCE

EXPLANATORY NOTES

1987 Amendments. Section 408 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 252) amended section 205 as it appears above. Prior to amendment section 205 read as follows:

"RELOCATION ASSISTANCE ADVISORY SERVICES

Sec. 205. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this section, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying property immediately adjacent to the real property acquired is [sic] caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this Act shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

1. determine the need, if any, of displaced persons, for relocation assistance;
2. provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;
3. assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;
4. assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;
5. supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and
6. provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The heads of Federal agencies shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

Section 408 of the 1987 Act appears in Volume V at page 3552.

NOTE OF OPINION

1. Timing

The responsibilities of the Bureau of Reclamation under section 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act to provide a relocation assistance advisory program in connection with the construction of the Initial Stage of the Oahe Unit need not be discharged at one time with respect to all those who eventually will be displaced by the project. United Family Farmers, Inc. v. Kleppe, 418 F. Supp. 591 (1976), affirmed on other grounds, 552 F.2d 823 (8th Cir. 1977).

Sec. 206. [Housing replacement by Federal agency as last resort.]—(a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The head of the displacing agency may use this section to exceed the maximum amounts which may be paid under sections 203 and 204 on a case-by-case basis for good cause as determined in accordance with such regulations as the head of the lead agency shall issue.

(b) No person shall be required to move from his dwelling on account of any program or project undertaken by a Federal agency or with Federal financial assistance, unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person. (84 Stat. 1898, 101 Stat. 253; 42 U.S.C. § 4626.)

EXPLANATORY NOTE

1987 Amendments. Section 409 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 252) amended section 206 as it appears above. Prior to amendment, section 206 read as follows: "(a) If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(b) No person shall be required to move from his dwelling on or after the effective date of this title, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 205(c) (3), is available to such person." (84 Stat. 1898) Section 409 of the 1987 Act appears in Volume V at page 3554.
Sec. 207. [State required to furnish real property incident to federal Assistance (local cooperation).]—Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 210 and 305 of this Act. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance. (84 Stat. 1898; 42 U.S.C. § 4627)

Sec. 208. [State acting as agent for federal program.]—Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this Act, be deemed an acquisition by the Federal agency having authority over such program or project. (84 Stat. 1899; 42 U.S.C. § 4628)

Sec. 210. [Requirements for relocation payments and assistance of federally assisted program; assurances of availability of housing.]—Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a displacing agency (other than a Federal agency), under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such displacing agency that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

(2) relocation assistance programs offering the services described in section 205 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with section 205(c) (3). (84 Stat. 1899, 101 Stat. 254; 42 U.S.C. § 4630.)

Explanatory Note

1987 Amendments. Section 410 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 254) amended section 210 by striking out "State agency" the first place it appears and inserting
Sec. 211. [Federal share of costs.]—(a) The cost to a displacing agency of providing payments and assistance under this title and title III of this Act (42 U.S.C. § 4651) shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

(b) No payment or assistance under this title or title III of this Act shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by Federal, State, or local law which is determined by the head of the Federal agency to have substantially the same purpose and effect as such payment under this section. (101 Stat. 254; 42 U.S.C. § 4631(a) and (b).)

Explanatory Note

1987 Amendments. Section 411 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 254) amended subsections 211(a) and 211(b) as they appear above. Prior to amendment, subsections 211(a) and (b) read as follows: 

"(a) The cost to a State agency of providing payments and assistance pursuant to sections 206, 210, 215, and 305, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first $25,000 of such cost.

(b) No payment or assistance under section 210 or 305 shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available."
(c) Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this Act, shall be amended to include the cost of providing payments and services under sections 210 and 305. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 206, 210, 215, and 305. (84 Stat. 1900, 101 Stat. 254; 42 U.S.C. § 4631.)

Sec. 212. [Administration—Relocation assistance in programs receiving federal financial assistance.]—In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 206, 210, and 215 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this title through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 206, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities. (84 Stat. 1900; 42 U.S.C. § 4632.)

Sec. 213. [Duties of lead agency.]—(a) [General provisions.]—The head of the lead agency shall—

(1) develop, publish, and issue, with the active participation of the Secretary of Housing and Urban Development and the heads of other Federal agencies responsible for funding relocation and acquisition actions, and in coordination with State and local governments, such regulations as may be necessary to carry out this Act;

(2) provide, in consultation with the Attorney General (acting through the Commissioner of the Immigration and Naturalization Service), through training and technical assistance activities for displacing agencies, information developed with the Attorney General (acting through the Commissioner) on proper implementation of section 104;

(3) ensure that displacing agencies implement section 104 fairly and without discrimination in accordance with section 104(b)(2)(B);
(4) ensure that relocation assistance activities under this Act are coordinated with low-income housing assistance programs or projects by a Federal agency or a State or State agency with Federal financial assistance;

(5) monitor, in coordination with other Federal agencies, the implementation and enforcement of this Act and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this Act; and

(6) perform such other duties as may be necessary to carry out this Act.

(b) [Regulations.—The head of the lead agency is authorized to issue such regulations and establish such procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any aggrieved person may have his application reviewed by the head of the Federal agency having authority over the applicable program or project or, in the case of a program or project receiving Federal financial assistance, by the State agency having authority over such program or project or the Federal agency having authority over such program or project if there is no such State agency.

(c) The regulations and procedures issued pursuant to this section shall apply to the Tennessee Valley Authority and Rural Electrification Administration only with respect to relocation assistance under this title and title I. (84 Stat. 1900, 101 Stat. 254, 111 Stat. 2385, 105 Stat. 2002; 42 U.S.C. § 4633.)

Explanatory Notes

1997 Amendment. Section 2 of the Act of November 21, 1997 (Public Law 105-117, 111 Stat. 2385) amended section 213(a) as follows:

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (4), (5), and (6), respectively; and

(2) by inserting after paragraph (1) paragraphs (2) and (3) as they appear above.

Section 2 of the 1997 Act appears in volume V at page 4117.


1987 Amendment. Section 412 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 254) amended subsection 213 generally by providing substitute language. Prior to the 1987 amendment, section 213 read as follows: (a) "In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall
consult together on the establishment of regulations and procedures for the implementation of such programs.

(b) The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this Act, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.

c) The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this Act, as he deems necessary or appropriate to carry out this Act."

Section 412 of the 1987 Act appears in Book V at page 3555.


Explanatory Note

Section Repealed. Section 415 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 255) repealed section 214. Prior to repeal, section 214 read as follows: "Sec. 214. The head of each Federal agency shall prepare and submit an annual report to the President on the activities of such agency with respect to the programs and policies established or authorized by this Act, and the President shall submit such reports to the Congress not later than January 15 of each year, beginning January 15, 1972, and ending January 15, 1975, together with his comments or recommendations. Such reports shall give special attention to: (1) the effectiveness of the provisions of this Act assuring the availability of comparable replacement housing, which is decent, safe, and sanitary, for displaced homeowners and tenants;

(2) actions taken by the agency to achieve the objectives of the policies of Congress, declared in this Act, to provide uniform and equal treatment, to the greatest extent practicable, for all persons displaced by, or having real property taken for, Federal or federally assisted programs; (3) the views of the Federal agency head on the progress made to achieve such objectives in the various programs conducted or administered by such agency, and among the Federal agencies; (4) any indicated effects of such programs and policies on the public; and (5) any recommendations he may have for further improvements in relocation assistance and land acquisition programs, policies, and implementing laws and regulations." Section 415 of the 1987 Act appears in Volume V at page 3556.

Sec. 215. [Planning and other preliminary expenses for additional housing.]—In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from
dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts. (84 Stat. 1901; 42 U.S.C. § 4635)

Sec. 216. [Payments not to be considered as income.]—No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law (except for any Federal law providing low-income housing assistance). (84 Stat. 1902; 101 Stat. 255; 42 U.S.C. § 4636.)

Explanatory Note


Explanatory Note

Section Repealed. Section 415 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 255) repealed section 217. Prior to repeal, section 217 read as follows: "A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after the effective date of this Act, as a direct result of any project or program which receives Federal financial assistance under title I of the Housing Act of 1949, as amended, or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall, for the purposes of this title, be deemed to have been displaced as the result of the acquisition of real property." Section 415 of the 1987 Act appears in Volume V at page 3556.

Sec. 218. [Transfers of surplus property.]—The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this title, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all net amounts received by such agency from any sale, lease, or other disposition of such property for such housing. (84 Stat. 1902, 101 Stat. 255; 42 U.S.C. § 4638.)

Explanatory Notes


Sec. 219. Repealed.
January 2, 1971

2627, S283    UNIFORM RELOCATION ASSISTANCE

Explanatory Note


Sec. 220. [Repeals.]

(a) The following laws and parts of laws are hereby repealed:


(3) Section 2680 of title 10, United States Code.

(4) Section 7(b) of the Urban Mass Transportation Act of 1965 (49 U.S.C. § 1606(b)). (84 Stat. 1903; 49 U.S.C. § 1606.)

(5) Section 114 of the Housing Act of 1949 (42 U.S.C. § 1465.)

(6) Paragraphs (7)(b) (iii) and (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. § 1415, 1415 (8)), except the first sentence of paragraph (8). (84 Stat. 1903; 42 U.S.C. § 1415.)

(7) Section 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to pay relocation costs made necessary by actions of the District of Columbia government, and for other purposes", approved October 6, 1964 (78 Stat. 1004; Public Law 88-629; D.C. Code 5-729).

(8) Section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. § 3074.)

(9) Sections 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. § 3307). (84 Stat. 1903; 42 U.S.C. § 3307.)

(10) Chapter 5 of title 23, United States Code.


(b) Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section. (84 Stat. 1903; 42 U.S.C. § 4621 note)

Explanatory Note

Sec. 221. [Effective date.]

(a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

(b) Until July 1, 1972, sections 210 and 305 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all States.

(c) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11), and (12) of section 220(a) of this title and section 306 of title III shall not apply to any State so long as sections 210 and 305 are not applicable in such State. (84 Stat. 1904; 42 U.S.C. § 4601 note.)

TITLE III—UNIFORM REAL PROPERTY ACQUISITION POLICY

Sec. 301. [Uniform policy on real property acquisition practices.]

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency’s approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration...
within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. § 258a), for the benefit of the owner, an amount not less than the agency’s approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days’ written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire that remnant. For the purposes of this Act, an uneconomic remnant is a parcel of real property in which the owner is left with an interest
January 2, 1971

UNIFORM RELOCATION ASSISTANCE

**Sec. 302.** (Buildings, structures, and improvements.)—(a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property acquired.
of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection. (84 Stat. 1905; 42 U.S.C. § 4652)

Sec. 303. [Expenses incidental to transfer of title to United States.]—The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier. (84 Stat. 1906; 42 U.S.C. § 4653.)

Sec. 304. [Litigation expenses.]—(a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgement is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.
January 2, 1971

UNIFORM RELOCATION ASSISTANCE

(b) Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding. (84 Stat. 1906; 42 U.S.C. § 4654.)

EXPLANATORY NOTE

References in the Text. Sections 1346(a)(2) and 1491 of title 28, United States Code, referred to in subsection (c) of the text, appear in Volume III at pages 1950 and 1951, respectively and in Supplement I at pages S493 and S494, respectively.

Sec. 305. [Requirements for uniform land acquisition policies—Payments of expenses incidental to transfer of real property to state—Payment of litigation expenses in certain cases.]—(a) Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such acquiring agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304.

(b) For purposes of this section, the term "acquiring agency" means—

(1) a State agency (as defined in section 101(3)) which has the authority to acquire property by eminent domain under State law, and

(2) a State agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation.

EXPLANATORY NOTE

1987 Amendments. Section 417 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 256) amended section 305 above by inserting "(a)" after "Sec. 305.", by striking out "a State agency" the first place it appears and inserting in lieu thereof "an acquiring agency", and by adding at the end thereof the new subsection (b) as it appears above. Section 417 of the 1987 Act appears in Volume V at page 3557.

Sec. 306. [Repeals.]—Sections 401, 402, and 403 of the Housing and Urban Development Act of 1965 (42 U.S.C. §§ 3071-3073), section 35(a) of the Federal Aid Highway Act of 1968 (23 U.S.C. § 141) and section 301 of the Land Acquisition Policy Act of 1960 (33 U.S.C. § 596) are hereby repealed. Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section. (84 Stat. 1907; 42 U.S.C. § 4651 note.)

Explanatory Notes

References in the Text. None of the statutory provisions repealed by section 306 appear herein.


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

Notes of Opinions

Canal Act 1
Displaced persons 2
Distribution system loans 3

1. Canal Act

In acquiring rights-of-way under the Canal Act, the Bureau of Reclamation must comply with the provisions of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 as the latter Act expressly applies to all real property acquisitions associated with Federal and federally-assisted programs and projects. Even though the Canal Act refers only to reservations of rights-of-ways, Congress has recognized that such reservations constitute an acquisition of land by enacting the Acts of September 2, 1964, and October 4, 1966, providing for the payment of just compensation for land taken under the Canal Act for projects initiated after January 1, 1961. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, July 15, 1971.

2. Displaced persons

Members of the Navajo and Hopi tribes
forced to relocate after their tribes granted leases for coal mining rights to their lands to Peabody Coal Company, are not "displaced persons" as defined by section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 merely because the leases and mining plan were approved by the Department of Interior and the company subsequently sold strip-mined coal from the reservations to the Navajo generating station, in which the Bureau of Reclamation is a participant and which supplies power for the Mojave generating station which, allegedly, receives Bureau of Reclamation subsidies. The focus of section 101(6) is not on the degree of involvement by a Federal agency or a program of such agency which results in the acquisition, but is instead on whether the person involved was displaced by governmental action either acquiring the property or issuing an order to vacate the property. Austin v. Andrus, 638 F.2d 113 (9th Cir. 1981).

3. Distribution system loans

The Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Uniform Act) applies to acquisitions made by irrigation districts or other public agencies for construction of facilities financed under the Distribution Systems Loan Act. It is evident that a loan under the Distribution Systems Loan Act qualifies as Federal financial assistance within the meaning of the Uniform Act. Moreover, it is apparent from the overall scheme of the Distribution Systems Loan Act that loan recipients must be either irrigation districts, which have inherent taxing authority, or other public agencies which also enjoy the power to tax and, therefore, such loan recipients must be considered political subdivisions, bringing them within the definition of the term "State agency" in section 101(3) of the Uniform Act. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, June 28, 1971.

ADDENDUM

NOTE OF OPINION

1. Condemnation

Section 301(8) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which specifies that the Federal Government need not initiate condemnation proceedings in order for the owner of property it acquires "to prove the fact of the taking of his real property," provides that once an agency initiates negotiations for property acquisition, a taking, as real as that under condemnation, has occurred. Thus, where the Bureau of Reclamation notifies a landowner of its intention to acquire a specific piece of land under the Act and indicates the price it will pay, the subsequent sale is the practical equivalent of a condemnation, even though the landowner accepts the indicated price and no judicial proceedings are instituted. Mealey v. Orlich, 120 Ariz. 321, 585 P.2d 1233 (1978).
RECLAMATION PROJECT AUTHORIZATION ACT OF 1972

Sec. 101. [Authorization of closed basin division, including channel rectification of Rio Grande—purposes—construction in stages—compliance with water quality standards.—] (a) The Secretary of the Interior is authorized to construct, operate, and maintain the closed basin division, San Luis Valley project, Colorado, in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), and as otherwise provided in this Act, for the principal purposes of salvaging, regulating, and furnishing water from the closed basin area of Colorado; transporting such water into the Rio Grande; making water available for fulfilling the United States obligation to the United States of Mexico in accordance with the treaty dated May 21, 1906 (34 Stat. 2953); furnishing irrigation water, industrial water, and municipal water supplies to water deficient areas of Colorado, New Mexico, and Texas through direct diversion and exchange of water; establishing the Russell Lakes Waterfowl Management Area and furnishing a water supply for the Russell Lakes Waterfowl Management Area by purchase of required lands with appurtenant water rights and a partial water supply for the operation of the Blanca Wildlife Habitat Area and Alamosa National Wildlife Refuge essentially as shown in the Revised Fish and Wildlife Coordination Act Report for the San Luis Valley project, dated June 1982; providing outdoor recreational opportunities; augmenting the flow of the Rio Grande; and other useful purposes, in substantial accordance with the engineering plans set out in the report of the Secretary of the Interior on this project as modified by the plans shown in the Definite Plan Report of the Water and Power Resources Service, dated November 1979, and as modified by the plans essentially as shown in the Revised Fish and Wildlife Coordination Act Report for the San Luis Valley project, dated June 1982:

Provided, That no wells of the project, other than observation wells, shall be permitted to penetrate the aquiclude, or first confining clay layer. (86 Stat. 964, 98 Stat. 2941)

EXPLANATORY NOTES

1988 Amendment. Subsection 22(1) of the Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2575) amended Sec. 101(a) of Public Law 92-514 (86 Stat. 964) by striking the phrase, "including channel rectification of the Rio Grande between the uppermost point of discharge into the river of waters salvaged by the project, and the Colorado-New Mexico State line, so as to provide for the carriage of water so salvaged without flooding of surrounding lands, to minimize losses of waters through evaporation, transpiration, and seepage, and to provide a conduit for the reception of waters salvaged by drainage..."
October 20, 1972

RECLAMATION PROJECT AUTHORIZATION ACT  2748

projects undertaken in the San Luis Valley below Alamosa, Colorado," following the words "San Luis Valley project, Colorado," and preceding the words "in accordance with." Section 22 of the 1988 Act appears in Volume V at page 3611.  


References in the Text. The treaty of May 21, 1906 (34 Stat. 2953) referred to in subsection (a) of the text is established by Article I of the Convention, and requires the United States to deliver annually to Mexico 60,000 acre-feet of water via the Rio Grande. The Convention appears in Volume I at page 114. 

The Water Quality Act of 1965 referred to in subsection (c) of the text, amended in part the Federal Water Pollution Control Act of July 9, 1956 (70 Stat. 498). The 1956 Act was extensively revised by the Federal Water Pollution Control Act Amendments of October 18, 1972 (Public Law 92-500, 86 Stat. 816) and subsequent amendatory legislation, and, as amended, is commonly referred to as the Clean Water Act. Extracts from the Act as amended are set forth in Volume IV, under the 1972 Amendments, as they appear at page 2664 in chapter 26 of Title 33 of the U.S. Code as of January 14, 1983. 

*          *          *          *          * 

(c) The closed basin division, San Luis Valley project, Colorado, shall be operated in such manner that the delivery of water to the river and return flows of water will not cause the Rio Grande system to be in violation of water quality standards promulgated pursuant to the Clean Water Act (Public Law 92-500), as amended. (86 Stat. 964; Act of October 3, 1980, § 6, Public Law 96-375, 94 Stat. 1505; 102 Stat. 2575)
October 20, 1972

2748  RECLAMATION PROJECT AUTHORIZATION ACT

EXPLANATORY NOTES


Section 22 of the 1988 Act appears in Volume V at page 3611.


Sec. 102. [Control system of observation—Protection of water table and artesian wells.]—(a) Prior to commencement of construction of any part of the project, there shall be incorporated into the project plans a control system of observation wells, which shall be designated to provide positive identification of any fluctuations in the water table of the area surrounding the project attributable to operation of the project or any part thereof. Such control system, or so much thereof as is necessary to provide such positive identification with respect to any stage of the project, shall be installed concurrently with such stage of the project.

(b) The Secretary shall operate project facilities in a manner that will not cause the water table available for any irrigation or domestic wells in existence outside the project boundary prior to the construction of the project to drop more than two feet and in a manner that will not cause reduction of artesian flows in existence prior to the construction of the project.

(c) The Secretary is authorized to acquire water pursuant to the procedural and substantive laws of the State of Colorado from within the Rio Grande Basin in the State of Colorado by purchase, lease, or exchange from willing sellers for the purposes of this Act, provided that—

(1) such water is obtained, made available, and delivered for project purposes at less cost for operation and maintenance than the same amounts of water can be made available by operation of project pumping facilities and without necessitating the construction of additional physical facilities by the Secretary;

(2) such water 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
October 20, 1972

RECLAMATION PROJECT AUTHORIZATION ACT 2750

(4) this authorization shall not entitle the Secretary to obtain such water or any water rights by condemnation or by exercising the power of eminent domain. (86 Stat. 964; Act of October 3, 1980, §6, Public Law 96-375, 94 Stat. 1505; Act of October 24, 1988, 102 Stat. 2575)

EXPLANATORY NOTES

1988 Amendment. Subsection 22(3) of the Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2575) amended Sec. 102 (a) of Public Law 92-514 (86 Stat. 964) by striking the phrase "except channel rectification.", Subsection 22(4) amended Sec. 102 further by adding subsection (c). Section 22 of the 1988 Act appears in Volume V at page 3611.

1980 Amendment. Section 6 of the Act of October 3, 1980 (Public Law 96-375, 94 Stat. 1505) added to subsection (b) the words "outside the property boundary" after the words "domestic wells in existence." Section 6 of the 1980 Act appears in Volume IV at page 3218.

Sec. 103. [Operating committee.]—There is hereby established an operating committee consisting of one member appointed by the Secretary, one member appointed by the Colorado Water Conservation Board, and one member appointed by the Rio Grande Water Conservation District, which is authorized to determine from time to time whether the requirements of section 102 of this Act are being complied with. The committee shall inform the Secretary if the operation of the project fails to meet the requirements of section 102 or adversely affects the beneficial use of water in the Rio Grande Basin in Colorado as defined in article I(c) of the Rio Grande compact (53 Stat. 785). Upon receipt of such information the Secretary shall modify, curtail, or suspend operation of the project to the extent necessary to comply with such requirements or eliminate such adverse effect. (86 Stat. 965; Act of October 24, 1988, 102 Stat. 2575)

EXPLANATORY NOTE

Reference in the Text. The Rio Grande Basin in Colorado as defined in Article I(c) of the Rio Grande Compact, Act of March 18, 1939 (53 Stat. 785) referred to in the text means "all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the Closed Basin in Colorado." The Closed Basin in Colorado is defined as "that part of the Rio Grande Basin in Colorado where the streams drain into the San Luis Lake and adjacent territory, and do not normally contribute to the flow of the Rio Grande." Article I(c) of the Rio Grande Compact appears in Volume I at page 622 and a Note of Opinion appears in Supplement I at page S123.
Sec. 104. [Priority of uses of water—Project costs nonreimbursable except as determined by Secretary within ability to pay.]

(a) Except as hereinafter provided, project costs shall be nonreimbursable.

(b) After the project or any phase thereof has been constructed and is operational, the Secretary shall make water available in the following listed order of priority:

1. To assist in making the annual delivery of water at the gaging station on the Rio Grande near Lobatos, Colorado, as required by article III of the Rio Grande compact: Provided, That the total amount of water delivered for this purpose shall not exceed an aggregate of six hundred thousand acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of January next succeeding the year in which the Secretary determined that the project authorized by this Act is operational.

2. To maintain the Alamosa National Wildlife Refuge and the Blanca Wildlife Habitat Area: Provided, That the amount of project salvaged water delivered to the Alamosa National Wildlife Refuge and the Blanca Wildlife Habitat Area shall not exceed five thousand three hundred acre-feet annually. The Secretary is authorized to negotiate and enter into an agreement with the Rio Grande Water Conservation District which provides for the temporary delivery of project salvaged water to the refuge and the habitat area in those years in which there is not sufficient water to fully satisfy the purposes of both paragraphs (1) and (2) of this subsection.

3. To apply to the reduction and elimination of any accumulated deficit in deliveries by Colorado as is determined to exist by the Rio Grande Compact Commission under article VI of the Rio Grande compact at the end of the compact water years in which the Secretary first determines the project to be operational.

4. For irrigation or other beneficial uses in Colorado: Provided, That no water shall be delivered until contracts between the United States and water

EXPLANATORY NOTES


1984 Amendment. The Act of October 30, 1984 (Public Law 98-570, 98 Stat. 2941) amended Sec. 104(b)(2) of Public Law 92-514 (86 Stat. 965) to read as shown above without the last sentence. The last sentence was added by the 1988 amendment. The original language appears in Volume IV at page 2750. The 1984 Act appears in Volume V at page 3456.
users in Colorado, or the Rio Grande Water Conservation District acting for them, have been executed providing for the repayment of such construction costs as in the opinion of the Secretary are appropriate and within the ability of the users to pay and for the payment of all of the costs of operation and maintenance which are allocable to the production of this priority 4 water. (86 Stat. 965; Act of October 24, 1988, 102 Stat. 2575)

EXPLANATORY NOTE


NOTE OF OPINION

1. Priority of water use
   It is clear from both the plain language and the legislative history of the Reclamation Project Authorization Act of 1972 that section 104(b) requires that, in times of water shortage insufficient to meet all the needs of the project, the first 60,000 acre-feet per year be allocated to fulfill the treaty obligation of Article III of the Rio Grande Compact. Only after this requirement is met will water be available for the lower priority Alamosa and Mishak National Wildlife Refuges, up to the statutory maximum. Memorandum of Associate Solicitor Good to Field Solicitor, Amarillo, December 16, 1981, in re Closed Basin Division, San Luis Valley Project, Colorado.

Sec. 105. [Conveyance of State lands—Limitations on acquisition of private lands.]—Construction of the project shall not be started until the State of Colorado agrees that it will, as its participation in the project, convey to the United States easements and rights-of-way over lands owned by the State that are needed for wells, channels, laterals, and wildlife refuge areas, as identified in the Revised Fish and Wildlife Coordination Act Report for the San Luis Valley project, dated June 1982. Acquisition of privately owned land shall, where possible and consistent with the development of the project, be restricted to easements and rights-of-way in order to minimize the removal of land from local tax rolls. Private lands required for permanent project facilities may, at the option of the United States, be acquired by fee title. (86 Stat. 965, 98 Stat. 2942, 43 U.S.C. § 615eee.)
2752     RECLAMATION PROJECT AUTHORIZATION ACT

EXPLANATORY NOTE


NOTE OF OPINION

1. Acceptance of less than fee for title

Section 105 authorizes the United States to accept less than fee title for Colorado state lands needed for wells, channels, laterals and wildlife refuge areas as identified in the project plan, as the Act plainly contemplates that Colorado may retain ownership of the lands involved by specifying that "[T]he State of Colorado agrees that it will . . . convey to the United States easements and rights-of-way over lands owned by the State. . . ." Memorandum of Acting Associate Solicitor Elliott, Energy and Resources, to Field Solicitor, Amarillo, February 19, 1981, in re Closed Basin Division, San Luis Valley Project.

*   *   *   *   *

Page 2752

Sec. 109. [Authorization of Appropriations.]—There is hereby authorized to be appropriated the sum of $94,000,000 (October 1988 prices) for the construction of the Closed Basin Division of the San Luis Valley project, of which amount not more than $31,000,000 may be adjusted plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein, and such additional sums for the operation and maintenance of the project as may be required: Provided, That none of the funds authorized herein for construction in excess of $75,000,000 may be expended by the Secretary unless and until the State of Colorado or a political subdivision thereof has entered into a binding agreement with the Secretary to contribute during construction one-third of the costs of construction in excess of $75,000,000, or $6,000,000, whichever is less. Such agreement shall include a reasonable limitation on administrative overhead expenses charged by the Secretary. (86 Stat. 966; Act of October 24, 1988, 102 Stat. 2576)

EXPLANATORY NOTE

Codification Omitted. Title I of this Act originally was codified at 43 U.S.C. §§ 615aa to 615ii but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.
October 20, 1972

RECLAMATION PROJECT AUTHORIZATION ACT 2752

COLORADO RIVER BASIN SALINITY CONTROL ACT

[Sec. 1. Short Title.]—This Act may be cited as the "Colorado River Basin Salinity Control Act". (Public Law 93-320, 88 Stat. 266; 43 U.S.C. § 1571.)

TITLE I—PROGRAMS DOWNSTREAM FROM IMPERIAL DAM

* * * * *

EXPLANATORY NOTE


Page 2867

TITLE II—MEASURES UPSTREAM FROM IMPERIAL DAM

* * * * *

Sec. 201. [Implementation of salinity control policies—Interagency cooperation.]—(a)

* * * * *

(b) The Secretary is hereby directed to expedite the investigation, planning, and implementation of the salinity control program generally as described in chapter VI of the Secretary's report entitled, "Colorado River Water Quality Improvement Program, February 1972". In determining the relative priority of implementing additional units or new self-contained portions of units authorized by section 202, the Secretary or the Secretary of Agriculture, as the case may be, shall give preference to those additional units or new self contained portions of units which reduce salinity of the Colorado River at the least cost per unit of salinity reduction. (88 Stat. 270, 98 Stat. 2933; 43 U.S.C. §1591.)
EXPLANATORY NOTE

1984 Amendment. Section 1 of the Act of October 30, 1984, (Public Law 98-569, 98 Stat. 2933) amended section 201(b) by adding at the end thereof a new sentence as it appears above. The 1984 Act appears in Volume V at page 3447.

Sec. 202. [Construction, operation, and maintenance of certain salinity control units authorized.]—(a) [Authority of Secretary.]—The Secretary is authorized to construct, operate, and maintain the following salinity control units and salinity control program as the initial stage of the Colorado River Basin salinity control program:

(1) The Paradox Valley unit, Montrose County, Colorado, consisting of facilities for collection and disposition of saline ground water of Paradox Valley, including wells, pumps, pipelines, solar evaporation ponds, and all necessary appurtenant and associated works such as roads, fences, dikes, power transmission facilities, and permanent operating facilities, and consisting of measures to replace incidental fish and wildlife values foregone.

(2) The Grand Valley unit, Colorado, consisting of measures and all necessary appurtenant and associated works to reduce the seepage of irrigation water from the irrigated lands of Grand Valley into the ground water and thence into the Colorado River. Measures shall include lining of canals and laterals, replacing canals and laterals with pipe, and the combining of existing canals and laterals into fewer and more efficient facilities implementing other measures to reduce salt contributions from the Grand Valley to the Colorado River, and implementing measures to replace incidental fish and wildlife values foregone. Prior to initiation of construction of the Grand Valley unit, or portion thereof, the Secretary shall enter into contracts through which the non-Federal entities owning, operating, and maintaining the water distribution systems, or portions thereof, in Grand Valley, singly or in concert, will assume the obligations specified in subsection (b)(2) of this section relating to the continued operation and maintenance of the unit's facilities to the end that the maximum reduction of salinity inflow to the Colorado River will be achieved.

(3) The Las Vegas Wash unit, Nevada, consisting of facilities for collection and disposition of saline ground water of Las Vegas Wash, including infiltration galleries, pumps, desalter, pipelines, solar evaporation facilities, and all appurtenant works including but not limited to roads, fences, power transmission facilities, and operating facilities, and consisting of measures to replace incidental fish and wildlife values foregone.
(4) Stage I of the Lower Gunnison Basin unit, Colorado, consisting of measures and all necessary appurtenant and associated works to reduce seepage from canals and laterals in the Uncompahgre Valley, and consisting of measures to replace incidental fish and wildlife values foregone, essentially as described in the feasibility report and final environmental statement dated February 10, 1984. Prior to initiation of construction of stage I of the Lower Gunnison Basin unit, or of a portion of stage I, the Secretary shall enter into contracts through which the non-Federal entities owning, operating, and maintaining the water distribution systems, or portions thereof, in the Uncompahgre Valley, singly or in concert, will assume the obligations specified in subsection (b)(2) of this section relating to the continued operation and maintenance of the unit’s facilities.

(5) Portions of the McElmo Creek unit, Colorado, as components of the Dolores participating project, Colorado River Storage project, authorized by Public Law 90-537 (43 U.S.C. § 1501 et seq.) and Public Law 84-485 (43 U.S.C. § 620 et seq.), consisting of all measures and all necessary appurtenant and associated works to reduce seepage only from the Towaoc-Highline combined canal, Rocky Ford laterals, Lone Pine lateral, and Upper Hermana lateral, and consisting of measures to replace incidental fish and wildlife values foregone. The Dolores participating project shall have salinity control as a project purpose insofar as these specific facilities are concerned: Provided, That the costs of construction and replacement of these specific facilities shall be allocated by the Secretary to salinity control and irrigation only after consultation with the State of Colorado, the Montezuma Valley Irrigation District, Colorado, and the Dolores Water Conservancy District, Colorado: And provided further, That such allocation of costs to salinity control will include only the separable and specific costs of these specific facilities and will not include any joint costs of any other facilities of the Dolores participating project. Repayment of costs allocated to salinity control shall be subject to this chapter. Repayment of costs allocated to irrigation shall be subject to the Acts which authorized the Dolores participating project, the Reclamation Act of 1902, (43 U.S.C. § 371 note.) and Acts amendatory and supplementary thereto. Prior to initiation of construction of these specific facilities, or a portion thereof, the Secretary shall enter into contracts through which the non-Federal entities owning, operating, and maintaining the water distribution systems, or portions thereof, in the Montezuma Valley, singly or in concert, will assume the obligations specified in subsection (b)(2) of this section relating to the continued operation and maintenance of the unit’s facilities.

(6) A basinwide salinity control program that the Secretary, acting through the Bureau of Reclamation, shall implement. The Secretary may carry out the
purposes of this paragraph directly, or may make grants, commitments for grants, or advances of funds to non-Federal entities under such terms and conditions as the Secretary may require. Such program shall consist of cost-effective measures and associated works to reduce salinity from saline springs, leaking wells, irrigation sources, industrial sources, erosion of public and private land, or other sources that the Secretary considers appropriate. Such program shall provide for the mitigation of incidental fish and wildlife values that are lost as a result of the measures and associated works. The Secretary shall submit a planning report concerning the program established under this paragraph to the appropriate committees of Congress. The Secretary may not expend funds for any implementation measure under the program established under this paragraph before the expiration of a 30-day period beginning on the date on which the Secretary submits such report.

(100 Stat. 225, 104-20 43 U.S.C. § 1592.)

EXPLANATORY NOTE

Reference in the Text. Colorado River Storage Project section 501 of authorized by Public Law 90-537 (82 Stat. 896) and Public Law 84-485 (70 Stat. 105) appears in Volume IV at page 2416 and in Volume II at page 1248, respectively.

(b) [Implementation of authorized units—Reports to Congress—Operation and maintenance (O&M) contracts with non-Federal entities—Reimbursement of certain O&M costs—Replacement costs—Organization of private canal and lateral owners—State water laws—Funding for and implementation of measures to replace incidental fish and wildlife values foregone.]—In implementing the units authorized to be constructed pursuant to subsection (a) of this section, the Secretary shall carry out the following directions:

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

(2) Non-Federal entities shall be required by the Secretary to contract for the long-term operation and maintenance of canal and lateral systems constructed pursuant to activities provided for in subsection (a) of this section: Provided, That the Secretary shall reimburse such non-Federal entities for the costs of such operation and maintenance to the extent the costs exceed the expenses that would have been incurred by them in the thorough and timely operation and maintenance of their canal and lateral systems absent the construction of

S1041
a unit, said expenses to be determined by the Secretary after consultation with the involved non-Federal entities. The operation and maintenance for which non-Federal entities shall be responsible shall include such repairing and replacing of a unit's facilities as are associated with normal annual maintenance activities in order to keep such facilities in a condition which will assure maximum reduction of salinity inflow to the Colorado River. These non-Federal entities shall not be responsible, nor incur any costs, for the replacement of a unit's facilities, including measures to replace incidental fish and wildlife values foregone. The term replacement shall be defined for the purposes of this Title as a major modification or reconstruction of a completed unit, or portion thereof, which is necessitated, through no fault of the non-Federal entity or entities operating and maintaining a unit, by design or construction inadequacies or by normal limits on the useful life of a facility. The Secretary is authorized to provide continuing technical assistance to non-Federal entities to assure the effective and efficient operation and maintenance of a unit's facilities.

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

(4) In implementing the units authorized to be constructed or the program pursuant to paragraphs (1), (2), (3), (4), (5), and (6) of subsection (a) of this section, the Secretary shall comply with procedural and substantive State water laws.

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

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


1996 Amendment. Subsection 336(c)(1) of the Act of April 4, 1996 (Public Law 104-127, 110 Stat. 1006, Title III, Subsection D) struck subsection 202(c) as provided by the Act of October 30, 1984, and inserted new language as it appears above.


1995 Amendments. Sec. 1(1) of the Act of July 28, 1995 (Public Law 104-20, 109 Stat. 255), amended section 202(a) as follows: in section 202(a) (A) in the first sentence—(i) by striking “the following salinity control units” and inserting “the following salinity control units and salinity control program”; and (ii) by striking the period and inserting a colon; and (B) by adding at the end the following the new paragraph: “(6)” as it appears above.

The 1995 Act appears in Volume V at page 4063.

1984 Amendments. The Act of October 30, 1984, (Public Law 98-569, 98 Stat. 2933) amended section 202 by inserting “(a)” after “Sec. 202.”; and then amending Sec. 202(a) as follows: (1) in paragraph (1) by inserting before the period at the end thereof the following: “, and consisting of measures to replace incidental fish and wildlife values foregone”; (2) in the second sentence of paragraph (2) by inserting “replacing canals and laterals with pipe,” after “canals and laterals,” and by inserting “implementing other measures to reduce salt contributions from the Grand Valley to the Colorado River, and implementing measures to replace incidental fish and wildlife values foregone.” after “efficient facilities”; (3) in the third sentence of paragraph (2) by inserting “, or portion thereof,” after “Grand Valley unit”, by striking out “agencies” and inserting in lieu thereof “non-Federal entities”, by inserting “, or portions thereof,” after “water distribution systems”, and by striking out “all obligations” and inserting in lieu thereof “the obligations specified in subsection (b)(2)”;

(4) in paragraph (2) by striking out the fourth, fifth, and sixth sentences (which read as follows: “The Secretary is also authorized to provide, as an element of the Grand Valley unit, for a technical staff to provide information and assistance to water users on means and measures for limiting excess water applications to irrigated lands: Provided, That such assistance shall not exceed a period of five years after funds first become available under this Title. The Secretary will enter into agreements with the Secretary of Agriculture to develop a unified control plan for the Grand Valley unit. The Secretary of Agriculture is directed to cooperate in the planning and construction of on-farm system measures under programs available to that Department.”);

(5) by striking out paragraph (3)) and by redesignating paragraph (4) as paragraph (3); Prior to striking, paragraph (3) read as follows: “The Crystal Geyser unit, Utah, consisting of facilities for collection and disposition of saline geyser discharges; including dikes, pipelines, solar evaporation ponds, and all necessary appurtenant works including operating facilities.”

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

(7) by adding at the end thereof the new paragraphs “(4)” and “(5)” as they appear above.

Section 202 is further amended by Public Law 98-569, Sec. 2(c), by adding new subsections (b) and (c) as they appear above.

The 1984 Act appears in Volume V at page 3447.
Sec. 203. (a) [Completion and submittal of planning reports.—

* * * * *

(b) [Cooperation with the Secretary of Agriculture on research and demonstration projects—Interagency cooperation.—The Secretary is directed—

(1) in the investigation, planning, construction, and implementation of any salinity control unity involving control of salinity from irrigation sources, to cooperate with the Secretary of Agriculture in carrying out research and demonstration projects and in implementing on-the-farm improvements and farm management practices and programs which will further the objective of this title;

(2) to undertake research on additional methods for accomplishing the objective of this title, utilizing to the fullest extent practicable the capabilities and resources of other Federal departments and agencies, interstate institutions, States, and private organizations;

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

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

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

COLORADO RIVER BASIN SALINITY CONTROL ACT 2870

EXPLANATORY NOTE


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

(2) inserting at the end thereof new paragraphs (3), (4), and (5) as they appear above.

The 1984 Act appears in Volume V at page 3452.

Page 2870

Sec. 204. [Colorado River Basin Salinity Control Advisory Council created—Duties.]—

* * * * *

EXPLANATORY NOTE

Termination of Advisory Councils. Sections 3(2) and 14 of the Act of October 6, 1972, Public Law 92-463, 86 Stat. 770, 776, provide that advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law.

Sec. 205. (a) [Cost allocation of salinity control units—Fifty-year repayment period.]—The Secretary shall allocate the total costs (excluding costs borne by non-Federal participants) of the on-farm measures authorized by section 202(c) of this title, of all measures to replace incidental fish and wildlife values foregone, and of each unit or separable feature thereof authorized by section 202(a) of this title, as follows:

(1) In recognition of Federal responsibility for the Colorado River as an interstate stream and for international comity with Mexico, Federal ownership of the lands of the Colorado River Basin from which most of the dissolved salts originate, and the policy embodied in the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816; 33 U.S.C. § 1251 et seq.), 75 per centum of the total costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof authorized by section 202(a)(1), (2), and (3) of this title, including 75 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, 70 per centum of the total costs of
construction, operation, maintenance, and replacement of each unit, or separable feature thereof authorized by paragraphs (4) through (6) of section 202(a) of this title, including 70 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, and 70 per centum of the total costs of implementation of the on-farm measures authorized by section 202(c) of this title, including 70 per centum of the total costs of the associated measures to replace incidental fish and wildlife values foregone, shall be nonreimbursable. The total costs remaining after these allocations shall be reimbursable as provided for in paragraphs (2), (3), (4), and (5) of subsection (a) of this section.

(2) The reimbursable portion of the total costs shall be allocated between the Upper Colorado River Basin Fund established by section 5(a) of the Colorado River Storage Project Act (70 Stat. 107; 43 U.S.C. § 620d(a)) and the Lower Colorado River Basin Development Fund established by section 403(a) of this title, after consultation with the Advisory Council created in section 204(a) of this title and consideration of the following items:

(i) benefits to be derived in each basin from the use of water of improved quality and the use of works for improved water management;
(ii) causes of salinity; and
(iii) availability of revenues in the Lower Colorado River Basin Development Fund and increased revenues to the Upper Colorado River Basin Fund made available under section 205(d)(5) of this title.

Provided, That costs allocated to the Upper Colorado River Basin Fund under this paragraph (2) shall not exceed 15 per centum of the costs allocated to the Upper Colorado River Basin Fund and the Lower Colorado River Basin Development Fund.

(3) Costs of construction and replacement of each unit or separable feature thereof authorized by section 205(a)(1), (2), and (3) of this title and costs of construction of measures to replace incidental fish and wildlife values foregone, when such measures are a part of the units authorized by section 205(a)(1), (2), and (3) of this title, allocated to the upper basin and to the lower basin under subsection (a)(2) of this section shall be repaid within a fifty-year period or within a period equal to the estimated life of the unit, separable feature thereof, or replacement, whichever is less, without interest from the date such unit, separable feature, or replacement is determined by the Secretary to be in operation.

(4) Costs of construction and replacement of each unit or separable feature thereof authorized by paragraphs (4) through (6) of section 202 of this title, costs of construction of measures to replace incidental fish and wildlife values foregone, when such measures are a part of the on-farm measures...
authorized by section 202(c) of this title or of the units authorized by paragraphs (4) through (6) of section 202 of this title, and costs of implementation of the on-farm measures authorized by section 202(c) of this title allocated to the upper basin and to the lower basin under subsection (a)(2) of this section shall be repaid as provided in subparagraphs (ii) and (iii), respectively, of this paragraph.

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

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

(iv) The interest rates used pursuant to this chapter shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period during the month preceding October 30, 1984, for costs outstanding at that date, or, in the case of costs incurred subsequent to October 30, 1984, during the month preceding the fiscal year in which the costs are incurred.

(5) Costs of operation and maintenance of each unit or separable feature thereof authorized by section 202(a) of this title and of measures to replace incidental fish and wildlife values foregone allocated to the upper basin and to the lower basin under subsection (a)(2) of this section shall be repaid without interest in the fiscal year next succeeding the fiscal year in which such costs are incurred. In the event that revenues are not available to repay the portion of operation and maintenance costs allocated to the Upper Colorado River Basin fund and to the Lower Colorado River Basin development fund in the year next succeeding the fiscal year in which such costs are incurred, the deficiency shall be repaid with interest calculated in the same manner as provided in subsection (a)(4)(iv) of this section. Any reimbursement due non-Federal
entities pursuant to section 202(b)(2) of this title shall be repaid without interest in the fiscal year next succeeding the fiscal year in which such operation and maintenance costs are incurred.

(b) [Repayment by lower basin—Section 403(g) of Colorado River Basin Project Act amended.]

(1) Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof authorized by section 202(a) of this title, costs of construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and costs of implementation of the on-farm measures authorized by section 202(c) of this title, allocated for repayment by the lower basin under subsection (a)(2) of this section shall be paid in accordance with section 203(g)(2) of this title, from the Lower Colorado River Basin Development Fund.

(2) Section 403(g) of the Colorado River Basin Project Act (82 Stat.896) is hereby amended as follows: strike the word "and" after the word "Act," in line 8; insert after the word "Act," the following "(2) for repayment to the general fund of the Treasury the costs of each salinity control unit or separable feature thereof payable from the Lower Colorado River Basin Development Fund in accordance with sections 205(a)(2), 205(a)(3), and 205(b)(1) of the Colorado River Salinity Control Act and"; change paragraph (2) to paragraph (3).

(c) [Repayment by the upper basin.]

Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof authorized by section 202(a) of this title, costs of construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and costs of implementation of the on-farm measures authorized by section 202(c) of this title allocated for repayment by the upper basin under subsection (a)(2) of this section shall be paid in accordance with section 5(d)(5) of this title [Colorado River Storage Project Act] from the Upper Colorado River Basin Fund within the limit of the funds made available under subsection (e) of this section.

(d) [Section 5(d) of the Colorado River Storage Project Act amended.]

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Page 2871

(e) [Upward adjustment in electrical rates to cover costs of salinity control units-Limitations]—The Secretary is authorized to make upward adjustments in rates charged for electrical energy under all contracts administered by the Secretary under the Colorado River Storage Project Act (70
June 24, 1974

COLORADO RIVER BASIN SALINITY CONTROL ACT 2871

Stat. 105; 43 U.S.C. 620) as soon as practicable and to the extent necessary to cover the costs allocated to the Upper Colorado River Basin Fund under section 205(a)(2) of this section and in conformity with section 205(a)(3), section 205(a)(4) and section 205(a)(5) of this section: Provided, That revenues derived from said rate adjustments shall be available solely for the construction, operation, maintenance, and replacement of salinity control units, for the construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and for the implementation of on-farm measures in the Colorado River Basin herein authorized.

(f) Use of Basin Funds by the Secretary of Agriculture.—The Secretary may expend funds available in the Basin Funds referred to in this section to carry out cost-share salinity measures in a manner that is consistent with the cost allocations required under this section. (88 Stat. 272; Act of Oct. 30, 1984, 98 Stat. 2937-2939; Act of July 28, 1995, 109 Stat. 255; Act of April 4, 1996, Title III, Subtitle D, § 336(c)(1), (2), 110 Stat. 1006; 43 U.S.C. 1595.)

EXPLANATORY NOTES

1996 Amendments. The Act of April 4, 1996, Title III, Subtitle D, § 336(c)(2), (110 Stat.1006) amends section 205 of this Act by—(A) in subsection (a), by striking “pursuant to section 202(c)(2)(C)” ; and (B) by adding at the end of section 205 the subsection (f) as it appears above.


1995 Amendments. Sec. 1(2) of the Act of July 28, 1995 (Public Law 104-20, 109 Stat. 255) amended section 205(a) by—(A) in paragraph (1) by striking “authorized by section 202(a)(4) and (5)” and inserting “authorized by paragraphs (4) through (6) of section 202(a)” ; and (B) in paragraph (4)(i), by striking “sections 202(a)(4) and (5)” each place it appears and inserting “paragraphs (4) through (6) of section 202”. The 1995 Act appears in Volume V at page 4063.

1984 Amendments. Sec. 4(a) of the Act of October 30, 1984, Public Law 98-569, amended section 205(a) of this Act by inserting “(a)” after “section 202” and inserting “(excluding costs borne by non-Federal participants pursuant to section 202(c)(2)(C) of this title)” of the on-farm measures authorized by section 202(c) of this title, of all measures to replace incidental fish and wildlife values foregone, and” after “total costs”. Sec. 4(b), amended section 205(a)(1) by inserting before “shall be nonreimbursable.” the words “authorized by section 202(a)(1), (2), and (3) of this title, including 75 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, 70 per centum of the total costs of construction, operation, maintenance, and replacement of each unit, or separable feature thereof authorized by section 202(a)(4) and (5) of this title, including 70 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, and 70 per centum of the total costs of implementation of the on-farm measures authorized by section 202(c) of this title, including 70 per centum of the total costs of the associated measures to replace incidental fish and wildlife values foregone.”. Section 205(a)(1) was further amended by inserting “The total
Sec. 208. (a) [Modification of projects authorized—Limitations.]—The Secretary is authorized to provide for modifications of the projects authorized by this title as determined to be appropriate for purposes of meeting the objective of this title. No funds for any such modification shall be expended until the expiration of sixty days after the proposed modification has been submitted to appropriate committees of the Congress, except that funds may be expended prior to the expiration of such sixty days in any case in which the Congress
approves an earlier date by concurrent resolution. The Governors of the Colorado River Basin States shall be notified of these changes.

(b) Contracts authorized in advance of appropriations—Appropriations authorized.—The Secretary is hereby authorized to enter into contracts that he deems necessary to carry out the provisions of this title, in advance of the appropriation of funds therefor. There is hereby authorized to be appropriated the sum of $125,100,000 for the construction of the works and for other purposes authorized in section 202(a) or (b) of this title, based on April 1973 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations in costs involved therein, and such sums as may be required to operate and maintain such works. The funds authorized to be appropriated by this section may be used for construction of any or all of the works or portions thereof and for other purposes authorized in subsection (a) of this section, including measures as provided for in subsection (b) of section 202 of this title. There is further authorized to be appropriated such sums as may be necessary to pay condemnation awards in excess of appraised values and to cover costs required in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 90-646; 42 U.S.C. § 4601 et seq.).

(c) Implementation of basinwide salinity control program—Limitations.—In addition to the amounts authorized to be appropriated under subsection (b) of this section, there are authorized to be appropriated $75,000,000 for subsection 202(a) of this title, including constructing the works described in paragraph 202(a)(6) and carrying out the measures described in such paragraph. Notwithstanding subsection (b), the Secretary may implement the program under paragraph 202(a)(6) of this title only to the extent and in such amounts as are provided in advance in appropriations Acts. (88 Stat. 274; Act of October 30, 1984, 98 Stat. 2939; Act of July 28, 1995, 109 Stat. 256; 43 U.S. Code. 1598.)

EXPLANATORY NOTES

1995 Amendments. Paragraph (3) of the Act of July 28, 1995 (Public Law 104-20, 109 Stat. 255) amended section 208 of this Act by adding section 208(c) as it appears above.

The 1995 Act appears in Volume V at page 4063.

1984 Amendments. Section 5(a) of the Act of October 30, 1984 (Public Law 98-569, 98 Stat. 2939) amended section 208(a) of this Act by striking out “and not then if disapproved by said committees.”. Section 5(b)(1) amended the second sentence of section 208(b) by inserting “(a) or (b)” after “section 202”.

Sec. 5(b)(2), amended section 208(b) of this Act by inserting after the second sentence thereof the following new sentence: “The funds authorized to be appropriated by this section may be used for construction of any or all of the works or portions thereof and for other purposes authorized in subsection (a) of this...
section, including measures as provided for in subsection (b) of section 202 of this title.

Section 5 of the 1984 Act appears in Volume V at page 3445.

References in Text. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsection (b), is Public Law 91-646, January 2, 1971, 84 Stat. 1894, which is classified generally to chapter 61 (Sec. 4601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of Title 42 and Tables.

Sec. 104. [Water supply contract—Limit on consumptive use—United States to retain title of pumping and conveyance system—Operation of retained facilities—Schedule of payments by municipality—Water system beyond Glen Canyon Dam.]—

(c) Such retained facilities shall be operated and maintained by the Secretary at the expense of the United States until termination of the fifth fiscal year following the year of incorporation. Not to exceed two thousand seven hundred and forty acre-feet of water per annum will be pumped by the United States from Lake Powell to the water treatment plant, or to such intermediate points of delivery as shall be mutually agreed upon by the municipality and the United States for use by the municipality. (88 Stat. 1488, 108 Stat. 4538)

Explanatory Note

1994 Amendment. Section 701 of the Act of October 31, 1994 (Public Law 103-434, 108 Stat. 4538) amended subsection 104(c) by striking "or three million gallons of water in any twenty-four-hour period,",.
**RECLAMATION AUTHORIZATION ACT OF 1975**

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**TITLE IV**

**POLLOCK-HERREID UNIT, SOUTH DAKOTA**

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Page 2939

**Sec. 407. [Appropriation authorized.]—Repealed.** (90 Stat. 209, 102 Stat. 2572)

**Explanatory Note**


Explanatory Note

Section Repealed. Section 901(f) of the Act of November 10, 1998 (Public Law 105-362, 112 Stat. 3290) repealed section 8 of the Teton Dam Disaster Assistance Act. Prior to repeal, section 8 read as follows: “At the end of the year following approval of this Act and each year thereafter until the completion of the claims program, the Secretary shall make an annual report to the Congress of all claims submitted to him under this Act stating the name of each claimant, the amount claimed, a brief description of the claim, and the status or disposition of the claim including the amount of each administrative payment and award under the Act.” Section 901 of the 1998 Act appears in Volume V at page 4135.
Sec. 208. [Appropriation authorized.]—There is hereby authorized to be appropriated for construction of the works and measures authorized by this title for the fiscal year 1978 and thereafter the sum of $88,000,000 (January 1987 prices): Provided, That of the $88,000,000 authorized herein, only $18,000,000 thereof may be adjusted by such amounts, plus or minus, as may be required by reason of changes in the cost of construction work of the types involved therein as shown by engineering cost indexes. There are also authorized to be appropriated such sums as may be required for the operation and maintenance of the project. (90 Stat. 1327, 101 Stat. 1313)

Explanatory Note

1987 Amendment. The Act of December 18, 1987 (Public Law 100-196, 101 Stat. 1313) amended section 208 by deleting "$39,370,000 (January 1976 prices), plus or minus such amounts, if any," and inserting in lieu thereof "$88,000,000 (January 1987 prices): Provided, that of the $88,000,000 authorized herein, only $18,000,000 thereof may be adjusted by such amounts, plus or minus.". The 1987 Act appears in Volume V at page 3558.

Sections 401, 402, and 403. Repealed.
September 28, 1976

RECLAMATION AUTHORIZATIONS ACT OF 1976 2955

EXPLANATORY NOTE

(e) [Emergency withdrawal.]-When the Secretary determines, or when the Committee on Natural Resources of the House of Representatives or the Committee on Energy and Natural Resources of the Senate notifies the Secretary, that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost, the Secretary notwithstanding the provisions of subsections (c)(1) and (d) of this section, shall immediately make a withdrawal and file notice of such emergency withdrawal with both of these committees. Such emergency withdrawal shall be effective when made but shall last only for a period not to exceed three years and may not be extended except under the provisions of subsection (c)(1) or (d), whichever is applicable and (b)(1) of this section. The information required, in subsection (c)(2) of this subsection shall be furnished the committees within three months after filing such notice.

(f) [Report to congressional committees.]-All withdrawals and extensions thereof, whether made prior to or after approval of this Act, having a specific period shall be reviewed by the Secretary toward the end of the withdrawal period and may be extended or further extended only upon compliance with the provisions of subsection (c)(1) or (d), whichever is applicable, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period no longer than the length of the original withdrawal period. The Secretary shall report on such review and extensions to the Committee on Natural Resources of the House of Representatives or the Committee on Energy and Natural Resources of the Senate. (90 Stat. 2751, 108 Stat. 4594)
Sec. 311. [Public lands program report.]—(a) For the purpose of providing information that will aid Congress in carrying out its oversight responsibilities for public lands programs and for other purposes, the Secretary shall prepare a report in accordance with subsections (b) and (c) and submit it to the Congress no later than one hundred and twenty days after the end of each fiscal year beginning with the report for fiscal year 1979.

(b) A list of programs and specific information to be included in the report as well as the format of the report shall be developed by the Secretary after consulting with the Committee on Natural Resources of the House of Representatives or the Committee on Energy and Natural Resources of the Senate and shall be provided to the committees prior to the end of the second quarter of each fiscal year.

(c) The report shall include, but not be limited to, program identification information, program evaluation information, and program budgetary information for the preceding current and succeeding fiscal years. (90 Stat. 2768; 43 U.S.C. § 1741.)

Explanatory Notes

1994 Amendment. Section 16(d) of the Act of November 2, 1994 (Public Law 103-437, 108 Stat. 4594) amended sections 204(e) and (f), 215(b)(5), and 311(b) as follows:

(1) In section 204 (43 U.S.C. 1714)—
   (A) in subsection (e)—
      (i) strike "Committee on Interior and Insular Affairs of either the House of Representatives or the Senate" and substitute "Committee on Natural Resources of the House of Representatives or the Committee on Energy and Natural Resources of the Senate";
      (ii) strike "the Committees on Interior and Insular Affairs of the Senate and the House of Representatives" and substitute "both of those Committees";
   (B) in subsection (f), strike "Committees on Interior and Insular Affairs of the House of Representatives and the Senate" and substitute "Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate".

(2) In section 215(b)(5) (43 U.S.C. 1723(b)(5)), strike "Interior and Insular Affairs" and substitute "Natural Resources".

Editor's Note: Section 215(b)(5) does not appear herein.

(3) In section 311(b) (43 U.S.C. 1741(b)), strike "Committees on Interior and Insular Affairs of the House and Senate" and substitute "Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate".

Section 16(d) of the 1994 Act appears in Volume V at page 4061.
AUTHORIZATION TO GRANT RIGHTS-OF-WAY

Sec. 501. [Authorization to grant rights-of-way.]—The Secretary, with respect to the public lands, as defined in section 103(e) of this Act, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. § 818) and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for—

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act, including Part II thereof (41 Stat. 1063, 16 U.S.C. § 791a-825r);

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

EXPLICATORY NOTE

October 21, 1976

FEDERAL LAND POLICY AND MANAGEMENT ACT

(b) [Disclosure of plans—Terms and conditions.]—(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-of-way pursuant to this title, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination in accordance with the provisions of this title, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where applicable: (A) the name and address of each partner; (B) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

* * * * * *

(d) [Projects located on lands subject to a reservation under section 24 of the Federal Power Act.]—With respect to any project or portion thereof that was licensed pursuant to, or granted an exemption from, part I of the Federal Power Act which is located on lands subject to a reservation under section 24 of the Federal Power Act and which did not receive a permit, right-of-way or other approval under this section prior to enactment of this subsection, no such permit, right-of-way, or other approval shall be required for continued operation, including continued operation pursuant to section 15 of the Federal Power Act, of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest lands not subject to such reservation. (90 Stat. 2776; 106 Stat. 3096; 43 U.S.C. § 1761)

(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));"


(3) by adding a new subsection "(d)" at the end thereof, as it appears above. Section 2401 of the 1992 Act appears in Volume V at page 3786.

Note of Opinion

1. Public lands

The Bonneville Power Administration was not required to obtain a right-of-way from the Bureau of Land Management for a transmission line crossing privately held lands in which the United States has retained mineral rights, as such lands are not "public lands" and therefore not subject to the right-of-way requirements of the Federal Land Policy and Management Act.

Sec. 501. [Procedures.]—(a)(1) Subject to the other requirements of this title, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5, United States Code), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this Act or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this title.

If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this Act, provides administrative procedure requirements in addition to the requirements provided in this title, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this title shall apply to the Commission to the same extent this title applies to the Secretary in the exercise of any of the Commission’s functions under section 402(c)(1) or which the Secretary has assigned under section 402(e).

(b)(1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a)) that no substantial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation’s economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title 5, United States Code. If the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have substantial impact on the Nation’s economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.

(2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral
presentation of views, data, and arguments, may submit material supporting
the existence of such substantial issues or such impact.
(3) A transcript shall be kept of any oral presentation with respect to a rule,
regulation, or order described in subsection (a).
(c) The requirements of subsection (b) of this section may be waived where
strict compliance is found by the Secretary to be likely to cause serious harm or
injury to the public health, safety, or welfare, and such finding is set out in detail
in such rule, regulation, or order. In the event the requirements of this section
are waived, the requirements shall be satisfied within a reasonable period of time
subsequent to the promulgation of such rule, regulation, or order.
(d)(1) With respect to any rule, regulation, or order described in subsection (a),
the effects of which except for indirect effects of an inconsequential nature, are
confined to—
   (A) a single unit of local government or the residents thereof;
   (B) a single geographic area within a State or the residents thereof; or
   (C) a single State or the residents thereof; the Secretary shall, in any case
where appropriate, afford an opportunity for a hearing or the oral
presentation of views, and provide procedures for the holding of such
hearing or oral presentation within the boundaries of the unit of local
government, geographic area, or State described in paragraphs (A) through
(C) of this paragraph as the case may be.
(2) For the purposes of this subsection—
   (A) the term "unit of local government" means a county, municipality,
town, township, village, or other unit of general government below the State
level; and
   (B) the term "geographic area within a State" means a special purpose
district or other region recognized for governmental purposes within such
State which is not a unit of local government.
(3) Nothing in this subsection shall be construed as requiring a hearing or an
oral presentation of views where none is required by this section or other
provision of law.
(e) Where authorized by any law vested, transferred, or delegated pursuant to
this Act, the Secretary may, by rule, prescribe procedures for State or local
government agencies authorized by the Secretary to carry out such functions as
may be permitted under applicable law. Such procedures shall apply to such
agencies in lieu of this section, and shall require that prior to taking any action,
such agencies shall take steps reasonably calculated to provide notice to persons
who may be affected by the action, and shall afford an opportunity for
presentation of views (including oral presentation of views where practicable)
within a reasonable time before taking the action. (91 Stat. 587, 111 Stat. 245; 42
U.S.C. § 7191.)
1997 Amendments. Subsection 2(a) of the Act of July 18, 1997 (Public Law 105-28, 111 Stat. 245) amended section 501 as follows:

1. by striking subsections (b) and (d),
2. by redesignating subsection (c) as subsection (b) and by redesignating subsections (e), (f), and (g) as subsections (c), (d), and (e), respectively, and
3. in subsection (c) (as so redesignated), by striking "subsections (b), (c), and (d)" and inserting "subsection (b)".

The former subsection (b) read as follows:

"(b)(1) In addition to the requirements of subsection (a) of this section, notice of any proposed title, regulation, or order described in subsection (a) shall be given by publication of such proposed rule, regulation, or order in the Federal Register. Such publication shall be accompanied by a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation, or order. Other effective means of publicity shall be utilized as may be reasonably calculated to notify concerned or affected persons of the nature and probable effect of any such proposed rule, regulation, or order. In each case, a minimum of thirty days following such publication shall be provided for an opportunity to comment prior to promulgation of any such rule, regulation, or order.

(2) Public notice of all rules, regulations, or orders described in subsection (a) which are promulgated by officers of a State or local government agency pursuant to a delegation under this Act shall be provided by publication of such proposed rules, regulations, or orders in at least two newspapers of statewide circulation. If such publication is not practicable, notice of any such rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will reasonably assure wide public notice.

(3) For the purposes of this title, the exception from the requirements of section 553 of title 5, United States Code, provided by subsection (a)(2) of such section with respect to public property, loans, grants, or contracts shall not be available."

The former subsection (d) read as follows:

"(d) Following the notice and comment period, including any oral presentation required by this subsection, the Secretary may promulgate a rule if the rule is accompanied by an explanation responding to the major comments, criticisms, and alternatives offered during the comment period."

Subsection 2(a) of the 1997 Act appears in Volume V at page 4112.

Interim rates 1
Ratemaking, generally 2
Rulemaking 3

1. Interim rates
The Secretary of Energy is without authority under sections 301(b) and 501(a)(1) of the Department of Energy Organization Act to place power rates into effect on an interim basis without confirmation and approval by the Federal Energy Regulatory Commission, as successor to the Federal Power Commission, as required by section 5 of the Flood Control Act of 1944. City of Fulton v. United States, 680 F. 2d 115 (Ct. Cl. 1982).
Editor's note. This decision was affirmed by the Federal Circuit, 751 F.2d 1255 (1985) but reversed by the Supreme Court sub. nom. United States v. City of Fulton, 475 U.S. 89, 106 S.Ct. 1422 (1986).

2. Ratemaking, generally

Despite the implication in sections 301(b)(2) and 501(a)(1) to the contrary, the unification in the hands of the Secretary of Energy of the separate functions of the Secretary of the Interior to prepare rates and of the Federal Power Commission to confirm and approve rates, amends section 5 of the Flood Control Act of 1944 to alter the strict procedural requirements of a bifurcated rate implementation scheme. United States v. Tex-La Electric Cooperative, Inc., 693 F. 2d. 592, 404 (5th Cir. 1982).

3. Rulemaking

Power from Federal hydroelectric projects is "public property" and thus was exempt from the rulemaking requirement of section 553 of the Administrative Procedure Act (APA) before the exemption was eliminated by section 501(b)(3) of the Department of Energy Organization Act. However, if the criteria used by the Southeastern Power Administration for allocating power had become so "crystallized" as to be considered a "rule" or "regulation" within the meaning of section 552 of the APA, they would have to be published. Greenwood Utilities Commission v. Schlesinger, 515 F. Supp. 653, 659-61 (M.D. Ga. 1981).

Editor's note. The court's decision was affirmed, 764 F.2d 1459 (11th Cir. 1985); however, the annotated holding was not discussed.
Law Repealed. Section 110 of The Act of March 22, 1984 (Public Law 98-242, 98 Stat. 97) repealed the Act of October 17, 1978 (Public Law 95-467, 92 Stat. 1279) subject to the following conditions: "(a) Public Law 95-467 (42 U.S.C. § 7801 et seq.) is repealed. (b) Rules and regulations issued prior to the date of enactment of this Act under the authority of Public Law 95-467 shall remain in full force and effect under this Act until superseded by new rules and regulations promulgated under this Act." (98 Stat. 102, 42 U.S.C. § 7801 note.)
Sec. 4 [Reimbursable and nonreimbursable costs.—

(b) With respect to the $100,000,000 authorized to be appropriated in the Reclamation Safety of Dams Act of 1978, costs hereto for, or hereafter incurred in the modification of structures under this Act, the cause of which results from new hydrologic or seismic data or changes in state-of-the-art criteria deemed necessary for safety purposes shall be nonreimbursable and nonreturnable under the Federal Reclamation law. (92 Stat 2471, 98 Stat. 1481; 43 U.S.C. § 506 et seq.)

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

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

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

(3) Costs allocated to recreation or fish and wildlife enhancement shall be reimbursed in accordance with the Federal Water Project Recreation Act (79 Stat. 213, 16 U.S.C. § 4601-12 note.), as amended.
November 2, 1978

RECLAMATION SAFETY OF DAMS ACT OF 1978

EXPLANATORY NOTE


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

(d) The Secretary is authorized to negotiate appropriate contracts with project beneficiaries providing for the return of reimbursable costs under this Act: Provided, however, That no contract entered into pursuant to this Act shall be deemed to be a new or amended contract for the purposes of section 203(a) of Public Law 97-293 (43 U.S.C. § 390 cc, 506 note, 509.).

EXPLANATORY NOTE

Reference in the Text. Section 203(a) of Public 97-293 referenced above is part of the “Reclamation Reform Act of 1982” (96 Stat. 1264) and appears in Volume IV at page 3336. The Act also appears as subsequently amended in this Supplement II at page 51092.

Sec. 5. [Authorization of appropriations—Report to Congress—Required finding and technical report.]—There are hereby authorized to be appropriated for fiscal year 1979 and ensuing fiscal years such sums as may be necessary and, effective October 1, 1983, not to exceed an additional $650,000,000 (October 1, 1983, price levels), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein, to carry out the provisions of this Act to remain available until expended if so provided by the appropriations Act: Provided, That no funds exceeding $750,000 shall be obligated for carrying out actual construction to modify an existing dam under authority of this Act prior to sixty days (which sixty days shall not include days on which either the House of representatives or the Senate is not in session.}

S1069
because of an adjournment of more than three calendar days to a day certain) from the date that the Secretary has transmitted a report on such existing dam to the Congress. The report required to be submitted by this section will consist of a finding by the Secretary of the Interior to the effect that modifications are required to be made to insure the safety of an existing dam. Such finding shall be accompanied by a technical report containing information on the need for structural modification, the corrective action deemed to be required, alternative solutions to structural modification that were considered, the estimated cost of needed modifications, and environmental impacts if any resulting from the implementation of the recommended plan of modification. (92 Stat. 2471, 98 Stat. 1481; 43 U.S.C. § 509.)

* * * * *

Sec. 12. [Scope of the Act.]—Included within the scope of this Act are Fish Lake, Four Mile, Ochoco, Savage Rapids Diversion and Warm Springs Dams, Oregon; Como Dam, Montana; Little Wood River Dam, Idaho; and related facilities which have been made a part of a Federal reclamation project by previous Acts of Congress. Coolidge Dam, San Carlos Irrigation Project, Arizona, shall also be included within the scope of this Act (43 U.S.C. § 506 note.)

Sec. 13. [Certain costs at Twin Buttes and Foss Dam nonreimbursable.]—The cost of foundation treatment, drainage and instrumentation work planned or underway at Twin Buttes, Texas, and Foss Dam, Oklahoma, shall be nonreimbursable and nonreturnable under Federal reclamation law. (98 Stat. 1482)
Sec. 3. [Definitions]—

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

(20) The term "system cost" means all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, distribution, transportation, utilization, waste management, and environmental compliance.


Explanatory Note

Sec. 111. [Consideration and determination respecting certain ratemaking standards.]—

(c) [Implementation.]—

(3) If a State regulatory authority implements a standard established by subsection (d)(7) or (8), such authority shall—
   (A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand side management measures, and
   (B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses. (106 Stat. 2795; 16 U.S.C. § 2621.)

**EXPLANATORY NOTE**

(7) [Integrated resource planning.]—Each electric utility shall employ integrated resource planning. All plans or filings before a State regulatory authority to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented.

(8) [Investments in conservation and demand management. ]—The rates allowed to be charged by a State regulated electric utility shall be such that the utility’s investment in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources and other demand side management measures shall be appropriately monitored and evaluated.

(9) [Energy efficiency investments in power generation and supply. ]—The rates charged by any electric utility shall be such that the utility is encouraged to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution. In considering regulatory changes to achieve the objectives of this paragraph, State regulatory authorities and nonregulated electric utilities shall consider the disincentives caused by existing ratemaking policies, and practices, and consider incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution equipment. (106 Stat. 2795; 16 U.S.C. § 2621.)
Sec. 112. [Obligations to consider and determine.]—

* * * * * * * * * * *

Page 3144

(b) [Time limitations.]—(1) Not later than 2 years after the date of the enactment of this Act (or after the enactment of the Comprehensive National Energy Policy Act in the case of standards under paragraphs (7), (8), and (9) of section 111(d)), each State regulatory authority (with respect to each electric utility) shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by section 111(d).

(2) Not later than three years after the date of the enactment of this Act (or after the enactment of the Comprehensive National Energy Policy Act in the case of standards under paragraphs (7), (8), and (9) of section 111(d)), each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by section 111(d). (106 Stat. 2795; 16 U.S.C. § 2622.)

EXPLANATORY NOTE

1992 Amendment. Section 111(c) of the Energy Policy Act of 1992 (Act of October 24, 1992, Public Law 102-486, 106 Stat. 2776) amended section 112(b) of this Act by inserting "(or after the enactment of the Comprehensive National Energy Policy Act in the case of standards under paragraphs (7), (8), and (9) of section 111(d))" after "Act" in both places such word appears in paragraphs (1) and (2). Section 111(c) of the 1992 Act appears in Volume V at page 3768.

* * * * * * * * * * *

Page 3157

Sec. 210. [Cogeneration and small power production.]—(a) [Cogeneration and small power production rules.]—Not later than 1 year after the date of enactment of this Act, the Commission shall prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage cogeneration and small power production, and to encourage geothermal small power production facilities at not more than 80 megawatts capacity, which rules require electric utilities to offer to—
(1) sell electric energy to qualifying cogeneration facilities and qualifying small production facilities and

(2) purchase electric energy from such facilities.

Such rules shall be prescribed, after consultation with representatives of Federal and State regulatory agencies having ratemaking authority for electric utilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments. Such rules shall include provisions respecting minimum reliability of qualifying cogeneration facilities and qualifying small power production facilities (including reliability of such facilities during emergencies) and rules respecting reliability of electric energy service to be available to such facilities from electric utilities during emergencies. Such rules may not authorize a qualifying cogeneration facility or qualifying small power production facility to make any sale for purposes other than resale.

(b) [Rates for purchases by electric utilities.]

The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase—

(1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and

(2) shall not discriminate against qualifying cogenerators or qualifying small power producers.

No such rule prescribed under subsection (a) shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.

(c) [Rates for sales by utilities.]

The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to sell electric energy to any qualifying cogeneration facility or qualifying small power production facility, the rates for such sale—

(1) shall be just and reasonable and in the public interest and

(2) shall not discriminate against the qualifying cogenerators or qualifying small power producers.

(d) [Definition.]

For purposes of this section, the term "incremental cost of alternative electric energy" means, with respect to electric energy purchased from a qualifying cogenerator or qualifying small power producer, the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.

(e) [Exemptions.]

Not later than 1 year after the date of enactment of this Act and from time to time thereafter, the Commission shall, after consultation with representatives of State regulatory authorities, electric utilities, owners of cogeneration facilities and owners of small power production facilities, and
after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments, prescribe rules under which geothermal small power production facilities of not more than 80 megawatts capacity, qualifying cogeneration facilities, and qualifying small power production facilities are exempted in whole or part from the Federal Power Act, from the Public Utility Holding Company Act, from State laws and regulations respecting the rates, or respecting the financial or organizational regulation, of electric utilities, or from any combination of the foregoing, if the Commission determines such exemption is necessary to encourage cogeneration and small power production.

(2) No qualifying small power production facility which has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), exceeds 30 megawatts or 80 megawatts for a qualifying small power production facility using geothermal energy as the primary energy source, may be exempted under rules under paragraph (1) from any provision of law or regulation referred to in paragraph (1), except that any qualifying small power production facility which produces electric energy solely by the use of biomass as a primary energy source, may be exempted by the Commission under such rules from the Public Utility Holding Company Act and from State laws and regulations referred to in such paragraph (1).

(3) No qualifying small power production facility or qualifying cogeneration facility may be exempted under this subsection from—

(A) any State law or regulation in effect in a State pursuant to subsection (f).

(B) the provisions of section 210, 211, or 212 of the Federal Power Act or the necessary authorities for enforcement of any such provision under the Federal Power Act, or

(C) any license or permit requirement under part I of the Federal Power Act, any provision under such Act related to such a license or permit requirement, or the necessary authorities for enforcement of any such requirement.

Explanatory Note

Reference in the Text. Sections 210, 211, or 212 of the Federal Power Act appear in Supplement I pages S101-S105. Extracts from

(f) [Implementation of rules for qualifying cogeneration and qualifying small power production facilities.]--(1) Beginning on or before the date one
year after any rule is prescribed by the Commission under subsection (a) or revised under such subsection, each State regulatory authority shall, after notice and opportunity for public hearing, implement such rule (or revised rule) for each electric utility for which it has ratemaking authority.

(2) Beginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) or revised under such subsection, each nonregulated electric utility shall, after notice and opportunity for public hearing, implement such rule (or revised rule).

(g) [Judicial review and enforcement.]—(1) Judicial review may be obtained respecting any proceeding conducted by a State regulatory authority or nonregulated electric utility for purposes of implementing any requirement of a rule under subsection (a) in the same manner, and under the same requirements, as judicial review may be obtained under section 123 in the case of a proceeding to which section 123 applies.

(2) Any person (including the Secretary) may bring an action against any electric utility, qualifying small power producer, or qualifying cogenerator to enforce any requirement established by a State regulatory authority or nonregulated electric utility pursuant to subsection (f). Any such action shall be brought only in the manner, and under the requirements, as provided under section 123 with respect to an action to which section 123 applies.

(h) [Commission enforcement.]—(1) For purposes of enforcement of any rule prescribed by the Commission under subsection (a) with respect to any operations of an electric utility, a qualifying cogeneration facility or a qualifying small power production facility which are subject to the jurisdiction of the Commission under Part II of the Federal Power Act, such rule shall be treated as a rule under the Federal Power Act. Nothing in subsection (g) shall apply to so much of the operations of an electric utility, a qualifying cogeneration facility or a qualifying small power production facility as are subject to the jurisdiction of the Commission under Part II of the Federal Power Act.

(2)(A) The Commission may enforce the requirements of subsection (f) against any State regulatory authority or nonregulated electric utility. For purposes of any such enforcement, the requirements of subsection (f)(1) shall be treated as a rule enforceable under the Federal Power Act. For purposes of any such action, a State regulatory authority or nonregulated electric utility shall be treated as a person within the meaning of the Federal Power Act. No enforcement action may be brought by the Commission under this section other than

(i) an action against the State regulatory authority or nonregulated electric utility for failure to comply with the requirements of subsection(f) or
(ii) an action under paragraph (1).

(B) Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph. If the Commission does not initiate an enforcement action under subparagraph (A) against a State regulatory authority or nonregulated electric utility within 60 days following the date on which a petition is filed under this subparagraph with respect to such authority, the petitioner may bring an action in the appropriate United States district court to require such State regulatory authority or nonregulated electric utility to comply with such requirements, and such court may issue such injunctive or other relief as may be appropriate. The Commission may intervene as a matter of right in any such action.

(i) [Federal contracts.]—No contract between a Federal agency and any electric utility for the sale of electric energy by such Federal agency for resale which is entered into after the date of the enactment of this Act may contain any provision which will have the effect of preventing the implementation of any rule under this section with respect to such utility. Any provision in any such contract which has such effect shall be null and void.

(j) [New dams and diversions.]—Except for a hydroelectric project located at a Government dam (as defined in section 3(10) of the Federal Power Act at which non-Federal hydroelectric development is permissible, this section shall not apply to any hydroelectric project which impounds or diverts the water of a natural watercourse by means of a new dam or diversion unless the project meets each of the following requirements:

1. [No substantial adverse effects.]—At the time of issuance of the license or exemption for the project, the Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality. Such finding shall be made by the Commission after taking into consideration terms and conditions imposed under either paragraph (3) of this subsection or section 10 of the Federal Power Act (whichever is appropriate as required by that Act or the Electric Consumers Protection Act of 1986) and compliance with other environmental requirements applicable to the project.

Explanatory Note

(2) [Protected rivers.]—At the time the application for a license or exemption for the project is accepted by the Commission (in accordance with the Commission’s regulations and procedures in effect on January 1, 1986, including those relating to environmental consultation), such project is not located on either of the following:

(A) Any segment of a natural watercourse which is included in (or designated for potential inclusion in) a State or national wild and scenic river system.

(B) Any segment of a natural watercourse which the State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development.

(3) [Fish and wildlife terms and conditions.]—The project meets the terms and conditions set by fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

(k) [Definition of new dam or diversion.]—For purposes of this section, the term "new dam or diversion" means a dam or diversion which requires, for purposes of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar adjustable devices).

(l) [Definitions.]—For purposes of this section, the terms "small power production facility", "qualifying small power production facility", "qualifying small power producer", "primary energy source", "cogeneration facility", "qualifying cogeneration facility", and "qualifying cogenerator" have the respective meanings provided for such terms under section 3 (17) and (18) of the Federal Power Act. (92 Stat. 3144; § 643(b), Act of June 30, 1980, 94 Stat. 770; Act of October 16, 1986, 100 Stat. 1249; 16 U.S.C. § 824a-3.)
ARCHAEOLOGICAL RESOURCES PROTECTION ACT

Sec. 3. [Definitions: "Archaeological resource"; "Federal land manager"; "Public lands"; "Indian lands"; "Indian Tribe"; "Person".—

(3) The term "public lands" means—
(A) lands which are owned and administered by the United States as a part of—
   (i) the national park system,
   (ii) the national wildlife refuge system, or
   (iii) the national forest system; and
(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution. (93 Stat. 721, 102 Stat. 2983, 16 U.S.C. § 470bb.)

EXPLANATORY NOTE


Sec. 6. [Prohibited acts—Criminal penalties for knowing violations—Effective date—Exemptions from penalty.— (a) No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).]
ARCHAEOLOGICAL RESOURCES PROTECTION ACT

EXPLANATORY NOTE

Nov. 1988 Amendment. Subsection 1(b) of the Act of November 3, 1988 (Public Law 100-588, 102 Stat. 2983) amended subsection 6(a) above by inserting after "deface" the following:

", or attempt to excavate, remove, damage, or otherwise alter or deface". The 1988 Act appears in Volume V at page 3634.

*          *          *          *          *

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned not more than one year, or both: Provided, however, That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $500, such person shall be fined not more than $20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than $100,000, or imprisoned not more than five years, or both. (93 Stat. 724, 102 Stat. 2983, 16 U.S.C. § 470ee.)

EXPLANATORY NOTE


*          *          *          *          *

Sec. 10. [Rules and regulations.]

*          *          *          *          *

(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program. (93 Stat. 727, 102 Stat. 2983, 16 U.S.C. § 470ii.)
ARCHAEOLOGICAL RESOURCES PROTECTION ACT

EXPLANATORY NOTE

Nov. 1988 Amendment. Subsection 1(d) of the Act of November 3, 1988 (Public Law 100-588, 102 Stat. 2983) amended Section 10 by adding a subsection (c) as it appears above. The 1988 Act appears in Volume V at page 3634.

* * * * *

Sec. 14. The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall—(a) develop plans for surveying lands under their control to determine the nature and extent of archeological resources on those lands; (b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archeological resources; and (c) develop documents for the reporting of suspected violations of this Act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies. (102 Stat. 2778, 16 U.S.C. 470mm.)

EXPLANATORY NOTE

Sec. 4. [Appropriation authorization.]

The Secretary is hereby authorized to undertake the design and construction of approximately 11,000 feet of gunite lining of the Bessemer Ditch in addition to that lining which was constructed pursuant to section 1 of this Act. There is hereby authorized to be appropriated as the Federal share of costs for the purpose of this section the sum of $1,170,000 (based on August 1988 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction cost indices applicable to the type of construction involved: Provided, That non-Federal interests shall contribute during construction of the additional gunite lining an amount equal to 22 per centum of the total cost of the design and construction of such additional lining. The non-Federal contribution may include cash and in kind contributions and shall not be subject to the conditions of section 2 of this Act. The Secretary is authorized to contract with the Bessemer Irrigation Ditch Company for the construction at cost of the additional gunite lining authorized by this section. (94 Stat. 940, 102 Stat. 2576)

**Explanatory Note**

Sec. 4. [Contra Costa Canal relocation, Los Vaqueros Dam, Kellogg Unit—Impacts must be described—Protection of Delta water quality and ecology.]—In preparing the studies and review authorized by subsections (11) and (12) of section 1 and section 3, the Secretary of the Interior shall fully describe all potential beneficial or detrimental impacts resulting from the construction or operation of the projects under study. (94 Stat. 1506, 112 Stat. 3289)

EXPLANATORY NOTE

1998 Amendment. Section 901(c) of the Act of November 10, 1998 (Public Law 105-362, 112 Stat. 3289) amended section 4 by striking the second sentence. Prior to striking, the second sentence read as follows: "The Secretary shall further make recommendations to the Congress for assuring that neither the construction nor the operation of any such project results in the deterioration of the water quality ecology of the Sacramento-San Joaquin Delta or the San Francisco Bay estuarine system.” Section 901(c) of the 1998 Act appear in Volume V at page 4133.
RELIEF OF THE VERMEJO CONSERVANCY DISTRICT

*          *          *          *          *

Page 3274

TITLE IV—FOR THE RELIEF OF THE VERMEJO
CONSERVANCY DISTRICT

Sec. 401. [Secretary authorized to amend contract to defer repayment obligation and to transfer title to project facilities to district—Transfer not to include interests in land or water held for management of Maxwell NWR—District to continue to operate project—Further Federal expenditures limited to contract administration and fish and wildlife—Repayment obligation to continue—Flexible repayment plan according to ability to pay.]—That, notwithstanding any other provision of law, the Secretary of the Interior is authorized, subject to the written consent of the Vermejo Conservancy District, to amend contract numbered 178r-458, dated August 7, 1952, as amended, between the Vermejo Conservancy District, located in the State of New Mexico, and the United States for the construction, operation, and maintenance of the Vermejo reclamation project, to defer payments on the remaining repayment obligation of the Vermejo Conservancy District under such contract, until such time or times as the Secretary determines additional repayment to be reasonably feasible, to relieve the district of such other penalties, assessments, or costs, including interest, which have accrued or may become due under the existing contract prior to enactment of this Act, and to transfer all right, title, and interest in or to the project facilities serving the Vermejo Conservancy District; Provided, That the Vermejo Conservancy District shall, to the extent practicable, continue to operate and maintain the facilities of the Vermejo project for the benefit of all authorized project beneficiaries, including the Maxwell National Wildlife Refuge, and in accordance with the authorized project purposes: Provided further, That with the exception of assistance, if needed, under the Disaster Relief Act of 1974, as amended, the Federal Government shall incur no further expense on behalf of the Vermejo project or the Vermejo Conservancy District for the operation and maintenance or rehabilitation of existing facilities or for the development of any new facilities related to the delivery or impoundment of water, and further Federal expenditures related to the Vermejo Federal reclamation project shall be limited to administration of such amended contract for the purpose of determining and obtaining such reasonable repayment as may be feasible, and to necessary expenses for fish and wildlife purposes. Effective as of the date of the written
December 19, 1980

3274  RELIEF OF THE VERMEJO CONSERVANCY DISTRICT

consent of the Vermejo Conservancy District to amend contract 178r-458, all
facilities are hereby transferred to the district. The transfer to the district of
project facilities shall be without any additional consideration in excess of the
existing repayment contract of the district and shall include all related lands or
interest in lands acquired by the Federal Government for the project, but shall
not include any lands or interests in land, or interests in water, purchased by the
Federal Government from various landowners in the district, consisting of
approximately two thousand eight hundred acres, for the Maxwell Wildlife
Refuge and shall not include certain contractual arrangements, namely Contract
Number 14-06-500-1713 between the Bureau of Reclamation and the Bureau of
Sport Fisheries and Wildlife, and concurred in by the district, dated December
5, 1969, and the lease agreement between the district and the Secretary dated
January 17, 1992, and expiring January 17, 1995, for 468.38 acres under the
district’s Lakes 12 and 14, which contractual arrangements shall be maintained
consistent with the terms thereof. The Secretary, acting through the United States
Fish and Wildlife Service, shall retain the right to manage Lake 13 for the
conservation, maintenance, and development of the area as a component of the
Maxwell National Wildlife Refuge in accordance with Contract Number
14-06-500-1713 and in a manner that does not interfere with operation of the
Lake 13 dam and reservoir for the primary purposes of the Vermejo
Reclamation Project. Any amended contract which provides for deferral of the
district’s repayment obligation shall provide that the obligation shall continue in
effect until repaid or for the useful life of the existing facilities, and the Secretary
shall provide for a flexible plan of repayment of the remaining obligation of the
district according to the district’s ability to repay as determined by the Secretary.
Determinations of ability to repay shall include water deliveries achieved in a
given year, as well as such other factors as the Secretary considers to be

EXPLANATORY NOTES

1992 Amendment. Title XIV of the Act of
October 30, 1992 (Public Law 102-575, 106
Stat. 4662) amended section 401 by striking the
text that previously read: “Transfer of project
facilities to the district shall be without any
additional consideration in excess of the existing
repayment obligation of the district, and shall
include any related lands or interest in lands
acquired by the Federal Government for the
project, except that any lands or interests in
land, or interests in water, or other contractual
arrangements which may be held by the Secretary for
management of the Maxwell National Wildlife Refuge, for wildlife
enhancement purposes, shall not be transferred and shall be maintained consistently with
existing arrangements.” and inserting in lieu
thereof “Effective as of the date of the written
consent . . . primary purposes of the Vermejo
Reclamation Project.” as it appears above.

Reference in the Text. The Disaster Relief
93-288 (88 Stat. 143) appears in Volume IV at
page 2843.
SOUTH DAKOTA PROJECTS; PICK-SLOAN PUMPING POWER

Sec. 3. [Feasibility studies—Report to Congress required.]—The Secretary is authorized, in cooperation with the State of South Dakota and all Indian tribes residing on reservations within the State of South Dakota, to conduct a feasibility investigation of the alternate uses of facilities constructed for use in conjunction with the Oahe Unit, initial stage, James Division, Pick-Sloan Missouri Basin Program, South Dakota, and to report to the Congress the findings of such study along with his recommendations. (96 Stat. 1181, 102 Stat. 2572)

EXPLANATORY NOTES


Sec. 5. [Secretary authorized to make available Pick-Sloan Missouri basin program pumping power.]—The Secretary of the Interior, in cooperation with the Department of Energy, is authorized to make available the Pick-Sloan Missouri basin program pumping power to the Crow Creek, Cheyenne River, Omafha Lower Brule, including the Clark Ranch irrigation development, and Standing Rock Indian Reservation irrigation developments. Such pumping power shall also be made available to such additional irrigation projects as may be subsequently authorized to receive such power by Act of Congress. (96 Stat. 1182, 102 Stat. 2435)
1988 Amendment. Section 102 of the Act of October 14, 1988 (Public Law 100-490, 102 Stat. 2435) amended section 5 by inserting: (1) after "Omaha" the phrase "Lower Brule, including the Clark Ranch irrigation development," and (2) a period after the phrase "irrigation developments" and deleting the remainder of the sentence. Prior to amendment, the sentence read as follows: "The Secretary of the Interior, in cooperation with the Department of Energy, is authorized to make available the Pick-Sloan Missouri basin program pumping power to the Crow Creek, Cheyenne River, Omaha and Standing Rock Indian Reservation irrigation developments, and the Grass Rope Unit, Pick-Sloan Missouri basin program." Section 102 of the 1988 Act appears in Volume V at page 3577.
Sec. 101. [Buffalo Bill Dam and Reservoir modifications, Shoshone Project, Wyoming—Authorized as part of Pick-Sloan Missouri Basin program—Powerplant not to affect releases to satisfy existing water rights or contracts.]—The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplemental thereto), is hereby authorized to construct, operate, and maintain modifications to the Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, for the purposes of providing approximately seventy-four thousand acre-feet of additional water annually for irrigation, municipal and industrial use, increased hydroelectric power generation, outdoor recreation, fish and wildlife conservation and development, environmental quality, and other purposes. The principal modifications to the Buffalo Bill Dam and Reservoir shall include raising the height of the existing Buffalo Bill Dam by twenty-five feet, enlarging the capacity of the existing Buffalo Bill Reservoir by approximately two hundred and seventy-one thousand acre-feet, constructing power generating facilities with a total installed capacity of 25.5 megawatts, enlarging a spillway, construction of a visitor’s center, dikes and impoundments, and necessary facilities to effect the aforesaid purposes of the modifications. These modifications are hereby authorized as part of the Pick-Sloan Missouri Basin program: Provided, That the powerplant authorized by this section shall be designed, constructed, and operated in such a manner as to not limit, restrict, or alter the release of water from any existing reservoir, impoundment, or canal adverse to the satisfaction of valid existing water rights or water delivery to the holder of any valid water service contract. (96 Stat. 1261, 106 Stat. 4605)

Explanatory Note

1992 Amendment. Section 101(a) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4600) amended section 101 of this Act as follows: (a) In the second sentence of section 101, by striking “replacing the existing Shoshone Powerplant,” and inserting...
“constructing power generating facilities with a total installed capacity of 25.5 megawatts.”

Section 101(a) of the 1992 Act appears in Volume V at page 3812.

Sec. 102. [Recreational facilities, conservation, and fish and wildlife.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the modification of Buffalo Bill Dam and Reservoir shall be in accordance with the Federal Water Project Recreation Act (79 Stat. 213), as amended. The construction of recreational facilities in excess of the amount required to replace or relocate existing facilities is authorized, and the costs of such construction shall be borne equally by the United States and the State of Wyoming pursuant to the Federal Water Project Recreation Act. (96 Stat. 1261, 106 Stat. 4605)

Explanatory Notes

1992 Amendment. Section 101(b) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4600) amended section 102 of this Act as follows: (b) In section 102, amend the heading to read “recreational facilities, conservation, and fish and wildlife”, and add at the end “The construction of recreational facilities in excess of the amount required to replace or relocate existing facilities is authorized, and the costs of such construction shall be borne equally by the United States and the State of Wyoming pursuant to the Federal Water Project Recreation Act.”. Section 101(b) of the 1992 Act appears in Volume V at page 3812.


Sec. 103. [Modifications shall be integrated physically and financially with other Pick-Sloan Missouri Basin program works—Repayment contracts prerequisite to construction of M&I facilities—Environmental quality costs nonreimbursable.]—The modifications of the Buffalo Bill Dam and Reservoir shall be integrated physically and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891), as amended and supplemented. Revenues for the return of costs allocated to power shall be determined by power rate and repayment analysis of the Pick-Sloan Missouri Basin program. Repayment contracts for the return of costs allocated to municipal and industrial water and irrigation water supplies exclusive of State participation pursuant to section 107 shall be negotiated under provisions of the Reclamation Project Act of 1939 (53 Stat. 1198) or the Water Supply Act of 1958.
October 12, 1982

BUFFALO BILL DAM AND RESERVOIR MODIFICATIONS 3333

(72 Stat. 320), as amended, and shall be prerequisite to the initiation of construction of facilities for this purpose. Costs allocated to environmental quality shall be nonreimbursable and nonreturnable under Federal reclamation law. (96 Stat. 1261)

EXPLANATORY NOTE


* * * * *

Sec. 106. [Authorization for appropriations.]

(a) There is hereby authorized to be appropriated beginning October 1, 1982, for the Federal share of the construction of the Buffalo Bill Dam and Reservoir modifications and recreational facilities the sum of $80,000,000 (October 1988 price levels) plus or minus such amounts, if any, as may be required by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein and, in addition thereto, such sums as may be required for operation, maintenance, and replacement of the works of said modifications.

(b) There is also authorized to be appropriated beginning October 1, 1982, such sums as may be required by the Secretary of Energy to accomplish interconnection of the powerplant authorized by this title, together with such sums as may be required for operation and maintenance of the works authorized by section 104(a). (96 Stat. 1261, 106 Stat. 4605)

EXPLANATORY NOTE

1992 Amendment. Section 101(c) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4600) amended section 106(a) of this Act as follows: (c) In section 106(a), strike "for construction of the Buffalo Bill Dam and Reservoir modifications the sum of $106,700,000 (October 1982 price levels)" and insert "for the Federal share of the construction of the Buffalo Bill Dam and Reservoir modifications and recreational facilities the sum of $80,000,000 (October 1988 price levels)".
authorized to be appropriated for construction, operation, maintenance, and replacement shall be reduced by the amounts contributed to the project under the provisions of section 107."

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Page 3334

TITLE II

RECLAMATION REFORM ACT OF 1982

Editor's Note: The Reclamation Reform Act of 1982 was initially published in two volumes. (1) Reclamation Reform Act Compilation, 1982–1988 and (2) Volume IV at page 3334. It is re-published herein in as amended to date.

Sec. 201. [Amendment and supplement to "Federal reclamation law—Short title."]—This title shall amend and supplement the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof (43 U.S.C. § 371), hereinafter referred to as "Federal reclamation law". This title may be referred to as the "Reclamation Reform Act of 1982". (96 Stat. 1263; 43 U.S.C. § 390aa.)

Sec. 202. [Definitions: "contract"; "district"; "full cost"; "individual"; "irrigation water"; "landholding"; "limited recipient"; "project"; "qualified recipient"; "recordable contract"—Interest rates—Operation, maintenance and replacement costs shall be collected.]—As used in this title:

(1) The term "contract" means any repayment or water service contract between the United States and a district providing for the payment of construction charges to the United States including normal operation, maintenance, and replacement costs pursuant to Federal reclamation law.

(2) The term "district" means any individual or any legal entity established under State law which has entered into a contract or is eligible to contract with the Secretary for irrigation water.

(3)(A) The term "full cost" means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law or applicable contract provisions, with interest on both accruing from the date of enactment of this Act on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to the date of enactment of this Act. Provided, That operation, maintenance, and replacement charges required under Federal
reclamation law, including this title, shall be collected in addition to the full cost charge.

(B) The interest rate used for expenditures made on or before the date of enactment of this Act shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest bearing, marketable issues sold by the Treasury during the fiscal year in which the expenditures by the United States were made, but shall not be less than 7-1/2 per centum per annum.

(C) The interest rate used for expenditures made after the date of enactment of this Act shall be determined by the Secretary of the Treasury on the basis of the arithmetic average of—

(i) the rate as of the beginning of the fiscal year in which expenditures are made on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance; and

(ii) the weighted average yield on all interest-bearing, marketable issues sold by the Treasury during the fiscal year preceding the fiscal year in which the expenditures are made.

(4) The term "individual" means any natural person, including his or her spouse, and including other dependents thereof within the meaning of the Internal Revenue Code of 1954 (26 U.S.C. § 152).

(5) The term "irrigation water" means water made available for agricultural purposes from the operation of reclamation project facilities pursuant to a contract with the Secretary.

(6) The term "landholding" means total irrigable acreage of one or more tracts of land situated in one or more districts owned or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary. In determining the extent of a landholding the Secretary shall add to any landholding held directly by a qualified or limited recipient that portion of any landholding held indirectly by such qualified or limited recipient which benefits that qualified or limited recipient in proportion to that landholding.

(7) The term "limited recipient" means any legal entity established under State or Federal law benefitting more than twenty-five natural persons.

(8) The term "project" means any reclamation or irrigation project, including incidental features thereof, authorized by Federal reclamation law, or constructed by the United States pursuant to such law, or in connection with which there is a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the Secretary through the Bureau of Reclamation for the reclamation of lands.
(9) The term "qualified recipient" means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law which benefits twenty-five natural persons or less.

(10) The term "recordable contract" means a contract between the Secretary and a landowner in writing capable of being recorded under State law providing for the sale or disposition of lands held in excess of the ownership limitations of Federal reclamation law including this title.

(11) The term "Secretary" means the Secretary of the Interior. (96 Stat. 1263; 43 U.S.C. § 390bb.)

EXPLICATORY NOTE


Sec. 203. [Applicability to districts which enter into new or amended contracts—Deliveries to districts which do not enter into amended contracts within 4-1/2 years of date of enactment—Irrevocable election by qualified or limited recipients.—(a) The provisions of this title shall be applicable to any district which—

(1) enters into a contract with the Secretary subsequent to the date of enactment of this Act;

(2) enters into any amendment of its contract with the Secretary subsequent to the date of enactment of this Act which enables the district to receive supplemental or additional benefits; or

(3) which amends its contract for the purpose of conforming to the provisions of this title.

(b) Any district which has an existing contract with the Secretary as of the date of enactment of this Act which does not enter into an amendment of such contract as specified in subsection (a) shall be subject to Federal reclamation law in effect immediately prior to the date of enactment of this Act, as that law is amended or supplemented by sections 209 through 230 of this title. Within a district that does not enter into an amendment of its contract with the Secretary within four and one-half years of the date of enactment of this Act, irrigation water may be delivered to lands leased in excess of a landholding of one hundred and sixty acres only if full cost, as defined in section 202(A) of this title,

S1094
is paid for such water as is assignable to those lands leased in excess of such landholding of one hundred and sixty acres. Provided, That the interest rate used in computing full cost under this subsection shall be the same as provided in section 205(a)(3).

(c) In the absence of an amendment to a contract, as specified in subsection (a), a qualified recipient or limited recipient may elect to be subject to the provisions of this title by executing an irrevocable election in a form approved by the Secretary to comply with this title. The district shall thereupon deliver irrigation water to and collect from such recipient, for the credit of the United States, the additional charges required by this title and assignable to the recipient making the election.

(d) Amendments to contracts which are not required by the provisions of this title shall not be made without the consent of the non-Federal party. (96 Stat. 1264; 43 U.S.C. § 390cc.)

Sec. 204. [Acreage ownership limitations.—] Except as provided in section 209 of this title, irrigation water may not be delivered to—

(1) a qualified recipient for use in the irrigation of lands owned by such qualified recipient in excess of nine hundred and sixty acres of class I lands or the equivalent thereof; or

(2) a limited recipient for the use in the irrigation of lands owned by such limited recipient in excess of six hundred and forty acres of class I lands or the equivalent thereof;
whether situated in one or more districts. (96 Stat. 1265; 43 U.S.C. § 390dd.)

Sec. 205. [Full cost pricing—Interest rate—Less than full cost pricing—Deliveries to lands under recordable contract.—](a) Notwithstanding any other provision of law, any contract with a district entered into by the Secretary as specified in section 203, shall provide for the delivery of irrigation water at full cost as defined in section 202(3) to:

(1) a landholding in excess of nine hundred and sixty acres of class I lands or the equivalent thereof for a qualified recipient,

(2) a landholding in excess of three hundred and twenty acres of class I land or the equivalent thereof for a limited recipient receiving irrigation water on or before October 1, 1981; and

(3) the entire landholding of a limited recipient not receiving irrigation water on or before October 1, 1981: Provided, That the interest rate used in computing full cost under this paragraph shall be determined by the Secretary of the Treasury on the basis of the arithmetic average of—
(A) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance; and

(B) the weighted average of market yields on all interest-bearing, marketable issues sold by the Treasury during the fiscal year preceding the fiscal year in which the expenditures are made, or the date of enactment of this Act for expenditures made before such date of enactment.

(b) Any contract with a district entered into by the Secretary as specified in section 203, shall provide for the delivery of irrigation water to lands not in excess of the landholdings described in subsection (a) upon terms and conditions related to pricing established by the Secretary pursuant to Federal reclamation law in effect immediately prior to the date of enactment of this Act, or, in the case of an amended contract, upon the terms and conditions established by such contract prior to the date of its amendment. However, the portion of any price established under this subsection which relates to operation and maintenance charges shall be established pursuant to section 208 of this title.

(c) Notwithstanding any extension of time of any recordable contract as provided in section 209(e) of this title, lands under recordable contract shall be eligible to receive irrigation water at less than full cost for a period not to exceed ten years from the date such recordable contract was executed by the Secretary in the case of contracts existing prior to the date of enactment of this Act, or five years from the date such recordable contract was executed by the Secretary in the case of contracts entered into subsequent to the date of enactment, or the time specified in section 218 for lands described in that section: Provided, That in no case shall the right to receive water at less than full cost under this subsection terminate sooner than eighteen months after the date on which the Secretary again commences the processing or the approval of the disposition of such lands. (96 Stat. 1265; 43 U.S.C. § 390ee.)

Sec. 206. [Certification of compliance; a condition of receipt of water.]—As a condition to the receipt of irrigation water for lands in a district which has a contract as specified in section 203, each landowner and lessee within such district shall furnish the district, in a form prescribed by the Secretary, a certificate that they are in compliance with the provisions of this title including a statement of the number of acres leased, the term of any lease, and a certification that the rent paid reflects the reasonable value of the irrigation water to the productivity of the land. The Secretary may require any lessee to submit to him, for his examination, a complete copy of any such lease executed by each of the parties thereto. (96 Stat. 1266; 43 U.S.C. § 390ff.)

Sec. 207. [Equivalency.]—Upon the request of any district, the ownership and pricing limitations imposed by this title shall apply to the irrigable lands classified
within such district by the Secretary as having class I productive potential, as
determined by the Secretary, taking into account all factors which significantly
affect productivity, including but not limited to topography, soil characteristics,
length of growing season, elevation, adequacy of water supply, and crop

Page 3338

Sec. 208. [Recovery of operation and maintenance charges—Amendment of contracts to reflect changes in operation and
maintenance costs.]—(a) The price of irrigation water delivered by the Secretary
pursuant to a contract or an amendment to a contract with a district, as specified
in section 203, shall be at least sufficient to recover all operation and
maintenance charges which the district is obligated to pay to the United States.
(b) Whenever a district enters into a contract or requests that its contract be
amended as specified in section 203, and each year thereafter, the Secretary shall
calculate such operation and maintenance charges and shall modify the price of
irrigation water delivered under the contract as necessary to reflect any changes
in such costs by amending the district's contract accordingly.
(c) This section shall not apply to districts which operate and maintain project
facilities and finance the operation and maintenance thereof from non-Federal

Page 3339

Sec. 209. [Deliveries to excess lands—Time periods for disposal of lands
under recordable contract—Disposal by the Secretary—Extension of time
period for disposal—Eligibility of excess lands disposed of in compliance
with reclamation law to receive irrigation water.]—(a) Irrigation water made
available in the operation of reclamation project facilities may not be delivered
for use in the irrigation of lands held in excess of the ownership limitations
imposed by Federal reclamation law, including this title, unless and until the
owners thereof shall have executed a recordable contract with the Secretary, in
accordance with the terms and conditions required by Federal reclamation law,
requiring the disposal of their interest in such excess lands within a reasonable
time to be established by the Secretary. In the case of recordable contracts
entered into prior to the date of enactment of this Act, such reasonable time shall
not exceed ten years after the recordable contract is executed by the Secretary.
In the case of recordable contracts entered into after the date of enactment of this
Act, except as provided in section 218, such reasonable time shall not exceed
five years after the recordable contract is executed by the Secretary.
(b) Lands held in excess of the ownership limitations imposed by Federal reclamation law, including this title, which, on the date of enactment of this Act, are, or are capable of, receiving delivery of irrigation water made available by the operation of existing reclamation project facilities may receive such deliveries only—

(1) if the disposal of the owner’s interest in such lands is required by an existing recordable contract with the Secretary, or

(2) if the owners of such lands have requested that a recordable contract be executed by the Secretary.

(c) Recordable contracts existing on the date of enactment of this Act shall be amended at the request of the landowner to conform with the ownership limitations contained in this title: Provided, That the time period for disposal of excess lands specified in the existing recordable contract shall not be extended except as provided in subsection (e).

(d) Any recordable contract covering excess lands sales shall provide that a power of attorney shall vest in the Secretary to sell any excess lands not disposed of by the owners thereof within the period of time specified in the recordable contract. In the exercise of that power, the Secretary shall sell such lands through an impartial selection process only to qualified purchasers according to such reasonable rules and regulations as the Secretary may establish: Provided, That the Secretary shall recover for the owner the fair market value of the land unrelated to irrigation water deliveries plus the fair market value of improvements thereon.

(e) In the event that the owner of any lands in excess of the ownership limitations of Federal reclamation law has heretofore entered into a recordable contract with the Secretary for the disposition of such excess lands and has been prevented from disposing of them because the Secretary may have withheld the processing or approval of the disposition of the lands (whether he may have been compelled to do so by court order or for other reasons), the period of time for the disposal of such lands by the owner thereof pursuant to the contract shall be extended from the date on which the Secretary again commences the processing or the approval of the disposition of such lands for a period which shall be equal to the remaining period of time under the recordable contract for the disposal thereof by the owner at the time the decision of the Secretary to withhold the processing or approval of such disposition first became effective.

(f) Excess lands which have been or may be disposed of in compliance with Federal reclamation law, including this title, shall not be considered eligible to receive irrigation water unless—

(1) they are held by nonexcess owners; and

(2) in the case of disposals made after the date of enactment of this Act, their title is burdened by a covenant prohibiting their sale, for a period of ten years

S1098
after their original disposal to comply with Federal reclamation law, including this title, for values exceeding the sum of the value of newly added improvements and the value of the land as increased by market appreciation unrelated to the delivery of irrigation water. Upon expiration of the terms of such covenant, the title to such lands shall be freed of the burden of any limitations on subsequent sale values which might otherwise be imposed by the operation of section 46 of the Act entitled “An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes”, approved May 25, 1926 (43 U.S.C. § 423e). (96 Stat. 1267; 43 U.S.C. § 390ii.)

Explanatory Note

Reference in the Text. The Act of May 25, 1926, referred to in subsection (f) of the text, is the Omnibus Adjustment Act of 1926 (44 Stat. 636). Section 46 thereof (43 U.S.C. § 423e) requires repayment contracts with irrigation districts to provide that privately owned excess lands shall be appraised in a manner prescribed by the Secretary on the basis of its actual bona fide value without reference to construction of the irrigation works, that no such excess lands shall receive water unless the owners execute recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed by the Secretary, and that until one half the construction charges against said lands have been paid, no sale of such lands shall carry the right to receive water unless the purchase price involved is approved by the Secretary. Section 46 of the 1926 Act appears in Volume I at page 376.

Sec. 210. [Water conservation.]—(a) The Secretary shall, pursuant to his authorities under otherwise existing Federal reclamation law, encourage the full consideration and incorporation of prudent and responsible water conservation measures in the operations of non-Federal recipients of irrigation water from Federal reclamation projects, where such measures are shown to be economically feasible for such non-Federal recipients.

(b) Each district that has entered into a repayment contract or water service contract pursuant to Federal reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. § 390b), shall develop a water conservation plan which shall contain definite goals, appropriate water conservation measures, and a time schedule for meeting the water conservation objectives.

(c) The Secretary is authorized and directed to enter into memorandums of agreement with those Federal agencies having capability to assist in implementing water conservation measures to assure coordination of ongoing programs. Such memorandums should provide for involvement of non-Federal entities such as States, Indian tribes, and water user organizations to assure full
October 12, 1982

3341

RECLAMATION REFORM ACT OF 1982


EXPLANATORY NOTE


Sec. 211. [Residency not required.]—Notwithstanding any other provision of law, irrigation water made available from the operation of reclamation project facilities shall not be withheld from delivery to any project lands for the reason that the owners, lessees, or operators do not live on or near them. (96 Stat. 1269; 43 U.S.C. § 390kk.)

Sec. 212. [Applicability to projects constructed by the Corps of Engineers—Contract obligations to repay costs allocated to conservation or irrigation storage shall remain in effect.]—(a) Notwithstanding any other provision of law, neither the ownership or pricing limitation provisions nor the other provisions of Federal reclamation law, including this title, shall be applicable to lands receiving benefits from Federal water resources projects constructed by the United States Army Corps of Engineers, unless—

(1) the project has, by Federal statute, explicitly been designated, made part of, or integrated with a Federal reclamation project; or

(2) the Secretary, pursuant to his authority under Federal reclamation law, has provided project works for the control or conveyance of an agricultural water supply for the lands involved.

(b) Notwithstanding any other provision of this section to the contrary, obligations that require water users, pursuant to contracts with the Secretary, to repay the share of construction costs and to pay the share of the operation and maintenance and contract administrative costs of a Corps of Engineers project which are allocated to conservation storage or irrigation storage shall remain in effect. (96 Stat. 1269; 43 U.S.C. § 390ll.)

Sec. 213. [Ownership and full cost pricing limitations shall not apply after obligation to repay construction costs has been discharged—Certificate acknowledging freedom from limitations—Lump sum or accelerated repayment.]—(a) The ownership and full cost pricing limitations of this title and the ownership limitations provided in any other provision of Federal reclamation law shall not apply to lands in a district after the obligation of a
district for the repayment of the construction costs of the project facilities used to make project water available for delivery to such lands shall have been discharged by a district (or by a person within the district pursuant to a contract existing on the date of enactment of this Act), by payment of periodic installments throughout a specified contract term, including individual or district accelerated payments where so provided in contracts existing on the date of enactment of this Act.

(b)(1) The Secretary shall provide, upon request of any owner of a landholding for which repayment has occurred, a certificate acknowledging that the landholding is free of the ownership or full cost pricing limitation of Federal reclamation law. Such certificate shall be in a form suitable for entry in the land records of the county in which such landholding is located.

(2) Any certificate issued by the Secretary prior to the date of enactment of this Act acknowledging that the landholding is free of the acreage limitation of Federal reclamation law is hereby ratified.

(c) Nothing in this title shall be construed as authorizing or permitting lump sum or accelerated repayment of construction costs, except in the case of a repayment contract which is in effect upon the date of enactment of this Act and which provides for such lump sum or accelerated repayment by an individual or district. (96 Stat. 1269; 43 U.S.C. § 390mm.)

Sec. 214. [Trusts.]

(a) The ownership and full cost pricing limitations of this title and the ownership limitations provided in any other provision of Federal reclamation law shall not apply to lands in a district which are held by an individual or corporate trustee in a fiduciary capacity for a beneficiary or beneficiaries whose interests in the lands served do not exceed the ownership and pricing limitations imposed by Federal reclamation law, including this title.

(b) Lands placed in a revocable trust shall be attributable to the grantor if—

(1) the trust is revocable at the discretion of the grantor and revocation results in the title to such lands reverting either directly or indirectly to the grantor; or

(2) the trust is revoked or terminated by its terms upon the expiration of a specified period of time and the revocation or termination results in the title to such lands reverting either directly or indirectly to the grantor. (96 Stat. 1270; 101 Stat. 1330-269; 43 U.S.C. § 390nn.)
Sec. 215. [Temporary supply of water.]—(a) Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands which receive only a temporary, not to exceed one year, supply of water made possible as a result of—

(1) an unusually large water supply not otherwise storable for project purposes; or

(2) infrequent and otherwise unmanaged flood flows of short duration.

(b) The Secretary shall have the authority to waive payments for a supply of water described in subsection (a). (96 Stat. 1270; 43 U.S.C. § 390oo.)

Sec. 216. [Lands acquired by involuntary process of law, conveyance in satisfaction of debt, inheritance or devise.]—Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands when the lands are acquired by involuntary foreclosure, or similar involuntary process of law, by bona fide conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), by inheritance, or by devise: Provided, That such lands were eligible to receive irrigation water prior to such transfer of title or the mortgaged lands became ineligible to receive water after the mortgage is recorded but before it is acquired by involuntary foreclosure or similar involuntary process of law or by bona fide conveyance in satisfaction of mortgage: Provided further, That if, after acquisition, such lands are not qualified under Federal reclamation law, including this title, they shall be furnished temporarily with an irrigation water supply for a period not exceeding five years from the effective date of such an acquisition, delivery of irrigation water thereafter ceasing until the transfer thereof to a landowner qualified under such laws: Provided further, That the provisions of section 205 of this title shall be applicable separately to each acquisition under this section if the lands are otherwise subject to the provisions of section 205. (96 Stat. 1270; 43 U.S.C. § 390pp.)

Sec. 217. [Isolated tracts.]—Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands which are isolated tracts found by the Secretary to be economically farmable only if they are included in a larger farming operation but which may, as a result of their inclusion in that operation, cause it to exceed such ownership limitations. (96 Stat. 1270; 43 U.S.C. § 390qq.)
Sec. 218. [Central Arizona Project—Eligibility of lands placed under recordable contract.]—Lands receiving irrigation water pursuant to a contract with the Secretary as authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. §1521 et seq.) which are placed under recordable contract shall be eligible to receive irrigation water upon terms and conditions related to pricing established by the Secretary pursuant to Federal reclamation law in effect immediately prior to the date of enactment of this Act, for a period of time not to exceed ten years from the date such lands are capable of being served with irrigation water, as determined by the Secretary. (96 Stat. 1271; 43 U.S.C. § 390rr.)

Explanatory Note

Reference in the Text. Title III of the Colorado River Basin Project Act (Act of September 30, 1968), referred to in the text, authorized the Central Arizona Project for the purposes of furnishing irrigation water and municipal water supplies to the water-deficient areas of Arizona and Western New Mexico, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes. Title III of the 1968 Act appears in Volume IV at page 2398.

Sec. 219. [Religious or charitable organizations.]—An individual religious or charitable entity or organization (including but not limited to a congregation, parish, school, ward, or chapter) which is exempt from taxation under section 501 of the Internal Revenue Code of 1986, as amended, and which owns, operates, or leases any lands within a district shall be treated as an individual under the provisions of this title regardless of such entity or organization’s affiliation with a central organization or its subjugation to a hierarchical authority of the same faith and regardless of whether or not the individual entity is the owner of record if—

1. the agricultural produce and the proceeds of sales of such produce are directly used only for charitable purposes;
2. said land is operated by said individual religious or charitable entity or organization (or subdivision thereof); and
3. no part of the net earnings of such religious or charitable entity or organization (or subdivision thereof) shall inure to the benefit of any private shareholder or individual. (96 Stat. 1271; 43 U.S.C. § 390ss.)
Sec. 220. [Water temporarily made available—Contract required.]—Irrigation water temporarily made available from reclamation facilities in excess of ordinary quantities not otherwise storable for project purposes or at times when such irrigation water would not have been available without the operations of those facilities, may be used for irrigation, municipal, or industrial purposes only to the extent covered by a contract requiring payment for the use of such irrigation water, executed in accordance with the Reclamation Project Act of 1939, or other applicable provisions of Federal reclamation law. (96 Stat. 1291; 43 U.S.C. § 390tt.)

Sec. 221. [Suits to adjudicate, confirm, validate, or decree contractual rights—Waiver of sovereign immunity.]—Consent is given to join the United States as a necessary party defendant in any suit to adjudicate, confirm, validate, or decree the contractual rights of a contracting entity and the United States regarding any contract executed pursuant to Federal reclamation law. The United States, when a party to any suit, shall be deemed to have waived any right to plead that it is not amenable thereto by reason of its sovereignty, and shall be subject to judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances. Any suit pursuant to this section may be brought in any United States district court in the State in which the land involved is situated. (96 Stat. 1271; 43 U.S.C. § 390uu.)

Sec. 222. (a) [Production of surplus crops—Secretary of Agriculture shall transmit report to Congress—Existing restrictions prohibiting delivery of water.]—Within one year of the date of enactment of this Act, the Secretary of Agriculture, with the cooperation of the Secretary of the Interior, shall transmit to the Congress a report on the production of surplus crops on acreage served by irrigation water. The report shall include—
(1) data delineating the production of surplus crops on lands served by irrigation water.
(2) the percentage of participation of farms served by irrigation water in set-aside programs, by acreage, crop, and State;
(3) the feasibility and appropriateness of requiring the participation in acreage set-aside programs of farms served by irrigation water and the costs of such a requirement; and
(4) any recommendations concerning how to coordinate national reclamation policy with agriculture policy to help alleviate recurring problems of surplus crops and low commodity prices.

(b) In addition, notwithstanding any other provision of law, in the case of any Federal reclamation project authorized before the date of enactment of this Act, any restriction prohibiting the delivery of irrigation water for the production of excess basic agricultural commodities shall extend for a period no longer than ten years after the date of the initial authorization of such project. (96 Stat. 1272; 43 U.S.C. § 390vv.)

Sec. 223. [Amendment to Small Reclamation Projects Act.]—Section 5(c)(2) of the Act of August 6, 1956 (43 U.S.C. § 422e), is amended by striking out "by any one owner in excess of one hundred and sixty irrigable acres;" and inserting in lieu thereof "by a qualified recipient, as such term is defined in section 202 of the Reclamation Reform Act of 1982, in excess of nine hundred and sixty irrigable acres, or by a limited recipient, as such term is defined in section 202 of the Reclamation Reform Act of 1982, in excess of three hundred and twenty irrigable acres;". (96 Stat. 1272)
status—Repeal of cost limitation requirements for new projects for Indian lands.—(a) The provisions of Federal reclamation law shall remain in full force and effect, except to the extent such law is amended by, or is inconsistent with, this title.

(b) Nothing in this title shall repeal or amend any existing statutory exemptions from the ownership or pricing limitations of Federal reclamation law.

(c) The Secretary may prescribe regulations and shall collect all data necessary to carry out the provisions of this title and other provisions of Federal reclamation law.

(d) Section 3 of the Act of July 7, 1970 (43 U.S.C. § 425b) is amended by striking the phrase "for a period not to exceed twenty-five years" following the term "project water".

(e) Any nonexcess land which is acquired into excess status pursuant to involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise, may be sold at its fair market value without regard to any other provision of this title or to section 46 of the Act entitled “An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes”, approved May 25, 1926 (43 U.S.C. § 423e): Provided, That if the status of mortgaged land changes from nonexcess into excess after the mortgage is recorded and is subsequently acquired by the lender by involuntary foreclosure or similar involuntary process of law, by bona fide conveyance in satisfaction of the mortgage, such land may be sold at its fair market value.

(f) The first proviso in the third paragraph of section 1 of the Act of April 4, 1910 (36 Stat. 269, 270), as amended by the Act of August 7, 1946 (60 Stat. 866, 867), is hereby repealed.

(g) In addition to any other audit or compliance activities which may otherwise be undertaken, the Secretary of the Interior, or his designee, shall conduct a thorough audit of the compliance with the reclamation law of the United States, specifically including this title, by legal entities and individuals subject to such law. At a minimum, the Secretary shall complete audits of those legal entities and individuals whose landholdings or operations exceed 960 acres within 3 years.

(h) The provisions of section 205(c) of this title are and have been applicable to all recordable contracts executed prior to October 12, 1982, and any decision, rule, or regulation promulgated by the Department of the Interior to the contrary is hereby revoked: Provided, That notwithstanding the provisions of subsection (i) of this section, the Secretary shall not seek reimbursement for any amounts due under this subsection or section 205(c) of this title which was due prior to December 22, 1987.
(i) When the Secretary finds that any individual or legal entity subject to reclamation law, including this title, has not paid the required amount for irrigation water delivered to a landholding pursuant to reclamation law, including this title, he shall collect the amount of any underpayment with interest accruing from the date the required payment was due until paid. The interest rate shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest bearing marketable issues sold by the Treasury during the period of underpayment. (96 Stat. 1272; 101 Stat. 1330-268; 108 Stat. 4594; 109 Stat. 721; 43 U.S.C. § 390ww.)

EXPLANATORY NOTES

1995 Amendment. Section 1081(d) of the Act of December 21, 1995 (Public Law 104-66, 109 Stat. 707) amended subsection 224(g) by striking the last two sentences that read as follows, "The Secretary shall submit an annual written report to the Senate Committee on Energy and Natural Resources and the House Committee on Natural Resources. Such report shall summarize the legal entities and individuals audited, the results of such audits, and the actions taken by the Secretary to correct any instances of noncompliance with the reclamation law." Section 1081(d) of the 1995 Act appears in Volume V at page 4071.

1996 Amendment. Subsection 16(a)(3) of the Act of November 2, 1994 (Public Law 103-437, 108 Stat. 4581) amended subsection 224(g) by striking, "Interior and Insular Affairs" each place it appears and substituting "Natural Resources". Section 16 of the 1994 Act appears in Volume V at page 4061.

1987 Amendment. Section 5302 (a) of the Act of December 22, 1987 (Public Law 100-203, 101 Stat. 1330) amended section 224 by adding new subsections (g), (h), and (i). Section 5302 of the 1987 Act appears in Volume V at page 3571.

Reference in the Text. The Act of April 4, 1910 (36 Stat. 269), referred to in subsection (f) of the text, appropriated funds for the Bureau of Indian Affairs for the fiscal year ending June 30, 1911. The first proviso of the third paragraph of section 1 of that Act was repealed by section 224(f). Prior to repeal of the first proviso, the third paragraph of section 1 read as follows:

"For the construction, repair and maintenance of ditches, reservoirs, and dams, purchase and use of irrigation tools and appliances, water rights, lands necessary for canals, pipe lines and reservoirs for Indian reservations and allotments, and for drainage and protection of irrigable lands from damage by floods, two hundred and forty-
nine thousand one hundred dollars, of which twenty-five thousand dollars shall be immediately available, and the balance of the appropriation shall remain available until expended: Provided, That no part of this appropriation shall be expended on any irrigation system or reclamation project for which specific appropriation is made in this Act or for which public funds are or may be available under any other Act of Congress, and hereafter no new irrigation project on any Indian reservation, allotments or lands, shall be undertaken until it shall have been estimated for and a maximum limit of cost ascertained from surveys, plans, and reports submitted by the chief irrigation engineer in the Indian service and approved by the Commissioner of Indian Affairs and the Secretary of the Interior, and such limit of cost shall in no case be exceeded without express authorization of Congress, and hereafter no new project to cost in the aggregate to exceed thirty-five thousand dollars shall be undertaken on any Indian reservation or allotment without specific authority of Congress; and the Secretary of the Interior shall transmit to Congress on the first Monday in December, nineteen hundred and ten, a statement, by systems or projects, showing the original estimated cost, the present estimated cost, and the total amount of all moneys, from whatever source derived, expended thereon for construction, extension, repair, or maintenance, of each irrigation system or reclamation project on Indian reservations, allotments or lands to and including June thirtieth, nineteen hundred and ten; and annually thereafter the Secretary of the Interior shall transmit to Congress a cost account of all moneys, from whatever source derived, expended on each such irrigation project for the preceding fiscal year...."

The last clause of the proviso, requiring the Secretary to transmit an annual cost account to Congress for each irrigation project, had previously been repealed by Item 8 of the Act of August 7, 1946 (60 Stat. 866) also referred to in subsection (f) of the text. The third paragraph of section 1 of the Act of April 4, 1910, and Item 8 of the Act of August 7, 1946 do not appear herein.
"(1) publish notice of the proposed contract or amendment in newspapers of general circulation in the affected area and shall make reasonable efforts to otherwise notify interested parties which may be affected by such contract or amendment, together with information indicating to whom comments or inquiries concerning the proposed actions can be addressed; and

"(2) provide an opportunity for submission of written data, views and arguments so received.". (96 Stat. 1273; 43 U.S.C. § 485h.)

Explanatory Note


Sec. 227. [Leased lands—Perennial crops.]—Notwithstanding any other provision of Federal reclamation law, including this title, lands which receive irrigation water may be leased only if the lease instrument is—

(1) written; and

(2) for a term not to exceed ten years, including any exercisable options:

Provided, however, That leases of lands for the production of perennial crops having an average life of more than ten years may be for periods of time equal to the average life of the perennial crop but in any event not to exceed twenty-five years. (96 Stat. 1273; 43 U.S.C. § 390yy.)

Sec. 228. [Contracting entity shall compile and maintain records and information and provide annual reports to Secretary.]—Any contracting entity subject to the ownership or pricing limitations of Federal reclamation law shall compile and maintain such records and information as the Secretary deems reasonably necessary to implement this title and Federal reclamation law. On a date set by the Secretary following the date of enactment of this Act, and annually thereafter, every such contracting entity shall provide in a form suitable to the Secretary such reports on the above matters as the Secretary may require. (96 Stat. 1274; 43 U.S.C. § 390zz.)

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Page 3348

Sec. 229. [Appointment of Commissioner of Reclamation subject to advice and consent of the Senate.]—The Act of May 26, 1926 (44 Stat. 657),
SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

is amended by adding the words "by and with the advice and consent of the Senate" after the word "President". (96 Stat. 1274; 43 U.S.C. § 373a.)

EXPLANATORY NOTE

Reference in the Text The Act of May 26, 1926 (43 U.S.C. § 373a), referred to in and amended by the text, provides for the appointment of the Commissioner of Reclamation by the President. The 1926 Act appears in Volume I at page 390.

Sec. 230. [Severability.]—If any provision of this title or the applicability thereof to any person or circumstances is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby. (96 Stat. 1274; 43 U.S.C. § 390zz-1)

TITLE III

SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

ACT OF 1982

*          *          *          *          *

Page 3359

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

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

(2) by such Tribe. (96 Stat. 1283, 98 Stat. 2703)

EXPLANATORY NOTES

1984 Amendment. Section 10 of the Act of October 19, 1984, Public Law 98-530, 98 Stat. 2698) amended Section 311 to read as it appears above and provided that the amendment shall not apply with respect to any action filed prior to the date of enactment of 1984 Act. Section 10 of the 1984 Act appears in Volume V at page 3438.

Reference in the Text. Section 2415 of title 28 of the U.S. Code, referred to in the text, establishes statutes of limitations governing the commencement of various types of legal actions brought by the United States, including actions brought for or on behalf of individual Indians or Indian tribes. This provision does not appear herein.

*          *          *          *          *
Sec. 313. [Cooperative Fund—Establishment—Purposes—Composition of Fund—Authorization of appropriations to Fund—Only interest may be expended—Secretary of the Treasury shall be trustee—Termination—Payments for damages shall not exceed amounts available for expenditure.]

(a) There is established in the Treasury of the United States a fund to be known as the "Cooperative Fund" for purposes of carrying out the obligations of the Secretary under sections 303, 304, and 305 of this title, including—

(A) operation, maintenance, and repair costs related to the delivery of water under sections 303, 304, 305;
(B) any costs of acquisition and delivery of water from alternative sources under section 304(b) and 305(c); and
(C) any damages payable by the Secretary under section 304(c) or 305(d) of this title.

(b)(1) The Cooperative Fund shall consist of—

(A) amounts appropriated to the Fund under paragraph (2) of this subsection;
(B) $5,250,000 to be contributed as follows:
   (i) $2,750,000 which has been contributed by the State of Arizona;
   (ii) $1,500,000 which has been contributed by the City of Tucson; and
   (iii) $1,000,000 which has been contributed jointly by the Anamax Mining Company, the Cyprus-Pine Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company; and
(C) interest accruing to the Fund under subsection (a) which is not expended as provided in subsection (c), including all interest which has accrued to the Fund since the Fund was established and all interest which accrued on contributions and appropriations to the Fund from October 12, 1985, to the date of the enactment of the Southern Arizona Water Rights Settlement Technical Amendments Act of 1992.

(2) There are hereby authorized to be appropriated to the Cooperative Fund the following:

(A) $5,250,000; and
(B) Such sums up to $16,000,000 (adjusted as provided in [former] paragraph (2) which the Secretary determines, by notice to the Congress, are necessary to meet his obligations under this title; and
(C) Such additional sums as may be provided by Act of Congress.

(c)(1) Only interest accruing to the Cooperative Fund may be expended and no such interest may be expended prior to the earlier of—
October 12, 1982

3359 SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

(A) 10 years and months after the date of the enactment of this title; or
(B) the date of completion of the main project works of the Central Arizona Project.

(2) Interest accruing to the Fund during the twelve-month period before the date determined under paragraph (1) and interest accruing to Fund thereafter shall, without further appropriation, be available for expenditure after the date determined under paragraph (1).

(d) The Secretary of the Treasury shall be the trustee of the Cooperative Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(e) If, before the date three years after the date of the enactment of this title—
(1) the waiver and release referred to in section 307 does not take effect by reason of section 307(d); or
(2) the suit referred to in section 307(a)(1)(C) is not finally dismissed, the Cooperative Fund under this section shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of accrued interest) to the respective contributors. Upon such termination, the share contributed by the United States under subsection (b)(3) shall be deposited in the General Fund of the Treasury.

(f) Payments for damages arising under 304(c) and 305(d) shall not exceed in any given year the amounts available for expenditure in any given year from the Cooperative Fund established under this section.

(g)(1) Notwithstanding the provisions of subsection (e), if no funds contributed to the Cooperative Fund pursuant to subsection (b)(1)(B) (or accrued interest thereon) have been returned to any of the contributors, the Cooperative Fund shall not be terminated; except that, if the final judgment in the lawsuit referred to in section 307(a)(1)(C) does not dismiss all claims against the defendants named therein, the Cooperative Fund shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of the remaining accrued interest) to the respective contributors.

(2)(A) If the share contributed to the Cooperative Fund by the United States has been deposited in the General Fund of the Treasury pursuant to subsection (e), there is authorized to be appropriated to the Cooperative Fund the amount so deposited in the General Fund of the Treasury, adjusted to include an amount representing the additional interest which would have been earned by the Cooperative Fund if that portion had not been deposited in the General Fund of the Treasury.
October 12, 1982

SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT 3359

(B) If the final judgment in the lawsuit referred to in section 307(a)(1)(C) does not dismiss all claims against the defendants named therein, the share of the Cooperative Fund contributed by the United States shall be deposited in the General Fund of the Treasury. (96 Stat. 1284, 106 Stat. 3256)

EXPLANATORY NOTES


(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 accured on contributions and appropriations to the Fund from October 12, 1985, to the date of the enactment of the Southern Arizona Water Rights Settlement Technical Amendments Act of 1992";

(4) in subsection (b), delete paragraph (2) and renumber paragraph (3) as paragraph (2);

(5) amend section 313 by adding at the end thereof a new subsection "(g)(1)" as it appears above:

(6) in section 304(e)(2), delete ", as long as such water is used for irrigation of Indian Lands";

(7) in section 306(c), amend by adding at the end thereof a new paragraph "(3)" as it appears above; and

(8) in sections 313(c)(1)(A), 304(c)(1) and 305(d)(1), immediately after "10 years" each place it appears, insert "and months".

The original paragraph (2) read as follows: (2) The amounts referred to in subparagraph (B) of paragraph (1) shall be contributed before the expiration of the three-year period beginning on the date of the enactment of this title. To the extent that any portion of such amounts is contributed after the one-year period beginning on the date of the enactment of this title, the contribution shall include an adjustment representing the additional interest which would have been earned by the Cooperative Fund if that portion had been contributed before the end of the one-year period. Section 8 of the 1992 Act appears in Volume V at page 3800.
INDEX
TO VOLUME V AND SUPPLEMENT II

A

A AND B IRRIGATION DISTRICT 2352
ABERNATHY, L. M. 1007
ABQUIU RESERVOIR 3325
ABBOUREZK, SENATOR JAMES S83

ACCOUNTING AND AUDITING
Federal agencies, generally 1949, 1953, 1959, 1990
Power. See POWER.

ACCOUNTING AND AUDITING
Federal agencies, generally S492, S519

ACCOUNTING AND AUDITING ACT OF 1950
Extracts from 1953

ACCOUNTING AND AUDITING ACT OF 1950
Extracts from S519

ACCRETION 43
ACEQUA MADRE 114, 127

ACQUIRED LANDS
See also ACQUISITION OF PROPERTY.
As a "reservation" 30
Sale of surplus acquired lands 162, 658

ACQUISITION OF PROPERTY
See also individual projects by name.
Arizona and New Mexico public lands 142
Compensation for real property above the high water mark of navigable water 2614
Donation
Bonneville Power Administration 569
Central Valley project 586
Columbia Basin project 734
Fish and wildlife purposes 510, 839
Fort Peck project transmission facilities 605
Generally 327
Middle Rio Grande project 902
Wild and scenic rivers 2452, 2460
Estuaries areas
Congressional authority required 2380
Exchange. See CONSTRUCTION: OPERATION AND MAINTENANCE. S143
Federal agencies, generally
INDEX TO VOLUME V AND SUPPLEMENT II

Approval of title  S546
Condemnation proceedings  1974, S547
Constitutional provisions  5
Inter-agency transactions. See FEDERAL AGENCIES.
Title, examination of  1972
Use of procurement contracts and grant and cooperative agreements  S533
Indian lands. See INDIAN LANDS.
Inverse condemnation  6, 75, 967
Leaseholds  74
Movable property. See MOBILE PROPERTY ACT.
Moving expenses, payment of. See MOVING EXPENSES.
National Parks, lands in. See NATIONAL PARKS.
Purchase of land for resale to settlers
Middle Rio Grande project  902
Reclamation projects, generally
Editor's note, annotations  71
Express statutory authorization  71, 660
Repayment contracts as a prerequisite. See REPAYMENT CONTRACTS.
Title, examination of  419, 735
Title, less than fee  S393
Relocation. See CONSTRUCTION; OPERATION AND MAINTENANCE, ARMY, DEPARTMENT OF THE; MOVING EXPENSES.
Rights of way and easements. See RIGHTS OF WAY AND EA斯坦MENTS.
Supplies and services. See SUPPLIES AND SERVICES.
Transfer to United States as security for loans
Distribution system loans  1218
Transmission lines. See POWER.
Uniform policy for  2628
Withdrawal of lands. See RECLAMATION WITHDRAWALS.

ACREAGE LIMITATIONS
Carey Act  25
Desert Land Act  12
Homestead Act  2023
Indian lands. See statutes relating to individual tribes by name.
Reclamation projects. See EXCESS LANDS. FARM UNITS.
See also individual projects by name.
Sales of property
Small tracts. See SMALL TRACTS ACT.
Surplus acquired lands  163
Surplus improved withdrawn lands  255
Town sites. See TOWN SITES. See also individual town sites by name.
Water Conservation and Utilization Act  673

ADA COUNTY, Idaho  3216
ADAMS, ALVA B., TUNNEL  795
ADAMS, JAMES W.  2348
ADAMS COUNTY, Nebraska  35
ADDENDA  2633, S15
ADDY, Washington  2503, 2505

S1116
INDEX TO VOLUME V AND SUPPLEMENT II

ADLER CONSTRUCTION COMPANY 2772
ADLER, HAROLD C. 2772
ADLER, VERA L 2772

ADMINISTRATION OF CONTRACTS. See SECTION 9 OF THE RECLAMATION PROJECTS ACT OF 1939.

ADMINISTRATION OF AREAS UNDER THE NATIONAL PARK SERVICE ACT. See NATIONAL PARK SERVICE.

ADMINISTRATIVE EXPENSES ACT OF 1946
Statutory references to 1281, 1470, 1534

ADMINISTRATIVE PROCEDURE ACT
Miscellaneous references to S131, S153, S154
Public property exemption waived
Department of Energy 3065
Statutory references to 1418, 2494, 2597, 2787, 2788, 2790, 2804, 2805, 2807, 2991, 3008, 3062, 3063, 3064, 3139, 3175, 3177, 3235, 3266, 3420
Text 1928, S446

ADMINISTRATIVE PRACTICE S442, S465-S471

ADMINISTRATOR OF GENERAL SERVICES. See GENERAL SERVICES ADMINISTRATION.

ADRIANCE, MARY S. 2476

ADVANCE PAYMENTS. See also COST SHARING.
By United States
General provisions relating to 970, 1962, 2000, S518
Rehabilitation and betterment work 970
Road maintenance 658, 661
Small watershed projects (Public Law 566). See WATERSHED PROTECTION AND FLOOD PREVENTION ACT.
Contributed funds
Appropriation of 291
For construction 34, 291, 313, 353, 355, 539, 649, 1162, 1530
For fish and wildlife purposes 839
For investigations 36, 291, 315, 496, 1894
For land classification studies 642
Parker Dam 539

Operation and maintenance charges
Acceptance of, where land title disputed 67
Appropriation of 236, 353, 398, 1021
Overpayments, application or refund of 191, 259, 1021, 1025
Payment date fixed by Secretary 193
Required for individual projects 334, 336, 337, 338, 339, 351, 354, 392
Required, generally 325, 377, 639, 672
Reserved works 405

ADVANCEMENT IRRIGATION DISTRICT 1080

ADVANCES. See ADVANCE PAYMENTS, RECLAMATION FUND.

ADVICE. See SETTLEMENT ASSISTANCE.
INDEX TO VOLUME V AND SUPPLEMENT II

ADVISORY COUNCIL ON HISTORIC PRESERVATION
   Established 2319

ADVISORY BOARD ON NATIONAL PARKS, HISTORIC SITES, BUILDINGS AND MONUMENTS S189

AGATE DAM AND RESERVOIR 1185, 1689

AGRI-LANDS, LTD. S80, S82

AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT OF 1978
   Text 3100

AGRICULTURAL ADJUSTMENT ACT OF 1938
   Statutory references to 1251, 1267, 115, 1415, 1526, 1660, 1662, 1776, 1844, 1885, 1900, 2335, 2338, 2377, 2409, 2474, 2518, 2523, 2526, 2533, 2756, 2757, 2759, 2935, 2939, 2951, 2954, 2957

AGRICULTURAL ACT OF 1949
   Statutory references to 1251, 1267, 1355, 1415, 1526, 1660, 1662, 1776, 1884, 1900, 2335, 2338, 2377, 2409, 2474, 2518, 2523, 2526, 2533, 2756, 2757, 2759, 2935, 2939, 2952, 2954, 2957, 3518

AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954
   Statutory references to 2808

AGRICULTURE, DEPARTMENT OF
   Completion of land development and settlement work
      Angostura unit 973
      Eden project 954
   Conservation of fish and wildlife by, authorized 509
   Consultation with Chief of Engineers on forest and other conservation measures at
      Army reservoirs 1553
   Colorado River Basin Salinity Control Measures S1040, 4074
      Research and demonstration projects 3451, S1042
      Use of Basin Funds S1047
   Conveyance of Farson Pilot Farm on Eden Valley project to State of Wyoming 1693, 1911
   Exchange of lands on Eden project authorized 1136
   Flood control, authority to study, explained 545
   Joint studies with Secretary of the Army of watershed areas for flood control and
      water conservation 1684
   Loans to homestead and reclamation entrymen authorized 981
   Loans to settlers by Farm Security Administration 666
   National forests. See NATIONAL FORESTS.
   National recreation areas, administration of
      Shasta and Clair Engle-Lewiston units 1863
      Flaming Gorge National Recreation Area 2425
   Participation in W.C.U. projects 668
   Reconveyance of Carey Act lands to United States for Eden project 714
   Secretary of, a member of Water Resources Council 1829
   Soil and moisture conservation
      Programs authorized 517, 798, 3078
      Studies and reports. See STUDIES AND REPORTS.
   Transfer of funds to, to construct water management and channel works in connection
      with Farwell unit, MRB 1326

S1118
INDEX TO VOLUME V AND SUPPLEMENT II

Transfer of lands from Bad Lands-Fall River land utilization project to Angostura unit, 856
MRB  Water Facilities Act program explained 621
Water facilities loans and grants 1606
Watershed protection
Small watershed projects (Public Law 566). See WATERSHED PROTECTION AND FLOOD PREVENTION ACT.
Studies and reports. See STUDIES AND REPORTS.
Watershed improvement programs 798, 1170, 1171
Wilderness system. See WILDERNESS ACT.

AHTANUM CREEK, Washinton 1889
AHTANUM UNIT, Yakima project 1889
AINSWORTH UNIT, MRB, Nebraska
Authorized 1186
Feasibility report approved 1267
AINSWORDH CANAL S9, S228
AINSWORDH UNIT, P-SMBP, Nebraska
Miscellaneous references to S228
AIR QUALITY CONTROL
Generally S636
Federal agencies, generally S649, S654, S659, S661
AIR RESOURCES BOARD OF CALIFORNIA 3281
AK-CHIN INDIAN WATER RIGHTS SETTLEMENT ACT, 1978
Statutory references to 3431, 3436, 3437, 3802, 3974
Text 3084
AK-CHIN WATER RIGHTS SETTLEMENT ACT, REVISED, 1984
Amendments 3435, 3802
Funds for settlement obligations 3459
Miscellaneous references to S1110
Statutory references to 3974
Text 3431
AK-CHIN WATER USE AMENDMENTS ACT OF 1992 3802
AK-CHIN INDIAN RESERVATION 3064, 3431
ALABAMA STATE OF
Executive Order No. 6964 and Taylor Grazing Act apply 516
Projects in. See individual dams and projects by name.
Southeastern Power Administration markets power from Army dams in 801
ALAGNAK RIVER 2438, 2439
ALAMEDA COUNTY 979, 1454
ALAMITI CREEK 753
ALAMO RIVER 753, 4136, 4139

S1119
INDEX TO VOLUME V AND SUPPLEMENT II

ALAMO CANAL 760, 1030
ALAMOGORDO DAM AND RESERVOIR 667, 1004, 1142, 1216, 1317, 2753, 2887, S139
ALAMOSA NATIONAL WILDLIFE REFUGE 2748, 2750
ALAMOSA, Colorado 2748
ALASKA NATIVE CLAIMS SETTLEMENT ACT Amendments 4061
Statutory references to 2325, 2455, 3015, 3171, 4061
ALASKA HYDROELECTRIC POWER DEVELOPMENT ACT
Text 3028
ALASKA POWER ADMINISTRATION
Appropriations for 2383
Establishment of, explained 2383, S198
Miscellaneous references to S197, S239
Transferred to Department of Energy 3056
ALASKA FEDERAL-CIVILIAN ENERGY EFFICIENCY SWAP ACT
Text 3319
ALASKA HYDROELECTRIC POWER DEVELOPMENT FUND 3028
ALASKA, State of
Disposition of proceeds from mineral leases in 249, 851
Federal-civilian sales and purchases of electric energy 3319
Framework plan by Army authorized 1922
Investigation and report on water resource projects authorized 1229, S239
Investigations in 896, 1651
Location in, of field laboratory for water quality research 1282
Not a Reclamation state 33, S91, S197
Projects in. See individual projects by name.
Small watersheds act applies to 1171
Treaty with Great Britain guarantees navigation 11
Wheeler-Howard Act extended to 863
ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT
Statutory references to 2449, 2461
ALATNA RIVER 2438
ALBANY, Oklahoma 3304
ALBANY COUNTY, Wyoming 3216
ALBEE, STANLEY 2476
ALBENI FALLS DAM 1579
ALBERT JOHNSON CREEK 2438
ALBUQUERQUE, New Mexico S30, S253
ALCOA 2503, 2505

S1120
INDEX TO VOLUME V AND SUPPLEMENT II

ALCOVA IRRIGATION DISTRICT. See CASPER-ALCOVA IRRIGATION DISTRICT.

ALCOVA DAM AND RESERVOIR 645, 658, 1389, 1445

ALIBATES FLINT QUARRIES AND TEXAS PANHANDLE PUEBLO CULTURE NATIONAL MONUMENT 1846, S404

ALIBATES FLINT QUARRIES NATIONAL MONUMENT S404

ALIENS 148, 230, 255, 2978, 3100, 3336

ALL-AMERICAN CANAL
   Application and appropriation of payments received from Mexico 896
   Appropriation act language 548, 854
   Authorized 414, 423, 432
   Canal lining authorized 3641
   Coachella Valley, allocation of flood control costs to distribution system 548, 854
   Desilting operations S14, S89
   Land preparation 748
   Liability for increased costs to complete construction of Coachella division 1055
   Miscellaneous references to 440, 2875, S73, S89
   Payment by Mexico of a portion of costs of 761
   Reimbursability of investigation costs 254
   Statutory references to 1473
   Used for delivery of water to Mexico 760, 673
   Veterans preference 435
   Water salvage
       Feasibility study authorized 1890
       Feasibility study of East Mesa unit authorized 1893

ALLAGASH WILDERNESS WATERWAY 2428

ALLEGHENY RIVER 2443, 2444, 2447

ALLEN CAMP UNIT, CVP 1890, 2956

ALLEN CAMP DAM AND RESERVOIR 2956

ALLOCATION OF COSTS. See COST ALLOCATION.

ALMADEN VALLEY PIPELINE 2333

ALMENA UNIT, MRB, Kansas
   Road relocation for Norton Reservoir 1706

ALPINE COUNTY 1319

ALTA IRRIGATION DISTRICT 2344

ALTURAS, California 3324

ALTUS PROJECT, Oklahoma. See LUGERT-ALTUS PROJECT.

ALTUS CANAL 1007

ALTUS, Oklahoma 2343, 2388, 2906

ALUM FORK 3309

S1121
INDEX TO VOLUME V AND SUPPLEMENT II

ALUMAX PACIFIC CORPORATION 2503, 2504

AMARGOSA PROJECT, California-Nevada
Feasibility study authorized 2478

AMERICAN AGRONOMICS PACIFIC DIVISION, INC. S80

AMERICAN CANAL, Texas 2955, 3655

AMERICAN DIVERSION DAM, Rio Grande canalisat1on project, Texas
Additional appropriations for 543
Authorized 536
Statutory references to 3657

AMERICAN FALLS DAM AND RESERVOIR 290, 310, 313, 1040, 1041, 1187, 1206, 1889, 2828, 2943, 3128, 3168

AMERICAN FALLS RESERVOIR DISTRICT 313, 399, 1041, 2828, 3129

AMERICAN FALLS RESERVOIR DISTRICT NUMBERED 2 1187

AMERICAN FALLS, TOWN OF 290
Quitclaim deed to 3371

AMERICAN INDIAN RELIGIOUS FREEDOM ACT
Statutory references to 3177

AMERICAN REPUBLICS 687

AMERICAN RIVER 978, 1887, 1889, 1890, 2435, 2445, 2616, 2837

AMERICAN RIVER BASIN 978, 1893

AMERICAN RIVER DIVISION, CVP 1847, 1889
Sty Park Extension unit
Feasibility study authorized 3217

AMERICAN-MEXICAN BOUNDARY TREATY ACT OF 1972
Text 2761

AMERICAN-MEXICAN CHAMIZAL ACT OF 1964
Miscellaneous references to 99, 775

AMERICAN-MEXICAN TREATY ACT OF 1950
Text 1028

AMERICAN NATIONAL RED CROSS 2847

AMERICAN SAMOA 3026

AMERICAN SMELTING AND REFINING COMPANY 3356, 3360

AMISTAD DAM
Authorized 1541
Location and construction of, explained 755
Marketing of power from, by Secretary of Interior 1736
Power marketing function transferred to Secretary of Energy 3057, S213

S1122
INDEX TO VOLUME V AND SUPPLEMENT II

ANADROMOUS FISH CONSERVATION ACT
  Named and amended  S409

ANADROMOUS AND GREAT LAKES FISHERIES CONSERVATION ACT
  Amendments of  S409
  Statutory references to  2581

ANADROMOUS FISHERIES ACT
  Text  1880

ANAMAX MINING COMPANY  3356, 3360

ANCHOR DAM  1328

ANCHORAGE, CITY OF  1010

ANGOSTURA IRRIGATION DISTRICT  1654

ANGOSTURA UNIT, MRB, South Dakota
  Authorization explained  1654
  Bankhead-Jones Farm Tenant Act extended to  1223
  Completion of land development and settlement by Secretary of Agriculture authorized 973
  Temporary deferment of charges  1654
  Transfer of lands to, from Bad Lands-Fall River land utilization project administered by Agriculture  855

ANDERSON, E. L.  2476

ANDERSON RANCH RESERVOIR  684, 827, S190

ANDRADE, A. F.  211

ANDRADE  1030

ANDREAFSKY RIVER  2439

ANIACHAK NATIONAL MONUMENT AND NATIONAL PRESERVE  2438

ANIACHAK RIVER  2438

ANIMAS-LA PLATA PROJECT, Colorado-New Mexico
  Expeditious completion of planning report directed  1249
  Authorized  2416, S247
  Construction funds denied  3124
  Construction to proceed  3458, 4066
  Protection of archaeological resources  3196
  Spending restrictions  4114
  See COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1980.

ANIMAS-LA PLATA PROJECT COMPACT
  Text  2418

ANIMAS RIVER  2418

ANNUAL RETURNS
  Term defined  635
INDEX TO VOLUME V AND SUPPLEMENT II

ANOKA, Minnesota 2446
ANSONIA, Pennsylvania 2444
ANTELOPE CREEK 2903

ANTI-DEFICIENCY ACT
Amendment of 2877
Extracts from S510
Miscellaneous references to S277

ANTI-DEFICIENCY LAWS
Miscellaneous references to 2405
References to. See REVISED STATUTES, Section 3679.
Text 1949, 1963

ANTI-KICKBACK ACT S555, S576

ANTILON LAKE 1884

ANTIOCH, California 1858

ANTIQUITIES ACT OF 1906
Miscellaneous references to 1534
Statutory references to 1780, 3172, 3173

ANTISPECULATION. See EXCESS LANDS.

ANTITRUST LAWS. See also Clayton Act; Robinson-Patman Act; Sherman Act.
Definition of 3010, 3139
Federal Power Commission license provisions 273
Miscellaneous references to 112
Statutory references to 3140

ANZALDÚAS DAM 524, 1096

APA. See ALASKA POWER ADMINISTRATION.

APACHE NATIONAL FOREST 2447

APACHE TRAIL 1201

APPALACHIAN REGIONAL DEVELOPMENT ACT OF 1965
Reorganization plan references to 1304

APPENDIX S429

APPLEGATE CREEK 1889

APPLE CREEK UNIT, P-SMBP, North Dakota
Feasibility study authorized 2915

APPLEGATE LAKE 2841

APPLEGATE RESERVOIR 1703

APPLEGATE RIVER 2430

APPLEGATE VALLEY DIVISION, Rogue River Basin project 1889

S1124
INDEX TO VOLUME V AND SUPPLEMENT II

APPROPRIATIONS
Apportionment of  S512
Availability of
( Editor's note: Questions involving the availability of appropriated funds for specific purposes, as distinguished from questions of the authorization to spend money for specific purposes, are not dealt with in this publication.)
Generally  S508
Specific appropriations required  1963, S510
Change from line-item to lump-sum basis  1027
Contract authority in excess of appropriations  659, 2405, S277
Contracts contingent upon appropriations  659, 1012, 2329, S137
Current provisions in appropriation acts
A Canal, Klamath Project rehabilitation nonreimbursable  3459
Ak-Chin Water Rights Settlement Obligations  3459
Alaskan investigations  1651
Animas-La Plata Project  3458, 4066, 4114
Anzaldusas Dam  1096
Archeological investigation and recovery  1055
Binding agreements required prior to construction  3458
Bostwick District, Kansas/Nebraska, P-SMBP
  Water service Contract extended  4084
California-Oregon Transmission Project, Memorandum of Understanding  3460
Cliff Dam feature of CAP  3559
Central Arizona Project  3105, S1067
Colorado River Storage project  1651
Colorado River Basin Salinity Control Project  3105, S1067
Construction and rehabilitation  1021
CVP Restoration Fund  4006
CVP Water Supply Contracts  3660
Dallas Creek Project  3373
Damage claims  205
Dickinson, City of  3560
Earned but unpaid revenues shall not be obligated  897
Emergency Drought Relief Act of 1991 amended  4083
Emergency repairs  1026
Excess Federal Power  4066
Farwell Unit, P-SMBP  3560
Federal Advisory Committee Act exemptions  3726
Federal Energy Regulatory Commission Authority  3460
Federal Power Marketing Administration employment levels  4065
Federal Water Project Recreation Act amended  3758
Forest or range fires  1026
Foss Dam, Oklahoma  3399
Frenchman-Cambredge District, P-SMBP, Nebraska,
  Water service contract extended  4085
Folsom Dam, California, reoperation plan  3725
Garrison Diversion unit  3399
General investigations  1020
Giving information and advice to settlers  484, 790
Hilltop Irrigation District, P-SMBP  3560
Hooker Dam or alternative  3459
Interstate compact representatives  1022
Investigations requested by others  496
Island Park Dam and Reservoir  3681

S1125
INDEX TO VOLUME V AND SUPPLEMENT II

Irrigation development on Indian Reservations 1114, S938
James River Report, Garrison Diversion Unit, P-SMBP 3560
Joinder of United States as defendant in water rights suits 1097
Kesterson Reservoir Cleanup Program, CVP 4094
Loans beyond fiscal year contingent upon appropriations 1496
Lost Creek Dam Lake Project renamed 4085
McGee Creek Reservoir and access facilities 3374, 3361, 3648, 3660
Minot, City of, North Dakota, relieved of repayment obligation 3560
Non-availability of wheeling service as condition to, construction of transmission lines (Keating Amendment) 1054
Norden Dam alternative, O'Neil Unit, P-SMBP, joint studies authorized 3375
Office of the Commissioner 3562
Operation and maintenance 790, 1021
Pacific Northwest and California power transmission facilities 3402
Prairie Bend Unit, P-SMBP, feasibility study authorized 3373
Pilot Butte Powerplant, Riverton Unit, P-SMBP feasibility studies authorized 3374
Proviso regarding general administration, surveys, and general engineering and research 1023
Reclamation Wastewater and Ground Water Act amended 4114
Repayment deferment 3374
Restriction on expenditure of appropriations for Colorado River Storage project to protect any national monument 1551
Restriction on transfer of funds of Southwestern Power Administration 1460
Restriction on use of funds for benefit of lands in arrears in payments 398, 1024
Return of expenditures for reimbursable functions 1023
Safety of Dams work at Coolidge Dam
San Carlos Irrigation Project 3659
Small Power production facilities 3562
San Luis interceptor drain 1858, 3369
Shasta Dam temperature control device 3662
Soil and moisture conservation 1021
Southern Nevada Water Project (Robert B. Griffith) 3105, S1067
Special funds 1022
Sykeston Canal, Garrison Diversion Unit, P-SMBP 3756
Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act, certain sections repealed 4008
Trinity River Basin Fish and Wildlife Management Act amended 4065
Tucson Aqueduct, Arizona, CAP, System Reliability Investigation 4083
Twin Buttes Dam, Texas 3370
Twin Falls Canal Company, Idaho 3369
Velarde Community Ditch Project 3369
WEB Pipeline enlargement costs nonreimbursable 3459
Western Water Policy Review 4065
Working Capital Fund 3462
Yavapai-Prescott Indian Tribe Water Rights Settlement Act amended 4114
Expenditures or obligations in excess of, prohibited 1949, 1963, 1989, S491, S510, S569

Extracts from appropriation acts. See Table of Contents.
Impoundment of. See IMPOUNDMENT CONTROL ACT OF 1974.
Interchange of appropriations 210, 300, 1021
Permanent appropriations
Advance payments on operation and maintenance charges. See ADVANCE PAYMENTS.

S1126
INDEX TO VOLUME V AND SUPPLEMENT II

Colorado River Storage project. See UPPER COLORADO RIVER BASIN FUND.
Contributed funds. See ADVANCE PAYMENTS.
Emergency work. See EMERGENCY WORK.
To refund over-collections and to return excess deposits 1025
Reclamation fund, appropriations from. See RECLAMATION FUND.
Requests for 1952, S505
Secretary not required to spend 300

AQUATIC PLANT CONTROL
Reimbursement and cost-sharing 1423
Secretary of the Army authorized to undertake 1423

AQUEDUCT DIVISION, PROVO RIVER project 866

ARAPAHOE INDIANS, WYOMING
Acquisition of lands of, for Boysen Unit, MRB 1109
Compensation for lands on Wind River Indian Reservation used for Riverton project 1125
Conveyance of Wind River Reservation land to United States 1328
Minerals in lands covered by Act of August 15, 1953, held in trust for Shoshone and Arapahoe tribes 1451

ARAPAHO NATIONAL FOREST 2918

ARBITRATION
Statutory provisions relating to individual projects
Boulder Canyon project 425, 702

ARBUCKLE PROJECT, OKLAHOMA
Authorized 1676
Miscellaneous references to S333

ARCH HURLEY CONSERVANCY DISTRICT 562, 596, 1113, 1224, 1444

ARCHAEOLOGY
Current appropriation act language 1055
Investigations and conservation
Authorized, generally 1533, S298
Animas-La Plata and Dolores projects 3196, S257
Davis Dam project 716
Protection of archaeological resources 3170

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979
Amendments of 3618, 3634, S1080-S1082
Statutory references to 2307, 3618, 3634, 950,
Text 3170

ARCHULETA MESA 1697

ARCTIC NATIONAL WILDLIFE RANGE 2439

AREAS OF ORIGIN. See POWER, WATER RIGHTS.

ARIKAREE RIVER 741

ARIZONA-CALIFORNIA BOUNDARY COMPACT
Consent to negotiate 1345

S1127
INDEX TO VOLUME V AND SUPPLEMENT II

Text 1875

ARIZONA CANAL 2839, 3096

ARIZONA GROUNDWATER MANAGEMENT ACT OF 1980 3349

ARIZONA-NEVADA BOUNDARY COMPACT
Text 1602

ARIZONA POWER POOLING ASSOCIATION 650

ARIZONA-SONORA INTERNATIONAL BOUNDARY 2876

ARIZONA STATE EXPERIMENT FARM 598

ARIZONA, STATE OF
Apportionment by Congress of Colorado River water among three lower basin States 420, 427
Comacts of. See ARIZONA-CALIFORNIA BOUNDARY COMPACT; ARIZONA-NEVADA BOUNDARY COMPACT.
COLORADO RIVER COMPACT; UPPER COLORADO RIVER BASIN COMPACT.
Contribution to settlement of Indian water rights dispute 3356, 3359

ARIZONA, UNIVERSITY OF 819
Desert Land Act applies 13
Enabling Act
Extracts from 141
Irrigable lands reserved to United States 142
Power sites reserved to United States 142
School lands 143
Executive Order No. 6910 and Taylor Grazing Act apply 515
Opposition to Parker Dam 538
Projects in. See individual projects by name.
Quitclaim to, of United States interest in highway right-of-way designated as the Apache Trail 1201
Reclamation Act applies 31
School lands 42, 74, 143

ARKANSAS-OKLAHOMA ARKANSAS RIVER COMPACT COMMISSION
Established 2776

ARKANSAS-OKLAHOMA ARKANSAS RIVER COMPACT FUND 2779

ARKANSAS POWER AND LIGHT COMPANY 802

ARKANSAS RIVER 806, 931, 1075, 1922
See also ARKANSAS RIVER COMPACTS; FRYINGPAN-ARKANSAS PROJECT.

ARKANSAS RIVER BASIN 832, 901, 1002, 1003, 1424, 1855, 1922, 2773
Water transfer studies restricted 3428, 3537

ARKANSAS RIVER COMPACTS
Arkansas and Oklahoma
Consent to negotiate 1217
Text 2773
Colorado and Kansas
Consent to negotiate 815
INDEX TO VOLUME V AND SUPPLEMENT II

Statutory references to
Text 1230, 1673, 1855
Kansas and Oklahoma
Consent to negotiate 1230
Text 1914

ARKANSAS RIVER COMPACT ADMINISTRATION
Established 936
Statutory references to 1855

ARKANSAS SOIL AND WATER CONSERVATION COMMISSION 2776

ARKANSAS, STATE OF
Compacts of. See ARKANSAS RIVER COMPACTS; RED RIVER COMPACT.
Executive Order No. 6964 and Taylor Grazing Act apply 516
Included in marketing area of Southwestern Power Administration 974
Projects in. See individual dams and projects by name.
Reclamation investigations in 806

ARMEL UNIT. P-SMBP, Upper Republican division 2478

ARMY, DEPARTMENT OF THE
See also MIDDLE RIO GRANDE PROJECT; SNEETISHAM PROJECT.
Approval by, of structure on navigable waters required 27
Aquatic plant control program authorized 1423
Construction of power projects in Alaska for non-Federal public authorities.
See ALASKA HYDROELECTRIC POWER DEVELOPMENT ACT.
Cooperation with States in preparation of comprehensive plans for drainage
basins 2835
Cost sharing
Annual payments during construction period 2837
Deauthorization of projects 2833
Environmental impacts
Guidelines for assessing 2614
Interest of local agencies in Army reservoirs 1722
Joint studies with Secretary of Agriculture of watershed areas for flood control and
water conservation 1684
Jurisdiction over Red Willow Dam and Reservoir, Nebraska, transferred to Interior, and
jurisdiction over Wilson Dam and Reservoir, Kansas, transferred to Army 1261
Joint construction of Kanopolis Unit, Kansas 2950
Law enforcement services 3026
Liability for damages due to negligence 2833
Missouri River Basin development Authorized 806
National dam inspection program 2655
Phase I design authorized for non-controversial projects S147
Power facilities of, transfer to Interior 1053, 1054
Projects of. See COST ALLOCATION; EXCESS LANDS; FISH AND WILDLIFE; FLOOD CONTROL; FLOOD
CONTROL ACTS; INTEREST; NAVIGATION; POWER; RECREATION RIVER AND HARBOR ACTS; ROADS;
WATER RIGHTS; WATER SERVICE; WATER SUPPLY. See also individual dams, rivers, and river
basins by name.
Protection, reconstruction or relocation of structures or facilities of an agency of
government authorized 1423
Provision of, and consultation with Secretary of Agriculture and State agencies on,
forest and other conservation measures at Army reservoirs 1553
Public Buildings Act of 1859 not applicable to projects of 1494

S1129
INDEX TO VOLUME V AND SUPPLEMENT II

Reimbursement of construction charges when land acquired by. See FEDERAL AGENCIES.
Removal of structures prohibited until 1989 3326
Resettlement
Acquisition of lands for 2385
Review of feasibility studies and reports by 150, 646, 797
Secretary of, a member of Water Resources Council 1829
Studies and reports. See STUDIES AND REPORTS.
Sewage treatment 2841
Storage of San Juan-Chama project water in Abiquiu Reservoir 3325
Streambank erosion control. See STREAMBANK EROSION CONTROL EVALUATION
AND DEMONSTRATION ACT OF 1974.
Studies and reports
Water and related land resources of American Samoa 3026
High Plains Region 3026

ARNOLD IRRIGATION DISTRICT 856, 970, 976

ARNOLD PROJECT, Oregon
Additional appropriations for 976, 1360
Authorized 856
Reclamation laws, application of. See CORDON AMENDMENT PROJECTS.

ARROW LAKE DAM, Canada 1561, 1594

ARROWROCK DIVISION, Boise project 358, 450, 683

ARROWROCK DAM AND RESERVOIR 657, 683, 833, S190

ARROYO DEL VALLE 1332

ARTESIAN WELLS 35

ARCTIC NATIONAL WILDLIFE REFUGE 2439

ARVIN-EDISON WATER STORAGE DISTRICT S33, S80, S82, S127, S128, S235, S237

ASHCROFT SITE ON CASTLE CREEK 1670

ASHLEY NATIONAL FOREST 2426

ASOTIN, Washington 2446

ASPEN SITE 1670

ASSESSMENTS. See IRRIGATION DISTRICTS.

ASSINIBOINE TRIBE S130

ASSOCIATED ELECTRIC COOPERATIVE, INC. 3099, S150, S151, S153

ATCHAFALAYA RIVER 3302

ATKINSON-KIER COMPANY 907

ATCHISON, TOPEKA AND SANTA FE RAILWAY 216, 453

ATMOSPHERIC RESEARCH. See RESEARCH; WEATHER MODIFICATION.

ATOKA COUNTY, Oklahoma 2771

S1130
INDEX TO VOLUME V AND SUPPLEMENT II

**ATOMIC ENERGY ACT OF 1946**
- Miscellaneous references to 44
- Statutory references to 924

**ATOMIC ENERGY COMMISSION**
- 2329, 2599

**ATOMIC ENERGY COMMISSION**
- 1274, 1685

**ATTORNEY GENERAL DECISIONS**

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
<th>Source</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apr. 1905</td>
<td>Secretarial authority</td>
<td>F. Recl. L</td>
<td>89</td>
</tr>
<tr>
<td></td>
<td>lands.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sept. 1926</td>
<td>do</td>
<td>17 N. Recl. Era 152</td>
<td>317</td>
</tr>
<tr>
<td>July 1937</td>
<td>Feasibility finding</td>
<td>F. Recl. L</td>
<td>317</td>
</tr>
<tr>
<td>Sept. 1937</td>
<td>do</td>
<td>F. Recl. L</td>
<td>58, 317</td>
</tr>
<tr>
<td>Aug. 1941</td>
<td>Soil conservation</td>
<td>Letter</td>
<td>520</td>
</tr>
<tr>
<td></td>
<td>65 I.D. 549.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dec. 1961</td>
<td>San Luis, Kings, excess lands</td>
<td>68 I.D. 370</td>
<td>1525</td>
</tr>
</tbody>
</table>

**AUBURN, California**
- 2615

**AUBURN DAM AND RESERVOIR**
- 1847, 2445, 2515, 2837, S405

---

1 The citation "F. Recl. L." indicates that the source is a note in Volume I of *Federal Reclamation Laws, Annotated* (U.S. Department of the Interior 1958).
INDEX TO VOLUME V AND SUPPLEMENT II

AUBURN-FOLSOM SOUTH UNIT, CVP 1847, 2615, S283, S344
AUBURN INDIAN RESTORATION 4018
AUGUSTINE INDIAN RESERVATION 1457
AUSABLE RIVER 2445
AUSTIN, W. C., PROJECT, Oklahoma. See W. C. AUSTIN PROJECT.

AUSTRALIA 687

AUTHORIZATION OF RECLAMATION PROJECTS
See also individual projects by name.
Administrative authorization by Secretary and/or President
   Generally 35, 151, 316, 644, 797
   Modification to include water supply storage 1427
On navigable waters 28, 538
Policy against projects with more than half of costs allocated to recreation and
   fish and wildlife enhancement 1826
   Small reservoirs 582
Change in project plan. See CONSTRUCTION.
Deauthorization
   Generally 2378
Reauthorization by Congress
   Effect of 586, 728

AVALON DAM 393, 944, 2753

AVONDALE IRRIGATION DISTRICT 1615

AVONDALE PROJECT, Idaho
   Additional work authorized 1615
   Funds appropriated for rehabilitation 1114, 1142, 1551
   Reclamation laws, application of. See CORDON AMENDMENT PROJECTS.

AVULSION 43, 775

AZALEA DIVISION, Umpqua River project 1892

AZURE UNIT, Middle Park Project 2417, S251

B

BACON CREEK 2433, 2445

BAD LANDS-FALL RIVER LAND UTILIZATION PROJECT 855

BAGBY DAM AND RESERVOIR 1546

BAKER PROJECT, Oregon
   Appropriations for 300
   Authorization explained 1688
   Repayment contract required 350
   Upper Division
      Authorized 1687
INDEX TO VOLUME V AND SUPPLEMENT II

BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985
Extracts from 83431

BALDWIN COUNTY, Alabama 2447

BALLANTINE, TOWNSITE OF 1497

BALMORHEA PROJECT, Texas
Deferment of construction charges. See WATER CONSERVATION AND UTILIZATION ACT.
Miscellaneous references to 675, 1338

BAMFIELD RESERVOIR 2445

BANDON, Oregon 2507

BANKHEAD-JONES FARM TENANT ACT
Miscellaneous references to 520
Statutory references to 855, 981, 1120, 1223, S195

BANKS EQUALIZING RESERVOIR 1583

BARANOF ISLAND 1892

BARKMAN RESERVOIR 3306

BARKMAN CREEK 3306

BARNESTOWN, Nebraska 2651

BARRON FORK CREEK 2445

BARTLETT DAM 3128
Bartlett Dam agreement 3582
Statutory references to 3582

BASALT MIDDLE PARK PROJECT. See MIDDLE PARK PROJECT

BASALT PROJECT, Colorado
Expedition of feasibility report required 1670

BASIC MANAGEMENT, INC. 1193, 1853, 1873

BASIC MAGNESIUM PROJECT 897

BASIN ACCOUNTS. See BONNEVILLE POWER ADMINISTRATION; CENTRAL VALLEY PROJECT; COLORADO RIVER DAM FUND; COLORADO RIVER DEVELOPMENT FUND; COLUMBIA BASIN LAND DEVELOPMENT ACCOUNT; COLUMBIA RIVER POWER SYSTEM; MISSOURI RIVER BASIN PROJECT; UPPER COLORADO RIVER DEVELOPMENT FUND.

BATTLE MESA PROJECT, Colorado
Expedient completion of planning report directed 1249

BAYOU BARTHOLOMEW 3309

BAYOU MACON 3309

BEAR CREEK, Alaska 2439

BEAR LAKE 1398, 3182, 3189, 3190, 3191

S1133
INDEX TO VOLUME V AND SUPPLEMENT II

BEAR RIVER, California 979
BEAR RIVER, Idaho, Utah, and Wyoming 3182
BEAR RIVER CANAL 3186
BEAR RIVER COMMISSION 1401, 3185
BEAR RIVER COMPACT
Consent to negotiate 835
Text 1398
Text of amended compact 3182
BEAR RIVER MIGRATORY BIRD REFUGE 2301
BEAR RIVER PROJECT, Idaho-Utah Completion of studies of first phase authorized 1887
Feasibility study authorized 1891
BEASLEY ENGINEERING COMPANY 2552
BEATTY, Nevada 2478
BEAVER CREEK RESERVOIR, Montana 353
BEAVER CREEK, Alaska 2439
BEAVER CREEK, Kansas-Nebraska 741, 1894
BEAVER CREEK, Oklahoma 1737, S347
BEAVER CREEK, Utah-Wyoming 918
BEAVER DAM, Arkansas 801
BEAVERHEAD VALLEY 1351
BECKWITH QUINN WEST SIDE CANAL 3186
BECKWOURTH, California 2430
BELLE FOURCHE RIVER COMPACT
Text 777
BELLE FOURCHE, South Dakota 2911
BELLE FOURCHE DAM 2911
BELLE FOURCHE IRRIGATION DISTRICT 376, 984, 1129, 2911, S196
BELLE FOURCHE PROJECT, South Dakota
Amended contract approved 984
Certain administrative costs nonreimbursable 1129
Improvements authorized for safety of Belle Fourche Dam 2911
Lands in townsit of Newell set apart for administrative purposes 228
Reduction and suspension of construction charges 357
Rehabilitation Authorized 3376
Amendatory Contract 3377
Amendments 3376, 3377, 3379, 4034

S1134
INDEX TO VOLUME V AND SUPPLEMENT II

Statutory references to

4034  Repayment contract required for drainage works  399

BELTON RESERVoir  832

BENBROOK LAKE  3325

BENCH IRRIGATION DISTRICT  1080

BESSEMER DITCH
  Authorization  3197
  Amendment  S1083, 3613

BESSEMER IRRIGATING DITCH COMPANY  3197

Bessie, Oklahoma  2349

BIG BEND DAM  1425

BIG BLUE RIVER  1892, 2647

BIG BLUE RIVER BASIN  2647

BIG BLUE RIVER COMPACT
  Consent to negotiate  1532

See KANSAS-NEBRASKA BIG BLUE RIVER COMPACT

BIG CREEK, Kansas  1888

BIG CREEK LANDING  2447

BIG FLAT IRRIGATION DISTRICT  1746

BIG FLAT UNIT, Missoula Valley project  1746

BIG HOLE RIVER  1888

BIG HORN RIVER  1063, 1893, S159, S206

BIGHORN CANYON NATIONAL RECREATION AREA
  Authorized  1904

BIG HORN DIVISION, MRB, Wyoming
  Shoshone extension unit
  Feasibility study authorized  1891

BIG ISLAND  2430

BIG JIMMY CREEK  1207

BIG PINE CREEK  3305

BIG PINE LAKE  3305

BIG SANDY RIVER  2869

BIG SANDY RIVER SALINITY CONTROL STUDY  3220

BIG SIOUX RIVER BASIN  2478

S1135
INDEX TO VOLUME V AND SUPPLEMENT II

BIG SPRING CREEK 1207
BIG THOMPSON RIVER 2445
   See COLORADO-BIG THOMPSON PROJECT.
BIG WOOD RIVER BASIN 1892
BIG WOOD DIVISION, Upper Snake River project 1892
BILLINGS PUMP UNIT, MRB 1892
BILLINGS MUNICIPAL WATER SUPPLY UNIT, P-SMBP, Yellowstone division 2643
BIRCH CREEK, Alaska 2439
BIRCH CREEK, Utah, Wyoming 918
BIRCH RIVER, West Virginia 2448
BITTER ROOT PROJECT, Montana 926
   Amended contract approved; earlier acts for rehabilitation of project repealed
   Certain administrative costs nonreimbursable 1129
   Rehabilitation of, authorized 475, 526
BITTER ROOT IRRIGATION DISTRICT 475, 526, 926, 1129, S180
BLACK BUTTE DAM AND RESERVOIR 809, 2549
BLACK CANYON DAM, Boise project 453
BLACK CANYON IRRIGATION DISTRICT, Idaho 1189
BLACK CANYON POWER PLANT, Boise project 352
BLACK CANYON UNIT, Boise project 202
BLACK CANYON, Colorado River 414, 848
BLACK CANYON OF THE GUNNISON NATIONAL MONUMENT 2445
BLACK CREEK, Mississippi 2447
BLACK CYPRESS DAM 3308
BLACK RAPIDS, Alaska 2439
BLACK RIVER, Arizona 1890
BLACK RIVER-SPRINGERVILLE-SAINT JOHNS PROJECT, Arizona 1890
   Feasibility study authorized
BLACK RIVER, Texas 392
BLACKFEET INDIANS 1522
   Compensation to John W. Wagner for lands on Blackfeet Reservation acquired by
   Bureau of Reclamation 1016
   Miscellaneous references to 635
   Relief to Henkel for seepage damage to lands on Blackfeet Indian Reservation 1522
   Relinquishment, in favor of Tribe, of lands acquired for reclamation purposes 588

S1136
INDEX TO VOLUME V AND SUPPLEMENT II

BLACKFOOT RESERVATION S24
BLACKWOOD CREEK 741
BLAINE COUNTY, Idaho 2928
BLAINE COUNTY, Oklahoma 2771
BLAKELY MOUNTAIN DAM 801
BLANCO RIVER 1660, 1662
BLOMGREN, W. E. 2468, 2473
BLUE DIVISION, MRB, Nebraska
  Feasibility studies of Little Blue and Sunbeam units authorized 1892
BLUE RAPIDS, Kansas 2648
BLUE RIVER 3304
  See also Big Blue River; Little Blue River.
BLUE RIVER, Colorado 1258
BLUE RIVER CORRIDOR 2918
BLUESTONE PROJECT, Colorado
  Expeditions completion of planning report directed 1249
BLUESTONE RIVER 2447
BOARD OF SURVEY AND ADJUSTMENTS 357
BOARD OF LAND COMMISSIONERS, Idaho 2438
BOCA DAM AND RESERVOIR 712, 713
BOEUF RIVER 3309
BOGGY RIVER 3304
Bois D'Arc Creek 3305
BOISE AND ARROWROCK RAILROAD 657
BOISE COUNTY, Idaho 3216
BOISE NATIONAL FOREST 1483

BOISE PROJECT, Idaho-Oregon
  Allocation to, of power revenues from Minidoka project 352
  Amended contract approved 1189
  Drainage works 259, 300, 305, 312
  Expenditures for extensions of project 242
  Extension of Boise and Payette National Forests 1485
  Lake Lowell shoreline, Land conveyance 3380
  Miscellaneous references to 297
  Power and Modification Study authorized 3216
  Power revenues, application of 453, 1189
INDEX TO VOLUME V AND SUPPLEMENT II

Purchase of improvements on public lands for Anderson Ranch Reservoir 827
Relinquishment of certain Ridenbaugh or Nampa and Meridian irrigation district water rights 450
Repayment contract required 259
Repayment of costs of repair and enlargement of Arrowrock Dam 683
Reservation for park and community center 202
Reservation of storage capacity in Cascade Reservoir for other irrigation and power development 715
Sale of Boise and Arrowrock Railroad 657
Substitution of Anderson Ranch for Twin Springs Dam 684
Suspension of construction charges 358

BOISE RIVER 684, 833, 1189, S164

BOISE RIVER BASIN 833

BOKE, RICHARD L. 894

BOLSA ISLAND 2329

BONANZA CREEK 2438

BONDS. See BONNEVILLE POWER ADMINISTRATION; TAXATION.
Construction. See CONSTRUCTION.
Retirement of bonds issued by irrigation and other districts
Bitter Root Irrigation District 475, 526
Fort Sumner Irrigation District 963
Gila Valley Power District and Mohawk Municipal Water Conservation District 859
Kennewick Irrigation District 458
Maxwell Irrigation Company 1037, 1153
Middle Rio Grande Conservancy District 902

BONNEVILLE BASIN, Utah 1893, 2502, S249

BONNEVILLE DAM 568, 1579

BONNEVILLE POWER ADMINISTRATION
Authority, generally. See BONNEVILLE PROJECT ACT; FEDERAL COLUMBIA RIVER TRANSMISSION SYSTEM ACT; PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT.
Administrator designated chairman of U. S. Entity for Columbia River Treaty 1600
Allocation of interest on power sales from Grand Coulee Dam 856
Canadian entitlement power. See CANADIAN ENTITLEMENT EXCHANGE AGREEMENTS; COLUMBIA RIVER TREATY.
Avondale, Dalton Gardens and Rathdrum Prairie projects, Idaho 1615
Crooked River project (from The Dalles Dam) 1341
Columbia River Power System. See COLUMBIA RIVER POWER SYSTEM.
Designated as marketing agent for all Federal power generated in the Pacific Northwest 2890
Designated as marketing agent for Grand Coulee Dam 539
Environmental impact statements 2496, 2498, 2500, 2501, 2503, 2504, 2505, 2507
Established 568
Excess power sale of 4065, 4066
Funds for wood-derived fuel program 3324
Hanford reactor and power exchange 1685
Hydrothermal power program 2480, 2504, 2547, S111, S112, S113, S115

S1138
INDEX TO VOLUME V AND SUPPLEMENT II

Intertie. See PACIFIC NORTHWEST-PACIFIC SOUTHWEST INTERTIE.
Irrigation pumping power. See also CHIEF JOSEPH DAM PROJECT; COLUMBIA RIVER POWER SYSTEM.
    Oroville-Tonasket unit, Chief Joseph Dam project 1695
    Western Division, The Dalles project 1554
Lower Teton division, Teton Basin project (from Idaho projects) 1796
Marketing area 1760
Mann Creek project (from Southern Idaho system) 1668
Manson unit, Chief Joseph Dam project 1894
Purchase of power from Priest Rapids Dam 1155
Power revenues of, to pay certain irrigation costs. See also CHIEF JOSEPH DAM PROJECT; COLUMBIA RIVER POWER SYSTEM.
Rates and charges. See BONNEVILLE PROJECT ACT; COLUMBIA RIVER POWER SYSTEM.
Rates and reimbursement. See also POWER.
    Generally 2890, 3256
    Regional preference 1760
    Regional planning 3229
Revenue bonds 2893, 2895, 3263
Statutory references to S845-S847
Transfered to Department of Energy 3056
Transmission system. See FEDERAL COLUMBIA RIVER TRANSMISSION SYSTEM.
Tualatin project 1899
Upper Division, Baker project (from McNary Dam) 1687
Western Division, The Dalles project 1554

BONNEVILLE POWER ADMINISTRATION FUND
    Established 2892
    Statutory references to 2931, 2942, 3125, 3214, 3240, 3263, 3324, 3125, 3366, 4067

BONNEVILLE POWER ADVISORY BOARD 570

BONNEVILLE PROJECT ACT
    Amendments of 1871
    Marketing of power from Army dams on Snake River 813
    Miscellaneous references to 1758
    Statutory references to 1155, 4066
    Text 568

BONNEVILLE PROJECT ACT OF 1937
    Annotations of S111-117
    Procurement procedures S579
    Statutory references to 2893, 3056, 3242, 3243, 3247, 3261, 3265, 3267

BONNEVILLE UNIT, CUP 2496, 2497, 2502, 2657, S36, S249

BOSTWICK PARK PROJECT, Colorado
    Authorized 1248, 1774

BOSTWICK DIVISION. MRB, P-SMBP, Kansas-Nebraska
    Contract extension 4103, 4084
    Scandia unit
    Feasibility study authorized 1893

BOSWELL, Oklahoma 3304

BOULDER CANYON PROJECT ACT OF 1928
    Annotations of S89-S92

S1139
INDEX TO VOLUME V AND SUPPLEMENT II

Amendments of
Generally. See BOULDER CANYON PROJECT ADJUSTMENT ACT, Hoover Power Plant Act of 1984. Sections 2(b) & (3) S839, 3404
Section 9 821
"Present perfected rights" 431, 445, 1853, 2401, S77, S90
Statutory references to 538, 564, 599, 664, 685, 697, 791, 828, 848, 858, 861, 1021, 1057, 1085, 1135, 1211, 1255, 1257, 1258, 1473, 1664, 1665, 1673, 1674, 1769, 1852, 1853, 2407, 2413, 2420, 2421, 2862, 2872, 3404, 3530, 3642
Text 414

BOULDER CANYON PROJECT, Arizona-California-Nevada
Adjustments for costs of Boulder City 790
All-American Canal. See ALL-AMERICAN CANAL.
Annual justification to appropriations committees of allocation of expenditures between project and Federal activities at Boulder City required 695
Appropriation act language 477, 895, 1021
Appropriations for school, hospital, and recreation grounds in Boulder City 715
Authorized 414
Boulder Canyon Project Adjustment Act 697
Boulder Dam renamed Hoover Dam 848
Colorado River Dam Fund. See COLORADO RIVER DAM FUND.
Colorado River Development Fund not a limit on investigation and construction of projects in Basin States 874
Lease of reserved lands in Boulder City 685, 869
Lining of Coachella Canal authorized 2862
Modification of Hoover powerplant
Feasibility study authorized 2928
Power revenues, application of 548, 619
Recreational area
Appropriations to National Park Service for 549
National recreation area. See LAKE MEAD NATIONAL RECREATION AREA.
Sale of houses in Boulder City 869
School assistance 418, 457, 619, 868, 895
Study of, authorized 253

BOULDER CANYON PROJECT ADJUSTMENT ACT
Amendments of
Requirement for annual report repealed 1200
Section 1 S857, 3405
Section 2 873, S858, 3405
Section 2(e) added 868, S858, 3405
Section 6 S858, 3406
Section 12 S859, 3406
Statutory references to 791, 861, 895, 1135, 1255, 1257, 1258, 1472, 1665, 1673, 1674, 2419, 2420, 2421, 2872, 3405, 3530
Text 697

BOULDER CITY, Nevada 685, 715, 790, 825, 869, 895, 1472, 2923

BOULDER CITY ACT OF 1958
Amendment of S290
Repeal of reporting requirement 2923
Text 1472

S1140
INDEX TO VOLUME V AND SUPPLEMENT II

BOULDER CITY CEMETERY ACT
   Text 825

BOULDER CITY SCHOOL DISTRICT 619, 700, 868

BOULDER CITY MUNICIPAL FUND 1477

BOULDER, Colorado 2478

BOULDER DAM 413, 414, 548, 894, 697

BOULDER POWER PLANT 702

BOUNDARY INTEGRATION TRANSMISSION LINE 3366

BOUNDARY WATERS CANOE AREA 1783

BOUNDARY WATERS TREATY. See TREATIES AND CONVENTIONS.

BOUNTIFUL, Utah S254

BOWDOIN, TOWN SITE OF 391

BOX CANYON DAM 1579

BOYLE COMMISSION COMPANY 356

BOYSEN RESERVOIR 2504, 2506, S55, S132, S135, S159, S160, S166, S206

BOYSEN UNIT, MRB, Wyoming
   Acquisition of Indian lands authorized 1109

BPA. See BONNEVILLE POWER ADMINISTRATION.

BRADLEY LAKE PROJECT, Alaska 1704
   Authorization terminated S341

BRANTLEY PROJECT, New Mexico
   Feasibility study authorized 1891
   Authorized 2752
   Increased appropriations authorized 3219

BRAXTON COUNTY, West Virginia 2448

BRAYS LANDING UNIT, Greater Wenatchee division 1415

BRAZOS RIVER BASIN 832

BRIDGE CANYON 424

BRIDGEPORT IRRIGATION DISTRICT 550, 726

BRIDGES
   Across Colorado River near Glen Canyon Dam 1317
   Across Colorado River near Needles 1612
   Across Columbia River at Kettle Falls 665
   Across Columbia River connecting Lewiston and Clarkston S162
   Damages to 209
   Use of Federal dams for public highways 1448, S287

S1141
INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Term</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>BRIGGS, ELVIE</td>
<td>1311</td>
</tr>
<tr>
<td>BRINGLE LAKE</td>
<td>3306</td>
</tr>
<tr>
<td>BRISTOL BAY COOPERATIVE REGION PLAN</td>
<td>2449</td>
</tr>
<tr>
<td>BRITISH COLUMBIA HYDRO AND POWER AUTHORITY</td>
<td>1584, 1588, 1592, 1593</td>
</tr>
<tr>
<td>BROADWATER COUNTY</td>
<td>895, 1233</td>
</tr>
<tr>
<td>BRODY, RALPH M.</td>
<td>S83, S85</td>
</tr>
<tr>
<td>BROKEN BOW DAM</td>
<td>801, 3305</td>
</tr>
<tr>
<td>BROWN COUNTY, South Dakota</td>
<td>3207</td>
</tr>
<tr>
<td>BROWN UNIT, Fort Belknap Indian irrigation project</td>
<td>2516</td>
</tr>
<tr>
<td>BROWNELL, HERBERT</td>
<td>2874, 2875</td>
</tr>
<tr>
<td>BROWNLEE DAM</td>
<td>1579</td>
</tr>
<tr>
<td>BRUNEAU RIVER</td>
<td>2444</td>
</tr>
<tr>
<td>BRUNEAU DIVISION, Southwest Idaho Water Development project</td>
<td>1893</td>
</tr>
<tr>
<td>BRUNER CREEK</td>
<td>3184, 3187</td>
</tr>
<tr>
<td>BRUSHY CREEK</td>
<td>2447, 3305</td>
</tr>
<tr>
<td>BUCHANAN DAM</td>
<td>2832</td>
</tr>
<tr>
<td>BUCHANAN DAM AND RESERVOIR</td>
<td>1702</td>
</tr>
<tr>
<td>BUCK MOUNTAIN</td>
<td>447</td>
</tr>
<tr>
<td>BUCK CREEK</td>
<td>3303</td>
</tr>
<tr>
<td>BUCKLEY-SUMMER LAKE TRANSMISSION LINE</td>
<td>3214</td>
</tr>
<tr>
<td>BUCKWORTH, California</td>
<td>2440</td>
</tr>
<tr>
<td>BUDGET AUTHORITY</td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>S431</td>
</tr>
<tr>
<td>Rescission or deferral of. See IMPOUNDMENT CONTROL ACT OF 1974.</td>
<td></td>
</tr>
<tr>
<td>BUDGET</td>
<td></td>
</tr>
<tr>
<td>Terms and procedures</td>
<td>2877, S431, S502</td>
</tr>
<tr>
<td>BUDGET AND ACCOUNTING PROEDURE ACT OF 1950</td>
<td></td>
</tr>
<tr>
<td>Statutory references to</td>
<td>3072</td>
</tr>
<tr>
<td>BUDGETING AND ACCOUNTING ACT OF 1921</td>
<td></td>
</tr>
<tr>
<td>Statutory references to</td>
<td>1835, 2878</td>
</tr>
<tr>
<td>BUENA VISTA WATER STORAGE DISTRICT</td>
<td>S270</td>
</tr>
<tr>
<td>BUFFALO RIVER, Tennessee</td>
<td>2444</td>
</tr>
<tr>
<td>BUFFALO RAPIDS PROJECT, Montana</td>
<td></td>
</tr>
<tr>
<td>Completion of construction authorized</td>
<td>972</td>
</tr>
</tbody>
</table>

S1142
INDEX TO VOLUME V AND SUPPLEMENT II

Deferment of construction charges. See WATER CONSERVATION AND UTILIZATION ACT
Miscellaneous references to 317

BUFFALO CREEK 741

BUFFALO BILL DAM AND RESERVOIR
  Amendments S1089, 3812 3458
  Appropriations, supplemental 2640
  Conveyance of certain public land 2478
  Feasibility studies authorized 3332, S1089-S1091
  Statutory references to 3812

BUFFORD-TRENTON IRRIGATION DISTRICT 1349

BUFFORD-TRENTON PROJECT, North Dakota.
  Acquisition of land of, for Garrison reservoir 1349
  Cancellation of charges and sale of property 389
  Deferment of construction charges. See WATER CONSERVATION AND UTILIZATION ACT
  Funds for emergency flood protection and minor completion work 1115

BUILDING MATERIALS (earth, gravel, sand, stone, timber, etc.)
  Receipts from sales of 102
  Removal of, from reclamation project lands
    Authorized, generally 46, 656
  Removal of, from public lands and national forests, generally
    For construction of private canals and ditches 23
    For construction of reclamation projects 94, 168
  Timber and Stone Act
    Miscellaneous references to 42

BULL LAKE DAM AND RESERVOIR 680

BULL LAKE CREEK 680

BULLFROG BASIN 2768

BULLS SHOALS DAM 801

BULLSHEAD DAM 716

BULLY CREEK EXTENSION, Vale project 1492

BUMPING LAKE ENLARGEMENT, Yakima project 1887

BULLY CREEK DAM AND RESERVOIR 1492

BUMPING RIVER 1887

BUREAU OF BIOLOGICAL SURVEY 509

BUREAU OF FISHERIES 509, 602

BUREAU OF LAND MANAGEMENT
  Authority of. See FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976.
  Colorado River Basin Salinity Control Projects

S1143
INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inter agency cooperation</td>
<td>2867, 2869, S1042</td>
</tr>
<tr>
<td>Water rights</td>
<td>S1, S2</td>
</tr>
<tr>
<td><strong>BUREAU OF MINES</strong></td>
<td>845</td>
</tr>
<tr>
<td><strong>BUREAU OF RECLAMATION</strong></td>
<td></td>
</tr>
<tr>
<td>Commissioner, See COMMISSIONER OF RECLAMATION</td>
<td></td>
</tr>
<tr>
<td>Delegation, See DELEGATION OF AUTHORITY</td>
<td></td>
</tr>
<tr>
<td>Foreign countries, authority to work in</td>
<td></td>
</tr>
<tr>
<td>Detail of J. L. Savage to governments of Australia and Punjab, India</td>
<td>687</td>
</tr>
<tr>
<td>Generally</td>
<td>69</td>
</tr>
<tr>
<td>Headquarters</td>
<td>325, 334, 3562</td>
</tr>
<tr>
<td>Organizational history</td>
<td>86</td>
</tr>
<tr>
<td>Powers of, vested in Secretary of the Interior</td>
<td>1005</td>
</tr>
<tr>
<td>Power marketing function transferred to Department of Energy</td>
<td>3057</td>
</tr>
<tr>
<td>Water rights</td>
<td>S1, S2</td>
</tr>
<tr>
<td><strong>BURLEY IRRIGATION DISTRICT</strong></td>
<td>352, 1655</td>
</tr>
<tr>
<td>Conveyance of Minidoka Project facilities</td>
<td>4126</td>
</tr>
<tr>
<td><strong>BURNT RIVER, Oregon</strong></td>
<td>1889</td>
</tr>
<tr>
<td><strong>BURNT FORK</strong></td>
<td>918</td>
</tr>
<tr>
<td><strong>BURNT RIVER PROJECT, Oregon</strong></td>
<td></td>
</tr>
<tr>
<td>Dark Canyon division</td>
<td></td>
</tr>
<tr>
<td>Feasibility study authorized</td>
<td>1889</td>
</tr>
<tr>
<td><strong>BUSTAMANTE, ANDRES</strong></td>
<td>S88</td>
</tr>
<tr>
<td><strong>BUTTE COUNTY</strong></td>
<td>1033</td>
</tr>
<tr>
<td><strong>BUTTE VALLEY</strong></td>
<td>1366</td>
</tr>
<tr>
<td><strong>BUTTE VALLEY DIVISION, Klamath Project</strong></td>
<td>2643</td>
</tr>
<tr>
<td><strong>BUTTES DAM AND RESERVOIR</strong></td>
<td>1425, 2398</td>
</tr>
<tr>
<td><strong>BUTTON WILLOW IMPROVEMENT DISTRICT</strong></td>
<td>S270</td>
</tr>
<tr>
<td><strong>BUY AMERICAN ACT</strong></td>
<td></td>
</tr>
<tr>
<td>Text</td>
<td>1987, S568</td>
</tr>
<tr>
<td><strong>BYRON PUMPING PLANT</strong></td>
<td>3328</td>
</tr>
<tr>
<td><strong>BYRON DAM AND RESERVOIR</strong></td>
<td>3328</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>C</strong></td>
<td></td>
</tr>
<tr>
<td>CABALLO DAM AND RESERVOIR</td>
<td>99, 100, 536, 543, 564, 804, 902, 1667, 1805, 1891</td>
</tr>
<tr>
<td>CABAZON INDIAN RESERVATION</td>
<td>1457</td>
</tr>
<tr>
<td>CABEZA PRIETA GAME RANGE</td>
<td>1679</td>
</tr>
<tr>
<td>CABINET COUNCIL ON NATURAL RESOURCES</td>
<td>3331</td>
</tr>
<tr>
<td>CABINET GORGE</td>
<td>35</td>
</tr>
</tbody>
</table>

S1144
INDEX TO VOLUME V AND SUPPLEMENT II

CABINET GORGE DAM 1579
CABRILLO LAND COMPANY 1315
CACAPON RIVER 2447
CACHE CREEK, Oklahoma 2765
CACHE CREEK BASIN, California 1856
CACHE NATIONAL FOREST 1720
CACHE LA Poudre RIVER 2445, 2478
CACHE CREEK PROJECT, Oklahoma Feasibility study authorized 2765
CACHUMA UNIT, Santa Barbara County project 659, 975
See also SANTA BARBARA COUNTY WATER AGENCY.
CADDIO LAKE 3307
CADDIO RIVER 3309
CADDIO RESERVOIR 1855
CADDIO RESERVOIR PROJECT 932
CAHABA RIVER 2445
CALAMUS RIVER 2759
CALAMUS DAM AND RESERVOIR 2758
Renamed Virginia Smith Dam and Calamus lake Recreation Area 3650
CALAPOOIA DIVISION 2478
CALAPOOIA RIVER BASIN 2478
CALAVERAS COUNTY, California 1702, 3339
CALAVERAS RIVER 810
CALEXICO-MEXICALI SANITATION PROJECT Authorization explained 1030
CALIFORNIA AQUEDUCT 1530
CALIFORNIA DEPARTMENT OF TRANSPORTATION 3296
CALIFORNIA DESERT CONSERVATION AREA 2987
Desert ranger force 2987
Established 3011
CALIFORNIA DESERT CONSERVATION AREA ADVISORY COMMITTEE 3012
CALIFORNIA ELECTRIC POWER COMPANY 430
CALIFORNIA ENVIRONMENTAL QUALITY ACT 3294

S1145
INDEX TO VOLUME V AND SUPPLEMENT II

CALIFORNIA LIMITATION ACT. See CALIFORNIA, STATE OF

CALIFORNIA OREGON POWER COMPANY 96, 97, 361, 1578

CALIFORNIA PACIFIC UTILITIES COMPANY 430

CALIFORNIA RESOURCES AGENCY 2484

CALIFORNIA SLUICEWAY 415

CALIFORNIA SLUICEWAY CHANNEL S14, S89

CALIFORNIA, STATE OF
Apportionment by Congress of Colorado River water among three lower basin States 420, 427
Compacts of. See ARIZONA-CALIFORNIA BOUNDARY COMPACT; COLORADO RIVER COMPACT; Klamath River Basin Compact; Truckee, Carson and Walker Rivers Lake Tahoe Compact, and Tahoe Regional Planning Compact.
Department of Water Resources 1454
Desert Land Act applies 13
Executive Order No. 6910 and Taylor Grazing Act apply 515
Lands ceded by, for Klamath project subject to reclamation laws 788
Legislation of, ceding lands exposed by lowering of Lower Klamath, Tule and Goose Lakes 95
Limitation Act
Described 421
Statutory references to 1057, 1212
Proceeds of public lands sales 32
Projects in. See individual dams and projects by name.
Quitclaim to, of lands of Goose Lake 723
Reclamation Act applies 31
San Felipe division, contract for water delivery 2334
School lands 44
State water plan 1524, 1530, 1850, 2334, S405
State water project 2334, S235, S862, 3611
Suit re ceded Klamath project lands authorized 307
Water Rights Board 586

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD S338, S340

CALIFORNIA TAHOE REGIONAL PLANNING AGENCY 3285

CALIFORNIA-PACIFIC UTILITIES COMPANY 2505, S4, S129

CALIFORNIA WATER RESOURCES DEVELOPMENT SYSTEM 1525

CAMBRIDGE INDIAN IRRIGATION PROJECT 1664

CAMELSBACK RESERVOIR 1425

Cameron County 1505

Camp Creek 978

Camp Verde, Arizona 2447

Campbell County, South Dakota 3207

S1146
INDEX TO VOLUME V AND SUPPLEMENT II

CAMPBELL COUNTY, Wyoming 2771

Camps, Construction. See Construction

Canada
   Miscellaneous references to S402
   Seasonal diversity exchange with 3165
   Treaties and conventions with. See Columbia River Treaty. Treaties and Conventions.

Canadian Entitlement Exchange Agreements 662, 1586, 1598, 1764

Canadian Entitlement Purchase Agreement 1588, 1593

Canadian River Commission
   Established 1077

Canadian River Compact
   Consent to negotiate 1001
   Statutory references to 1048
   Text 1075

Canadian River, Oklahoma 1886, 2771, 2773

Canadian River Project, Texas
   Authorized 1048
   Creation of Alibates Flint Quarries, etc., National Monument 1846
   Lake impounded by Sanford Dam named Lake Meredith 1845
   Prepayment Act 4123
   Recreation development, at Sanford Reservoir area authorized 1759
   Statutory reference 3723

Canadian River Project

Canadian River, Upper, New Mexico 2928

Canal Act
   Annotations of S9, S354
   Miscellaneous reference to 2619
   Payment of compensation for rights-of-way reserved under 1766
   Statutory references to 1418, 1497
   Text 17

Canal Flats, Canada 1568

Canals and Ditches. See Claims Against United States; Indian Lands; National Parks; Rights of Way and Easements.

Cannon, Clarence, Dam 801

Cannonball Division, MRB, North Dakota
   Mott unit
   Feasibility study authorized 1891

Cannonball River 1891

Canton Reservoir 832, 901, 1002

S1147
INDEX TO VOLUME V AND SUPPLEMENT II

CANTON PROJECT, Oklahoma
   Additional studies authorized 1886

CANYON COUNTY, Idaho 3216

CANYON FERRY DAM AND RESERVOIR 895, 1233, 1763, 1888

CANYON FERRY UNIT, MRB, Montana
   Excluded from Pacific Northwest Power Marketing Act 1763
   Maximum reservoir normal pool elevation limited until facilities provided to irrigate lands in Broadwater County 895

CANYON LANDS NATIONAL PARK S382

CANYON LANDS NATIONAL PARK 1799

CAP. See CENTRAL ARIZONA PROJECT.

CAPITAL INVESTMENT PROGRAM (Capital budget) S503
   See WORKING CAPITAL FUND.

CARBON COUNTY, Utah 3220

CARBON COUNTY, Wyoming 3216

CAREY ACT
   Miscellaneous references to 55
   Sec. 4, as amended. S11
   Statutory references to 166, 242, 714
   Text 25

CARIBOU NATIONAL FOREST 1442, S286

CARRSDAD, CITY OF 1314

CARRSDAD IRRIGATION DISTRICT 1314, 1392, 1800

CARRSDAD PROJECT, New Mexico
   Appropriations for public use facilities at Alamogordo Dam 1317
   Authorization explained 667
   Expenditures for increasing spillway of Alamogordo Dam made nonreimbursable 1142
   Flood control included as a purpose of Alamogordo Dam 667
   Name of Alamogordo Dam and Reservoir changed to Sumner Dam and Lake Sumner 1319
   Reduction and suspension of construction charges 358
   Relocation of Atchison, Topeka & Santa Fe Railway System tracks and right of way 453
   Transfer of irrigation storage from Alamogordo Reservoir to Los Esteros Reservoir 1216

CARRTON DIVISION, Willamette River project 1889

CARPINTERIA COUNTY WATER DISTRICT 585

CARR, JUDGE FRANCIS, POWERHOUSE 1765

CARSON CITY, Nevada 3277, 3279, 3281, 3287, 3288, 3296

CARSON COUNTY, Texas 3216

CARSON RIVER 453, 1232, 1319, 1890

S1148
INDEX TO VOLUME V AND SUPPLEMENT II

| CARTERS DAM  | 2504 |
| CASA GRANDE NATIONAL MONUMENT | 288 |
| CASCADE RESERVOIR | 715, 1486 |
| CASCADE IRRIGATION DISTRICT, Washington | 2547 |
| CASCADE RIVER | 2434, 2445 |
| CASE AMENDMENT | 1425 |
| CASE-WHEELER ACT. See WATER CONSERVATION AND UTILIZATION ACT. |
| CASES. See COURT DECISIONS. |
| CASITAS DAM AND RESERVOIR | 1245 |
| CASITAS MUNICIPAL WATER DISTRICT | 2907 |
| CASPER-ALCOVA IRRIGATION DISTRICT | 1389 |
| CASPER-ALCOVA PROJECT, Wyoming |
| Name changed from Kendrick Project | 566 |
| Study authorized | 315 |
| Water rights of Jackson County, Colorado, recognized | 566 |
| CASSIA COUNTY, Idaho | 2928 |
| CASTLE CREEK, Colorado | 1670 |
| CATHERINE CREEK DAM AND RESERVOIR | 1856 |
| CATOOSA WILDLIFE MANAGEMENT AREA | 2432 |
| CEDAR BLUFF UNIT, P-SMBP, Kansas |
| Authorization to reformulate | 3870 |
| CEDAR CITY | 1768 |
| CEDAR RAPIDS DIVISION, MRB, Nebraska |
| Completion of studies authorized | 1888 |
| CEDAR RIVER, Nebraska | 1888 |
| CEDARVILLE, California | 3324 |
| CENTER HILL DAM | 801 |
| CENTRAL ARIZONA IRRIGATION AND DRAINAGE DISTRICT, Arizona | 3609 |
| CENTRAL ARIZONA PROJECT, Arizona-New Mexico |
| Authorized | 2398 |
| Cliff Dam and Plan B features | 3559 |
| Distribution system contracts | 3611 |
| Hooker Dam or alternative | 3459 |
| Miscellaneous references to | 424, S130, 3611 |
| Power revenues authorized for San Carlos Irrigation Project | 3649 |
| Siphon repair and replacement | 3986 |

1149
INDEX TO VOLUME V AND SUPPLEMENT II

Site specific environmental impact statement for a feature deemed adequate 3105
Special provision relating to excess lands under recordable contract 3343
Statutory references to 2858, 3200, 3557, 3707
Tucson Aqueduct System Reliability investigation 4083

CENTRAL ARIZONA WATER CONSERVATION DISTRICT 2407

CENTRAL DAKOTA NURSING HOME 2635

CENTRAL DIVISION, Deschutes project 1889

CENTRAL OKLAHOMA MASTER CONSERVANCY DISTRICT 2949

CENTRAL OREGON IRRIGATION DISTRICT 3076, 3125, S271

CENTRAL UTAH PROJECT, Utah

Application of the Warren Act 4022
Bonneville unit 2657, 3619
Miscellaneous references to S36
Increased appropriations authorized 1249
Jensen unit 2496, 2497, 2502, S249
Statutory references to 3619, 3816
Uintah Unit
Authorized 2416, S247
Construction funds denied 3124
Discount rate 2841
Feasibility study of unit authorized 1891
Increased appropriations authorized 2555
Preconstruction requirements repealed 3221
Ultimate Phase 1891
Upalco unit
Construction funds denied 3124
Ute Indian unit
Expeditious completion of planning report directed 2417, S251
Vernal Unit
Drainage facilities authorized 2910

CENTRAL UTAH PROJECT COMPLETION ACT. See Titles II through IV, Reclamation Projects
Authorization and Adjustment Act of 1992
Amendments 3836, 3839, 4023, 4095
Statutory references 4023, 4095
Text 3813

CENTRAL VALLEY, California 1758

CENTRAL VALLEY BASIN 1890

CENTRAL VALLEY PROJECT, California

Acquisition of Indian lands authorized 719
Advance of funds by Westlands Water District 2479
Amendments 711, S852, S855, S966, 3512-3514, 3959
See Reauthorization below.

S1150
INDEX TO VOLUME V AND SUPPLEMENT II

American River development
Authorized 978
Auburn-Folsom South unit, American River division
Authorized 1847
Annotations of opinions concerning S405
Cost sharing agreements required 3725
Foresthill Bridge S344
Miscellaneous references to S137, S283
Road relocation 2815
Authorizing Act 583
Supplementary provisions 978, 1032, 1191, 1235, 1524, 1701, 1847, S852,
Authorization of, explained 584
Black Butte Dam and Reservoir
Financially and operationally integrated with CVP 2549
Buchanan Dam and Reservoir
Irrigation repayment to be financially integrated into CVP 1702
Claims for levee damage from Shasta Dam operations, May, 1948 1144
Conveyance of lands to Churntown Elementary School District 924
Conveyance of lands to Summit City Public Utility District 2467
Coordinated Operations Policy S852, 3512
Coordinated Operations Agreement S584, 3513, 3945, 3960
Miscellaneous references S882, S855, S875, S877
Statutory references 3741, 3933, 3945, S1105
Cosumnes River division
Completion of studies of initial phase authorized 1887
Feasibility study of Fair Play unit authorized 1890
Delta division
Completion of studies of peripheral canal and Kellogg unit authorized 1887, 3217,
S1082
Feasibility study of Montezuma Hills unit authorized 2643
Pumping operations S118, S119
Distribution systems
Distribution systems authorized 711
Miscellaneous references to S236, S855
Documents 584
East Side division
Additional capacity authorized in Folsom South Canal to provide for future construction
of East Side division 1848
Completion of studies of initial phase authorized 1887
Feasibility study for ultimate phase authorized 1890
Exchange of lands with Mary Saunders Moses 1617
Fish and wildlife habitat restoration S852, 3940
Hidden Dam and Reservoir
Irrigation repayment to be financially integrated into CVP 1702
Hood-Clay unit, American River division
Feasibility study authorized 2771
Improvement Act 3932
Miscellaneous references S855, S867
Interie. See PACIFIC NORTHWEST-PACIFIC SOUTHWEST INTERIE.
Kellogg unit
Review and revision of feasibility study authorized 3217, S1082
Lands added to Shasta National Forest 865
Miscellaneous references to S131, S135, S175, 2500, 3933
Millerton Rancheria, use of 725

S1151
INDEX TO VOLUME V AND SUPPLEMENT II

National recreation area. See WHISKEYTOWN-SHASTA-TRINITY NATIONAL RECREATION AREA.

New Melones project
- Amendments S888, 3575
- Archeological research and recovery 3214
- Made integral part of CVP 1701

Pit River division
- Feasibility study of Allen Camp unit authorized 1890
- Allen Camp unit authorized 2956
- Statutory references 3933

Placerville Ridge unit, American River division
- Feasibility study authorized 1889

Pleasant Oaks unit, American River division
- Feasibility study authorized 1889

Powerhouse on Clear Creek at head of Whiskeytown Reservoir named judge Francis Carr Powerhouse 1785

Power
- Allocation of S4, S194
- Power revenues, application of 790
- Reauthorizations. See Amendments above.
  - Effect of subsequent reauthorizations 586
  - Statutory references 3512, 3578, 3933
- Text 583

Relocation of highways, railroads and other properties 601

Repayment of costs S118, 3511

Restoration Fund 4005

Sacramento River division
- Completion of studies of West Sacramento canal unit authorized 1887

Sacramento Valley Canals
- Authorized 1032
- Extension of service area 3317
- Increased capacity authorized 2332, S202
- Section 2, as amended S866

San Felipe division
- Authorized 2333
- Completion of studies authorized 1887
- Miscellaneous references to 2498

Study directed 1454, 1530

San Luis unit 1524, 1858, 2661, 3041, S67, S76, S210, S295
- Additional appropriations authorized and task force established 3041
- Authorized 1524
- Miscellaneous references to S295
- Pumping-generating plant redesignated William Giannei Pumping-Generating Plant 3578

San Luis Canal 1529

San Luis Dam 1524
- Redesignated "B. F. Sisk" San Luis Dam 3577

San Luis Forebay Reservoir 2334
- San Luis Interceptor drain 1524, 1529, 1858, S297, 3369
- Statutory references 3577
- Water rights litigation S210

Shasta Dam and Reservoir
- Feasibility study of enlarging or replacing, authorized 3217
- Power cost increases associated with bypass releases 3659
- Temperature control curtain authorized 3575

S1152
INDEX TO VOLUME V AND SUPPLEMENT II

Stanislaus River division
  Feasibility study of Sonora-Keystone unit authorized  1890
  Statutory references 3439, 3512, 3578, 3739, 3932, 3933
Suisun Marsh
  Partial restoration of fish and wildlife resources authorized  3222
  Preservation Agreement 3514
Trinity River division
  Authorized 1235
  Clair Engle Lake redesignated "Trinity Lake"  4112
  Fish and wildlife S242, 3439, 4064
  Flood damage S5, S175
  Increase in generating capacity 1273
  Miscellaneous references to 2506, 3034
  Reservoir created by Trinity Dam named Clair Engle Lake  1817
    See CLAIR ENGLE LAKE ABOVE.
    Stream rectification 3198
    Statutory references to 1529, 3439, 3950, 4065, 4077
Waterfowl management program
  Authorized 1191
  Authorization amended 3135, S229, S855
  Water quality and salinity control costs nonreimbursable 3854, 3511
  Water supply contracts 3660
  Whiskeytown Dam redesignated "Clair A. Hill Whiskeytown Dam" 3578

CENTRAL VALLEY PROJECT DOCUMENTS 584

CENTRALIA COAL PLANT S112, S119

CERRO CANAL 1725

CERRO TRIBUTARY IRRIGATION UNIT 1660

CHALLIS CREEK 1887

CHALLIS PROJECT, Idaho
  Completion of studies authorized 1887

CHAMITA DAM 902

CHAMA RIVER. See SAN JUAN-CHAMA PROJECT.

CHAMIZAL 99, 775

CHAMPION CREEK, Alaska 2439, 2440

CHAPMAN CANAL 3185, 3186, 3193

CHARGES. See FEES AND CHARGES; RECREATION; REIMBURSEMENTS AND COST SHARING.

CHARLESTON DAM AND RESERVOIR 2398, 2400

CHARLEY RIVER 2438

CHASE COUNTY, Nebraska 2928

CHATTOOGA RIVER 2431, 2444

CHAVEZ, NICOLAS 2476

S1153
INDEX TO VOLUME V AND SUPPLEMENT II

CHEHALIS River Project, Washington
    Adna division
    Feasibility study authorized 1892

CHELAN DAM 1579

CHELAN DIVISION, Chief Joseph Dam Project 1884, 1886

CHEMNAHUKI INDIANS
    Acquisition of lands of, for Parker Dam project 695
    Miscellaneous references to 427

CHENEY DIVISION, Wichita project 1557

CHENEY RESERVOIR 1557

CHERRY ISLAND 2434

CHESAPEAKE BAY 2565

CHIYENNE RIVER INDIAN RESERVATION 3328

CHICAGO, BURLINGTON & QUINCY RAILROAD 458

CHICAGO & NORTH WESTERN RAILWAY 458

CHICO CANAL 1032

CHIEF OF ENGINEERS. See ARMY, DEPARTMENT OF THE.

CHIEF JOSEPH DAM 1104, 1579, S415

CHIEF JOSEPH DAM PROJECT, Washington
    Foster Creek division
        Authorized 1151
    Greater Wenatchee division
        Authorized 1415
    Irrigation pumping power
        Foster Creek division 1151
        Greater Wenatchee division 1416
        Spokane Valley project 1501, 1683
        Whitestone Coulee unit 1803

Lake formed by Chief Joseph Dam named Rufus Woods Lake 1091

Manson unit, Chelan division
    Additional studies authorized 1886
    Authorized 1884

Okanogan unit, Okanogan-Similkameen division
    Feasibility study authorized 1889

Oroville-Tonasket unit, Okanogan-Similkameen division
    Authorized 1695
    Feasibility study authorized 1893
    Claim Settlement and Conveyance Act 4105
    Irrigation District 2952, 2953

Oroville-Tonasket Unit extension, Okanogan-Similkameen division
    Authorized 2952

Power revenues of, to pay certain irrigation costs
    Foster Creek division 1151

S1154
INDEX TO VOLUME V AND SUPPLEMENT II

Greater Wenatchee division 1416
Spokane Valley project 1501, 1683
Whitstone Coulee unit 1803
Study and report on irrigation assistance authorized 1104
Whitstone Coulee unit, Okanogan-Similkameen division Authorized 1803

CHIFLO DAM AND RESERVOIR 902

CHIKASKIA PROJECT, Kansas-Oklahoma
Completion of studies authorized 1888
Recreation plan S418

CHIKASKIA RIVER 1888

CHILIKADROTNA RIVER 2438

CHINO VALLEY PROJECT, Arizona
Feasibility study authorized 3216

CHINOOK DIVISION, Milk River project 363, 478

CHOKE CANYON DAM AND RESERVOIR 2912, S67

CHOWCHILLA RIVER 1702, 2832

CHRISTIAN, JOHN 2468, 2472

CHRISTOPULOS, GEORGE L 3195

CHURNTOWN ELEMENTARY SCHOOL 924

CIBOLO CREEK 1891, 2904

CIBOLO PROJECT, Texas
Authorized 2904
Feasibility study authorized 1891

CIBOLA VALLEY 35

CIMARRON RIVER 1916

CIMARRON RIVER BASIN 567

CITIZENS UTILITIES COMPANY 430

CIVIL SERVICE REFORM ACT OF 1978
Miscellaneous references to S117, S453

CIVIL RIGHTS ACT OF 1964
Extracts from 2007, S625
Miscellaneous references S1005
Statutory references to S1005, 3549

CIVILIAN CONSERVATION CORPS
Established 560
Statutory references to 669

S1155
# INDEX TO VOLUME V AND SUPPLEMENT II

## CLAIMS OF UNITED STATES
- Collection and settlement of
  - Generally 1960, 1969, S524, S525

## CLAIMS AGAINST UNITED STATES
- See also suits.
- Bonneville Power Administration, authority to settle 578
- Collection and settlement of
  - Generally 1959, S615, S670
- Flood damage. See FLOOD CONTROL.
- For taking of property
  - Generally 5, 71, 5
  - Inverse condemnation 6, 75
- For tortious Injury. See ARMY, DEPARTMENT OF THE.
- Federal Tort Claims Act 884
  - Miscellaneous references 70
- For non-tortious Injury 205
- Interest on. See INTEREST.
- Settlement and payment of
  - Generally S500, S501, S509, S523, S524, S530, S623
  - Jurisdiction of district courts and Court of Claims 1950
  - See TUCKER ACT.
- Seepage. See SEEPAGE.

## CLAIMS COURT
- Creation of, explained S495
- Procedure S494, S500

## CLAIR ENGLE LAKE
- 1817, 2500, 2506, 3034, S166, S242
- Redesignated "Trinity Lake" 4113

## CLARION RIVER
- 2444

## CLARK COUNTY, NEVADA
- 2928, 3220

## CLARK CANYON DAM AND RESERVOIR
- 1351

## CLARK, COLORADO
- 2445

## CLARK COUNTY, NEVADA
- 825, 1193, 1472, 1851

## CLARK FORK RIVER
- 35

## CLARK HILL-GREENWOOD TRANSMISSION FACILITY
- 1114

## CLARK HILL DAM
- 802

## CLARKS FORK
- 2445

## CLARKS FORK CANYON
- 2445

## CLARKS FORK, YELLOWSTONE RIVER
- 1063

## CLARKDALE, ARIZONA
- 2447

## CLARKSTON, WASHINGTON
- S162

## CLAYPOOL, W.M., III
- S129

S1156
INDEX TO VOLUME V AND SUPPLEMENT II

CLAYTON ACT
Statutory references to S841, 3139

C-L ELECTRIC COMPANY 1411

CLE ELUM DAM 3217

CLEAN WATER ACT
Compact references to 3288
Principal contents of
  Congressional policy 2664
  Programs, Federal reservoir projects, studies, research 2668
  Grants and planning for construction of treatment works 2678
  Effluent limitations 2686
  Water quality standards 2692
  Federal facilities pollution control 2714, S15
  Permits and licenses 2717, S15
  National pollution discharge elimination system 2720
  General provisions 2734
Statutory references S1031
Text 2664

CLEAN WATER RESTORATION ACT OF 1966
Miscellaneous references to 1278, 1301

CLEAN AIR ACT
Extracts from S636

CLEAR CREEK, Idaho 1207

CLEAR LAKE NATIONAL WILDLIFE REFUGE 1771

CLEAR CREEK, California 1235, 1785, 1864

CLEAR LAKE 257, 307

CLEAR LAKE WATERSHED
Study of water rights in
  Authorized 555
  Requirement for report discontinued 837

CLEAR CREEK, Tennessee 2432, 2444

CLEARWATER RIVER 2430

CLERMONT COUNTY, Ohio 2444

CLIFFORD KOSTER HOSPITAL WATER DISTRICT S81

CLIFTON, Arizona 2447

CLIFTON COURT FOREBAY 3216

CLIMATE. See NATIONAL CLIMATE PROGRAM ACT.

CLINTON, Oklahoma 2343, 2349

CLINTON-SHERMAN AIR FORCE BASE 1460

S1157
INDEX TO VOLUME V AND SUPPLEMENT II

CLOSED BASIN, Colorado 466, 622

CLOSED BASIN CONVEYANCE CHANNEL
Designated the "Franklin Eddy Canal" 3475
Miscellaneous references S1031

CLOSED BASIN DIVISION, San Luis Valley Project, Colorado 1888, 2748, S390, S393, 3475, 3611

CLOSED BASIN DRAIN 468, 685

COACHELLA VALLEY, California 414, 423, 548, 647, 854, 1893

COACHELLA VALLEY COUNTY WATER DISTRICT 417, 423, 428, 433, 962, 970, 1055, 1332, 1457, 2862

COACHELLA CANAL 2861, 2865, 3202

COACHELLA DIVISION, All-American Canal 1055, 1890

COALINGA CANAL 2530

COBB CREEK 1242

COCHITI RESERVOIR 1544, 1744, 2916, 3027, S348

COCONINO COUNTY, Arizona 2898, 2903, 3216

COCOPAH INDIAN RESERVATION 2863
Miscellaneous references to 427

COCOPAH INDIAN TRIBE 2862, 2931

CODE OF FEDERAL REGULATIONS S664

CODY CANAL 2640

CODY, Wyoming 2478

COEUR D'ALENE LAKE DAM 1579

COFFEE MILL CREEK 3305

COFFEE MILL LAKE 3305

COKEVILLE, Wyoming 3183

COLDWATER RIVER 396

COLFA COUNTY, New Mexico 2928

COLFAX-IOWA HILL BRIDGE 2435

COLLBRAN FORMULA 1085
See also Construction Charges.

COLLBRAN PROJECT, Colorado
Authorized 1084
Secretary authorized to reconvey mineral interest in lands acquired for Vega Dam and Reservoir 1896

S1158
INDEX TO VOLUME V AND SUPPLEMENT II

COLONIAL REALTY COMPANY  507, 508, 1196

COLORADO AQUEDUCT  2400

COLORADO COASTAL PLAINS PROJECT, Texas. See TEXAS BASIN PROJECT.

COLORADO RIVER, Texas  587, 1886

COLORADO RIVER PROJECT, Texas
  Authorization of, including Marshall Ford Dam  587
  Repayment contract required  620

COLORADO RIVER. See also LOWER COLORADO RIVER; UPPER COLORADO RIVER.
  Allotment of waters of, to Mexico  759
  Provisions of 1944 treaty  420, 427
  Apportionment by Congress among three lower basin States  2919
  Bed of, exempted from lands transferred to Yuma County and Wide River Farms, Inc.
  Boundary between Arizona and California  1875
  Boundary between Arizona and Nevada  1602
  Bridges across. See BRIDGES.
  Centerline of, made eastern boundary of lands transferred to Colorado River
  Commission of Nevada  1517
  Colorado River Basin, defined  442
  Colorado River System, defined  442
  Comprehensive plan  439
  Diversion for Yuma and Colorado River Indians authorized  90
  Framework study by Army authorized  1857
  Funds appropriated to protect property from damage by  161, 211
  Land title disputes  43
  Lower Basin, defined  442
  Moratorium on FPC licenses  1756
  Palo Verde Valley flood protection  503
  Projects on main stem or tributaries of. See individual projects by name.
  Specific provisions of Mexican Water Treaty relating to  753, 770, 774
  States of the Lower Division, defined  442
  States of the Upper Division, defined  442
  Studies
    Comprehensive development  439
    Miscellaneous studies  35, 36, 253, 413
  Water quality. See STUDIES AND REPORTS.
  Water supply for users along the river in California  3216
  Title to land in Riverside County  2550
  Upper Basin, defined  442
  Water quality. See COLORADO RIVER BASIN SALINITY CONTROL ACT.
  Water quality standards  2535
  Water rights in
    Adjudication of rights in a "river system"  2910
    Indian tribes  S2, S179, S321
    "Present perfected rights". See BOULDER CANYON PROJECT ACT.
    Seasonal overflow  S5
  Wild and scenic river system  2445

COLORADO RIVER AQUEDUCT. See METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA.
INDEX TO VOLUME V AND SUPPLEMENT II

COLORADO RIVER BASIN 2396
Salinity control measures S1040

COLORADO RIVER BASIN PROJECT
Authorized 2395

COLORADO RIVER BASIN PROJECT ACT
Amendments of 2871, 3130, 3219, 3362, S995, 3403, S1048, 3452, 3984
CAP siphon replacement 3986
Section 304(c)(3) repealed S248, S857
Statutory references to 2615, 2858, 2870, 2872, 2903, 2924, 3196, 3343, 3349, 3403, 3405, 3432, 3448, 3452, 3454, 3506, 3530, 3559, 3581, 3582, 3584, 3626, 3720, 3709, 3816, 3872, 3890, 3973, 3976, 3979, 3985, 4013, S857, S1040, S1048, S1103
Text 2395

COLORADO RIVER BASIN SALINITY CONTROL ACT
Amendments of 2857, 3200, 3447, 4063, 4075, S1038, S1052
Amendments Act 3447
Miscellaneous references S874, S997, S1039, S1043, S1045, S1049, S1051
Statutory references to 2415, 3412, 3447, 4064, S873, S997
Text 2857
Text extracts, as amended S1038

COLORADO RIVER BASIN SALINITY CONTROL ADVISORY COUNCIL
Established 2870
Terminated S1043

COLORADO RIVER BASIN SALINITY CONTROL PROJECT
Authorized 2857, 2868, 3200, S1036
Appropriations authorized S1048, 2873
Contracts authorized in advance of appropriations S1048, 2873
Completion of planning reports directed 2869
Cost allocation of units. See COST ALLOCATION.
Electrical rates S1046, 2871
Feasibility studies authorized S1036, 2867
Investigations, planning, and implementation, expedite directed S1042, 2869
Report to Congress required S1037, 2868
Repayment by Upper and Lower Basins S1043, S1037, 2869
Research and demonstration projects S1042, 2869
Site specific environmental impact statement for a project deemed adequate 3105

COLORADO RIVER COMMISSION OF ARIZONA 439
COLORADO RIVER COMMISSION OF CALIFORNIA 439
COLORADO RIVER COMMISSION OF NEVADA
Contract with, authorized for water from Southern Nevada Water project 1852
Conveyance of lands to 1394, 1517
Establishment of, explained 439
Miscellaneous references to 428
Statutory references to 1194
COLORADO RIVER COMMISSION OF UTAH 439
COLORADO RIVER COMPACT

S1160
INDEX TO VOLUME V AND SUPPLEMENT II

Background material on 415
Boulder Canyon project subject to 414, 420, 433, 437
Conditions of Congressional approval 419, 437
Miscellaneous references to 416, S248
Ratification explained 420
Ratification of, as condition to construction of Boulder Canyon project 419
Statutory references to 538, 564, 704, 716, 858, 1057, 1085, 1211, 1248, 1250, 1251, 1255, 1257, 1258, 1480, 1654, 1665, 1666, 1673, 1674, 1769, 1852, 2397, 2419, 2420, 2422, 2872, 2900, 3530, 3890
Text 441
Terms defined 2423

COLORADO RIVER DAM FUND
Allocation of expenditures between project and Federal activities at Boulder City
Annual justification to appropriations committees required 895
Report required 790
Amended provisions relating to 697, S858, 3405
Appropriation act language 477, 548, 620, 1021, 1022, 1093
Established 417
Interest computations S858, 3406
Miscellaneous revenues credited to 685
Net proceeds from power development 433
Statutory references to 791, 869, 1472

COLORADO RIVER DEVELOPMENT FUND
Appropriation act language 1022
Distribution of funds from 873
Established 699
Statutory references to 2419

COLORADO RIVER FLOODWAY PROTECTION ACT 3476
Amendment of 3476, 3479, 4134, 4061
Statutory references 4134

COLORADO RIVER FRONT WORK AND LEVEE SYSTEM
Appropriations for work adjacent to Yuma project 340, 402
Authority for, extended to Palo Verde Diversion Project 1211
Authorized 340, 401, 694, 828
Authority to dredge 887
Construction of temporary weir for Palo Verde Irrigation District 785
Conveyance of land to City of Needles 1693
Enlargement of project authority 928
Payment to Cocopah Indian Tribe 2931
Program extended from Yuma project to Boulder Dam 694
Purchase and improvement of lands subject to seepage and overflow; protection of property in or near City of Needles 791
Transfer of accounts to, from Yuma and Yuma Auxiliary projects; credit to Imperial Irrigation District 1018
Work within non-Federal reclamation projects 1414

COLORADO RIVER INDIANS
Miscellaneous references to 427, 539
Reclamation of irrigable lands of 90
Use and protection of lands of, in connection with Palo Verde Diversion project 1211

S1161
INDEX TO VOLUME V AND SUPPLEMENT II

COLORADO RIVER INDIAN RESERVATION 2869
COLORADO RIVER INDIAN TRIBES SMALL RECLAMATION PROJECT S270
COLORADO RIVER STORAGE PROJECT
  Appropriation act language 1651
  Authorized 1248
  Construction of power transmission lines 1652
  Contribution by Secretary of Commerce to bridge across, Colorado River near Glen Canyon Dam 1317
  Curecanti Storage unit
    Name changed to Wayne N. Aspinall Storage Unit 3218
  Exchange of lands with Navajo Tribe in connection with construction of Glen Canyon Unit 1462
  Exchange of lands with Southern Ute Indian Tribe in connection with Navajo Dam and Reservoir 1697
  Increased appropriations authorized 2657, 3815
  Miscellaneous references to 2496, 2499, S127
  Page, Arizona, Accommodation School 1859
  Participating projects. See ANIMAS-LAPLATA, BOSTWICK PARK, CENTRAL UTAH, DALLAS CREEK, DOLORES, EMERY COUNTY FLORIDA, FRUITLAND MESA, HAMMOND, LABARGE, LYMAN, NAVAJO INDIAN IRRIGATION, PAONIA, PINE RIVER EXTENSION, SAN JUAN-CHAMA, SAN MIGUEL, SAVERT-POT HOOK, SEEDSKADEE, SILT, SMITH FORK, WEST DIVIDE.
  Power revenues from, to be credited to Eden project 954
  Recreation
    National recreation area. See FLAMING GORGE NATIONAL RECREATION AREA.
  Restriction on expenditure of funds to protect any national monument 1551
  Separation of the town of Page, Arizona, from the project 2898
  Site specific environmental impact statement for a feature deemed adequate 3105
  Statutory references to 1248, 2917, 3413, 3448, 3619, S1040, S1046, S1048
  Upper Colorado River Basin Fund authorized 1252
COLORADO RIVER STORAGE PROJECT ACT
  Amendments of 2416, 2871, 3454, S247, S873
  Annotations of S247, S259
  Marketing criteria S255
  Statutory references to 2418, 2419, 2420, 2421, 2422, 2767, 2870, 2871, 2872, 2900, 2905, 3105, 3325, 3452, 3460, 3626, 3761, 3814, 3853, 3890, S1040, S1046, S1048
COLORADO RIVER WATER CONSERVATION DISTRICT S110
COLORADO RIVER WATER QUALITY IMPROVEMENT PROGRAM 2867
COLORADO WATER CONSERVATION BOARD 1855, 2749, 2750
COLORADO WATER RIGHTS DETERMINATION AND ADMINISTRATION ACT OF 1969 S209
COLORADO-BIG THOMPSON PROJECT, Colorado
  Authorization of, explained 565
  Excess land laws not applicable to lands receiving only a supplemental water supply 612
  Inclusion of Green Mountain Reservoir lands in Arapaho National Forest 2918
  Miscellaneous references to 203, 662, 2505, S5
  Power revenues, application of 715
  Repayment contract required 565

S1162
INDEX TO VOLUME V AND SUPPLEMENT II

Temporary delivery of water authorized 1614
Third powerhouse, Grand Coulee Dam
  Additional studies authorized 1886
  Authorized 1870
Third powerplant, Grand Coulee Dam
  Annotations of opinions concerning authorizing act S414
Transfer of surplus property at Ephrata Air Force Base 1025
Washington State research farm 1484

COLUMBIA BASIN PROJECT ACT
  Annotations of S143
  Amendments of
    Farm unit limitations repealed; reclamation laws applied 1690
    Provisions relating to State lands 1038
    Recordable contract provisions 1034, 1388
    Statutory references to 794, 1484
    Text 728

COLUMBIA NORTHSIDE PROJECT, Washington
  White Salmon division
  Feasibility study authorized 2928

COLUMBIA RIVER
  Compacts relating to. See COLUMBIA RIVER COMPACT.
  Fishery development
    Adoption of fish and wildlife program by Pacific Northwest Electric Power and Conservation Planning Council 3237
    Authorized 602, S121
    Fish passage facilities in McNary Dam required 813
    Operation of Grand Coulee Dam project fish hatcheries by State of Washington 707
    Highway and railroad bridge or bridges across, at Kettle Falls 665
    Studies 35
    Treaties concerning. See COLUMBIA RIVER TREATY, TREATIES AND CONVENTIONS.
    Oroville-Tonasket unit extension 2952
    Transfer of fishery programs to Department of Commerce S121
    Water service from Army reservoirs on S156

COLUMBIA RIVER BASIN 1831, 1856
  See also COLUMBIA BASIN
  Water transfer studies restricted 3537

COLUMBIA RIVER COMPACT
  Consent to negotiate 539, 1103

COLUMBIA RIVER POWER SYSTEM
  Amortization of investment in 3256
  Annual consolidated financial statement; assistance to Pacific Northwest reclamation projects; rates and charges 1870
  Annual consolidated financial statement S414
  Assistance to Reclamation projects
    Statutory references to 2517, 2522, 2525, 2755, 2953
  Irrigation pumping power
    See also BONNEVILLE POWER ADMINISTRATION, CHIEF JOSEPH DAM PROJECT.
    Crooked River project extension 1802

S1164
INDEX TO VOLUME V AND SUPPLEMENT II

Manson unit, Chief Joseph Dam project 1884
Tualatin project 1899
East Greenacres unit, Rathdrum Prairie project 2523
Kennewick division extension 2474
Merlin division, Rogue River Basin project 2518
Oroville-Tonasket Unit extension 2953
Upper Snake River project 2755
Miscellaneous references to 1585
Power revenues of, to pay certain irrigation costs
See also BONNEVILLE POWER ADMINISTRATION; CHIEF JOSEPH DAM PROJECT.
Generally 1871, 1894
Statutory references to 1760, 2888, 3225, S172

COLUMBIA RIVER TREATY
Documents reprinted herein
Treaty 1580
Annex A 1574
Annex B 1577
Annex to January 22, 1964 exchange of notes 1580
Note from U.S. Secretary of State, January 22, 1964 1583
Attachment relating to terms of sale 1584
Note from Canadian Secretary of State for External Affairs, September 16, 1964 1588
Minute of the Privy Council 1592
Canadian Entitlement Purchase Agreement 1593
Note from the American Ambassador, September 16, 1964 1599
Executive Order No. 11177 1600
Miscellaneous references to 662
Statutory references to 1763, 1829, 2888

COLUMBIA RIVER TRANSMISSION SYSTEM 289 FEDERAL COLUMBIA RIVER TRANSMISSION SYSTEM

COLUMBIA STORAGE POWER EXCHANGE 1588, 1593

COLUMBIANA COUNTY, Ohio 2444

COLUMBUS BEND PROJECT, Texas
Additional studies authorized 1886

COLUMBUS, TOWN OF 898

COLUSA COUNTY, California 1032, 3317, S203

COLUSA COUNTY WATER DISTRICT 3317

COLVILLE EXTENSION, Okanogan Project 367

COLVILLE INDIAN RESERVATION S141

COLVILLE INDIANS
Disposition of lands of, under Reclamation Act 108
Lands used for Columbia Basin project; hunting, fishing and boating rights 688, 794
Confederated Tribes of Grand Coulee Dam Settlement Act 4057

COLVILLE RIVER, Alaska 2448

S1165
INDEX TO VOLUME V AND SUPPLEMENT II

COLVILLE VALLEY SUPPORT TRANSMISSION LINE 3366

COMANCHE COUNTY, Oklahoma 2765

COMMERCE, DEPARTMENT OF 509, 1317
  National Climate Program Office 3088, 3089
  Study of water resources of High Plains region 3026
  Transfer of Columbia River fishery program to S121

COMMERCE CLAUSE 1, S1

COMMERCIAL FISHERIES RESEARCH AND DEVELOPMENT ACT OF 1964
  Statutory references to 2381

COMMISSIONER OF RECLAMATION
  Advice and consent of Senate to appointment required S86, S1107, 3349
  Appointed by President 390
  Delegations. See DELEGATION OF AUTHORITY.
  Office of the Commissioner to remain in Washington, D.C. 3562
  Origin of position 86
  Power, vested in Secretary of the Interior 1005

COMMISSIONER OF INTERNAL REVENUE OPINION

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
<th>Author</th>
<th>Source</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb. 12, 1968</td>
<td>Taxation of excess land sales Cohen</td>
<td>Letter</td>
<td></td>
<td>S77</td>
</tr>
</tbody>
</table>

COMMISSIONS AND COMMITTEES
  Activities of. See FEDERAL ADVISORY COMMITTEE ACT.
  Expenses of
    Generally 1967, 1968, S511

COMMUNICATIONS FACILITIES. See RIGHTS OF WAY AND EASEMENTS.

COMMUNITY PROPERTY 730

COMMO DAM, Montana 3422

COMPACTS. See also individual compacts by name.
  Compacts between the states 3574
  Constitutional basis for 3
  Federal representatives in negotiation and administration of
    Payment of salary and expenses, generally 1022
    General consent or encouragement to negotiate
      Colorado River 440, 3529
    Flood control 547
    Water quality control 1280
  Presidential statements regarding. See PRESIDENT.
  Suits involving
    United States an indispensable party 631

COMPTROLLER OF THE CURRENCY 2356

S1166
## INDEX TO VOLUME V AND SUPPLEMENT II

### COMPTROLLER GENERAL DECISIONS

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
<th>File No.</th>
<th>Source</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1924</td>
<td>Expenditures</td>
<td>A-2537</td>
<td>F. Recl. L.</td>
<td>34</td>
</tr>
<tr>
<td>Mar. 1926</td>
<td>Condemnations</td>
<td>A-13467</td>
<td>5 Comp. Gen. 737</td>
<td>75, 290</td>
</tr>
<tr>
<td>May 1926</td>
<td>do</td>
<td>A-14244</td>
<td>5 Comp. Gen. 907</td>
<td>75</td>
</tr>
<tr>
<td>June 1926</td>
<td>Property acquisition</td>
<td>A-14629</td>
<td>F. Recl. L.</td>
<td>74</td>
</tr>
<tr>
<td>Mar. 1927</td>
<td>Emergency repairs</td>
<td>A-16521</td>
<td>F. Recl. L.</td>
<td>341</td>
</tr>
<tr>
<td>Dec. 1927</td>
<td>Water rights</td>
<td>A-20551</td>
<td>F. Recl. L.</td>
<td>372</td>
</tr>
<tr>
<td>Mar. 1928</td>
<td>Refund of charges</td>
<td>A-21979</td>
<td>F. Recl. L.</td>
<td>372</td>
</tr>
<tr>
<td>Mar. 1929</td>
<td>Flood damage claims</td>
<td>A-23558</td>
<td>Letter</td>
<td>278</td>
</tr>
<tr>
<td>Feb. 1930</td>
<td>Charges</td>
<td>A-29747</td>
<td>do</td>
<td>278</td>
</tr>
<tr>
<td>Mar. 1930</td>
<td>Consultants</td>
<td>A-30788</td>
<td>F. Recl. L.</td>
<td>449</td>
</tr>
<tr>
<td>May 1930</td>
<td>Charges</td>
<td>A-29747</td>
<td>Letter</td>
<td>404</td>
</tr>
<tr>
<td>Oct. 1930</td>
<td>Boulder Canyon project</td>
<td>A-32702</td>
<td>F. Recl. L.</td>
<td>423</td>
</tr>
<tr>
<td>May 1931</td>
<td>Bitter Root project</td>
<td>A-34571</td>
<td>F. Recl. L.</td>
<td>475</td>
</tr>
<tr>
<td>July 1931</td>
<td>do</td>
<td>A-34571</td>
<td>F. Recl. L.</td>
<td>475</td>
</tr>
<tr>
<td>Oct. 1931</td>
<td>Boulder Canyon project</td>
<td>A-38343</td>
<td>F. Recl. L.</td>
<td>418</td>
</tr>
<tr>
<td>Jan. 1932</td>
<td>do</td>
<td>A-39589</td>
<td>F. Recl. L.</td>
<td>419</td>
</tr>
<tr>
<td>Mar. 1932</td>
<td>Bitterroot project</td>
<td>A-34571</td>
<td>F. Recl. L.</td>
<td>475</td>
</tr>
<tr>
<td>June 1932</td>
<td>Boulder Canyon project</td>
<td>A-41637</td>
<td>F. Recl. L.</td>
<td>439</td>
</tr>
<tr>
<td>Do Bitterroot project</td>
<td></td>
<td>A-34571</td>
<td>F. Recl. L.</td>
<td>475</td>
</tr>
<tr>
<td>July 1932</td>
<td>Boulder Canyon project</td>
<td>A-42691</td>
<td>F. Recl. L.</td>
<td>419</td>
</tr>
<tr>
<td>Aug. 1932</td>
<td>Consultants</td>
<td>A-44084</td>
<td>F. Recl. L.</td>
<td>449</td>
</tr>
<tr>
<td>Oct. 1932</td>
<td>Sun River project</td>
<td>A-43217</td>
<td>F. Recl. L.</td>
<td>103</td>
</tr>
<tr>
<td>Feb. 1933</td>
<td>Boulder Canyon project</td>
<td>A-42691</td>
<td>F. Recl. L.</td>
<td>419</td>
</tr>
<tr>
<td>Do</td>
<td>do</td>
<td>A-46044</td>
<td>Letter</td>
<td>418</td>
</tr>
<tr>
<td>Apr. 1933</td>
<td>Consultants</td>
<td>A-47819</td>
<td>F. Recl. L.</td>
<td>449</td>
</tr>
<tr>
<td>June 1933</td>
<td>Moratorium</td>
<td>A-48742</td>
<td>Letter</td>
<td>506</td>
</tr>
<tr>
<td>Dec. 1933</td>
<td>Boulder Canyon project</td>
<td>A-32702</td>
<td>F. Recl. L.</td>
<td>423</td>
</tr>
<tr>
<td>July 1934</td>
<td>do</td>
<td>A-56169</td>
<td>F. Recl. L.</td>
<td>419</td>
</tr>
<tr>
<td>Dec. 1934</td>
<td>Leases</td>
<td>A-58113</td>
<td>14 Comp. Gen. 430</td>
<td>45</td>
</tr>
<tr>
<td>May 1935</td>
<td>Boulder Canyon project</td>
<td>A-61595</td>
<td>F. Recl. L.</td>
<td>419</td>
</tr>
<tr>
<td>Sept. 1935</td>
<td>All-American Canal</td>
<td>A-32702</td>
<td>F. Recl. L.</td>
<td>58</td>
</tr>
<tr>
<td>Nov. 1935</td>
<td>Moratorium</td>
<td>A-48742</td>
<td>Letter</td>
<td>506</td>
</tr>
<tr>
<td>Jan. 1936</td>
<td>Drainage work</td>
<td>A-36502</td>
<td>F. Recl. L.</td>
<td>481</td>
</tr>
<tr>
<td>Do</td>
<td>Moratorium</td>
<td>A-48742</td>
<td>Letter</td>
<td>506</td>
</tr>
<tr>
<td>Mat. 1938</td>
<td>Repayments</td>
<td>A-93229</td>
<td>17 Comp. Gen. 763</td>
<td>565</td>
</tr>
<tr>
<td>Oct. 1939</td>
<td>Consultants</td>
<td>B-6069</td>
<td>19 Comp. Gen. 418</td>
<td>449</td>
</tr>
<tr>
<td>Aug. 1940</td>
<td>Timber receipts</td>
<td>B-11729</td>
<td>Letter</td>
<td>246</td>
</tr>
<tr>
<td>Oct. 1940</td>
<td>Boulder Canyon project</td>
<td>B-10509</td>
<td>do</td>
<td>700</td>
</tr>
<tr>
<td>Feb. 1941</td>
<td>Boise project</td>
<td>B-12615</td>
<td>F. Recl. L.</td>
<td>78</td>
</tr>
<tr>
<td>Aug. 1942</td>
<td>Bitter Root project</td>
<td>B-27425</td>
<td>F. Recl. L.</td>
<td>475, 718</td>
</tr>
<tr>
<td>Jan. 1943</td>
<td>Kendrick project</td>
<td>B-31310</td>
<td>Letter</td>
<td>297</td>
</tr>
<tr>
<td>Sept. 1946</td>
<td>Repealpage</td>
<td>B-69368</td>
<td>do</td>
<td>791</td>
</tr>
<tr>
<td>Do</td>
<td>Relocation expenses</td>
<td>B-60222</td>
<td>do</td>
<td>661</td>
</tr>
<tr>
<td>Oct. 1946</td>
<td>Overseas projects</td>
<td>B-60382</td>
<td>do</td>
<td>89</td>
</tr>
<tr>
<td>Jan. 1947</td>
<td>Kendrick project</td>
<td>B-62789</td>
<td>do</td>
<td>291</td>
</tr>
<tr>
<td>Do</td>
<td>San Diego Aqueduct</td>
<td>B-48120</td>
<td>do</td>
<td>867</td>
</tr>
</tbody>
</table>
INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Month</th>
<th>Topic</th>
<th>Reference</th>
<th>Type</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb. 1947</td>
<td>Permanent legislation</td>
<td>do</td>
<td>Letter</td>
<td>830</td>
</tr>
<tr>
<td>June 1948</td>
<td>Colorado River Dam Fund</td>
<td>B-77260</td>
<td>do</td>
<td>896</td>
</tr>
<tr>
<td>Sept. 1948</td>
<td>Contracting authority</td>
<td>B-79145, 28 Comp. Gen. 163</td>
<td>do</td>
<td>659</td>
</tr>
<tr>
<td>Oct. 1948</td>
<td>Land titles</td>
<td>B-80025, Letter</td>
<td>do</td>
<td>735</td>
</tr>
<tr>
<td>May 1949</td>
<td>Water rights exchanges</td>
<td>B-84264, Letter</td>
<td>do</td>
<td>662</td>
</tr>
<tr>
<td>Jan. 1950</td>
<td>Ownership of facilities</td>
<td>B-91527, Memorandum</td>
<td>do</td>
<td>655, 656</td>
</tr>
</tbody>
</table>

O.M.

<table>
<thead>
<tr>
<th>Month</th>
<th>Topic</th>
<th>Reference</th>
<th>Type</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1951</td>
<td>Aid to school districts</td>
<td>B-103904</td>
<td>Letter</td>
<td>893</td>
</tr>
<tr>
<td>July 1951</td>
<td>Weather modification</td>
<td>B-104463</td>
<td>do</td>
<td>570</td>
</tr>
<tr>
<td>Aug. 1951</td>
<td>Timber sales</td>
<td>B-48120</td>
<td>do</td>
<td>247</td>
</tr>
<tr>
<td>Sept. 1951</td>
<td>Weather modification</td>
<td>B-105397</td>
<td>do</td>
<td>70, 578</td>
</tr>
</tbody>
</table>

Dec. 1951  | Coachella division                         | B-106038           | do     | 891, 995 |

July 1952  | Easements                                  | B-109485           | do     | 1056 |

Feb. 1955  | Housing facilities                         | B-120797, 34 Comp. Gen. 374 | do | 192, 962 |

May 1955  | Glendo sewerage                           | B-123514, 34 Comp. Gen. 599 | do | 88 |

Sept. 1955 | Colorado River Dam Fund                    | B-124783, Letter    | do     | 433 |

Nov. 1955  | Housing facilities                         | B-120797, 35 Comp. Gen. 285 | do | 192, 962 |

Feb. 1956  | Southwestern Power                         | B-125127, Letter    | do     | 803 |

| Administration. |

May 1956  | Reduction in charge                        | B-127709           | do     | 860 |

Sept. 1956 | Klamath water rights                       | B-125666           | do     | 80 |

Dec. 1958  | Payment in lieu of taxes                   | B-137273           | do     | 898 |

June 1960  | CVP power rates                            | B-62789            | do     | 86, 649, 1054 |

July 1962  | Hanford reactor                            | B-149016           | do     | 570, 574, 662, 729, 1686 |

Sept. 1962 | Rehabilitation and betterment contracts    | B-149629           | do     | 971 |

| Oct. 1962 | Hanford reactor                            | B-149083           | do     | 1686 |

Sept. 1963 | Road relocation                            | B-152193           | do     | 1706 |

Jan. 1964  | Sacramento diverters                       | B-152683           | do     | 585, 662 |

Sept. 1964 | Keating amendment                          | B-153601           | do     | 1054 |

May 1965  | Flood damage                               | B-152747, 44 Comp. Gen. 746 | do | 1045 |

May 1966  | Headwater benefits                         | B-156498, 45 Comp. Gen. 724 | do | 274, 601 |

May 24, 1968 | Excess lands                               | B-163663, Letter   | do     | S275 |


Sep. 18, 1974 | Excess lands                               | B-169126, Letter   | do     | S81, S83, S85 |

July 10, 1979 | BPA authority                              | B-114858, Letter   | do     | S112 |

July 19, 1982 | San Luis funds                             | B-198221, Memorandum | do | 3041, S295, S297 |

The citation "F. Rec. L." indicates that the source is a note in Volume I of Federal Reclamation Law, Annotated (U.S. Department of the Interior 1958).
INDEX TO VOLUME V AND SUPPLEMENT II

COMPTROLLER OF THE TREASURY DECISIONS

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
<th>Source</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apr. 1903</td>
<td>Options, abstracts</td>
<td>9 Comp. Dec. 569</td>
<td>76</td>
</tr>
<tr>
<td>Nov. 1905</td>
<td>Reclamation fund</td>
<td>12 Comp. Dec. 297</td>
<td>102</td>
</tr>
<tr>
<td>June 1906</td>
<td>do</td>
<td>12 Comp. Dec. 733</td>
<td>103</td>
</tr>
<tr>
<td>Oct. 1906</td>
<td>California lands</td>
<td>13 Comp. Dec. 289</td>
<td>33</td>
</tr>
<tr>
<td>Dec. 1906</td>
<td>Townsite lots</td>
<td>F. Recl. L.</td>
<td>110, 112</td>
</tr>
<tr>
<td>Aug. 1907</td>
<td>Indian lands</td>
<td>14 Comp. Dec. 49</td>
<td>40</td>
</tr>
<tr>
<td>Nov. 1907</td>
<td>do</td>
<td>14 Comp. Dec. 285</td>
<td>33</td>
</tr>
<tr>
<td>Dec. 1907</td>
<td>Reclamation fund</td>
<td>14 Comp. Dec. 361</td>
<td>32</td>
</tr>
<tr>
<td>Apr. 1908</td>
<td>Value of water right</td>
<td>14 Comp. Dec. 724</td>
<td>36, 72</td>
</tr>
<tr>
<td>May 1911</td>
<td>Rewards</td>
<td>F. Recl. L.</td>
<td>34</td>
</tr>
<tr>
<td>Mar. 1913</td>
<td>do</td>
<td>F. Recl. L.</td>
<td>35</td>
</tr>
<tr>
<td>Dec. 1913</td>
<td>Townsite lands</td>
<td>20 Comp. Dec. 365</td>
<td>33, 110</td>
</tr>
<tr>
<td>Do</td>
<td>O &amp; C lands</td>
<td>20 Comp. Dec. 397</td>
<td>33</td>
</tr>
<tr>
<td>Do</td>
<td>Reclamation fund</td>
<td>20 Comp. Dec. 415</td>
<td>33</td>
</tr>
<tr>
<td>Mar. 1914</td>
<td>do</td>
<td>20 Comp. Dec. 597</td>
<td>33</td>
</tr>
<tr>
<td>June 1914</td>
<td>Litigation costs</td>
<td>F. Recl. L.</td>
<td>34</td>
</tr>
<tr>
<td>June 1915</td>
<td>Damages</td>
<td>F. Recl. L.</td>
<td>208</td>
</tr>
<tr>
<td>July 1915</td>
<td>Sales of material</td>
<td>22 Comp. Dec. 54</td>
<td>102</td>
</tr>
<tr>
<td>Jan. 1916</td>
<td>Sales of material</td>
<td>22 Comp. Dec. 289</td>
<td>102</td>
</tr>
<tr>
<td>June 1916</td>
<td>Interagency charges</td>
<td>22 Comp. Dec. 684</td>
<td>32</td>
</tr>
<tr>
<td>Dec. 1916</td>
<td>Litigation costs</td>
<td>F. Recl. L.</td>
<td>34</td>
</tr>
<tr>
<td>Dec. 1918</td>
<td>Reclamation fund</td>
<td>F. Recl. L.</td>
<td>33</td>
</tr>
<tr>
<td>Apr. 1919</td>
<td>Stamp taxes</td>
<td>F. Recl. L.</td>
<td>34</td>
</tr>
<tr>
<td>Jan. 1921</td>
<td>Purchase of property</td>
<td>27 Comp. Dec. 882</td>
<td>36</td>
</tr>
<tr>
<td>Apr. 1921</td>
<td>O &amp; M charges</td>
<td>27 Comp. Dec. 849</td>
<td>200, 236</td>
</tr>
<tr>
<td>May 1921</td>
<td>Reclamation fund</td>
<td>F. Recl. L.</td>
<td>231</td>
</tr>
<tr>
<td>July 1921</td>
<td>do</td>
<td>F. Recl. L.</td>
<td>231</td>
</tr>
</tbody>
</table>

The citation "F. Recl. L." indicates that the source is a note in Volume I of Federal Reclamation Laws, Annotated (U.S. Department of the Interior 1958).

CONCESSIONS 1945, 1982
CONCHAS DAM 1075
CONCHOS RIVER 753
CONCONULLY CEMETERY ASSOCIATION 692
CONDEMNATION. See ACQUISITION OF PROPERTY.
CONEJO DIVISION, San Luis Valley Project 1083
CONEJO RIVER 623, 2445, 2752
CONEJO WATER CONSERVANCY DISTRICT 383, 1514
CONFIDENTIAL INFORMATION 1932, 1949, S451, S461, S492
CONFLUENCE DAM 2399
CONGRESS

S1169
INDEX TO VOLUME V AND SUPPLEMENT II

Approval by, of amended repayment contracts 641
Budget procedures. See BUDGET.
Committee review of proceedings under Leavitt Act 504
Committee review of proposed executive action
  Contracts for scientific and technical research 1907
  Conveyance of land to Colorado River Commission of Nevada 1396, 1518
  Drainage and Minor Construction Act 1269
  Hanford reactor contracts 1686
  Pacific Northwest-Pacific Southwest Intermc contracts 1758
  Rehhailitation and Betterment Act 969, 988
  San Luis unit, CVP 1526, 1531
  Small Reclamation Projects Act of 1956 1334, 1335, 1348
  Small watershed projects 1164
  Water resources research 1750
Notification to, of proposed executive action
  Wild and scenic rivers 2441, 2453, 2454
Powers of 1
Reports to. See CONGRESSIONAL REPORTS ELIMINATION ACT; STUDIES AND REPORTS.

CONGRESSIONAL BUDGET ACT OF 1974
  Extracts from S431
  Statutory references to 2877, 2996, 3391, 3428, 3455, 3640

CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974
  Explained S431
  Extracts from 2877, S431
  Statutory references to 3038, 3039

CONGRESSIONAL REPORTS ELIMINATION ACT OF 1980
  Extracts from 3221
  Statutory references 3815

CONGRESSIONAL REPORTS ELIMINATION ACT OF 1982
  Extracts from 3365

CONNELLSVILLE, Pennsylvania 2445

CONSERVANCY DISTRICTS. See IRRIGATION DISTRICTS.

CONSERVATION. See FISH AND WILDLIFE; POWER; WATER CONSERVATION.

CONSOLIDATED IRRIGATION DISTRICT 2344

CONSOLIDATED FARMERS HOME ADMINISTRATION ACT OF 1951
  Amendments of S309
  Change of name explained S309
  Extracts from 1606

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT
  Statutory references to 3207, 3327, 3895
  Text 3309

CONSTITUTION OF THE UNITED STATES
  Annotations of S1-5, S21, S74
  Extracts from 1

S1170
INDEX TO VOLUME V AND SUPPLEMENT II

CONSTRUCTION. See also individual projects by name.

Appropriations for
Change from line-item to lump-sum basis 1027
Current appropriation act language 1021
Generally 962

Camps and housing.
Boulder City. See BOULDER CITY ACT OF 1956
Coulee Dam, Town of. See COULEE DAM COMMUNITY ACT OF 1957.
Sewerage systems, town of Glendo 1227

Charges. See CONSTRUCTION CHARGES.

Contracts
Bonds of contractors 1976, S549
Buy American Act 1987, S568
Contingent upon appropriation 659
Defaulting contractors, recoveries from 463
Editor's note, annotations 52
Generally 51
Indian property 126
Public contracts, generally 1949, 1987, S567

Contributed funds. See ADVANCE PAYMENTS.

Costs of. See also CONSTRUCTION CHARGES.
Allocation of. See COST ALLOCATION.
Distinguished from operation and maintenance costs 190, 969
Generally 51
Increase in 59, 379, 654, 1055
Repayment of. See CONSTRUCTION CHARGES; REIMBURSEMENT AND COST SHARING.
What constitutes, special problems 58, 59, 379, 645, 970

Damage claims. See CLAIMS AGAINST UNITED STATES.

Exchange of property
Generally 76, 660

Feasibility reports. See STUDIES AND REPORTS.

Historical and archeological data. See ARCHAEOLOGY.

Labor provisions
Boulder Canyon project 704
Eight-hour day 51, 1982, S558
Indian labor 126, 2399
Mongolian labor 51
Prevailing wage rates 1978, S552
Public buildings, generally S565
Relocation of property
Generally 72, 660
Roads. See ROADS.
Town of American Falls 290

Repayment contract, when required. See REPAYMENT CONTRACTS.

School assistance. See SCHOOLS.

Works authorized
Change in project plan 1040, 1249
Discretion of Secretary 52, 300
Distribution systems. See DISTRIBUTION SYSTEMS.
Drainage. See DRAINAGE WORKS.
Generally 35, 36, 51, 88
Power facilities. See POWER.

S1171
INDEX TO VOLUME V AND SUPPLEMENT II

Roads. See ROADS.
Small reservoirs 582
Warren Act 166
Change in project plan 2333, 2400

CONSTRUCTION CHARGES. See also individual projects and irrigation districts by name.
Apportionment
Based on land classification 52, 318, 638, 652, S69
Generally 52, 221

Authorized
Generally 37, 51, 62, 166, 186, 376
Repayment contracts. See REPAYMENT CONTRACTS.

Contracts with organizations. See DRAINAGE AND MINOR CONSTRUCTION ACT; FISH AND WILDLIFE; RECREATION, REHABILITATION AND BETTERMENT ACT; REPAYMENT CONTRACTS; SMALL RECLAMATION PROJECTS ACT; WATER SERVICE, WATER SUPPLY.

Cost allocation. See COST ALLOCATION.
Credits against, from other revenues. See also RECLAMATION FUND.
Generally 320, 598, 644
Miscellaneous revenues 102, 163, 202, 236, 251, 256, 320, 323, 451, 461, 463, 598, 654, 658, 999, S69, S70
Naval Air Station, Lemoore, California 2659, 3610
Power revenues 111, 320, 352, 598, 544, 647, 807, 830, S69, S163
Strawberry Valley project 137
Warren Act contracts 323

Defined 634, 969, S124

See also CONSTRUCTION.

Development period
Generally 186, 318, 640, 652, 1681

Different rates for irrigation and municipal or industrial uses permitted. See WATER SUPPLY.

Extension, deferment and other interim relief
Generally 61, 305, 308, 324, 373, 375, 636, 639, 640, 643, 652, 663, 817, 1503, S137

Normal and percentages plan 636, 664
Relief and moratorium acts 292, 293, 294, 305, 308, 350, 375, 376, 387, 490, 506, 511, 521, 541, 581, 632, 663, 3033
Variable annual payment 653, 664

Increase of
Collbran formula 1085, 1185, 1245, 1319
Miscellaneous opinions 58, 59, 61, 379, 654, 729, 1055
Statutory provisions governing 189, 211
Statutory provisions relating to 1275

Where delay in application for water service 195

Indian lands. See INDIAN LANDS.

Nonreimbursable funds. See REIMBURSEMENT AND COST SHARING.

Obligation of irrigators, generally.
Amount of construction costs repaid by irrigators, explanatory note 51
Based on ability to repay 634, 644, 654, 663, 786, 1084, 1205, 1503, 2755, S134

Different rates for irrigation and municipal uses permitted 585

Payment of, by individual water users
Generally 60, 62, 67, 177, 186, 187, 296, 372, 373
Lien for 178, 179, 298

To local organization as fiscal agent of the United States 195

Penalties for delinquent payment

S1172
INDEX TO VOLUME V AND SUPPLEMENT II

Delivery of water witheld 398, 639, 1024
Forfeiture 62, 68, 178, 188, 296
Interest 178, 188, 296, 320, 375, 639
Public notice of water availability and terms
   Generally 51, 186, 196, 297, 318, 377
   Withdrawal of notice 164
Rates and reimbursement
   Generally S134, S135
   Sixty year repayment period 3028
   Reduction of S243
Refunds of 103, 331, 372, 373, 1025
Repayment period, generally
   Forty years 375, 377, 636, 652
   Ten years 51
   Twenty years 186, 187
Repayment period
   Administrative discretion 646, 648, 650, 656
Variable annual payment
   Generally 318
Waiver or reduction of
   Irrigable lands transferred to nonirrigation uses 297
   Nonirrigable lands, generally 61, 68, 372, 373, 374, 643
   Warren Act contracts 166

CONSULTANTS
   Authority to hire consulting engineers, geologists, appraisers, and economists 498, 682, 812

CONTINUING FUNDS. See EMERGENCY WORK.

CONTRA COSTA COUNTY, California 979, 1858, 3216, 3217

CONTRA COSTA COUNTY WATER DISTRICT CANAL 3216, 3217

CONTRACTS. See CONSTRUCTION, DRAINAGE AND MINOR CONSTRUCTION ACT; EXCESS LANDS, OPERATION AND MAINTENANCE; RECREATION; REHABILITATION AND BETTERMENT; REPAYMENT CONTRACTS; SMALL RECLAMATION PROJECTS ACT; SUPPLIES AND SERVICES; WATER SERVICE; WATER SUPPLY.

CONTRACT DISPUTES ACT OF 1978
   Extracts from S615

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
   Text S557

CONTRACT WORK HOURS STANDARDS ACT
   Miscellaneous references to S191, S236, S260
   Text 1982, S557

CONTRACTORS. See CONSTRUCTION.

CONTRIBUTED FUNDS. See ADVANCE PAYMENTS; COST SHARING.

CONTRIBUTED FUNDS ACT
   Annotations of S67
   Statutory references to 2479, 3644
   Text 291
INDEX TO VOLUME V AND SUPPLEMENT II

COOK CANAL  3187
COOK INLET  1704
COOLIDGE DAM  2414, 3423
        Modifications  3659
COOPER, CHARLES  1060
COOPERATIVE FUND  3356, 3359
COORDINATED OPERATIONS POLICY OR AGREEMENT. See CENTRAL VALLEY PROJECT.
COORDINATION ACT  842
COPELAND ACT
        Miscellaneous references to  S191, S236, S250, S555
COPPER CREEK  2438
COPPER RIVER, Alaska  2440
CORA BROWN BRIDGE  2448
CORDELL, Oklahoma  2349
CORDON AMENDMENT PROJECTS
        Deferment of construction charges  1503
        Individual projects. See ARNOLD PROJECT; AVONDALE PROJECT; CRESCENT LAKE PROJECT; DALTON
        GARDENS PROJECT; GRANTS PASS PROJECT; OCHOCO DAM PROJECT; RATHDRUM PRAIRIE PROJECT
        (Hayden Lake Unit).
        Reclamation laws, application of  634, 970, 1503
CORN CREEK  2437
CORN CREEK UNIT, P-SMBP, Oregon Trail division  2478
CORPORATIONS
        Excess lands  66
        Water service to  54, 148
CORPS OF ENGINEERS. See ARMY, DEPARTMENT OF THE.
COST ALLOCATION
        Army projects
        Columbia River projects  575
        Cumberland River projects  801
        Federal Power Commission role  575, 800
        Fort Peck project  606
        Federal water projects, generally
        Fish and wildlife costs  841, 842, 1820
        Recreation costs  1820
        Water quality costs  1279, 2668
        Water supply costs  1427
        Reclamation projects
        Colorado River Basin project  2412
        Colorado River Basin Salinity Control project. See the first level entry of the topic.
        Fish and wildlife costs  842, 1436, 1823

S1174
INDEX TO VOLUME V AND SUPPLEMENT II

Flood control and navigation costs; consultation with Army 646
   Generally 644, 645, 647, 652, 655, 3057
   Pick-Sloan Missouri Basin Program S157, S158
Safety of Dams 3420
Small reclamation projects 1333
Small watershed projects. See WATERSHED PROTECTION AND FLOOD PREVENTION ACT.
W.C.U. projects
   Flood control costs, consultation with Army 670
   Generally 670, 678

COST-EFFECTIVE
   Definition of 3226

COST SHARING. See also ARMY, DEPARTMENT OF THE; REIMBURSEMENT AND COST SHARING.
   Federal water projects, generally S393, 3532
   Flood Control and other purposes 3532
   Special provisions relating to individual projects
      Buffalo Bill Dam and Reservoir modifications 3334
      Cibolo project 2905
      CVP Water quality and salinity control costs nonreimbursable S854, 3512
      Drainage facilities for Central Arizona Project 2411, 3364
      Klamath River Basin Restoration Program 3526
      Nueces River project 2913
      Reclamation Wastewater and Groundwater Studies 3876-3878
      Trinity River sand dredging 3198

COSTILLA CREEK COMPACT
   Text 1724

COSTILLA COUNTY 1725

COSTILLA RESERVOIR 1725

COSUMNES RIVER 978, 1889, 1890

COSUMNES RIVER DIVISION, CVP 1887, 1890

COTTON COUNTY, Oklahoma 2765

COTTONWOOD BENCH AREA, Riverton project 1741

COULEE DAM COMMUNITY ACT OF 1967
   Text 1379

COULEE DAM SCHOOL DISTRICT 716

COUNCIL ON ENVIRONMENTAL QUALITY
   Compact references to 3283
   Established 2508
   Statutory references to 2513, 2807

COUNCIL OF ECONOMIC ADVISERS 3331

COUNTY LINE DAM AND RESERVOIR 1847

COURT OF CLAIMS
   Abolishment of, explained S495

S1175
INDEX TO VOLUME V AND SUPPLEMENT II

COURTS. See court decisions, suits.

COURT DECISIONS

Abell v. United States, 518 F.2d 1369, 207 CL Ct. 207 (1975)  S117
Accardi v. United States, 599 F.2d 423 (Ct. Cl. 1979)  S5
Aetna Insurance Co. v. United States, 628 F.2d 1201 (9th Cir. 1980), cert. denied, 450 U.S. 1025 (1981)  2945, S175, S381
Alford, et al. v. Hesse, 279 P. 381 (Calif. 1929)  89
American Falls Reservoir District No. 2 v. Crandall, et al., 82 F. 2d 973, 85 F. 2d 864 (C.C.A. Idaho 1936)  83
Anahiem, City of. See City of Anaheim v. Duncan; City of Anaheim v. Kleppe.
Arizona v. California, 283 U.S. 423 (1931)  2, 78, 415, 416
Arizona v. California, 439 U.S. 419 (1979)  2401, S20, S77, S90
Arizona v. California, 376 U.S. 340 (1964)  2401, 2408, 2409, 2420, 2423, 2862, 2872, 3529
Austin v. Andrus, 638 F.2d 113 (9th Cir. 1981)  2633
Beaver v. United States, 350 F. 2d 4 (9th Cir. 1965), cert. denied, 383 U.S. 937 (1966)  43
Bethune v. Salt River Valley Water Users' Ass'n, 26 Ariz. 525, 227 P. 989 (1924)  54, 57
Board of Directors of Wilbur Irrigation District v. Jorgensen, 84 Idaho 538, 136 P. 2d 461 (1943)  297
Bowker v. Morton, 541 F.2d 1347 (9th Cir. 1976)  S76, S295

S1176
INDEX TO VOLUME V AND SUPPLEMENT II

Brown v. United States, 263 U.S. 78 (1923), affirming United States v. Brown, 279 F. 168 (1922) 72, 290
Buell v. County Court of Jefferson County, et al., 152 P. 2d 578 (Ore. 1944), rehearing denied, 154 P. 2d 188 (1944) 221
Burley v. United States, et al., 179 F. 1, 33 L.R.A. (N.S.) 807 (Idaho 1910), affirming 172 F. 615 (C.C.D. Idaho 1909) 4, 52, 72, 78, 87
Bryant v. Yellen. See United States v. Imperial Irrigation District (160-acre limit)
California v. United States, 169 F. 2d 914 (1948) 661
California v. United States, 146 F. Supp. 341 (S.D. Cal. 1956) 889
California v. United States, 151 F. Supp. 570 (N.D. Calif. 1957) 889
California Energy Resources Conservation and Development Commission v. Johnson, 677 F. 2d 711 (9th Cir. 1982) 3268
California Electric Power Co. v. United States, 60 F. Supp. 344, 104 Ct. Cl. 289 (1945) 430
Capron v. Van Horn, 201 Cal. 468, 258 P. 77 (1927) 43, 46, 47, 48
Caruthers v. Sunnyside Valley Irrigation Dist., 29 Wash. 2d 530, 188 P. 2d 136 (1947) 192
Casey v. Butte County, 217 N.W. 508 (S. Dak. 1927) 63
Cheney v. Minidoka County, 26 Idaho 471, 144 P. 343 (1914) 63, 178
Citizens and Landowners Against the Miles City/New Underwood Powerline v. Secretary, 513 F. Supp. 257 (D. S. Dak 1981), affirmed on the ground of laches, 683 F.2d 1171 (8th Cir. 1982) 2496, 3007, 3053, S3
City of Anaheim v. Duncan, 658 F.2d 1326 (9th Cir. 1981) S128
City of Anaheim v. Kleppe, 590 F.2d 285 (9th Cir. 1978) 2405, S129
City and County of Denver v. Northern Colo. Water Conservancy Dist., 130 Colo. 375, 276 P. 2d 992 (1954) 84
City of Fresno v. California, 372 U.S. 627 (1963) 77, 585, 586, 651

S1777
INDEX TO VOLUME V AND SUPPLEMENT II


City of Portland, Oregon v. Munro, No. 77-928 (D. Ore. December 3, 1980) S113


City of Stanfield v. Umatilla River Water Users’ Ass’n, 192 F. 596 (D. Ore. 1911) 87

Clinton v. Elder, et al., 277 P. 968 (Wyo. 1929) 222

Clyde v. Cummings, 35 Utah 461, 101 P. 106 (1909) 45, 88, 89

Colorado v. Kansas, 320 U.S. 353 (1943) 932


Colorado River Water Conservation District v. United States, 593 F.2d 907 (10th Cir. 1977) 2505, S110


Confederated Bands of Ute Indians v. United States, 112 Ct. Cl. 123 (1948) 47

Continental Land Co. v. United States, 88 F. 2d 104 (9th Cir. 1937) 74

Cosby v. Danzigar, 38 Cal. App. 204, 175 P. 809 (1918) 9

Cotton Land Co. v. United States, 75 F. Supp. 232, 109 Ct. Cl. 816 (1948) 6, 7

County of Fresno v. Andrus, 622 F.2d 435 (9th Cir. 1980) S76


County of Trinity v. Andrus, 439 F. Supp. 1368 (E.D. Cal. 1977) 2501, 2506, 3034, S166, S242

Crow Tribe v. United States, Civil No. 214, D.C. Mont., 1963 1430

Culpepper v. Ocheltree, 185 P. 971 (Cal. 1919), affirmed 256 U.S. 483 (1921) 47

Desert Beach Corp. v. United States, 128 F. Supp. 581 (S.D. Cal. 1955) 889


Dopp v. Alderman, 12 Wash. 2d 268, 121 P. 2d 388 (1942) 18

Dugan v. Rank, 372 U.S. 504 (1963) 6, 7, 585, 586, 1098

Edwards v. Bodkin, 267 F. 1004 (D. Cal. 1919), affirmed, 265 F. 621 (9th Cir. 1920) 47

Edwards v. Bodkin, 249 F. 562, 161 C.C.A. 488 (Cal. 1918), overruling 241 F. 931 (1917), 42 L.D. 172; affirmed, 265 F. 621 (9th Cir. 1920), affirmed, 255 U.S. 221 (1921) 47, 48, 89, 125

Elephant Butte Irrigation Dist. v. Gatlin, 61 N.M. 58, 294 P. 2d 628 (1956) 100

S1178
INDEX TO VOLUME V AND SUPPLEMENT II


Enterprise Irr. Dist. v. Enterprise Land and Investment Co., 300 P. 507 (Ore. 1931) 65


Fort Mojave Indian Tribe v. United States. See The Fort Mojave Indian Tribe v. United States.


Fort Shaw Irr. Dist. v. Ward, 81 Mont. 170, 261 P. 962 (1927) 297

Fort Worth v. United States, 188 F. 2d 217 (1951) 661

Foster v. United States, 183 F. Supp. 524 (D. N.M. 1959), affirmed, 280 F. 2d 431 (10th Cir. 1960) (per curiam) 887

Fox v. Iokes, 137 F. 2d 30 (D.C. Cir. 1943), 78 U.S. App. 84 (1943), cert. denied, 320 U.S. 792 (1943) 58, 59, 81, 83, 85, 211

Franz v. East Columbia Basin Irrigation District, 383 F.2d 391 (9th Cir. 1967) S143

The Frenchman Valley Irrigation District v. Smith, et al., 167 Neb. 78, 91 N.W. 2d 415 (1958) 6, 380

Fresno, County of. See County of Fresno v. Andrus.


Fulton, City of. See City of Fulton v. United States.


Grand Canyon Dories, Inc. v. Walker, 500 F.2d 588 (10th Cir. 1974) 2506, S249

INDEX TO VOLUME V AND SUPPLEMENT II

Hodel v. Wilihite, 674 F. 2d 1459 (11th Cit. 1985) 2504, 3067, S132, S150, S153
Green v. Wilihite, 14 Idaho 238, 93 P. 971 (1908) 17, 18
Green v. Wilihite, 160 F. 755 (C.C. Idaho 1906) 18
Green River Drainage Area, 147 F. Supp. 127 (D. Utah 1956) 1098
Greerson, et al. v. Imperial Irr. Dist., et al., 59 F. 2d 529 (9th Cir. 1932) 429
Griffiths v. Cole, 264 F. 369 (D. Idaho 1919) 18, 84, 87
Gustine Land & Cattle Co., Inc. v. United States, 217 Ct. Cl. 556 (1966) 6, 7
Hancock v. Train, 426 U.S. 167 (1978) S3
Hedrick v. United States, 184 F. Supp. 927 (D. N.M. 1960) 889
Hillcrest Irr. Dist. v. Brose, 24 Idaho 376, 133 P. 663 (1913) 167
Horstmann v. United States and Natron Soda Co. v. United States, 257 U.S. 138 (1921), affirming 54 Ct. Cl. 169 (1919) 76
Hudson County Water Co. v. McCarter, 209 U.S. 349 (1908) 2
Hunter v. United States, 159 Ct. Cl. 356 (1962) 83
Ide v. United States, 263 U.S. 497 (1924), affirmering United States v. Ide, 277 F. 373 (C.C.A. Wyo. 1921) 18, 79, 84
Imperial Water Co. No. 5 v. Holabird, 197 F. 4, 116 C.C.A. 526 (Cal. 1912) 85
Iowa Public Service Co. v. Iowa State Commerce Commission, 407 F.2d 916 (8th Cir. 1969), cert. denied, 398 U.S. 826 (1969) S3, S131, S158
Irwin v. Wright, 258 U.S. 219 (1922) 63, 149, 178, 179
Israel v. Morton, 549 F.2d 128 (9th Cit. 1977) S64, S143, S335
Ivanhoe Irr. Dist. v. All Parties, 47 Cal. 2d 597, 306 P. 2d 824 (1957) 585
Ivanhoe Irr. Dist. v. McCracken, 357 U.S. 275 (1958) 1, 4, 5, 6, 64, 77, 86, 87, 380, 382, 584, 585, 586, 655, 656, 1277
Jacobs v. United States, 290 U.S. 13 (1933) 6
Johnson v. Warm Springs Irr. Dist., 118 Ore. 239, 248 P. 527 (1926) 337
Jolley v. Minidoka County, 61 Idaho 996, 106 P. 2d 885 (1940) 63, 409
Klamath County v. Colonial Realty Co., 139 Ore. 311, 7 P. 2d 976 (1932) 65, 170
Laguna Hermanos Corp. v. Martin, 643 F.2d 1376 (9th Cit. 1981) 2910, S5

S1180
INDEX TO VOLUME V AND SUPPLEMENT II

Lake Berryessa Tenants' Council v. United States, 588 F.2d 267 (9th Cir. 1978) 2505, 2909
Lawrence v. Southard, 192 Wash. 287, 73 P. 2d 722 (1937) 190
Lincoln Land Co. v. Goshen Irr. Dist., 42 Wyo. 229, 293 P. 373 (1930) 57, 65, 198, 297
Loney v. Scott, 57 Ore. 378, 112 P. 172 (1910) 40, 44
Madera Irr. Dist. v. All Parties, 47 Cal. 2d 681, 306 P. 2d 886 (1957) 585
Magruder v. Belle Fourche Valley Water Users' Ass'n, 219 F. 72, 133 C.C.A. 524 (S.D. 1914) 4, 61, 69, 72, 88
Malone v. El Paso County Improvement District No. 1, 20 S.W. 2d 815 (Tex. Civ. App. 1929) 70
McLaren v. Fleischer, 181 Cal. 607, 185 P. 967 (1919), affirmed, 256 U.S. 477 (1921) 47
Metropolitan Water District of Southern California v. Marquardt, 59 Cal. 2d 159, 379 P. 2d 28 (1963) 1525
Michaelsen v. Miller, 28 P. 2d 378 (Idaho 1933) 55
Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy District, 57 N.M. 287, 258 P. 2d 391 (1953) 904
Miller v. Jennings, 243 F. 2d 157 (5th Cir. 1957), cert. denied, 355 U.S. 827 (1957) 100, 1098
Minidoka & S.W.R.R. Co. v. United-States, 235 U.S. 211 (1914), reversed, 190 F. 491 (1911) and affirmed, 176 F. 762 (1910) 50
Minidoka & S.W.R.R. Co. v. Weymouth, 19 Idaho 234., 113 P. 455 (1911) 19
Molokai Homesteaders Cooperative Association v. Morton, 506 F. 2d 572 (9th Cir. 1974) 2507, S55, S270, S272, S276, S278
Moody v. Johnston, 66 F. 2d 999 (9th Cir. 1933) 69
Moore v. Anderson, 68 F. 2d 191 (9th Cir. 1933) 69
Montana v. Johnson, CV-81-26-BU (D. Mont. March 4, 1982), modified, 738 F. 2d 1074 (9th Cir. 1984) 3008
Morici Corp. v. United States, 681 F.2d 645 (9th Cir. 1982), affirming 491 F. Supp. 466 (E.D. Cal. 1980) (Morici I) and reversing 500 F. Supp. 714 (E.D. Cal. 1980) (Morici II) S175
Nampa & Meridian Irr. Dist. v. Bond, 283 F. 569 (D. Idaho 1922), 288 F. 541 (9th Cir. 1923), 288 U.S. 50 (1925) 36, 190, 192
Nampa & Meridian Irrigation District v. Petrie, 37 Idaho 45, 223 P. 531 (1924) 88, 167
National Audubon Society, Inc. v. Watt, 678 F.2d 299 (D. C. Cir. 1982) 2493, 2500, S401
Narriss v. United States, 186 F. Supp. 180 (D. N.M. 1960) 1309

S1181
INDEX TO VOLUME V AND SUPPLEMENT II

78, 80, 81, 83, 84, 168, 666, 1148
State of Nevada v. United States, 279 F. 2d 699 (9th Cir. 1960) 1098
New Mexico v. Backer, 199 F. 2d 426 (10th Cir. 1952) 101
New York Canal Co., Ltd. v. Bond, 273 F. 826 (D. Idaho 1921), affirmed, 265 F. 228
(9th Cir. 1920) 59, 170, 192
New York Canal Co. v. United States, 277 F. 444 (D. Idaho 1913) 167, 169
New York Trust Co. v. Farmers' Irr. Dist., 280 F. 785 (8th Cir. 1922) 170
North v. United States, 94 F. Supp. 824 (D. Utah 1950) 7, 889
Northern Pac. Ry. Co. v. United States, 277 F. 2d 615 (10th Cir. 1960), reversed, 169 F.
Supp. 735 (D. Wyo. 1959) 20
Northside Canal Co., Ltd. v. State Board of Equalization of Wyoming, 8 F. 2d 739 (D. Wyo.
1925), reversed, 17 F. 2d 55 (8th Cir. 1926), cert. denied, 274 U.S. 740 (1927) 80
Northside Canal Co., Ltd. v. Twin Falls Canal Co., 12 F. 2d 311 (D.C. Idaho 1926) 83
Ogden River Water Users' Ass'n. v. Weber Basin Water Conservancy, et al., 238 F. 2d
936 (1956) 7, 967
Oregon Short Line R.R. Co. v. Minidoka Irr. Dist., 283 P. 614 (Idaho 1929) 192
Otter Tail Power Company v. Federal Power Commission, 536 F.2d 240 (8th Cir. 1976)
S127
Otter Tail Power Company v. United States, 410 U.S. 386 (1973), affirming United States
Owen v. United States, 8 F. 2d 992 (C.C.A. Tex. 1925) 75
In re Owl Creek Irr. Dist., 71 Wyo. 70, 258 P. 2d 220 (1953), affirming 71 Wyo. 30, 253 P.
2d 867 (1953) 381
Payette-Boise Water Users' Assn., Ltd. v. Bond, 269 F. 159 (D. Idaho, 1920) 58, 60
Payette-Boise Water Users' Ass'n., Ltd. v. Cole, 263 F. 734 (D. Idaho 1919) 55, 56, 58, 59, 60, 193
3056, 3062, 3143, S115, S117
Pashley v. United States, 156 F. Supp. 737, 140 Ct. Cl. 535 (1957) 6
S45
People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P. 2d 274 (1938) 565
Commonwealth of Pennsylvania v. State of West Virginia, 262 U.S. 553 (1923) 2
Pfeifer v. Greig and Owyhee Irr. Dist., unpublished, Circuit Court of Oregon (1937) 387
Pioneer Irrigation District v. American Ditch Association, et al., 50 Idaho 732, 1 P. 2d 196
(1931) 78, 81
Pioneer Irr. Dist. v. Stone, 23 Idaho 344, 130 P. 382 (1913) 88, 167
Port of Astoria v. Hodel, 595 F.2d 467 (9th Cir. 1979), affirming Civil No. 75-349 (D. Ore.
August 26, 1975) 2501, 2503, 2504, 2505
Portland, City of. See City of Portland, Oregon v. Munro.
Quincy Columbia Basin Irrigation District, 63 Wash. 2d 115, 385 P. 2d 715 (1963), cert.
denied, 376 U.S. 953 (1964) 1690

S1182
INDEX TO VOLUME V AND SUPPLEMENT II

Ramshorn Ditch Co. v. United States, 269 F. 80 (8th Cir. 1920), affirming 254 F. 842 (D. Neb. 1918) 80, 84, 167, 168
Rio Grande Dam and Irrigation Co. v. United States, 215 U.S. 266 (1909) 98
Salt River Valley Water Users' Ass'n v. Spicer, 28 Ariz. 296, 236 P. 728 (1925) 53
San Joaquin & Kings River C. & f. Co. v. Stanislaus County, 191 F. 875 (C.C. Cal. 1911), reversed on other grounds, 233 U.S. 454 (1914) 85
Santa Barbara County Water Agency v. All Persons, 47 Cal. 2d 699, 306 P. 2d 875 (1957) 585
Santa Barbara County Water Agency v. All Persons, 53 Cal. 2d 743, 3 Cal. Rptr. 348, 350 P. 2d 100 (1960) 585
Santa Clara, City of. See City of Santa Clara v. Andrus.
Saylor v. Gray, 41 Ariz. 558, 20 P. 2d 441 (1933) 65
Save the Niobrara River Association v. Andrus, 483 F. Supp. 844 (D. Neb. 1979) 2498, 2499, 2501, S228
Shoshone Irr. Dist. v. Ickes, 70 F. 2d 771 (D.C. Cir. 1934), cert. denied, 293 U.S. 571 (1934) 454
Shoshone Irr. Dist. v. Lincoln Land Co., 51 F. 2d 128 (D. Wyo. 1930) 65
Shotwell v. United States, 163 F. Supp. 907 (E.D. Wash 1958) 658
Sierra Club v. Hodel, 544 F.2d 1036 (9th Cir. 1976) 2503, 2506
Sierra Club v. Stamm, 507 F.2d 788 (10th Cir. 1974) 2496, 2497, 2502, S249
Smith v. United States, 224 F. Supp. 402 (D. Wyo. 1963), affirmed, 333 F.2d 70 (10th Cir. 1964) 317, 889
Southern Pacific Company v. United States, 68 Ct. Cl. 223 (1929) 161
Sperry v. Elephant Butte Irr. Dist., 33 N.M. 482, 270 P. 889 (1928) 194
Stanfield, City of. See City of Stanfield v. Umatilla River Water Users' Ass'n., State of. See name of state.
Terra v. Pinney and Owyhee Irr. Dist., unpublished, Circuit Court of Oregon (1937) 387
Tex-La Electric Cooperative, Inc. v. Andrus, No. 77-1445, Civil 1219-71 (D.C. Cir. 1978) S153
Texas v. New Mexico, 352 U.S. 991 (1957) 631
Thetford v. United States, 404 F.2d 301 (10th Cir. 1968) S333
Trinity, County of. See County of Trinity v. Andrus.
Trout Unlimited v. Morton, 509 F.2d 1276 (9th Cir. 1974) 2497, 2501, 2502, S380, S381
Tulare Lake Canal Co. v. United States. See United States v. Tulare Lake Canal Company.
Turner v. Kings River Conservation Dist., 365 F. 2d 184 (9th Cir. 1966) 65, 75, 77, 382, 798, 805, 810, 1097, S73, S155

S1183
INDEX TO VOLUME V AND SUPPLEMENT II

Twin Falls Canal Co. v. American Falls Reservoir Dist. No. 2, 59 F. 2d 19 (9th Cir. 1932), affirming 49 F. 2d 632 (D. Idaho 1931) 70, 399

Twin Falls Canal Co., Ltd. v. Foote, 192 F. 583 (D. Idaho 1-9.11) 87

Twin Falls Canal Co. v. Teton County, Unpublished Mem'ndum (Dist. Ct. Wyo., Nov. 14, 1928) 80


United States v. 0.886 of an Acre, 65 F. Supp. 827 (1946) 661

United States v. 3.08 Acres of Land, More or Less, 209 F. Supp. 652 (D. Utah 1962) 79

United States v. 5.61 Acres of Land, More or Less, in El Dorado County, California, 148 F. Supp. 467 (N.D. Cal. 1957) 20

United States v. 20.53 Acres of Land in Osborne County, Kansas, City of Downs, 263 F. Supp. 694 (D. Kan. 1967) 74


United States v. 277.97 Acres of Land, 112 F. Supp. 159 (D. Cal. 1953) 72, 75, 378, 585

United States v. 5,677.94 Acres of Land, More or Less, 152 F. Supp. 801 (D. Mont. 1957) 73

United States v. 5,677.94 Acres of Land, More or Less, 162 F. Supp. 108 (D. Mont. 1958) 808

United States v. Alderson, 53 F. Supp. 528 (1944) 661

United States v. Akin. See Colorado River Water Conservation District v. United States


United States v. Bennett, 207 F. 524 (C.C.A. Wash. 1913) 82, 85

United States v. Brown, et al., 279 F. 168 (1922) 290

United States v. Buffalo Pitts Co., 234 U.S. 228 (1914) 74


United States v. Cantrall, 176 F. 949 (C.C. Ore. 1910) 56, 70

United States v. Canyon County, 232 F. 985 (D. Idaho 1916) 63, 178, 179

United States v. Causey, 328 U.S. 256 (1946) 6

United States v. Chandler-Dunbar Water Power Co., 229 U.S. 53 (1913) 2, 8

United States v. City of Fulton. See City of Fulton v. United States.

United States v. Coachella Valley County Water District, 111 F. Supp. 172 (S.D. Cal. 1953) 379, 654, 1055


United States v. Des Moines County, 148 F. 2d 448 (1945) 661

United States v. Dickinson, 331 U.S. 745 (1947) 6, 7

United States v. District Court of Fourth Judicial Dist. in and for Utah County, et al., 121 Utah 1, 238 P. 2d 1132 (1951), rehearing denied, 121 Utah 18, 242 P. 2d 774 (1952) 81

S1184
INDEX TO VOLUME V AND SUPPLEMENT II

United States v. District Court for Eagle County, 401 U.S. 520 (1971) S209, S210
United States v. District Court for Water Division No. 5, 401 U.S. 527 (1971) S209
United States v. Chas. L. Donohoe Co., 33 F. 2d 362 (N.D. Cal. 1929) 191
United States v. Fall, 276 F. 622, 57 App. D.C. 100 (1921) 39, 46, 154
United States v. Fallbrook Public Utility Dist., 165 F. Supp. 806 (D. Cal. 1958) 78

United States v. Fuller, 20 F. Supp. 839 (D. Ida. 1937) 79
United States v. Grand River Dam Authority, 363 U.S. 229 (1960) 7
United States v. Gregory, 300 F. 2d 11 (10th Cir. 1962) 8811
United States v. Hanson, 167 F. 881, 93 C.C.A. 371 (9th Cir. 1909) 4, 39, 41, 88, 122
United States v. Ida, 277 F. 373 (8th Cir. 1921), affirmed, 263 U.S. 497 (1924) 36, 79, 84

United States v. Imperial Irrigation District (160-acre limit), 322 F. Supp. 11 (S.D. Cal. 1971) reversed, 559 F.2d 509 (9th Cir. 1977), modified, 595 F.2d 524 (9th Cir. 1979), reaffirmed on rehearing, 595 F.2d 525 (9th Cir. 1979), reversed sub nom. Bryant v. Yellen, 447 U.S. 352 (1980) S19, S20, S21, S25, S73, S75, S76, S77, S89, S90, S155


United States v. Midwest Oil Co., 236 U.S. 459 (1915) 155, 3022

United States v. Northern Colorado Water Conservancy District, Civil Nos. 2782, 5016 and 5017 565, 1257

United States v. Northern Colorado Water Conservancy District, 449 F.2d 1 (10th Cir. 1971), following United States v. Martin, 267 F.2d 764 (10th Cir. 1959) S5
United States v. O'Neill, 198 F. 677 (D. Colo. 1912) 72, 76
United States v. Parkins, 18 F. 2d 643 (1926) 61
United States v. Pruden, 172 F. 2d 503 (10th Cir. 1949) 79
United States v. Sacramento Municipal Utility District, 652 F.2d 1341 (9th Cir. 1981) S126
United States ex rel. Shoshone Irr. Dist. v. Ickes, 70 F. 2d 771 (D.C. Cir. 1934), cert. denied, 293 U.S. 571 (1934) 322, 454

INDEX TO VOLUME V AND SUPPLEMENT II

United States v. Tilley, 124 F. 2d 850 (8th Cir. 1941), cert. denied, 316 U.S. 691 (1942)80, 84, 167, 168


United States v. Tulare Lake Canal Co. (second case), 677 F.2d 713 (9th Cir. 1982), cert. granted, judgment vacated, and case remanded with directions to dismiss as moot sub nom. Tulare Lake Canal Co. v. United States, 459 U.S. 1095 (1983) S4, S20, S21, S22, S25, S73, S74, S75, S77, S155, S156


United States v. Union Gap Irrigation Co., 209 F. 2d 274 (D.C. Wash. 1913) 85

United States v. Union Gap Irrigation District, 39 F. 2d 46 (9th Cir. 1930) 81, 82

United States v. Ure, 225 F. 2d 709 (9th Cir. 1955) 886, 888

United States v. Van Horn, 197 F. 611 (D. Colo. 1912) 17, 18, 19, 21


United States v. West Side Irrigating Company, 230 F. 284 (D. Wash. 1916) 81


United States v. Wunderlich, 342 U.S. 88 (1951) 1390

Ure v. United States, 93 F. Supp. 779 (D. Ore. 1950) 886, 888

Utah v. Andrus, 636 F.2d 276 (10th Cir. 1980) 2503, 3106

Utah Power & Light Co. v. United States, 243 U.S. 389 (1917) 29

Utah Power and Light Co. v. Morton, 504 F.2d 728 (9th Cir. 1974) S42


Walsug Mining Co. v. Covey, 352 P. 2d 768 (Ariz. 1960) 41


Washington v. Udall, 417 F.2d 1310 (9th Cir. 1969) S79, S335

Washington v. United States, 214 F. 2d 33 (1954) 661

Washington Water Power Co. v. United States, 135 F. 2d 541 (9th Cir. 1943) 74

West v. Kansas Natural Gas Co., 221 U.S. 229 (1911) 2


Weymouth v. Lincoln Land Co., 277 F. 384 (6th Cir. 1921) 36


White v. United States, 193 F. 2d 505 (9th Cir. 1951) 886


Wieland, Adelbert A., State Engineer of Colorado v. Pioneer Irrigation Co., 259 U.S. 498 (1922) 743

Wilbur v. Burley Irrigation Dist., 58 F. 2d 871 (D.C. Cir. 1932) 322

Wilbur v. Minidoka Irr. Dist., 50 F. 2d 495, 60 App. D.C. 205 (1931), cert. denied, 284 U.S. 634 (1931) 171, 323, 352

Winters v. United States, 207 U.S. 564 (1908) 4


Wood v. Canyon County, 43 Idaho 556, 253 P. 839 (1927) 63, 178

Wunderlich v. United States, 117 Ct. Cl. 92 (1950) 1390

Wyoming v. Colorado, 259 U.S. 419 (1922) 79

S1186
INDEX TO VOLUME V AND SUPPLEMENT II


United States v. Imperial Irrigation District, 559 F.2d 509, 516-520 (9th Cir. 1977) S20, S22, S23, S73, S89, S92

Yuma County Water Users' Assn. v. Schlecht, 275 F. 885 (9th Cir. 1921), affirmed, 262 U.S. 136 (1923) 56, 57, 59, 61, 191, 195


COVE POWERPLANT 1340

COW CREEK, California 1235

COW CREEK, Oregon 1892

COW CREEK, Wyoming 1887

COYOTE CREEK 1245

COYOTE PUMP STATION 2333

CRACKER BOX UNIT, MRB 1892

CRAIG, MILTON 2780

CRANBERRY RIVER 2447

CRANDALL CREEK BRIDGE 2445

CRATER LAKE, Alaska 1704

CRATER LAKE NATIONAL PARK 1375

CRATER-LONG LAKES DIVISION, Snettisham, project 1704

CRBSCP. See COLORADO RIVER BASIN SALINITY CONTROL PROJECT.

CRESBARD CANAL 3328

CRESBARD DAM AND RESERVOIR 3328

CRESSENT CREEK 2438

CRESSENT LAKE DAM PROJECT, Oregon

Funds for emergency rehabilitation 1142

Reclamation laws, application of. See CORDON AMENDMENT PROJECTS.

CRESTON-FAIRPORT INTERIE 808

CRIMES, REGULATION OF. See FISH AND WILDLIFE, RECREATION.

CROOK COUNTY 1340

CROOKED RIVER BASIN 1889

CROOKED RIVER PROJECT, Oregon

Authorized 1340

Extension
INDEX TO VOLUME V AND SUPPLEMENT II

Authorized 1802
Extra canal capacity authorized 1500
Prineville Dam powerplant 3217
Feasibility study authorized

CROPS, SURPLUS. See AGRICULTURE ACT OF 1949; AGRICULTURAL ADJUSTMENT ACT OF 1938.

CROSS LAKE 3307
CROSS VALLEY PIPELINE 2333

CROW CREEK PUMP UNIT, MRB, Montana 1233
Interim contract with Toston Irrigation District

CROW CREEK INDIAN RESERVATION 3328

CROW INDIANS
Acquisition of lands of, for Yellowtail Dam 808
Ceded lands to be disposed of under reclamation law 92
Compensation for lands used for Huntley project 461, 1440
Compensation to, for lands utilized for Yellowtail Dam and Reservoir 1429
Lands for transmission line to Yellowtail dam site 863
Lands of, excluded from Bighorn Canyon National Recreation Area without consent of tribal council 1905

CRSP MARKETING CRITERIA S256
CRSP. See COLORADO RIVER STORAGE PROJECT.

CRYSTAL CREEK 1768

CRYSTAL IRRIGATION DISTRICT 1080

CRYSTAL Geyser Unit, Utah Colorado River Basin Salinity Control Program 2869

CSPE. See COLUMBIA STORAGE POWER EXCHANGE.

CUDAI INDIAN IRRIGATION PROJECT 1664

CUERO PROJECT, Texas 1888
Completion of studies authorized

CuIu Fish 2783

CULBERTSON DAM 930
CUMBERLAND RIVER 801

CUP. See CENTRAL UTAH PROJECT.

CURECANTI STORAGE UNIT, CRSP 2657, 3218
Curecanti Unit, CRSP 1248, 1257

CURRANT CREEK DAM 2496, 2502, S249

CUSTER COUNTY, Oklahoma 855, 973, 2771

CVP. See CENTRAL VALLEY PROJECT.

S1188
INDEX TO VOLUME V AND SUPPLEMENT II

CYPRESS CREEK, Louisiana 3307
CYPRESS-PIMA MINING COMPANY 3356, 3360

D

DADDYS CREEK 2432, 2444
DALE HOLLOW DAM 801

DALLAS CREEK PROJECT, Colorado
 Authorized 2416, S247
 Expeditious completion of planning report directed 1249
 Miscellaneous references to S250
 Municipal and industrial costs exceeding $38,000,000 nonreimbursable 3373

DALLE. See THE DALLE.

DALTON GARDENS PROJECT, Idaho
 Additional work authorized 1615
 Funds appropriated for rehabilitation 1114, 1551
 Reclamation laws, application of. See CORDON AMENDMENT PROJECTS.

DAM SAFETY. See also ARMY, DEPARTMENT OF THE.
 As a project purpose
 Brantley project 2753
 Modification of Reclamation dams authorized. See RECLAMATION SAFETY OF DAMS ACT OF 1978.
 Reimbursement and cost sharing
 American Falls Dam 3128
 Bartlett Dam 3128
 Belle Fourche project 2911
 Brantley project 2753
 Dickinson Dam spillway 2936
 Generally 3127
 McKay Dam 2987
 Red Fleet Dam 3214

DAMAGES. See CANAL ACT; CLAIMS AGAINST UNITED STATES.

DAMS CREEK DAM AND RESERVOIR 2758

DARDANELLE DAM 801

DARK CANYON DIVISION, Burnt River project 1889

DAVIS-BACON ACT
 Miscellaneous references to S236
 Statutory references to 2596
 Text 1978, S552

DAVIS COUNTY 965

DAVIS DAM S90
 See PARKER-DAVIS PROJECT.

DAY COUNTY, South Dakota 3207

S1189
INDEX TO VOLUME V AND SUPPLEMENT II

DAYTON DAM AND RESERVOIR 2525
DE LUZ CREEK 1158
DE LUZ DAM 1158
DE LUZ HEIGHTS MUNICIPAL WATER DISTRICT S277
DE GRAY DAM 801
DEADWOOD RESERVOIR 453
DEATH VALLEY JUNCTION, California 2478
DEAVER IRRIGATION DISTRICT 985, 1129, S196

DECISIONS. See ATTORNEY GENERAL DECISIONS; COMMISSIONER OF INTERNAL REVENUE OPINION; COMPTROLLER GENERAL DECISIONS; COMPTROLLER OF THE TREASURY DECISIONS; COURT DECISIONS; FEDERAL ENERGY REGULATORY COMMISSION DECISION; FEDERAL POWER COMMISSION DECISIONS; OPINIONS AND DECISIONS OF THE DEPARTMENT OF ENERGY, OPINIONS AND DECISIONS OF THE DEPARTMENT OF THE INTERIOR.

DEER CREEK DIVISION, Provo River project 866
DEER FLAT RESERVOIR 450
DEER PARK, Alabama 2447
DEFENSE HOMES CORPORATION 869
DEFENSE PLANT CORPORATION 899, 1194
DEFERMENT OF CONSTRUCTION CHARGES 1503
DEGRAY LAKE 3309
DEL RIO 1542
DEL CITY AQUEDUCT 2949
DELANO-EARLMART IRRIGATION DISTRICT S79
DELAWARE RIVER 2434, 2444, S317
DELAWARE RIVER BASIN COMMISSION
Statutory references to 2520
DELAWARE RIVER BASIN COMPACT
Annotations of S317
Statutory references to 2520
Text 1618

DELAWARE, STATE OF
Compacts of. See DELAWARE RIVER BASIN COMPACT.

DELAWARE RIVER, Texas 943
DELAWARE CREEK, Texas 392
DELAWARE WATER GAP NATIONAL RECREATION AREA 2434, 2441

S1190
INDEX TO VOLUME V AND SUPPLEMENT II

DELEGATION OF AUTHORITY
   Bureau of Reclamation 658, 721
   By Secretary of the Interior, generally 1005
   Government agency heads generally 1927, S442
   Southwestern Power Administration 802

DELTA, Colorado 2765
DELTA COUNTY, Colorado 2765, 3220
DELTA. See SACRAMENTO-SAN JOAQUIN DELTA.
DELTA DIVISION, CVP 1887, 2643
DELTA OVERLAND WATER SERVICE FACILITIES 3216
DELTA-MENDOTA CANAL 1529, S13, S81, S118
DELTA RIVER, Alaska 2439

DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966
   Statutory references to 2980

DEN HARTOG, B. MARIAN S80, S82
DENISON DAM AND RESERVOIR 615, 616, 801, 1053, 3301, 3303, 3304, 3306
DENISON-PAYNE TRANSMISSION LINE 1053
DENNISON FORK, Alaska 2440
DENTON, PHILIP J. 1357

DENVER, CITY OF 1258

DEPARTMENT OF ENERGY ORGANIZATION ACT
   Amendments of S1063, 4112
   Extracts from 3048
   Miscellaneous references to S56, S111, S114, S116, S122, S149, S213
   Reports eliminated 4070
   Reports modified 4070
   Standardization Act of 1997 4112
   Miscellaneous references to S1065
   Statutory references to 3265, 3469, 3533, S939

DEPOSITS 259, 1025

DERWENT CREEK 2438

DESLALTING. See SALINITY CONTROL.

DESLALTING COMPLEX UNIT, CRBSCP 2865, 3202

DESCHUTES PROJECT, Oregon. See also ARNOLD PROJECT.
   Amended contract approved 1173
   Authorization explained 1173
   Central division
   Feasibility study authorized 1889
   Haystack Dam authorized 1173
INDEX TO VOLUME V AND SUPPLEMENT II

Miscellaneous references to 651
Study authorized 315
Wickiup Dam
Feasibility study authorized 3217

DESHUTES RIVER BASIN 1889

DESERT LAND ACT
Carey Act 25
Classification of lands for disposition under Entries
Assignment of 176
In Imperial Valley 422
Lands in irrigation districts covered by Smith Act 224
Patents and water-right certificates 184
Relationship to Reclamation projects 13, 41, 42, 47, 49, 55, 123, 176, 184, 286,
295, 462, 1121
Taxation of. See TAXATION.
Text (original act) 12

DEVELOPMENT PERIOD. See CONSTRUCTION CHARGES.

DEVELOPMENT UNIT
Term defined 635

DEVILS RIVER 753

DIABLO DAM 1542

DICKEY LAKE, Alaska 2440

DICKINSON DAM 1490, 2936

DICKINSON UNIT, MRB, P-SMBP, North Dakota
Appropriations for public use facilities 1317
Heart division 2643, 2936
Lake formed by Dickinson Dam named Edward Arthur Patterson Lake 1490
Obligation forgiven 3560

DIEDRICH BROTHERS S84

DIGIORGIO CORPORATION S80, S82

DINGELL-JOHNSON SPORT FISH RESTORATION ACT
Statutory references to 3212

DINOSAUR NATIONAL MONUMENT 2446

DIRECT SERVICE INDUSTRIAL CUSTOMERS 3245, 3258, 3269, 3270

DIRTY DEVIL RIVER 2869

DIRTY DEVIL RIVER SALINITY CONTROL STUDY 3220

DISASTER RELIEF. See DISASTER RELIEF; DROUGHT RELIEF; EMERGENCY WORK.

DISASTER RELIEF ACT OF 1950
Reimbursement of expenditures by Bureau of Reclamation for purposes of 1909

S1192
INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Text</th>
<th>Repeal of, explained</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2855, S204</td>
</tr>
</tbody>
</table>

**Disaster Relief Act of 1966**
- Extracts from 1912
- Miscellaneous references to 1608
- Repeal of, explained 2855

**Disaster Relief Act of 1969**
- Repeal of 2855

**Disaster Relief Act of 1970**
- Provisions of, explained 2856
- References to, explained 2855
- Repeal of 2855

**Disaster Relief Act of 1974**
- Extracts from 2843
- Statutory references to 2356, 2807, 2946, 3274, 3481, 3553, S1012, S1085

**Disaster Assistance Act of 1988**
- Extracts from 3573
- Miscellaneous references to S890

**Discount Rate**
- Generally 2840, 3039, S340
- Individual applications
  - Cibolo Project 2904
  - New Melones Dam 2498
  - Uintah unit 2417, 2841
- Relocation assistance 2620
- Used for interest rate
  - Small hydroelectric project loans 3162

**Discrimination** 2007, 2667

**Disposition of Property. See also Land Classification, Surplus Property.**
- Exchange
  - For lands acquired for wild and scenic rivers 2451
- Special provisions relating to individual projects
  - Columbia Basin project S143

**Distribution System Loans Act**
- Amendments and annotations of 1264, 2661, S233-S238
- Miscellaneous references to S128
- Statutory references to 1496, 1556, 3570, 3611
- Text 1218
- Use of emergency fund authorized 3330

**Distribution Systems**
- Central Valley project 584, 585, 711
- Coachella Valley. See All-American Canal
- Loans for. See Distribution System Loans Act.
- Repayment contracts for
  - Generally 651, 656

S1193
INDEX TO VOLUME V AND SUPPLEMENT II

DIVISION OF A PROJECT
   Term defined

DIXIE PROJECT, Utah
   Authorized 1768
   Reauthorized 2410

DOG CREEK 2428

DOLORES PROJECT, Colorado
   Authorized 2416, S247
   Miscellaneous completion of planning report directed 1249
   Protection of archaeological resources 3196
   Miscellaneous references to S20, S22, S250

DOLORES RIVER 2445, 2446

DOLTON, ROBERT, PEARL, AND CLIFFORD 1523

DOMESTIC WATER SUPPLY. See WATER SUPPLY.

DOMINGUEZ RESERVOIR PROJECT, Colorado
   Feasibility study authorized 2765

DON PEDRO RESERVOIR 2446

DONATIONS. See ACQUISITION OF PROPERTY; ADVANCE PAYMENTS; SURPLUS PROPERTY

DOUGLAS COUNTY SEWER DISTRICT NO. 1 3288

DOUGLAS COUNTY, Nevada 2482, 2483, 2484, 3277, 3278, 3281, 3287, 3288, 3296

DOUGLAS COUNTY, Wisconsin 2431

DOUGLAS COUNTY 1379

DOUGLAS-AQUA PRIETA SANITATION PROJECT
   Authorization explained 1030

DRAINAGE WORKS
   Canal Act 18
   Construction by the repayment organization
      Authorization of loans for 1269
   Cost sharing. See COST SHARING.
   Excess land laws 64
   Reclamation projects, generally
      Express statutory authority 1269
      Implied authority 36, 59, 169
   Seepage. See SEEPAGE; WATER RIGHTS
   Special authorizations for individual projects
      Belle Fourche project 399
      Boise project 259, 300, 312
      Colorado Front work and levee system 401
      Klamath project 257
      Newlands project 314, 394
      Rio Grande project 235, 240
      San Luis unit 1524, 1529, 1858
      Uncompahgre project 479, 491, 506, 511, 521

S1194
INDEX TO VOLUME V AND SUPPLEMENT II

Vale project 337
Vernal unit, CUP, and Emery County project 2910
Wellton-Mohawk division 1757, 1858

DRAINAGE AND MINOR CONSTRUCTION ACT
Annotations of S260 3611, 3818
Statutory references to Text 1269

DRIFTWOOD CREEK 741

DROUGHT RELIEF. See EMERGENCY DROUGHT ACT.

DRY FALLS DAM 1099

DSI. See DIRECT SERVICE INDUSTRIAL CUSTOMERS.

DUCHESNE COUNTY, Utah 3220

DUCK LAKE 367

DUE PROCESS CLAUSE 5, S4, S132

DUNCAN LAKE DAM, Canada 1561, 1594

DUNN COUNTY, North Dakota 2928

DUNNIGAN WATER DISTRICT 3317, S203

DURANT, Oklahoma 3304

DUST BOWL 616

DUST CONTROL 1240

DUVAL CORPORATION 3356, 3360

E

EAGLE RIVER S210

EAGLE COUNTY, Colorado 3220

EAGLE DIVIDE PROJECT, Colorado
  Expeditive completion of planning report directed 1249

EARTH, STONE AND TIMBER. See BUILDING MATERIALS.

EASEMENTS. See ACQUISITION OF PROPERTY; RIGHTS OF WAY AND EASEMENTS.

EAST BAY MUNICIPAL UTILITY DISTRICT S405

EAST RIVER UNIT, Upper Gunnison Project 2417, S251

EAST BRADY, Pennsylvania 2443, 2447

EAST CANAL, Oahe Unit 3328

EAST COLUMBIA BASIN IRRIGATION DISTRICT 2352, S143

SI195
INDEX TO VOLUME V AND SUPPLEMENT II

EAST GREENACRES UNIT, Rathdrum Prairie project 2522
EAST LIVERPOOL, Ohio 2444
EAST UNIT, Greater Wenatchee division 1415
EAST RIVER PROJECT, Colorado
   Expeditions completion of planning report directed 1249
   Included as unit of Upper Gunnison project 2417, S251
EAST MESA UNIT, All-American Canal water salvage 1893
EAST SIDE DIVISION, CVP 1848, 1887, 1890
EAST DIVISION, Umatilla project 369, 370
EAST MESA 436, 1893
EAST GREENACRES UNIT, Rathdrum Prairie project 1887
EAST BAY MUNICIPAL UTILITY DISTRICT 1546
EAST COLUMBIA BASIN IRRIGATION DISTRICT 1614, 1690
EAST BENCH UNIT, MRB, Montana
   Excess lands limit set at 130 acres of class 1 equivalent lands 1351
EASTDALE RESERVOIR 1725
EASTERN SCHUK TOAK DISTRICT 3350
EASTERN MUNICIPAL WATER DISTRICT 2553, S80, S269
EASTERN NEW MEXICO WATER SUPPLY PROJECT, New Mexico
   Feasibility study authorized 1891
EASTERN DIVISION, Huntley project 359
ECHEVERRIA, PRESIDENT 2874, 2875
ECHO RESERVOIR 338, S36, S188
ECONOMIC IMPACT INFORMATION
   Required 2495, S14
ECONOMISTS. See CONSULTANTS.
ECONOMY ACT
   Extracts from 1967, S517
   Miscellaneous references to 419, 449
EDDY COUNTY 1314
EDEN PROJECT, Wyoming
   Completion of construction of, authorized 954
   Conveyance of Farson Pilot Farm to State of Wyoming by Secretary of Agriculture
      1653, 1911
   Deferment of construction charges. See WATER CONSERVATION AND UTILIZATION ACT.
   Deferment of operation and maintenance charges 1743
   Exchange of lands authorized 1136

S1196
INDEX TO VOLUME V AND SUPPLEMENT II

Reconveyance of Carey Act lands to United States 714
Statutory references to 1251, 1253

EDEN VALLEY IRRIGATION AND DRAINAGE DISTRICT 1743

EDMUNDS COUNTY, South Dakota 3207

EDNA, Texas 2463, 3181

EDWARDS UNDERGROUND RESERVOIR 1548

EEL RIVER BASIN 1890

EEL RIVER, California 1893, 2836

EEL RIVER DIVISION, North Coast project 1890

EFFLUENT STANDARDS AND WATER QUALITY INFORMATION ADVISORY COMMITTEE
Established 2745

EIS. See environmental impact statement.

EKULU PROJECT, Alaska
Authorized 1010, 1123
Miscellaneous references to S197
Rehabilitation of Costs nonreimbursable 2394

EL CHAMIZAL. See CHAMIZAL.

EL DORADO COUNTY, California 978, 1847, 2482, 2483, 2484, 3277, 3278, 3281, 3287, 3288, 3296

ELDORADO COUNTY ROAD 2616, 2837

EL PASO, Texas 100, 543, 941, 1805, 2955

EL PASO COUNTY WATER IMPROVEMENT DISTRICT NUMBER I 100, 367, 412, 564, 1881, 2956

EL RANCHO DEL RIO, INC. S44

EL VADO DAM 1661

ELECTRIC CONSUMERS PROTECTION ACT OF 1986
Excepts from 3486
Miscellaneous references to S815, S817, S819, S822-S825, S827, S828, S831, S833, S835, S842, S1079
Statutory references to S828, S1076

ELECTRIC RELIABILITY COUNCIL OF TEXAS (ERCOT) S848 3775

ELECTRICITY. See POWER.

ELEPHANT BUTTE DAM AND RESERVOIR
Acquisition of pipeline rights of way 216
American Diversion Dam authorized 537
Appropriations 127
Authorization 98
Canalization of a certain reach of the Rio Grande River authorized 543

S1197
INDEX TO VOLUME V AND SUPPLEMENT II

Consent of Congress to execute the Rio Grande Compact 623
Notes of Opinion S30
Recreation pool limitations 2916
Recreation Facilities authorized 1667
Right to sue for Damages 1308
Storage of San Juan-Chama project water 3325
Temporary Rio Grande Compact 468
Title transfer authorized 3931
Transfer of Power facilities to the United States authorized 554
William Robert Smith memorial authorized 489

ELEPHANT BUTTE IRRIGATION DISTRICT 367, 412, 564, S27, S30, S44, S69, S123

ELEVENTH POINT RIVER 2430

ELK CREEK RESERVOIR 1703

ELK CREEK RESERVOIR PROJECT, Oregon 2546

ELK CREEK DIVERSION DAM 2388

ELK RIVER, West Virginia 2448

ELK RIVER, Colorado 2445

ELKHORN DIVISION, MRB, Nebraska
  Highland unit
  Feasibility study authorized 1894

ELKTON, Ohio 2444

ELLENBERG, Washington 2547

ELLINGSSEN, CARL S144

ELLIS UNIT, MRB 1888

ELLISON CREEK DAM 3308

ELLSWORTH AIR FORCE BASE 1115

ELM CREEK 3303

ELMER CITY PARK SITE S415

ELMORE COUNTY, Idaho 3216

ELVERTA SUBSTATION 1847

EMBEZZLEMENT S491

EMERGENCY DROUGHT ACT 2501, 2506
  Text 3032

EMERGENCY DROUGHT RELIEF ACT OF 1991. See RECLAMATION STATES EMERGENCY DROUGHT RELIEF

EMERGENCY DROUGHT RELIEF ACT OF 1996 4102

S1198
INDEX TO VOLUME V AND SUPPLEMENT II

EMERGENCY FUND ACT
Amendments of 3330
Statutory references to 3035

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT OF 1994
Extracts from 4008
Statutory references to 3964, 3965

EMERGENCY WORK
Current appropriation act language 1026
Disaster relief. See DISASTER RELIEF ACTS.; DROUGHT RELIEF.
Earlier appropriation act language 300
Emergency or continuing funds
  Bonneville Power Administration 578
  Bureau of Reclamation 891, 3035, 3380, S176
  Colorado River Storage project 1252
  Eklutna project 1011
  Fort Peck project 608
  Southeastern Power Administration 1053
  Southwestern Power Administration 974, S193
Federal agencies generally 1043, 2848, 2851
Fontenelle Dam. See SEEDSKAEE PROJECT.
Protection of Yuma project 341
Reimbursement of costs of 1045

EMERY COUNTY, Utah 3220

EMERY COUNTY PROJECT, Utah
Authorized 1248
Drainage facilities authorized 2910
Increased appropriations authorized 2657

EMERY WATER CONSERVANCY DISTRICT 2910

EMERYVILLE, California 2552

EMIGRANT RESERVOIR 1184

EMINENT DOMAIN. See ACQUISITION OF PROPERTY.

EMMETT, WILLIS L 2476

EMORY RIVER 2432

EMPIRE IRRIGATION DISTRICT 313

EMPLOYMENT
  Construction labor. See CONSTRUCTION.
  Consulting engineers, etc. See CONSULTANTS.
  Indians. See CONSTRUCTION.

ENABLING ACTS
  Arizona and New Mexico
  Extracts from 141

ENCAMPMENT RIVER 2445

S1199
INDEX TO VOLUME V AND SUPPLEMENT II

ENDANGERED SPECIES ACT OF 1973
    Statutory references to 3076, 3163, 3210, 3688, 3719, 3756, 3759, 3818, 3819, 3838, 3865, 3983, 3942
    Text 2782

ENDANGERED SPECIES COMMITTEE
    Established 2801

ENDERS DAM AND RESERVOIR 1364

ENERGY. See DEPARTMENT OF; ENERGY ACTS; GEOTHERMAL ENERGY, POWER.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACTS. See also supplemental appropriations acts.

ACT OF 1981
    Extracts from 3214
    Statutory references to 3534

ACT OF 1982
    Extracts from 3323
    Continuing appropriations 3331
    Further Continuing appropriations 3366

ACT OF 1984
    Extracts from 3369

ACT OF 1985
    Extracts from 3399
    Statutory references to 3460, 3543

ACT OF 1986
    Extracts from 3462
    Statutory references to 3474

ACT OF 1988
    Extracts from 3559
    Statutory references to 3582, 3648

ACT OF 1989
    Extracts from (Not retained herein)

ACT OF 1990
    Extracts from 3648
    Statutory references to 3561, 3935

ACT OF 1991
    Certain proviso struck 4084
    Extracts from 3659
    Section 501 repealed 4065
    Statutory references to 3444, 3935, 4065, 4084, 4120

ACT OF 1992
    Extracts from 3725
    Statutory references to 3934

ACT OF 1993
    Extracts from 3758

S1200
INDEX TO VOLUME V AND SUPPLEMENT II

Miscellaneous references to  S927
Statutory references to  3444

ACT OF 1994
Extracts from  4006

ACT OF 1995
Extracts from  (not retained herein)

ACT OF 1996
Extracts from  4065

ACT OF 1997
Extracts from  4083
Miscellaneous references to  3662

ACT OF 1998
Extracts from  4114
Statutory references to  4053

ACT OF 1999
Extracts from  (Not retained herein)

ENERGY CONSERVATION AND PRODUCTION ACT
Statutory references to  3153

ENERGY POLICY ACT OF 1992  3765
Amendments  4070
Miscellaneous references to  S822, S843, S848-S851, S1062, S1071-S1074
Section repealed  4133
Statutory references to  S813, S847, 4070, 4133

ENERGY POLICY AND CONSERVATION ACT
Statutory references to  3061

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
Miscellaneous references to  3121
Statutory references to  3052

ENERGY SECURITY ACT
Miscellaneous references to  3160, 3165
Statutory references to  3562

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT OF 1974
Statutory references to  3155, 3162

ENERGY TAX ACT OF 1978
Miscellaneous references to  3167

ENGINEERS. See ARMY, DEPARTMENT OF THE; CONSULTANTS.

ENGLE, CLAIR, LAKE  1817, 1863
Redesignated “Trinity Lake”  4113

ENGLE DAM  98, 114

ENGLE FORMULA. See EXCESS LANDS.

ENGLISH RIDGE UNIT, North Coast project  1890

S1201
INDEX TO VOLUME V AND SUPPLEMENT II

ENID, City of 832, 901

ENTERPRISE IRRIGATION DISTRICT 65

ENTITLEMENT LAND
Term defined S540

ENTRIES AND ENTRYMEN. See DESERT LAND ACT; HOMESTEAD LAWS; RECLAMATION ENTRIES; WATER RIGHTS.

ENVIRONMENTAL IMPACT STATEMENTS
Required 2494

ENVIRONMENTAL PROTECTION. See also individual projects by name; ARMY, DEPARTMENT OF THE;
NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.
Federal agency compliance with State standards 3007
Reimbursement and cost sharing
Buffalo Bill Dam and Reservoir modifications 3333

ENVIRONMENTAL PROTECTION AGENCY
Administers Federal Water Pollution Control Act 2665

ENVIRONMENTAL QUALITY IMPROVEMENT ACT OF 1970
Extracts from 2513

EPHRATA AIR FORCE BASE 1025

EQUAL ACCESS TO JUSTICE ACT
Extracts from S444, S497

EQUAL EMPLOYMENT OPPORTUNITIES S627

ERICKSON, JAMES L. 2348

ESCALANTE RIVER 2768

ESCATAWPA RIVER 2447

ESCOINDO RIVER 753

ESTUARIES 1282
Protection of 2379

ETULULUK-NIGU RIVER 2448

EUFULA DAM 801, 2773

EUGENE WATER AND ELECTRIC BOARD 2480, 2547

EUREKA DIVISION, North Coast project 1893

EVANS CREEK 2343

EVANS VALLEY DIVISION 2343

EVANSTON, Wyoming 3183

EXCESS LANDS
Class I equivalency, generally 3338, S1094
Farm units. See FARM UNITS.

S1202
INDEX TO VOLUME V AND SUPPLEMENT II

General statutory provisions 62, 166, 168, 179, 197, 376, 1307, 1550, 3334, S1090

Opinions
Constitutionality S4
Excess land laws, miscellaneous topics 64, 170, 180, 197, 380, 399, 417, 586, 806, 843, 904, 1122, 1525, 1530, S19, S43, S73, S89, S90, S155, S192, S211, S295, S297, S306, S335
Ownership of excess lands 66, 100, 170, 181, 384, 675, 1550, 2529, S20, S22, S44, S77, S264, S274
Preexisting holdings and anti-speculation 198, 386, 586, 1550, S45, S82, S143, S264

Special statutory problems
Army projects 805, 3341, S155
Boulder Canyon project 417, 424, 439
Exemption of State-owned lands 2528
Imperial Irrigation District 3318
Naval Air Station, Lemoore, California 2659
San Luis Unit, CVP 3042
San Luis unit, State service area 1525
Small reclamation projects (Engle formula) 1336, 1338
W.C.U. projects 673

Statutory provisions relating to individual projects
Acreage limit raised 1399
Class equivalency 1351, 1456, 1687, 1741, 1774, 2418, 2537, 2935, 2939, 2951, 2954, 2955, 2957
Columbia Basin project 556, 729, 1034, 1692, S143
Contract required including anti-speculation provisions 337, 339
Contract required with Southern Pacific Company for disposition of lands 336
General excess land law provisions applied 351, 354
Incremental value contracts 556, 562, 596, 1224
Payment of interest on costs attributable to excess lands (Engle formula) 1318, 1412, 1505
Research farms 1484
Statutory approval of contracts terminating excess land limitations on payout 541, 529, 986, 987, 1080, 1082, 1108, 1138, 1141, 1173, 1187, 1190, 1324
Tucumcari project 562, 596, 1224
Waiver of excess land laws 612, 712, 1083, 1215, 2334, 2528, 2533, 2864, 3201, S1106
Yuma project 983

EXCHANGE OF PROPERTY. See ACQUISITION OF PROPERTY, DISPOSITION OF PROPERTY, CONSTRUCTION. FARM UNITS, OPERATION AND MAINTENANCE, POWER, WATER RIGHTS.

EXCLUSIVE JURISDICTION CLAUSE 3

EXECUTIVE ORDERS
Number 1032, land in Okanogan County for wildlife preserve
Statutory references to 692
Number 6910, general withdrawal
Miscellaneous references to 43, 223, 515
Statutory references to 515
Number 6964, general withdrawal
Miscellaneous references to 43, 515
Statutory references to 515

S1203
INDEX TO VOLUME V AND SUPPLEMENT II

Number 8038, Cabeza Prieta Game Range
  Statutory references to 1679
Number 8526, BPA as marketing agent for Grand Coulee Dam
  Miscellaneous references to 539
  Statutory references to 2892
Number 9337 (superseded by 10355)
  Miscellaneous references to 155
Number 10355, Secretary of the Interior authority to withdraw lands
  Miscellaneous references to 155
Number 11177, designating United States Entity and United States Section of Permanent
  Engineering Board for purposes of Columbia River Treaty
  Text 1601
Number 11200, recreation area fees
  Miscellaneous references to 1788

EXPERIMENT FARMS. See RESEARCH.

F

FACT FINDERS ACT
  Amendments of
    Repeal of subsections E, F, and L 387
    Repeal of subsection M 1121
    Subsection O 816
  Annotations of 569-71
  Statutory references to
    Generally 375, 376, 387, 412, 637, 927
    Subsection B 562, 596
    Subsection C 435, 666, 734, 1691
    Subsection D 1239
    Subsection F 493
    Subsection I 352, 451, 494, 513, 685, 871, 1040, 1106, 1107, 1611
    Subsection J 494, 871, 1106, 1107
    Subsection K 357, 388
  Text 315

FAIR PLAY UNIT, CVP 1890

FAIR EMPLOYMENT PRACTICES 658

FAIRBANKS MERIDIAN 2439

FAIRBURY, Nebraska 2651

FALCON DAM, Texas
  Location and construction of, explained 755
  Power facilities at, approved 968
  Power marketing function transferred to Secretary of Energy 3057, S213
  Secretary of Interior to market power from 1139
  Statutory references to 1541

FALL RIVER COUNTY, South Dakota 855, 973

FALL RIVER WATER USERS DISTRICT RURAL WATER SYSTEM ACT OF 1998 4129

FALLBROOK PUBLIC UTILITY DISTRICT 1097, 1158

S1204
INDEX TO VOLUME V AND SUPPLEMENT II

FALLING WATER 648, 1235

FALLON PAIUTE SHOSHONE INDIAN TRIBES WATER RIGHTS SETTLEMENT ACT OF 1990 3669

FANNIN-MCFARLAND AQUEDUCT 3872. See SALT-GILA AQUEDUCT, ARIZONA.

FARM TENANT ACT. See BANKHEAD-JONES FARM TENANT ACT.

FARM CREDIT ADMINISTRATION 542

FARM CREDIT ACT OF 1933
Statutory references to 542

FARM SECURITY ADMINISTRATION 616, 666

FARM UNITS
See also statutes relating to individual projects by name.
Assignment of entries 145, 176, 214
Establishment and administration
Amendment of units 1120
Columbia Basin project 556, 729, 734
Establishment of units required before entry 152
Generally 37, 51, 198, 998
Maximum size 320 acres, including not more than 160 acres of irrigable lands 1121
Minimum size reduced to ten acres, or less 121
Excess land limitations. See EXCESS LANDS.
Exchanges
Generally 213, 324, 374, 1118
W.C.U. Act 673

FARM UNIT EXCHANGE ACT
Statutory references to 734, 1691, 1740
Text 1118

FARMS, EXPERIMENT. See RESEARCH.

FARMERS HOME ADMINISTRATION 1606

FARMERS INVESTMENT COMPANY 3356, 3360

FARMERS IRRIGATION DISTRICT 513, 850, 1024, 1352, 3323

FARMERS' IRRIGATION DISTRICT CANAL 871

FARMER'S OWN CANAL COMPANY 3215

FAISON PILOT FARM 1653

FARWELL UNIT, MRB, NEBRASKA
Reauthorized 1326
Drainage facilities costs nonreimbursable 3560

FAULK COUNTY, South Dakota 3207

FAULKTON CANAL 3328

FEASIBILITY STUDIES AND REPORTS. See STUDIES AND REPORTS.

S1205
INDEX TO VOLUME V AND SUPPLEMENT II

FEATHER RIVER 585, 2430

FEATHER WATER DISTRICT 585

FEDERAL ADVISORY COMMITTEE ACT
Non-Federal cost sharing entities 3726
Statutory references to 2792, 2990, 3001, 3478, 3726, 4139
Text S482

FEDERAL AID IN FISH RESTORATION ACT
Statutory references to 2381

FEDERAL AID IN WILDLIFE RESTORATION ACT
Statutory references to 2381

FEDERAL AGENCIES
  Interagency transfers of funds or property
    Economy Act provisions 1967, S517
    Excess property 957
    Miscellaneous references to 32
    Reimbursement of project costs when land taken by
        Generally 297

FEDERAL AGRICULTURAL IMPROVEMENT AND REFORM ACT OF 1996
Extracts from 4075
Miscellaneous references to S1042, S1049

FEDERAL CAPITAL INVESTMENT PROGRAM INFORMATION ACT
Extract from S503

FEDERAL CIVIL DEFENSE ACT OF 1950
Statutory references to 2845

FEDERAL COLUMBIA RIVER POWER SYSTEM. See Columbia River Power System

FEDERAL COLUMBIA RIVER TRANSMISSION SYSTEM ACT. See also Bonneville Power Administration Fund
  Appropriation act approval of additions to 2942, 3125, 2931, 2942, 3125, 3214, 3324, 3366
  Authorized 2888
  Amendment of 3263
  Miscellaneous references to S117, S845
  Revenue bonds authorized to finance construction of 2895
  Statutory references to 3056, 3234, 3240, 3249, 3251, 3252, 3254, 3256, 3261, 3262, 3263, 3267, 4059
  Text 2888

FEDERAL COMMUNICATIONS COMMISSION 2599

FEDERAL EMPLOYEES COMPENSATION ACT
Statutory references to 1357

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS 611

FEDERAL EMERGENCY MANAGEMENT AGENCY 2357

S1206
INDEX TO VOLUME V AND SUPPLEMENT II

**FEDERAL ENERGY REGULATORY COMMISSION. See also POWER.**

Authority to issue exemptions to Federal Power Act 3789
California-Oregon Transmission project 3460

*See HAROLD T. (BIZZ) JOHNSON CALIFORNIA-PACIFIC NORTHWEST INTERTIE.*

Established 3055, 3059
Hydro-electric licencing in Hawaii 3790
NEPA compliance 3785
Wild and scenic rivers
Notification to 2428
Statutory references to 2452, 2453, 2455, 2668, 3220, 3230, 3256, 3261, 3262, 3264, 3268, 3322, 3460, 3486, 3774, 3775, 3779, S814, S841

**FEDERAL ENERGY REGULATORY COMMISSION DECISION**

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan. 1981</td>
<td>Solano I.D. power</td>
<td>Solano I.D. power</td>
</tr>
</tbody>
</table>

**FEDERAL DEPOSIT INSURANCE CORPORATION**

2356

**FEDERAL FARM LOAN ACT**

Statutory references to 299, 542

**FEDERAL FARM MORTGAGE ASSOCIATION**

542

**FEDERAL FINANCING BANK**

Statutory references to 2316

**FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT OF 1977**

Extracts from S533
Statutory references to 3045

**FEDERAL HOME LOAN BANK BOARD**

2356

**FEDERAL HOME LOAN MORTGAGE CORPORATION**

2356

**FEDERAL LABOR RELATIONS AUTHORITY**

S117

**FEDERAL LAND BANKS**

542

**FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976**

Amendments S1058-S1062 3786, 4061
Miscellaneous references to S232, S257, S337
Repeals effected by, of earlier right-of-way, withdrawal, homestead and other public land statutes

Statutory provisions repealed 3016-3025, S6, S7, S8, S10, S11, S16, S18, S33, S35, S38, S39, S42, S47, S65, S81, S91, S98, S232, S257, S337
Statutory provisions not repealed, relationship to S71

Statutory references to 3786
Text 2962

**FEDERAL NATIONAL MORTGAGE ASSOCIATION**

2356

**FEDERAL NONNUCLEAR ENERGY RESEARCH AND DEVELOPMENT ACT OF 1974**

Statutory references to 3121, 3390

S1207
INDEX TO VOLUME V AND SUPPLEMENT II

FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT OF 1982
Statutory references to S53, S808

FEDERAL POWER ACT

Miscellaneous references to 429
Part I (Federal Water Power Act, Act of June 10, 1920)
Amendments and annotations of S56-64, S813-S838, 3486-3493, 3497, 3500-3503, 3518, 3787, 3784-3786
Clarification of authority regarding fishways 3782
Contracts, validation of 3518
Extension of deadlines by FERC for licensee under Section 13 3783
Functions of Federal Power Commission transferred to Secretary of Energy or Federal Energy Regulatory Commission S56, S114, S116, S122, S149, S213, S355, S361, S3485-3504, 3782, 3785
Federal Power Commission. See FEDERAL POWER COMMISSION.
Licences for dams and other facilities S814, 3486
Memorandum of understanding dated December 19, 1988, California-Oregon Transmission project 3460
Miscellaneous references to 28, 30, 45, S90
Moratorium on Colorado River licenses 1756
No licenses in national parks without specific congressional authority 288
No licenses in Grand Canyon without congressional authority 2423
No licenses on wild and scenic rivers 2452, 2453
Palo Verde Irrigation District given exclusive right to install powerplant at Palo Verde Diversion Dam under license from FERC 3322, S231
Policy of, governs conflicting applications for power privileges at Hoover Dam 426
Requirements of, apply to lease and operation of power at Hoover Dam 431
Statutory references to 576, 607, 863, 1780, 2520, 2597, 2608, 2655, 2828, 3002, 3224, 3460, 3486, 3518, 3563, 3640, 3704, S1060, S1076 3766, 3783, 3784
Storage for regulation of streamflow for the purpose of water quality control 2668
Temporary suspension of licensing authority 431
Text 262
Text as Amended S813-S838

Parts II and III (Federal Power Act, Act of August 26, 1935)
Amendments and annotations of S99-S107, S841, S850, 3469, 3504, 3776-3783
Extracts from 527
Statutory references to 576, 607, 3062, 3064, 3261, 3268, 3460, 3504 1060,
S1076 3776-3783
Supplementary provisions for regulatory authority, generally 3137
Text 527
Text as amended S841-S850

FEDERAL POWER COMMISSION. See also POWER; FEDERAL POWER ACT.
Authority to approve Federal power rates. See POWER.
Chairman of, a member of Water Resources Council 1829
Creation and composition of 262
Dissolution of, explained S56
Licensing of Priest Rapids Dam 1154
Role in reviewing cost allocations at Army projects. See COST ALLOCATION.
Statutory references to 431, 1799, 1871, 2599, 2655

S1208
INDEX TO VOLUME V AND SUPPLEMENT II

Transfer of functions
  Principal functions, to Federal Energy Regulation Commission 3061
  Residual functions, to Secretary of Energy 3055

FEDERAL POWER COMMISSION DECISIONS

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
<th>Source</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb. 1956</td>
<td>do</td>
<td>15 F.P.C.14</td>
<td>96</td>
</tr>
<tr>
<td>Aug. 1957</td>
<td>SPA aluminum contract</td>
<td>18 F.P.C.153</td>
<td>802</td>
</tr>
<tr>
<td>May 1958</td>
<td>Cumberland project rates</td>
<td>19 F.P.C. 774</td>
<td>801</td>
</tr>
<tr>
<td>Dec. 1964</td>
<td>do</td>
<td>32 F.P.C. 1523</td>
<td>801</td>
</tr>
<tr>
<td>Feb. 1965</td>
<td>Utah P. &amp; L.C. wheeling charges</td>
<td>33 F.P.C. 314</td>
<td>528</td>
</tr>
<tr>
<td>Dec. 1965</td>
<td>BPA rates</td>
<td>34 F.P.C.</td>
<td>1462</td>
</tr>
<tr>
<td>Jan. 1971</td>
<td>SWPA rates</td>
<td>45 F.P.C. 183</td>
<td>S117</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>S152</td>
</tr>
</tbody>
</table>

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

  Contracting provisions
    Extracts from 1987, 1996, S578
    Statutory references to 2988, 3118, S1021

  Surplus property provisions
    Amendments and annotations of S181-187
    Extracts from 956
    Miscellaneous references to 192, 327
    Statutory references to 534, 1204, 1788, 2627, 2762, 2966, 3071, 3121

FEDERAL REGISTER  S664

FEDERAL REPORTS ELIMINATION AND SUNSET ACT OF 1995

  Extracts from 4069
  Miscellaneous references to S901, S1107
  Statutory references to 3542

FEDERAL REPORTS ELIMINATION ACT OF 1998

  Extracts from 4133
  Miscellaneous references to S869, S1055, S1084
  Statutory references to 3479

FEDERAL RESERVE SYSTEM  2356

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION  2356

FEDERAL TORT CLAIMS ACT

  Amendments and annotations of S173-175
  Extracts from 884
  Miscellaneous references to 2342, S160
  Statutory references to 1144, 2597, 3134, 4127

FEDERAL TRADE COMMISSION ACT

  Statutory references to 3069, 3139, S844

FEDERAL WATER POLLUTION CONTROL ACT

  Miscellaneous references to 2776, 3299, S164
  Statutory references to 2379, 2663, 2837, 2842, 2865, 2867, 2870, 2872, 3120,
  4140, S235, S1031, S1045

S1209
INDEX TO VOLUME V AND SUPPLEMENT II

Text 1278
Text as amended, 1972 2664

FEDERAL WATER POLLUTION CONTROL ADMINISTRATION 1278, 1303

FEDERAL WATER PROJECTS FINANCING ACT OF 1979
Miscellaneous references to 2506

FEDERAL WATER PROJECT RECREATION ACT
Amendments and annotations of 2838, S389-S395, S921, S1090, 3756, 3914
Statutory references to 1851, 1884, 1899, 2334, 2338, 2376, 2389, 2410, 2412, 2465, 2466, 2518, 2523, 2528, 2532, 2537, 2540, 2751, 2753, 2757, 2759, 2830, 2905, 2907, 2913, 2935, 2938, 2953, 2959, 3332, 3378, 3421, 3751, 3758, 3813, 3916, S1068, S1090
Text 1820

FEDERAL WATER POWER ACT
References to. See FEDERAL POWER ACT (PART I).
Text 262
Text as amended S813-S838

FEDERATION OF ROCKY MOUNTAIN STATES, INC. 2396

FEES AND CHARGES
Federal agencies, generally 1960, S544
Recreation. See RECREATION
Reimbursement of Federal costs. See REIMBURSEMENT AND COST SHARING.

FERRY COUNTY 665

FIFE, ROWLAND W. 2476

FINNEY COUNTY WATER USERS' ASSOCIATION 261

FINNEY COUNTY 936

FIRE SUPPRESSION
Current appropriation act language 1026

FIRST MESA UNIT, Yuma Auxiliary project 950

FISCHBACK, WILLIAM M. S80

FISH CREEK, New York 2447

Fish Lake, Oregon 3422

FISH AND WILDLIFE. See also individual projects by name.
Administration of project areas by Forest Service
Generally 844
Administration of project areas by State or local bodies
Existing reclamation projects, generally 1825
Federal water projects, generally 841, 844, 845, 1820, 1823
Grand Coulee Dam project fish hatcheries 707
Reclamation projects, generally 1825
Allocation of costs. See COST ALLOCATION
Anadromous fisheries. See ANADROMOUS FISHERIES ACT; COLUMBIA RIVER.
As a project purpose

S1210
INDEX TO VOLUME V AND SUPPLEMENT II

Endangered species 2798
Generally 509, 839, 1820, 1861
Policy against projects with more than half of costs allocated to recreation and fish and wildlife enhancement 1826
Small reclamation projects 1333
Columbia River fisheries development. See COLUMBIA RIVER.
Conservation of, authorized 509, 839
Endangered species. See ENDANGERED SPECIES ACT.
Estuarine areas. See ESTUARIES.
Investigation of effect upon, as a condition to issuing Federal permits and licenses 840, 1434, 2798
Law enforcement 3133
Regulation of hunting and fishing
Crow Tribe of Indians 1430
Miscellaneous references to 69
National recreation areas. See individual national recreation areas by name.
Oahe unit 2376
Penalties for violating fish and wildlife conservation regulations 846
Spokane and Colville Indians 688
Wind River Reservation 681, 1329
Reimbursement and cost sharing
Anadromous fisheries 1860
Central Valley project S222, S229
Generally 839, 1434, 1820, S389, S391
Revised treatment of mitigation costs explained 842
Small reclamation projects 1336, S273, S276
Research. See RESEARCH.
Small watershed projects (Public Law 83-566). See WATERSHED PROTECTION AND FLOOD PREVENTION ACT.
Studies. See STUDIES AND REPORTS.
Utah fish, wildlife, and recreation mitigation and conservation 3838
Wilderness system. See WILDERNESS ACT.
Wetlands. See WATER BANK ACT.

FISH AND WILDLIFE ACT OF 1956
Statutory references to 2793

FISH AND WILDLIFE COORDINATION ACT
Annotations of S167-168
Amendments of 1823,
Miscellaneous references to 2501
Named and amended 1434
Statutory references to 881, 1036, 1236, 1320, 1339, 1342, 1343, 1529, 1555, 1558,
1668, 1678, 1688, 1689, 1696, 1701, 1862, 2663, 2793, 3163, 3488, 3743, 3791,
3838, 4107, S235, S412, S824, S834, S881, S889
Text 839

FISH AND WILDLIFE CONSERVATION ACT OF 1980
Extracts from 3209

FISH AND WILDLIFE IMPROVEMENT ACT OF 1978
Extracts from 3133

FISH AND WILDLIFE SERVICE
Creation of, explained 510
Water rights S1, S2

S1211
INDEX TO VOLUME V AND SUPPLEMENT II

FISHER CONTRACTING COMPANY 1000
FISHING. See FISH AND WILDLIFE.

FLAGSTAFF-WILLIAMS PROJECT, Arizona
Feasibility study authorized 1890

FLAMING GORGE NATIONAL RECREATION AREA
Established 2425

FLAMING GORGE RESERVOIR 2425
FLAMING GORGE UNIT, CRSP 1248, 1257, 2657
FLAT-ORTHMER CREEK 2438
FLATHEAD COUNTY, Montana 3216
FLATHEAD INDIANS
Miscellaneous references to 19, 69

FLATHEAD RIVER 766, 2431, 2444, 3216
FLATHEAD RIVER BASIN 1889

FLATHEAD RIVER PROJECT, Montana
Feasibility study authorized 1889

FLINT CREEK 2445

FLOOD CONTROL.
See also FLOOD CONTROL ACTS and individual dams, rivers, river basins and projects by name.

As a project purpose
Generally 545
Nonstructural alternatives 2838
Reclamation projects 846

Claims against United States for flood damage
Generally 206, 207, 208, 889, S5, S175
Private relief acts 404, 1144, 1308, S87
Statutory disclaimer of liability 889, 1971, 2945, S175, S544

Cost allocation. See COST ALLOCATION.
Flood damage repair
Colorado River 161
Columbia Basin 890
Disaster relief acts. See DISASTER RELIEF ACTS.
Reclamation emergency fund 891

Flood insurance. See NATIONAL FLOOD INSURANCE ACT OF 1968.
Flood plain mapping 2365
Regulation of reclamation projects for, by Army
Generally 804

Reimbursement and cost sharing
Army projects, generally 546, 614, 788, S109, 3532
Boulder Canyon project 702
Central Valley project 583
Protection of Imperial Valley 161
Reclamation projects, generally 646, 3532
Research. See RESEARCH.
INDEX TO VOLUME V AND SUPPLEMENT II

Small reclamation projects, loans for 1332, 3532
Small watershed projects (Public Law 566). See WATERSHED FLOOD PREVENTION ACT.
Studies. See STUDIES AND REPORTS.

FLOOD CONTROL ACT OF 1917
Extract from 234

FLOOD CONTROL ACT OF 1936
Annotation of S109
Extracts from 545
Miscellaneous references to 520
Statutory references to 614, 932, 1855, 2838

FLOOD CONTROL ACT OF 1938
Extracts from 614
Statutory references to 806, 1170

FLOOD CONTROL ACT OF 1939
Statutory references to 1004

FLOOD CONTROL ACT OF 1944
Extracts from 796
Amendments and annotations of S147-160, S861-S863, 3537
Statutory references to
Generally 3430, 3914, 3933
Section 1 1003, 1149, 1333, 1427, 1662, S887
Section 2 1170
Section 4 1787
Section 5 1341, 1425, 3056, 3099, 3256, 3261, 3913
Section 6 832, 901
Section 7 979, 1161, 1261, 1546, 1547, 1688, 1848
Section 8 832, 901, 1003, 1427, 1432, 1722, S861, S887, 3537, 3932
Section 9 3333, 3465, 3605, 3650, 3914, 4085, S934, S939, S1090
See MISSOURI RIVER BASIN PROJECT (MRB), PICK-SLOAN MISSOURI BASIN PROGRAM (P-SMBP); individual units and divisions of MRB and P-SMBP by name.

Section 13 1170, 1171

FLOOD CONTROL ACT OF 1946
Extracts from 832
Miscellaneous references to 807, 3535

FLOOD CONTROL ACT OF 1948
Extracts from 901
Statutory references to 3906

FLOOD CONTROL ACT OF 1950
Extracts from 1002
Miscellaneous references to 807, 3272
Statutory references to 1155, 1170, 3906

FLOOD CONTROL ACT OF 1954
Extracts from 1216

FLOOD CONTROL ACT OF 1958
Extracts from 1424
Miscellaneous references to 807

S1213
INDEX TO VOLUME V AND SUPPLEMENT II

FLOOD CONTROL ACT OF 1960
Amendment of 2835
Extracts from 1544
Miscellaneous references to 807

FLOOD CONTROL ACT OF 1962
Amendment of S889, 3575
Extracts from 1701
Statutory references to 1787, 1900, 3214, 3575, 3935, 3951

FLOOD CONTROL ACT OF 1965
Extracts from 1855
Statutory references to 2839

FLOOD CONTROL ACT OF 1966
Extracts from 1921

FLOOD CONTROL ACT OF 1968
Extracts from 2385

FLOOD CONTROL ACT OF 1970
Amendments of 2646, 2837
Extracts from 2615
Statutory references to 2840, 3536, 3970

FLOOD INSURANCE. See NATIONAL FLOOD INSURANCE ACT OF 1968.

FLORIDA PROJECT, Colorado
Authorized 1248
Increased appropriations authorized 2657

FLORIDA, STATE OF
Executive Order No. 6964 and Taylor Grazing Act apply 516
Southeastern Power Administration markets power from Army dams in 801

FLPMA. See FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976.

FLY CREEK DIVISION, Huntley project 359

FOIA. See FREEDOM OF INFORMATION ACT.

FOLSOM DAM

FOLSOM DAM AND RESERVOIR S194 809, 978, 1310, 1311, 3725, 4100, 4120

FOLSOM DAM TEMPERATURE CONTROL DEVICES 4120

FOLSOM-MALBY AREA 1847

FOLSOM SOUTH CANAL 1847

FONTENELLE DAM 1249, 1254

FOOT DAM 2445

FOREIGN COUNTRIES. See BUREAU OF RECLAMATION; COLUMBIA RIVER TREATY; INTERNATIONAL BOUNDARY AND WATER COMMISSION; MEXICAN WATER TREATY; POWER TREATIES AND CONVENTIONS.

S1214

INDEX TO VOLUME V AND SUPPLEMENT II

FORT MCDOUGELL MOHAVE-APACHE INDIAN COMMUNITY 2402

FORT MOHAVE INDIANS
  Acquisition of lands of, for Parker Dam project 695
  Miscellaneous references to 427
  Statutory references to 1517

FORT MOHAVE INDIAN TRIBE S2

FORT PECK DAM 2646

FORT PECK INDIAN IRRIGATION PROJECT 2340

FORT PECK INDIAN RESERVATION 2349
  Furnishing of electric service to 864
  Reverter of Indian lands acquired for Fort Peck project 822

FORT PECK PROJECT, Montana
  Acquisition of Indian lands authorized 822
  Authorized 604
  Indian power facilities acquired for use in connection with 864
  Requirement for annual report repealed 1200
  School assistance 878, S170
  Transfer of certain power transmission facilities to Interior 1054

FORT QUITMAN 116, 117, 466, 522, 524, 622, 717, 750, 1541

FORT RANDALL 2765

FORT RANDALL DAM 1888, 2836

FORT SHAW DIVISION, Sun River project 369, 1656

FORT SHAW IRRIGATION DISTRICT 1656

FORT SHAW MILITARY RESERVATION 118

FORT SUMNER IRRIGATION DISTRICT 890, 963

FORT SUMNER PROJECT, New Mexico
  Appropriation to protect diversion dam of Fort Sumner Irrigation District from flood damage 690
  Authorized 963

FORT SUPPLY RESERVOIR 1002

FORT THOMPSON UNIT, MRB, South Dakota S158
  Feasibility study authorized 1893

FORT WAYNE, Indiana 2444

FORT YUMA INDIAN RESERVATION S28, S45

FORTYMILE RIVER, Alaska 2343

FOSS DAM AND RESERVOIR 1242, 1460, 2343, 2349, 3423
  Foundation treatment, drainage, and instrumentation nonreimbursable 3399

FOSS RESERVOIR MASTER CONSERVANCY DISTRICT 2349

S1216
INDEX TO VOLUME V AND SUPPLEMENT II

FOSTER CREEK DIVISION, Chief Joseph Dam project 1151
FOURMILE LAKE, Oregon 1367, 3422
FOX, DOROTHY ATWOOD 1540
FRANCIS LEE CANAL 3185, 3186, 3193
FRANKLIN COUNTY DAM 3308
FRANKLIN COUNTY, Washington, roads study 3611
FRANKLIN CREEK, Alaska 2439
FRANKLIN CANAL 99, 941
FRANKLIN EDGY CANAL 3475
See CLOSED BASIN DIVISION.
FRANZIE DIVISION, Shoshone project 355, 368, 595, 985
FRAZER-WOLF POINT UNIT 2340, 2646
FREDERICK, Oklahoma 2388, 2906
FREEDOM OF INFORMATION. See PUBLIC INFORMATION ACT.
FREEDOM OF INFORMATION ACT
Statutory references to 3177
Text S448
FREMONT COUNTY, Wyoming 1125, 2928
FREMONT DAM AND RESERVOIR 1796
FREMONT-MADISON IRRIGATION DISTRICT 3215
FRENCHMAN CREEK 741, 1364
FRENCHMAN VALLEY IRRIGATION DISTRICT 380
FRENCHMAN-CAMBRIDGE DIVISION, P-SMBP, Nebraska
Amendatory contract with H&RW Irrigation District authorized 3429
Contract extension 4085, 4104
Feasibility study authorized 2928
Lake formed by Medicine Creek Dam named Harry Strunk Lake 1095
Name of Culbertson Dam changed to Trenton Dam and reservoir named Swanson Lake 930
Red Willow Dam and Reservoir
Feasibility report approved 1455
Transfer from Army to Interior 1261
Relief to Village of Wauneta for drainage to water and sewer facilities 1364
FRENCHTOWN IRRIGATION DISTRICT 1082, 1129
FRENCHTOWN PROJECT, Montana
Amended contract approved 1082
Certain administrative costs nonreimbursable 1129

S1217
INDEX TO VOLUME V AND SUPPLEMENT II

FRESNO IRRIGATION DISTRICT 2344
FRESNO DAM AND RESERVOIR, Milk River project 708
FRESNO RIVER 1702, 2921
FRIANT DIVISION, CVP S236
FRIANT DAM 584, 585, 1097
FRIANT-KERN CANAL 383
FRIEDKIN, F 2876
FRO RIVER 1891, 2912
FRONT RANGE UNIT, P-SMBP, Longs Peak Division 2478
FRONTIER CANAL 936
FRONTIER COUNTY, Nebraska 1095, 2928
FRUIT GROWERS EXTENSION PROJECT, Colorado
   Expeditious completion of planning report directed 1249
   Reference to planning report deleted 2417
FRUITLAND INDIAN IRRIGATION PROJECT 1664
FRUITLAND MESA PROJECT, Colorado
   Authorized 1248, 1774
   Construction funds denied 3124
FRYINGPAN-ARKANSAS PROJECT, Colorado
   Authorized 1670
   Amendments and annotations of project act 3131, S329-S332
   Diversions from Hunter Creek S331
   Increased appropriations authorized 2914
   Lining of Bessemer Ditch 3197, S1083
   Miscellaneous references to S133, S265
   Statutory references to 2872
FURNAS COUNTY, Nebraska 2928
FURTH, ALAN C. S82

G

GADESDEN PURCHASE 775
GALISTEO RESERVOIR 1544
GALLATIN COUNTY, Montana 2765
GALLEGOs, JOSEPH M. 2476
GALLMAN, W. BROOKS 2476
GALLUP PROJECT, New Mexico
   Feasibility study authorized 2643
INDEX TO VOLUME V AND SUPPLEMENT II

GARDEN CITY PROJECT, Kansas 261

GARDEN VALLEY DIVISION, Southwest Idaho water development project 1889

GARFIELD COUNTY, Colorado 3220

GARFIELD PUMPING DIVISION, Grand Valley project 359

GARLAND CANAL POWER PROJECT S289

GARLAND DIVISION, Shoshone project 368, 376, 491, 595, 1145

GARRISON DAM 1349, 2331, 2836

GARRISON DIVERSION UNIT, MRB, P-SMBP, North Dakota-South Dakota Amendments S933, S942, 3464, 3889, 3969
  Annotations of opinions concerning S401-S403
  Boundary waters treaty of 1909 applies 3399
  Commission establishment 3399
  Feasibility study of future uses of unit water in South Dakota authorized 3328
  M & I water facilities
    Feasibility study authorized 2765
  Municipal, rural, and industrial water facilities, construction of 3469
  Minot extension
    Feasibility study authorized 2343
    Authorized 2539
  Miscellaneous references to 2493, 2498, 2499, 2500, 2503, S869
  Missouri-Souris unit reauthorized as Garrison Diversion unit 1841
  Pick-Stean power 3468, 3543
  Reformulation of 3464
  Statutory references to S933, S934, 2858, 3464, 3543, 3758, 3889, 3963, 3969

GARRISON DIVERSION UNIT REFORMULATION ACT OF 1986
  Miscellaneous references to S933
  Statutory references to 3543, 3560, 3561, 3758, 3889
  Text 3464

GARRISON DIVISION, P-SMB. See GARRISON DIVERSION UNIT.

GARRISON LAKE 2331

GARRISON RESERVOIR 2331, 2385

GASCONADE RIVER 2444

GATES OF THE ARCTIC NATIONAL PARK 2438, 2439

GAULEY RIVER 2447

GAVINS POINT DAM 2435

GEARY PROJECT, Oklahoma
  Feasibility study authorized 2771

GEM IRRIGATION DISTRICT 312, 491, 610, 1080

GEM COUNTY, Idaho 3216

GENERAL WELFARE CLAUSE 1

S1219
INDEX TO VOLUME V AND SUPPLEMENT II

GENERAL BRIDGE ACT
Statutory references to 1612

GENERAL GRANT NATIONAL PARK 29

GENERAL RAILROAD RIGHT OF WAY ACT
Miscellaneous references to 46

GENERAL SERVICES ADMINISTRATION 956, 1025, 1203, 1494, 1822, 1843, 1849

GEOLOGICAL SURVEY 15, 86
See also individual compacts by name.
Renamed United States Geological Survey

GEOLOGISTS. See CONSULTANTS.

GEORGETOWN DIVIDE WATER DISTRICT S138, S275

GEORGIA, STATE OF
Southeastern Power Administration markets power from Army dams in 801

GEORGIA ELECTRIC MEMBERSHIP CORPORATION 802

GEORGIA POWER COMPANY 802

GEOTHERMAL ENERGY. See GEOTHERMAL ENERGY ACT OF 1960; GEOTHERMAL STEAM ACT OF 1970; STUDIES AND REPORTS.

GEOTHERMAL STEAM ACT OF 1970
Statutory references to 2994, S53, S808
Text 2602

GEOTHERMAL ENERGY ACT OF 1980
Miscellaneous references to 3160

GERBER RESERVOIR 361

GERING AND FORT LARAMIE IRRIGATION DISTRICT 1106, 1352, S211

GILA BEND INDIAN RESERVATION LANDS REPLACEMENT ACT 3506

GILA BEND RESERVATION 3357

GILA CANAL 435

GILA COUNTY 1202

GILA GRAVITY MAIN CANAL 2863

GILA PROJECT ACT 858
Statutory references 3433

GILA PROJECT, Arizona
Furnishing of water to reduced Yuma Auxiliary project 950
Improvement of Gila River Channel to facilitate drainage 3215
Land preparation 748
Lands to University of Arizona for experimental farm 819
Repayment contract authorized 1239
Subject to Boulder Canyon Project Act and Colorado River Compact 554
Supplemental irrigation facilities authorized 2535

S1220
INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water for use of Arizona State Experimental Farm</td>
<td>598</td>
</tr>
<tr>
<td>Wellton-Mohawk division</td>
<td></td>
</tr>
<tr>
<td>Desalting plant and other works authorized</td>
<td>2857</td>
</tr>
<tr>
<td>Flood control costs nonreimbursable</td>
<td>2341</td>
</tr>
<tr>
<td>Yuma Mesa division defined and reauthorized; Wellton-Mohawk division authorized</td>
<td>858</td>
</tr>
<tr>
<td>Yuma-Mesa division</td>
<td></td>
</tr>
<tr>
<td>Construction of irrigation works and facilities authorized</td>
<td>243</td>
</tr>
<tr>
<td>Compensation to Yuma Mesa Irrigation and Drainage District</td>
<td>243</td>
</tr>
<tr>
<td>Replacement of cast-in-place concrete pipe</td>
<td>2341</td>
</tr>
</tbody>
</table>

**GILA NATIONAL FOREST** 427

**GILA REAUTHORIZATION ACT**
- Identified 2859
- Statutory references to 2863

**GILA RIVER** 35, 420, 431, 661, 1425, 1891, 2398, 2407, 2408, 2447, 2861

**GILA RIVER BASIN** 1425

**GILA RIVER CHANNEL** 3215

**GILA RIVER RESERVATION** 2557

**GILA VALLEY IRRIGATION DISTRICT** 2398, 2409

**GILA VALLEY POWER DISTRICT** 859

**GILBERT, DON W.** 3195

**GRAND TOWN OF** 1800

**GLACIER PEAK WILDERNESS AREA** 2483, 2445

**GLACIER NATIONAL PARK**
- Use of, for reclamation projects 139

**GLASGOW DIVISION, Milk River project** 353, 1081

**GLASGOW IRRIGATION DISTRICT** 971, 1080

**GLEN CANYON CITY** 2768

**GLEN CANYON NATIONAL RECREATION AREA**
- Established 2766

**GLEN CANYON UNIT, CRSP** 1248, 1257, 1317, 1462, 2657

**GLEN CANYON DAM AND RESERVOIR** 424, 1248, 1756, 2395, 2399, 2403, 2419, 2421, 2423, 2506, 2767, 2900, 290, S248, S249, S253

**GLEN ELDER IRRIGATION UNIT, MRB** 1894

**GLENDEN DAM AND RESERVOIR** 1226, 1893, 2911

**GLENDEN INUNDATED IRRIGATION WATER RIGHTS UNIT, MRB** 1893

S1221
INDEX TO VOLUME V AND SUPPLEMENT II

GLENDO, TOWN OF 1226

GLENDO UNIT, MRB, P-SMBP, Wyoming
   Approval of definite plan report by Nebraska, Wyoming, Colorado and Congress required 976
   Definite plan report approved and construction authorized 1148
   Design and construction limited unless specifically authorized by Congress 895
   Extra sewerage capacity to serve town of Glendo 1226
   Extension of contracts 4117
   Gray Reef Dam and Reservoir authorized 1445
   Relocation of relocated road at Glendo Dam and Reservoir 2911

GLENN COUNTY, California 1032, 3317, S203

GLENWOOD-DOTSERO SPRINGS SALINITY CONTROL STUDY 2869, 3220

GLOBE EQUITY NUMBERED 59 2398, 2409

GLOVER CREEK 3305

GOLD BEACH, Oregon 2507

GOLD RUN ADDITION AREA 2435

GOLETA COUNTY WATER DISTRICT 585

GOODING DIVISION, Minidoka project 382

GOODWIN DAM 1701

GOOSE LAKE 95, 257, 307, 723, S29

GOOSEBERRY PROJECT, Utah
   Expeditious completion of planning report directed 1249

GORDON, Wisconsin 2430

GORE RANGE-EAGLES NEST PRIMITIVE AREA 1779

GORRELL, ISABELLE S. 1247

GOSHEN COUNTY, Wyoming 2478
   Unified School District Number One 3608

GOSHEN IRRIGATION DISTRICT 198, 297, 1106, 1352, S211

GOSPEL-HUMP WILDERNESS 2437

GOVERNMENT CORPORATION CONTROL ACT
   Statutory references to 957, 2694, S187

GRACE CREEK, Alaska 1892

GRADE CREEK 3188, 3187

GRAMM-RUDMAN-HOLLINGS ACT
   Extracts from S431

GRAND CANYON 2924

S1222
INDEX TO VOLUME V AND SUPPLEMENT II

GRAND CANYON NATIONAL PARK
   Use of, for reclamation projects 244, S51

GRAND CANYON NATIONAL PARK ENLARGEMENT ACT
   Extracts from 2924

GRAND CANYON PROTECTION ACT OF 1992 3890

GRAND COULEE, CITY OF 1379, 1385

GRAND COULEE DAM 538, 556, 724, 856, 907, 1273, 1579, 1870, 1886, S116, S414

GRAND COULEE DAM PROJECT, Washington
   Acquisition of Indian lands 688
   Allocation of interest on power sales from 856
   Appropriations for operation of camp and facilities 724
   Authorization of 538
   Amendment of S851
   Claims of Silas Mason, Walsh Construction, and Atkinson-Kier Companies 907
   Final payment to Grand Coulee School District 1053
   Jurisdiction of claims of Columbia Basin Orchard, et al., for flooding resulting from drilling operations 1134
   Name changed to Columbia Basin project 728
   Operation of fish hatcheries by State of Washington 707
   Payments to local school districts 716
   Prevention of speculation on irrigated lands 556
   Quitclaim of lands 1221
   Sale of housing. See COULEE DAM COMMUNITY ACT OF 1957.

GRAND COULEE SCHOOL DISTRICT 1053

GRAND COUNTY PROJECT, Utah
   Expeditious completion of planning report directed 2417, S251

GRAND ISLAND ARMY AIRFIELD 898

GRAND ISLAND, CITY OF, Nebraska 898, S158

GRAND MESA PROJECT, Colorado
   Expeditious completion of planning report directed 1249

GRAND TETON NATIONAL PARK 875, 996

GRAND VALLEY 52, 2868

GRAND VALLEY PROJECT, Colorado
   Authorization for lease of power privileges 486, 492, 506, 511, 521, 1543, 3608
   Miscellaneous references to 251, 651
   Modification of repayment contract authorized 1713
   Reduction and suspension of construction charges 358

GRAND VALLEY UNIT, CRBSCP 2868

GRAND VALLEY WATER USERS' ASSOCIATION 486, 1543, 1713

GRAND WASH CLIFFS 2924

GRAND-NEGSHIO RIVER 1915, 1916, 2773, 2775

S1223
INDEX TO VOLUME V AND SUPPLEMENT II

GRANDE RIVER, Oregon 1889
GRANDE RONDE PROJECT, Oregon
   Feasibility study authorized 1889
GRANDE RONDE RIVER 1856
GRANITE PEAK RANCH 2446
GRANITE REEF AQUEDUCT 2398
GRANITE REEF DAM 1202
GRANITE REEF RESERVE 3096
GRANT COUNTY, North Dakota 1431
GRANT COUNTY, Oregon 2648
GRANT COUNTY, Washington 1134, 1154, 1379
GRANTS PASS DIVISION, Rogue River Basin Project 2915, 2930
GRANTS PASS IRRIGATION DISTRICT 976
GRANTS PASS PROJECT, Oregon
   Appropriations for Northwest unit pipeline 976
   Fish protective facilities at Savage Rapids Dam 1273
   Reclamation laws, application of. See CORDON AMENDMENT PROJECTS.
   Rehabilitation of Savage Rapids Dam 1093
GRASS ROPE UNIT, MRB, P-SMBP, South Dakota 1893
   Reauthorization of, required S127, S158
   Use of P-SMBP pumping power authorized 3328
GRASS VALLEY CREEK 3198
GRASS VALLEY CREEK SEDIMENT CONTROL STUDY 3198
GRASSLANDS AREA S229
GRASSY LAKE RESERVOIR 996
GRAVEL. See BUILDING MATERIALS.
GRAVITY DIVISION, Minidoka project 364, 1610
GRAVITY EXTENSION UNIT, Minidoka project 66, 313, 382, 398, 1187
GRAY CANYON PROJECT, Utah
   Expedient completion of planning report directed 2417, S251
GRAY GOOSE IRRIGATION DISTRICT. See HILLTOP AND GRAY GOOSE IRRIGATION DISTRICTS.
GRAY, NORMAN B. 2468, 2472
GRAY REEF DAM AND RESERVOIR 1445
GRAYS LAKE 1039

S1224
INDEX TO VOLUME V AND SUPPLEMENT II

GRAZING. See LEASES AND PERMITS, TAYLOR GRAZING ACT.

GRAZING DISTRICTS  515

GREAT BASIN  1857

GREAT BRITAIN. See TREATIES AND CONVENTIONS.

GREAT LAKES  1282, 1860, 1922, 2379, S409, S410

GREAT NORTHERN RAILWAY COMPANY  362, 559, 657, 665

GREAT NORTHERN UNIT, LOWER YAMPA PROJECT  2417, S251

GREAT PLAINS  620, 668, 1137. See also WATER CONSERVATION AND UTILIZATION ACT.

GREAT SALT LAKE  1213, 1398
  Compact references to  3182
  Relicited and submerged lands  2301

GREATER WENATCHEE DIVISION, CHIEF JOSEPH DAM PROJECT  1415

GREEN MOUNTAIN DAM AND RESERVOIR  1249, 1258, 1672, 2419, 2918

GREEN RIVER  918, 1098, 2417, 2445, S251

GREENBRIER RIVER  2448

GREENFIELDS DIVISION, SUN RIVER PROJECT  1112

GREENFIELDS IRRIGATION DISTRICT  453, 1112

GREENWOOD COUNTY ELECTRIC POWER COMMISSION  1114

GREENWOOD UNIT, MRB  1888

GREENS FERRY DAM  801

GROUND WATER. See also SEEPAOE; WELLS; HIGH PLAINS STATES GROUNDWATER DEMONSTRATION PROGRAM ACT OF 1983.
  Consent to Nebraska, Wyoming and South Dakota to negotiate compact relating to extraction and use of ground waters common thereto  1117

Control of
  Central Arizona Project  2407

Drainage. See DRAINAGE WORKS.

Excess land laws
  Application to  S82
  Miscellaneous opinions  383, 1525
  Waiver of  1215, 2334

Exportation of, outside of State  2

Recharge of
  Edwards Underground Reservoir  1548
  Nebraska Mid-State division  2587
  Santa Maria Project  1215

Salvage of
  Colorado River  2409

See page. See SEEPAOE; WATER RIGHTS.

Wells. See WELLS.
INDEX TO VOLUME V AND SUPPLEMENT II

GUADALUPE RIVER 1888
GUADALUPE RIVER BASIN 1548
GUARDS 718
GUERNSEY DAM 3217
GUERNSEY RESERVOIR 998
GUERRA, CIRO 2476
GULF OF CALIFORNIA 1753
GULF INTRACOASTAL WATERWAY-CHANNEL 1493
GULKANA RIVER 2440
GUNNISON-ARKANSAS PROJECT, Colorado
Statutory references to 1670
GUNNISON RIVER 1248, 2445
GUTIERREZ, ELY E. 2476

H

H&RW IRRIGATION DISTRICT. See FRENCHMAN-CAMBRIDGE DIVISION, P-SMBP.
Amendatory Contract Act 3429

H. V. EASTMAN LAKE 2832

HAIDLE IRRIGATION PROJECT, Prairie County, Montana
Pick-Sloan power 3914

HALE, Colorado 2478

HALL COUNTY 899

HALOGETON GLOMERATUS CONTROL ACT
Text 1100

HAMILTON COUNTY 936

HAMMER CREEK 2437

HAMMOND IRRIGATION DISTRICT, Rosebud County, Montana
Pick-Sloan power 3914

HAMMOND PROJECT, New Mexico
Authorized 1248
Increased appropriations authorized 2657

HANCOCK, New York 2434, 2444

HAND COUNTY, South Dakota 3207

HANFORD NEW PRODUCTION REACTOR 1685

HANKS MARSH 1771

S1226
INDEX TO VOLUME V AND SUPPLEMENT II

HANNA NICKEL MINING AND SMELTING COMPANY 3263
HARDIN UNIT, MRB 1893
HARLAN COUNTY, Nebraska 2928
HAROLD T. (BIZZ) JOHNSON CALIFORNIA-PACIFIC NORTHWEST INTERTIE 3459
HARRIS, EARL 70
HATCH, TOWN of, New Mexico 404, S88
HAVASU LAKE NATIONAL WILDLIFE REFUGE 427
HAVRE DE GRACE, Maryland 2565
HAWAII BOARD OF LAND AND NATURAL RESOURCES 2507, S55, S270, S276
HAWAII, STATE OF
Framework plan by Army authorized 1922
Investigations in 1020
Investigation of certain projects in, authorized 1188
Small watersheds act applies to 1171
HAWK SPRINGS, Wyoming 2478
HAWTHORNE NAVAL AMMUNITION DEPOT 1098
HAYDEN LAKE IRRIGATION DISTRICT 1615
HAYDEN LAKE UNIT, Rathdrum Prairie project 1273, 1551, 615
HAYDEN MESA UNIT, Upper Yampa Project 2417, S251
HAYDEN-O'MAHONEY ACT
Annotations of 120
Miscellaneous references to 869
HAYDEN-O'MAHONEY AMENDMENT
Text 598
HAYES COUNTY, Nebraska 2928
HAYSTACK DAM 1173
HEAD GATE ROCK 538
HEADGATE ROCK DAM 1876
HEADGATE ROCK HYDROELECTRIC PROJECT 3457
HEAD WATER BENEFITS 273
HEALTH, EDUCATION, AND WELFARE, DEPARTMENT OF 1303, 1807, 1829, 1858, 1862
HEART BUTTE DAM 1431
HEART BUTTE UNIT, MRB, North Dakota
Reservoir above Heart Butte Dam named Lake Tschida 431
<table>
<thead>
<tr>
<th></th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HEART DIVISION,</strong> P-SMBP, North Dakota</td>
<td>2643</td>
</tr>
<tr>
<td>Dickinson unit</td>
<td></td>
</tr>
<tr>
<td>Feasibility study authorized</td>
<td>2936</td>
</tr>
<tr>
<td>Modification and replacement of Dickinson Dam spillway</td>
<td></td>
</tr>
<tr>
<td>Versippi Unit</td>
<td>928</td>
</tr>
<tr>
<td>Feasibility study authorized</td>
<td></td>
</tr>
<tr>
<td><strong>HEART MOUNTAIN DIVISION,</strong> Shoshone Project</td>
<td>831, 899, 1247, 1346, 2934</td>
</tr>
<tr>
<td><strong>HEART MOUNTAIN IRRIGATION DISTRICT</strong></td>
<td>1471</td>
</tr>
<tr>
<td><strong>HEATH SPRINGS</strong></td>
<td>2435</td>
</tr>
<tr>
<td><strong>HELENA-GREAT FALLS DIVISION,</strong> MRB, Montana</td>
<td></td>
</tr>
<tr>
<td>FortBenton unit</td>
<td></td>
</tr>
<tr>
<td>Feasibility study authorized</td>
<td>1891</td>
</tr>
<tr>
<td><strong>HELLS CANYON DAM</strong></td>
<td>2431</td>
</tr>
<tr>
<td><strong>HENDERSON, CITY OF</strong></td>
<td>897, 1266, 1715</td>
</tr>
<tr>
<td><strong>HENKEL, CAROLINE, WILLIAM AND GEORGE</strong></td>
<td>1522</td>
</tr>
<tr>
<td><strong>HENLY, GEORGE B., CONSTRUCTION COMPANY</strong></td>
<td>1102</td>
</tr>
<tr>
<td><strong>HENRY HAGG LAKE</strong></td>
<td>2930, 3130</td>
</tr>
<tr>
<td><strong>HENRY'S FORK</strong></td>
<td>918, 3503</td>
</tr>
<tr>
<td><strong>HENSLEY LAKE</strong></td>
<td>2921</td>
</tr>
<tr>
<td><strong>HERMISTON IRRIGATION DISTRICT</strong></td>
<td>369, 370, 1138</td>
</tr>
<tr>
<td><strong>HERNANDEZ DAM</strong></td>
<td>S276</td>
</tr>
<tr>
<td><strong>HERON NUMBERED 4 RESERVOIR</strong></td>
<td>1661</td>
</tr>
<tr>
<td><strong>HERON RESERVOIR</strong></td>
<td>2506, 2916, S252, S325</td>
</tr>
<tr>
<td><strong>HERRERA JORDAN, DAVID</strong></td>
<td>2876</td>
</tr>
<tr>
<td><strong>HEYBURN, VILLAGE OF</strong></td>
<td>122</td>
</tr>
<tr>
<td><strong>HEYBURN, TOWNSITE OF</strong></td>
<td>356, 1710, S35</td>
</tr>
<tr>
<td><strong>HIDALGO AND CAMERON COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NUMBERED 9</strong></td>
<td>1412</td>
</tr>
<tr>
<td><strong>HIDALGO-REYNOSA</strong></td>
<td>2763</td>
</tr>
<tr>
<td><strong>HIDDEN CREEK</strong></td>
<td>2438</td>
</tr>
<tr>
<td><strong>HIDDEN DAM AND RESERVOIR</strong></td>
<td>1702</td>
</tr>
<tr>
<td><strong>HIDDEN RESERVOIR</strong></td>
<td>2921</td>
</tr>
<tr>
<td><strong>HIERSCHE, ANTON</strong></td>
<td>660</td>
</tr>
</tbody>
</table>
INDEX TO VOLUME V AND SUPPLEMENT II

HIGH MOUNTAIN SHEEP PROJECT  S59, S411
HIGH PLAINS REGION  3026
HIGH PLAINS GROUNDWATER DEMONSTRATION PROGRAM ACT OF 1983  3424
Amendments  3425, 3427, 3913
Authorized  3424
Cost sharing  3427
Interstate water transfer  3428
Section 3(d) Repealed  3425, 4071
Statutory reference  3888, 3913
HIGHLAND UNIT, MRB  1894
HILLIARD EAST FORK CANAL  3183, 3184, 3186, 3193
HILLIARD WEST SIDE CANAL  3183, 3184, 3186, 3193
HILLSBORO, CITY OF  1054
HILLTOP AND GRAY GOOSE IRRIGATION DISTRICTS  3560
Authorized as units of P-SMBP  3539
HISTORICAL AND ARCHAEOLOGICAL DATA ACT 1533
Statutory references to  S951
HISTORIC PRESERVATION. See ADVISORY BOARD ON NATIONAL PARKS, HISTORIC SITES, BUILDING; AND MONUMENTS, NATIONAL HISTORIC PRESERVATION ACT.
HISTORIC PRESERVATION FUND
Statutory references to  2314, 2315
“Hit List”  3124
HITCHCOCK COUNTY, NEBRASKA  2928
HOBART, OKLAHOMA  2349
HOBBLE CREEK  3184, 3187
HODENPYL RESERVOIR  2446
HOGBACK IRRIGATION PROJECT  1864
HOLBROOK, ARIZONA  2343
HOLDEN RESERVOIR  2934
HOLLY HIRAI  S79
HOLMGREN, S. PAUL  3195
HOMESTEAD LAWS
Extracts from  2023
Lands in irrigation districts covered by Smith Act  224
Miscellaneous references to  S74
Relation to reclamation entries
Generally  37, S18
Repeal of  3016
Statutory references to  93, 257, 286, 295, 374, 515, 1118

S1229
INDEX TO VOLUME V AND SUPPLEMENT II

HOOD-CLAY UNIT, CVP  2771
HOOKER DAM AND RESERVOIR  2398, 3459
HOOVER DAM  414, 528, 539, 848, 898, 1021, 1479, 1758, 2403, 2419, 2423, 2926
HOOVER DAM DOCUMENTS  415
HOOVER POWER PLANT ACT  3403
-Amendments  3414-3419, 3769
-Bridge crossing authorized  3403
-Integrated resource planning  3414
-Miscellaneous references to  S839, S857-S859, S997
-Navajo Surplus power  3412
-Renewal contracts  3406
-Repayment requirements  3511
-Reports required  3413
-Statutory references to  S859, 3769
-Title II amended  3771
-Uprating program and visitor facilities authorized  3403

HOPE VALLEY DIVISION, Washoe project  1890

HOPI TRIBE  2632
HORNER A. S., CONSTRUCTION COMPANY  1009
HORSEFLY IRRIGATION DISTRICT  360, 361
HORSEHEAD FLATS UNIT, MRB  1893
HORSESHOE RESERVOIR  2447
HOSFORD CREEK  2438

HOSPITALS:
-Boulder City  715
-Disposition of land for, on Gila project  860

HOT SULPHUR SPRINGS, TOWN OF  662
HOT SPRINGS COUNTY  1328
HOUSETONIC RIVER  2446

HOUSING
-Construction camps. See CONSTRUCTION
-Disposition of surplus Government housing on Gila project  860
-Sale of Boulder City houses  869
-Sale of Coulee Dam houses  1379
-Transfer of construction workers' houses to Coachella Valley County Water District  962

HOUSING ACT OF 1954
-Statutory references to  1792, 1837

HOUSING ACT OF 1961
-Statutory references to  1792

S1230
INDEX TO VOLUME V AND SUPPLEMENT II

HOUSING AND HOME FINANCE AGENCY  1384, 1474, 1791

HOUSING AND HOME FINANCE ADMINISTRATION  860

HOUSING AND URBAN DEVELOPMENT ACT OF 1965
  Reorganization plan references to  1304

HOUSING AND URBAN DEVELOPMENT ACT OF 1968
  Miscellaneous references to  2353

HOWARD COUNTY  1326

HOWARD FLAT UNIT, Greater Wenatchee division  1415

HOWARD PRAIRE RESERVOIR  1184

HUALAPEI INDIANS
  Lands of, within boundaries of Lake Mead National Recreation Area  1814

HUDSON COUNTY, Texas  2444

HUDSON COUNTY CONSERVATION AND RECLAMATION DISTRICT NO. 1  100

HUGO, Oklahoma  3304

HUMBOLDT COUNTY  1236

HUMBOLDT PROJECT, Nevada
  Waiver of excess land laws  712
  Miscellaneous references to  812, 8190

HUMBOLDT RIVER RESERVOIR  712

HUMPHREY-THYE-BLATNIK-ANDRESEN ACT
  Statutory references to  1780

HUNGRY HORSE DAM AND RESERVOIR  786, 1579, 1764, 2431, 2444, 3272

HUNGRY HORSE PROJECT, Montana
  Authorized  786
  Hungry Horse Powerplant Enlargement and Reregulating Reservoir
    Feasibility study authorized  3216
    Subject to Federal reclamation laws  1417

HUNT PROJECT, Idaho  831

HUNTER CREEK  3131, S330, S331

HUNTING. See fish and wildlife.

HUNTLEY PROJECT, Montana
  Amended contract approved  1613
  Compensation to Crow Tribe for lands  1440
  Conveyance of lands to Huntley Project Schools  1497
  Conveyance of lands to Huntley Irrigation District  3510
  Miscellaneous references to  93
  Reduction and suspension of construction charges  359

HUNTLEY, TOWNSITE OF  1497

S1231
<table>
<thead>
<tr>
<th>Location/Subject</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Huntley Project Irrigation District</td>
<td>1613</td>
</tr>
<tr>
<td>Hutchinson Creek, Alaska</td>
<td>2440</td>
</tr>
<tr>
<td>Hutchinson County, Texas</td>
<td>3216</td>
</tr>
<tr>
<td>Hyrum Project, Utah</td>
<td>1015</td>
</tr>
<tr>
<td>Ice Harbor Dam</td>
<td>1579</td>
</tr>
<tr>
<td>Ichetucknee Springs</td>
<td>2445</td>
</tr>
<tr>
<td>Ickes, Harold L.</td>
<td>538</td>
</tr>
<tr>
<td>Idaho Power Company</td>
<td>352</td>
</tr>
<tr>
<td>Idaho, State of</td>
<td></td>
</tr>
<tr>
<td>Compacts of. See Bear River Compact, Columbia River Compact, Snake River Compact.</td>
<td></td>
</tr>
<tr>
<td>Desert Land Act applies</td>
<td>13</td>
</tr>
<tr>
<td>Executive Order No. 6910 and Taylor Grazing Act</td>
<td>515</td>
</tr>
<tr>
<td>Membership in Pacific Northwest Electric Power and Conservation Planning Council</td>
<td>3229</td>
</tr>
<tr>
<td>Proceeds of public lands sales</td>
<td>33</td>
</tr>
<tr>
<td>Projects in. See individual dams and projects by name.</td>
<td></td>
</tr>
<tr>
<td>Reclamation Act applies</td>
<td>31</td>
</tr>
<tr>
<td>School lands</td>
<td>110</td>
</tr>
<tr>
<td>Illinois Valley Division, Rogue River Basin project</td>
<td>1887</td>
</tr>
<tr>
<td>Illinois River, Oregon</td>
<td>2444</td>
</tr>
<tr>
<td>Illinois River, Arkansas</td>
<td>2774</td>
</tr>
<tr>
<td>Illinois River, Oklahoma</td>
<td>2445</td>
</tr>
<tr>
<td>Illinois, State of</td>
<td></td>
</tr>
<tr>
<td>Compacts of. See Wabash Valley Compact.</td>
<td></td>
</tr>
<tr>
<td>Imperial County</td>
<td>422</td>
</tr>
<tr>
<td>Imperial Dam</td>
<td>415, 761, 1753, 1877, 2867, 2875, S14, S89</td>
</tr>
<tr>
<td>Imperial Division, All-American Canal</td>
<td>1890</td>
</tr>
<tr>
<td>Imperial Irrigation District</td>
<td>2862, 3218, S74, S89, S90</td>
</tr>
<tr>
<td>Acquisition of Alamo Canal authorized</td>
<td></td>
</tr>
<tr>
<td>Application of payments by, to costs of Yuma and Yuma auxiliary project</td>
<td>447, 950</td>
</tr>
<tr>
<td>Contract with</td>
<td>415, 423, 433, 491</td>
</tr>
<tr>
<td>Contribution of funds</td>
<td></td>
</tr>
<tr>
<td>Flood protection</td>
<td>211</td>
</tr>
<tr>
<td>Studies</td>
<td>254</td>
</tr>
<tr>
<td>Credit to, for costs of Colorado River flood protection works</td>
<td>1018</td>
</tr>
<tr>
<td>Desert land entries within</td>
<td>222, 422</td>
</tr>
<tr>
<td>East Mesa lands</td>
<td>436</td>
</tr>
<tr>
<td>Excess lands</td>
<td>417</td>
</tr>
<tr>
<td>Seven-party contract</td>
<td>428</td>
</tr>
<tr>
<td>Imperial East Mesa</td>
<td>2862</td>
</tr>
</tbody>
</table>
# INDEX TO VOLUME V AND SUPPLEMENT II

**Imperial National Wildlife Refuge**
- Miscellaneous references to 44, 156

**Imperial Valley**
- 161, 211, 253, 414, 417, 422, 423, 433, 548, 854, 1890, 1893, S19, S73, S89, S92

**Imperial Water Fowl Management Area**
- S78

**Impoundment Control Act of 1974**
- Text 2877

**Index, Arkansas**
- 3306

**India**
- 687

**Indiana, State of**
- Compacts of. See Wabash Valley Compact.

**Indian Bend Wash, Arizona**
- 2839, S407

**Indians. See construction; fish and wildlife; Indian irrigation projects; Indian lands; water rights; surplus property. See also individual tribes and reservations by name.**

**Indian Camp Reservoir**
- 1661

**Indian Energy Resources**
- 3793

**Indian Irrigation Projects**
- Damage claims 205, 208
- Deferment or adjustment of charges
  - Lands in Indian ownership 504
  - Relief acts 308, 521, 541, 581, 632
- Miscellaneous references to 247, 635
- Repeal of cost limitation requirements 3346
- San Carlos Indian Irrigation Project Divestiture Act of 1991 3727
- Statutory references to
  - Fort Peck Indian irrigation project 2340
  - Construction of distribution system and drainage works to serve Cabazon, Augustine, and Torres-Martinez Indian Reservations 1457
  - Crow Indian Irrigation Department 1429
  - Fort Hall Indian project 311, 1206
  - Fort Peck Indian irrigation project 864
  - Fruitland, Hogback, Cudai and Cambridge projects 1664
  - Navajo Indians. See Navajo Indian Irrigation Project.
  - Not covered by Hayden-O’Mahoney amendment 599
  - Pine River (Southern Ute) 1150
  - Taxation of ceded Indian lands within 408
  - Wapato Indian irrigation project 589, 693, 1491
  - Yakima Indians 185
- Study Commission 580

**Indian Lands**
- Acquisition, withdrawal or other use of, for reclamation projects
  - Canal Act 18
  - Compensation for Chemehuevi Indian lands withdrawn 696
  - Generally 40, 73, 120, 157, 808, 862, S24

S1233
INDEX TO VOLUME V AND SUPPLEMENT II

Statutes relating to individual tribes 90, 91, 92, 105, 108, 137, 310, 680, 688, 695, 719, 725, 727, 794, 822, 1109, 1125, 1328, 1429, 1440, 1462
Arizona and New Mexico Enabling Act 141
Ceded lands
Fort Yuma Indian Reservation S28
Reclamation entries on, generally 177
Riverton project 260
Taxation of. See TAXATION.
Construction charges, generally
Not recoverable from power revenues 2413
Not collected while lands in Indian ownership 128, 504, S96
Drainage of 304
Fish and wildlife, conservation of 509
Indian irrigation projects. See INDIAN IRRIGATION PROJECTS.
Rights of way in, to others than United States
Federal Power Act 264, 267, 272
Generally 29, 173, 862
Water rights of. See WATER RIGHTS.
Water service to, from reclamation projects
Authorized, generally 128
Colorado River Storage project 1251
Fort Hall Indian Reservation 1208
Paiute Indians 394
Pima Indians 127
Salt River Indians 215
Wapato Indians 589, 693, 1491
Yakima Indians 185
Yuma and Colorado River Indians 395
W.C.U. projects 670

INDIAN SELF-DETERMINATION ACT OF 1975
Miscellaneous references to 2399

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT
Statutory references to 3358

INDUSTRIAL WATER SUPPLY. See WATER SUPPLY.

INFORMATION
Disclosure of confidential information 1949
Public Information Act 1930

INTAKE, Montana 2836

INTEGRATED RESOURCE PLANNING 3414, 3771

INTEREST
"Coupon rate"
Water Supply Act formula 1253, 1336, 1427, 1501, 1536, 1537, 1671, 1676, 1769, 1775, 1843, 1899, 2337, 2377, 2388, 2415, 2464, 2523, 2526, 2533, 2538, 2540, 2663, 2754, 2755, 2757, 2758, 2902, 2904, 2912, 2936, 2939, 2951, 2954, 2959, S234
Miscellaneous formulas 1048, 1084, 1160, 1170, 1242, 1245, 1354, 1557, 1704, 1851
Discount rate. See DISCOUNT RATE.
Farmers Home Administration loans 1608

S1234
INDEX TO VOLUME V AND SUPPLEMENT II

Hybrid coupon and yield rate  3335, 3337
Increase for failure to meet repayment schedule  2895, 3264
"Interest component"  650, 655, 856, 857, 882, 1104
On claims and judgments  S5, S495, S501, S509, S527, S530, S622
Penalty interest. See CONSTRUCTION CHARGES; OPERATION AND MAINTENANCE CHARGES.
Yield rate  2895, 3335, S314
Small reclamation projects  1336, S275
Small watershed projects (Public Law 566). See WATERSHED PROTECTION AND FLOOD PREVENTION ACT.
Special statutory provisions for individual projects
  Bitter Root project rehabilitation  476
  Bonneville Power Administration revenue bonds  2895
  Boulder Canyon project  417, 701, 1021
  Boulder City water supply  1480
  Colbran project  1084
  Columbia Basin project  737
  Colorado River Dam Fund  657, 3405, S858
  Grand Coulee Dam power sales  856
  Kennewick division, Yakima project  881
  Middle Rio Grande project  903
  Missouri River Basin project and Army power investment  1843, S402
  Water Supply Act formula applied. See under "Coupon rate" above.
  Waurika project  S347
Water resource projects, generally
  Irrigation, no interest on costs allocated to  58, 424, 1219
  Power. See POWER.
  Recreation. See RECREATION.
  Water supply. See WATER SUPPLY.
"Yield rate" 1254 expl. note, 1337 expl. note, 1412, 1505

INTERGOVERNMENTAL COOPERATION  S535

INTERGOVERNMENTAL COOPERATION ACT OF 1968
Statutory references to  2980

INTERSTATE OR INTERBASIN WATER TRANSFERS. See SPECIFIC RIVER BASINS.

INTERIOR, DEPARTMENT OF THE. See OPINIONS AND DECISIONS OF THE INTERIOR DEPARTMENT;
REORGANIZATION PLAN NO. 3 OF 1950.
Extracts from appropriations Act of 1979  3105, S1065
Extracts from appropriations Act of 1954  1114
  Amendments  3474
  Section repealed  4134, S869
Statutory references to  3458, S938

INTERNAL REVENUE CODE OF 1954
Miscellaneous references to  S77
Statutory references to  3164, 3268, 3335, 3348, S183, S309

INTERNATIONAL BOUNDARY COMMISSION. See INTERNATIONAL BOUNDARY AND WATER COMMISSION.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO
Anzaldusas Dam, repayment of costs  1096
Chumizal problem  99, 775
Compact references to  915
Construction of bypass drain in Mexico for Wellton-Mohawk division waters  2859

S1235
INDEX TO VOLUME V AND SUPPLEMENT II

Establishment of. See Mexican Water Treaty.
International Boundary Commission
   Establishment of and treaties relating to, explained 775
   Name changed to International Boundary and Water Commission 751
International Water Commission explained 524
Minute No. 242, August 30, 1973, Colorado River Water Quality
   Statutory references to 2857-2664
   Text 2875
Presidential letter to Secretary of State regarding flood control works and credits to Imperial Irrigation District 1019
Recreation fees and charges 1785
Statutory authority of United States Section, generally 522, 534, 1028
Statutory references to 1018, 1829, 2433, 2655, 2761
Treaties relating to. See Mexican Water Treaty, Treaties and Conventions.

INTERNATIONAL DAM, El Paso, Texas 2955

INTERNATIONAL WATER COMMISSION. See International Boundary and Water Commission.

INTERNATIONAL JOINT COMMISSION
   Established 132
   Statutory references to 1828
   Treaty references to 1561 et seq.

INTERSTATE COMMERCE COMMISSION 2599

INTERSTATE COMPACTS. See Compacts.

INTERSTATE DIVISION, North Platte Project 365, 366, 1131, 1352

INTERSTATE WATER TRANSFER, Arkansas 3428

INVENTIONS 1088, 3121, S613

INVERSE CONDEMNATION. See Acquisition of Property; Claims Against United States.

INVESTIGATIONS. See Studies and Reports.

IOWA, STATE OF
   Construction, of transmission lines in 808

IOWA RIVER 2445

IRON COUNTY, Utah 1768

IRRIGATION BLOCK
   Development period for 652, 1681
   Term defined 635

IRRIGATION DISTRICTS
   Application of State laws to public lands within, authorized 220, 299
   Appointment of, as fiscal agents of United States to collect charges against individual water users, authorized 195
INDEX TO VOLUME V AND SUPPLEMENT II

Assessments by
Columbia Basin project 736
Excess lands 65, 170, 381
Generally 221, 297, 298, 639, 904
Liens for 221, 542
Included within the term "organization" 635, 1331
Liability for damages S188
Repayment contracts with. See CONSTRUCTION CHARGES; DRAINAGE AND MINOR CONSTRUCTION
ACT; FISH AND WILDLIFE; OPERATION AND MAINTENANCE CHARGES; RECREATION; REHABILITATION
AND BETTERMENT ACT; REPAYMENT CONTRACTS SMALL RECLAMATION PROJECTS ACT; WATER
SERVICE WATER SUPPLY.
Taxation. See TAXATION
Term "irrigation district or other public agency" defined 1218
Transfer of operation and maintenance to. See OPERATION AND MAINTENANCE.

IRRIGATION PROJECT CONTRACT EXTENSION ACT OF 1996 4104
See BOSTWICK DIVISION; FRENCHMAN-CAMBRIDGE DIVISION, ENERGY AND APPROPRIATIONS ACT OF 1997.

IRRIGATION PROJECT CONTRACT EXTENSION ACT OF 1998 4118

IRRIGATION PUMPING. See Bonneville Power Administration; Chief Joseph Dam Project; Columbia
River Power System; Power.

IRRIGATION SUBSIDY. See Power; Water supply.

IRRIGATION MANAGEMENT SERVICES 2859

ISABELLA RESERVOIR 806, 809, 2447

ISLAND PARK DAM 3128
Power development 3661

ISLAND PARK RESORTS, INC 2942, 2945

ISLAND-BAYOU 3304

ITASCA LAKE 2446

IVANHOE IRRIGATION DISTRICT 585

IVINS BENCH 1768

IVISHAK RIVER 2439

J

JACKSON COUNTY, Oregon 1184, 2543
JACKSON COUNTY, Oklahoma 1007, 2765
JACKSON COUNTY, Colorado 565

JACKSON CREEK 2447

JACKSON LAKE 168, 210, 484
JACKSON LAKE DAM AND RESERVOIR 2532

JACKSON, S. KEITH 2780

S1237
INDEX TO VOLUME V AND SUPPLEMENT II

JAMES CANAL 3328
JAMES DIVERSION DAM 2376
JAMES DIVISION, MRB, P-SMBP, South Dakota
   Oahe unit
      Completion of studies (exclusive of Mitchell area) authorized 1888
      Feasibility study of Mitchell section authorized 1893
   Sioux Falls unit
      Feasibility study authorized 2478
JAMES AND PHELPS CONSTRUCTION COMPANY 905
JAMES RIVER, South Dakota 2376, 2499, 2503, 2765, 3560, S401
JAMES PUMPING PLANT 2376, 3328
JAMESTOWN DAM AND RESERVOIR 2635
JAMESTOWN, North Dakota 2635
JEFFERSON UNIT, MRB 1888
JEMEZ RESERVOIR 544
JEMEZ CANYON RESERVOIR 544
JENNY CREEK 1371
JENSEN UNIT, CUP 2657, 3214
JEROME, Idaho 2755
JEROME COUNTY, Idaho 2643
JIBSON, WALLACE N. 3195
JICARILLA APACHE TRIBE WATER RIGHTS SETTLEMENT ACT 3760
JICARILLA INDIANS 2916
JOB CORPS
   Established 2009
JOHN RIVER 2438
JOHN DAY DAM 1579, 1758
JOHN DAY RIVER 2446, 2643
JOHN MUIR HISTORICAL SITE 3623
JOHNSON CREEK 357
JOHNSON CREEK DAM 3308
JOHNSON, C. P. 2476
JOHNSON, HARRY 1132
JONES BLUFF DAM 2504

S1238
INDEX TO VOLUME V AND SUPPLEMENT II

JONES, DAN S., JR.  2468, 2472, 2647, 2654
JONES, J. N.  989
JONES-SMITH TRUST AGREEMENT  S81
JORDAN CREEK  1892
JORDAN RIVER BASIN  2385
JORDAN VALLEY DIVISION, Upper Owyhee project  1892
JOSEPH CREEK, Alaska  2440
JOSEPHINE COUNTY, Oregon  2643
JULESBURG IRRIGATION DISTRICT  345
JUMPOFF JOE CREEK  1886
JUNIPER DIVISION, Wapinitia project  1268
JUNIPER PROJECT, Colorado Expedious completion of planning report directed  1250
JUNIPER PROJECT, Utah Expedious completion of planning report directed  2417, S251
JUNIPER UNIT, Lower Yampa Project  2417, S251
JUST COMPENSATION CLAUSE  3, S4

K
KAILAHOI CORPORATION  2507, S55, S270 S276
KANAPOLIS DAM AND LAKE  2950
KANAPOLIS UNIT, P-SMBP, Kansas Reauthorized  2950
KANASKA DIVISION, MRB, Kansas Nelson Buck unit Feasibility study authorized  1894
KANEKTOK RIVER  2448
KANPOLIS UNIT, MRB  1894
KANPOLIS DAM  1894
KANSAS CITY POWER & LIGHT COMPANY  802
KANSAS FORESTRY, FISH AND GAME COMMISSION  1558, 2950
KANSAS-NEBRASKA BIG BLUE RIVER COMPACT Text  2647
KANSAS-NEBRASKA BIG BLUE RIVER COMPACT ADMINISTRATION Established  2648

S1239
INDEX TO VOLUME V AND SUPPLEMENT II

KANSAS-OKLAHOMA ARKANSAS RIVER COMMISSION
Established 1918

KANSAS RIVER 2647

KANSAS, STATE OF
Compacts of. See ARKANSAS RIVER COMPACTS; BIG BLUE RIVER COMPACT; REPUBLICAN RIVER COMPACT; KANSAS-NEBRASKA BIG BLUE RIVER COMPACT.
Executive Order No. 6964 and Taylor Grazing Act apply 516
Included in marketing area of Southwestern Power Administration 974
Projects in. See individual dams and projects by name.
Reclamation Act applies 31

KANSAS STATE HIGHWAY COMMISSION 1706

KATEL RIVER 2439, 2440

KATMAI NATIONAL PARK AND PRESERVE 2438, 2439

KAWEAH NUMBER 3 PROJECT S66

KAWEAH RIVER 383, 809

KAYSINGER BLUFF DAM 801

KEARNEY COUNTY 936

KEATING AMENDMENT 1054, S205

KECHUMSTUK, Alaska 2440

KELLOGG UNIT, CVP 1887, 3217

KELLY RIVER 2438

KENDRICK PROJECT, Wyoming
Amended contract; excess land limit raised to 480 acres 1389
Feasibility study of Seminole Dam modification authorized 2643
Miscellaneous references to 291, 297
Name changed to Casper-Alcova project 566
Power revenues, application of 619

KENNEDY DAM 584

KENNEWICK DIVISION, Yakima Project 881, 1886, S191

KENNEWICK DIVISION EXTENSION, Yakima project 2474, S171

KENNEWICK HIGHLANDS UNIT, Yakima project 457, 503

KENNEWICK IRRIGATION DISTRICT 457, S191

KENT DIVERSION WORKS 2758

KENTUCKY, STATE OF
Southeastern Power Administration markets power from Army dams in 801

S1240
INDEX TO VOLUME V AND SUPPLEMENT II

KERN COUNTY WATER AGENCY S270
KERN RIVER 806, 809, 1887, 1890, 2447
KERR DAM 1579
KERR. ROBERT S., DAM 801
KESHENA FALL 2431
KESTERSON RESERVOIR 3042, 4084
KESWICK DAM AND RESERVOIR S175, S373
KETTLE RIVER 665, 2446
KEYSTONE DAM 801
KIAMICHI RIVER 3304
KING HILL IRRIGATION DISTRICT 512
KING HILL PROJECT, Idaho
  Feasibility report required 235
  Reclamation laws and Carey Act, application of 242
  Reduction and suspension of construction charges 360
  Termination of project and conveyance of property authorized 512
KINGMAN PROJECT, Arizona
  Feasibility study authorized 1891
KING RANGE NATIONAL CONSERVATION AREA 3013
KINGS CANYON NATIONAL PARK
  Rights of way 30
KINGS RIVER 805, 806, 809, 823, 2344, S73, S155
KINGS RIVER CONSERVATION DISTRICT 805
KINGS RIVER AND TULARE LAKE PROJECT, California 809, 823
KINGS RIVER WATER ASSOCIATION 2344
KINGS RIVER WATER DISTRICT 2344
KINNAID ACT 254
KINZUA DAM 2447
KIONA SIPHON 2474, S171
KIOWA COUNTY, Oklahoma 2765
KIRKPATRICK, GLADE R. 2780
KISARALIK RIVER 2448
KITTATINNY MOUNTAIN 2520
KITTITAS DIVISION, Yakima project 338, 928

S1241
INDEX TO VOLUME V AND SUPPLEMENT II

KITTITAS IRRIGATION DISTRICT 1129, S180
KITTITAS RECLAMATION DISTRICT 928
KLAMATH COUNTY, Oregon 257, 788, 1050, 1203, 1771, 2531, 2643, 2908
KLAMATH DRAINAGE DISTRICT 788, 1738, 1772
KLAMATH FALLS, CITY OF 1050

KLAMATH INDIANS
Termination legislation, references to 1374

KLAMATH IRRIGATION DISTRICT 360, 361, 502, 1051, 1322
KLAMATH LAKE. See LOWER KLAMATH LAKE; UPPER KLAMATH LAKE.

KLAMATH LAKE BIRD RESERVE 258

KLAMATH LAKE RESERVATION (wildlife) 97

KLAMATH PROJECT, California-Oregon
A Canal rehabilitation nonreimbursable 3459
Acquisition of War Relocation Centers 831
Acquisition and use of lands exposed by lowering Lower Klamath, Tule and Goose Lakes 95
Amended contract approved; adjustment of charges, etc. 788, 926, 1322
Butte Valley division
Feasibility study authorized 2643
Compact references to 1366
Conveyance of abandoned "B" lateral canal right-of-way 2908
Conveyance of land to City of Klamath Falls 1050
Conveyance of lands to State of California for fairgrounds 1110
Entry on lands uncovered by lowering of Lower Klamath Lake 257
Exchange of lands with Colonial Realty Company 507, 508, 1196
Miscellaneous references to 80, 169, S22
Reduction and suspension of construction charges 360, 502
Refunds to lessees of marginal lands 406
Reimbursement of Modoc unit from grazing revenues 694
Revenues credited to cost of water rights program 1738, 2480
Shasta View Irrigation District Rehabilitation program 2479
Suit by California authorized 307
Transfer by GSA of certain property in Klamath County to State of Oregon 1203
Wildlife management
Ceded lands administered by Fish and Wildlife Service 788
Costs assigned to refuge lands nonreimbursable 1323
Migratory waterfowl management policy; accommodation with agricultural use 1771
Miscellaneous opinions 97

KLAMATH RIVER 97, 1228, 1366, 1890
KLAMATH RIVER BASIN 2643

S1242
INDEX TO VOLUME V AND SUPPLEMENT II

KLAMATH RIVER BASIN COMPACT
Consent to negotiate 1228
Text 1365

KLAMATH RIVER BASIN RESTORATION PROGRAM ACT 3520
Statutory references to 3443, 4079

KLAXA TOWN SITE 688

Klickitat County, Washington 2928

Knights Valley Unit, North Coast project 1890

Kobuk River 2438

Kobuk Valley National Park 2438

Kolob Reservoir 1768

Kolob Reservoir and Storage Association, Inc. 1768

Kooskia, Idaho 2430

Kootenai River, Montana 1567

Kootenai River 2444

Kootenay Lake 1567

Kootenay Lake Dam 1579

Kootenay River, Canada 1561, 1568, 1581

Kortes Dam 2637

Kortes Unit, P-SMBP, Wyoming
Conservation of fishery resources 2637

Koyuk River 2448

Koyukuk River 2458

Krause, Keith S. 2647, 2654

Kuchel Act S356

Kugarak River 2439

Kuhin Irrigation and Canal Company 210

KVW Ranch Lakes 3305

L

La Barge Project, Wyoming
Authorized 1248
Increased appropriations authorized 2657

La Fiera Division, Lower Rio Grande Rehabilitation project 1505

La Fiera Water Control and Improvement District 1505

S1243
INDEX TO VOLUME V AND SUPPLEMENT II

LA PLATA RIVER 917

LA PLATA RIVER COMPACT
  Compact references to 917
  Text 328

LA PRELE CREEK 1892

LA PRELE UNIT, MRB 1892

LA VERKIN SPRINGS 1768

LA VERKIN SPRINGS SALINITY CONTROL STUDY 3220

LABOR
  Collective bargaining S117
  See CONSTRUCTION.

LAGUNA DAM 253, 414, 423, 432, 491, 1877

LAHONTAN CUTTHROAT TROUT 2783

LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD 2485

LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD OF CALIFORNIA 3281

LAHONTAN RESERVOIR 336

LAKE ANDES-WAGNER/MARTY II ACT OF 1992 3898

LAKE BERRYESSA 1260, 2505, 2909, 3218, S5

LAKE CASITAS 2906

LAKE CASITAS RECREATION AREA 2907

LAKE CATHERINE 3309

LAKE CHAMPLAIN S409, S410

LAKE CLARK NATIONAL PARK AND PRESERVE 2438, 2439

LAKE COUNTY, California 2332, S202

LAKE COUNTY, Oregon 257

LAKE CROCKETT 3305

LAKE CROOK 3305

LAKE EKLUTNA 1010

LAKE ERIE 131

LAKE GRACE PROJECT, Alaska
  Feasibility study authorized 1892

LAKE GREESON 3309

LAKE HAVASU 38, 2398

S1244
# INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Location</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lake McMillan Reservoir</td>
<td>358</td>
</tr>
<tr>
<td>Lake Mead</td>
<td>1756, 1851, 2421, S389</td>
</tr>
<tr>
<td>Lake Mead National Recreation Area</td>
<td>2924, S51, S386 S389</td>
</tr>
<tr>
<td></td>
<td>Miscellaneous references to</td>
</tr>
<tr>
<td></td>
<td>Statute providing improved basis for administration</td>
</tr>
<tr>
<td></td>
<td>Statutory references to</td>
</tr>
<tr>
<td>Lake Meredith</td>
<td>1845</td>
</tr>
<tr>
<td>Lake Meredith National Recreation Area</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Administration of</td>
</tr>
<tr>
<td></td>
<td>Establishment of</td>
</tr>
<tr>
<td>Lake Meredith Salinity Project, New Mexico-Texas</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Authorization to construct and test</td>
</tr>
<tr>
<td></td>
<td>Feasibility study authorized</td>
</tr>
<tr>
<td>Lake Mohave</td>
<td>1006</td>
</tr>
<tr>
<td>Lake Namekago</td>
<td>2430</td>
</tr>
<tr>
<td>Lake O'The Pines Dam</td>
<td>3308</td>
</tr>
<tr>
<td>Lake Oahe</td>
<td>2345, 2938</td>
</tr>
<tr>
<td>Lake Pocasse</td>
<td>2938</td>
</tr>
<tr>
<td>Lake Ponchartrain</td>
<td>1857</td>
</tr>
<tr>
<td>Lake Powell</td>
<td>1249, 1551, 2395, 2399, 2421, 2768, 2900, S248, S253, 4026</td>
</tr>
<tr>
<td>Lake Sakakawea</td>
<td>2331</td>
</tr>
<tr>
<td>Lake Solano</td>
<td>1421</td>
</tr>
<tr>
<td>Lake Sumner</td>
<td>2753, 2887, SI39</td>
</tr>
<tr>
<td>Lake Tahoe</td>
<td>1232, 1320, 1893, 2482, 2544, 3276</td>
</tr>
<tr>
<td>Lake Tahoe Basin</td>
<td>2544</td>
</tr>
<tr>
<td>Lake Tahoe Canal</td>
<td>365</td>
</tr>
<tr>
<td>Lake Tahoe Management Unit</td>
<td>3283</td>
</tr>
<tr>
<td>Lake Tahoe National Lakeshore</td>
<td>2544</td>
</tr>
<tr>
<td>Lake Tahoe Project, California-Nevada</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Feasibility study authorized</td>
</tr>
<tr>
<td>Lake Texana</td>
<td>3181</td>
</tr>
<tr>
<td>Lake Texoma</td>
<td>3303</td>
</tr>
<tr>
<td>Lake Tschida</td>
<td>1431</td>
</tr>
<tr>
<td>Lake Winona</td>
<td>3309</td>
</tr>
<tr>
<td>Lakeport Dam and Reservoir</td>
<td>1856</td>
</tr>
</tbody>
</table>
INDEX TO VOLUME V AND SUPPLEMENT II

LAKESIDE DITCH COMPANY S270
LAKESIDE IRRIGATION WATER DISTRICT S270
LAKEVIEW IRRIGATION DISTRICT, Wyoming 3609
LAMANUZZI AND PANTALEO S79
LAMPASAS VALLEY 832

LAND ACQUISITION. See ACQUISITION OF PROPERTY.

LAND ACQUISITION POLICY ACT OF 1960
Section 301 repealed 2632

LAND CLASSIFICATION
Authorized at intervals of not less than 5 years 642
Class I equivalency. See EXCESS LANDS.
Permanently unproductive land
Generally 371, 372, 373, 375
Sale of 460
Required for reclamation projects
Generally 319, 1094, 1115, S124, S212
Hazardous return flows 3474
Repeal of requirement S869, 4134
Requirement waived 2389, 2465
Statutory references to 3964, 4134
Taylor Grazing Act 515
Temporarily unproductive land
Generally 373, 375
Sale of 460

LAND GRANT COLLEGES 31, 1747, 3108

LAND PREPARATION. See SETTLER ASSISTANCE.

LAND AND WATER CONSERVATION FUND
Established 1785
Receipts to 1785, 1824
Statutory references to 2438, 2450, 2455, 3481

LAND AND WATER CONSERVATION FUND ACT OF 1965
Amendments and annotations of 1827, 3564, 4125, S359-S379, S892, S904
Sec. 4(h) repealed 4071
Statutory references to 1823, 1824, 1837, 2312, 2381, 2427, 2429, 2458, 2793, 2830, 2968, 2996, 3564, 4072, 4124, S964
Text 1785
Text extracts, as amended and annotated S892

LAND AND WATER CONSERVATION FUND ACT OF 1965 AMENDMENT 4125
Miscellaneous references to 5904

LANGELL VALLEY IRRIGATION DISTRICT 360, 361, 514
LANGLADE COUNTY, Wisconsin 2428, 2431

LANHAM ACT
Miscellaneous references to 860

S1246
INDEX TO VOLUME V AND SUPPLEMENT II

LANNON CANAL 3183, 3184, 3186, 3193
LAPLATA RIVER 2418
LARAMIE RIVER 1892
LARAMIE DIVISION, MRB, Wyoming
       Wheatland unit
       Feasibility study authorized 1892
LASSEN VOLCANIC NATIONAL PARK
       Use of, for reclamation projects 218
LAS VACAS ARROYO 753
LAS VEGAS WASH 2869
LAS VEGAS WASH UNIT, CRBSCP, Nevada 2869
LASSEN VOLCANIC NATIONAL PARK S49
LAVA BEDS NATIONAL MONUMENT 1375
LAVACA RIVER, Texas 1886
LAVACA FLATS UNIT, MRB, Nebraska
       Authorized 1186
LAVERKIN SPRINGS 2869
LAWRENCE, DANIEL F. 3195
LEASBURG DIVISION, Rio Grande project 367
LEADVILLE MINE DRAINAGE TUNNEL PROJECT, Colorado
       Rehabilitation of tunnel authorized 2957
       Treatment Plant authorized 3866
LEASES AND PERMITS. See also individual projects by name.
       Archaeological resources 3171, S298
       Building materials. See BUILDING MATERIALS.
       Historic preservation. See HISTORIC PRESERVATION.
       Federal agencies, between. See FEDERAL AGENCIES.
       Federal Power Commission. See FEDERAL POWER ACT.
       Fish and wildlife. See FISH AND WILDLIFE.
       Limitation on leases of land receiving irrigation water 3347
       Power privileges
       Generally 111, 169, 647, S33, S58, S59, S61, S64, S126
       Statutes relating to individual projects 111, 431, 433, 486, 613, 1235, 1543
       Public buildings and other public works 1214, 1982, S555, S556
       Reclamation projects, generally
       Express statutory authority 656, 1017
       Implied authority 33, 45, 56, 88, 416
       Recreation. See RECREATION.
       Revenues from. See CONSTRUCTION CHARGES; FISH AND WILDLIFE; OPERATION AND MAINTENANCE
       CHARGES; RECLAMATION FUND; RECREATION.
       Rights of way. See RIGHTS OF WAY AND EASEMENTS.
       Transfer of projects to water users. See OPERATION AND MAINTENANCE.

S1247
INDEX TO VOLUME V AND SUPPLEMENT II

Water pollution control
   Compliance by permittee with legal requirements 2717, S15
Wild and scenic rivers, affecting 2453
Water service. See WATER SERVICE.

LEAVITT ACT
   Amendments and annotations of S96-S97
   Statutory references to 1206, 1251, 1329, 1458, 2413, 2831, 3352, 3468, 3628, 3903
   3964, 3976, S938
   Text 504

LECLAIR-RIVERTON IRRIGATION DISTRICT S97

LEE CREEK Arkansas-Oklahoma 2774

LEE FERRY 427, 442, 909, 1664, 1666, 1857, 2397, 2404, 2415, 2421, 2423

LEMOORE California 2659

LEON RIVER 832

LEON VALLEY 832

LEWIS M. SMITH DAM 2446

LEWISTON DAM 1890

LEWISTON, Idaho S162

LEWISTON ORCHARDS IRRIGATION DISTRICT S165

LEWISTON ORCHARDS PROJECT, Idaho
   Authorized 836
   Miscellaneous references to S165, S190

LEWISTON RESERVOIR 1863

LIBBY DAM AND RESERVOIR 1567, 3272

LIBBY REREGENERATING DAM 3272

LIBERIA 687

LIBERTY CREEK, Alaska 2439

LIBERTY BOTTOMS PROJECT, Oklahoma,
   Completion of studies authorized 1888

LIBERTY HILL 3305

LIENS. See CONSTRUCTION CHARGES; IRRIGATION DISTRICTS.

LIMITROPE 752, 759, 762, 767, 774

LIMITROPE SECTION OF THE COLORADO RIVER 2864, 2875, 3201

LINCOLN COUNTY Wyoming 3183, 3184

LINN COUNTY, Oregon 2478

S1248
INDEX TO VOLUME V AND SUPPLEMENT II

LITTLE ARKANSAS RIVER 1915
LITTLE BEAVER RIVER, Ohio 2444
LITTLE BIGHORN RIVER 1063
LITTLE BLUE RIVER 1892, 2647
LITTLE COLORADO RIVER, Arizona 1890
LITTLE COLORADO RIVER BASIN 2343
LITTLE DELL DAM AND RESERVOIR 2385
LITTLE JOHN CREEK 810
LITTLE Klamath Lake. See LOWER KLAMATH LAKE  S29
LITTLE MIAMI RIVER, Ohio 2444
LITTLE MISSOURI RIVER COMPACT Consent to negotiate 1362
LITTLE MISSOURI RIVER 3309
LITTLE NAVAJO RIVER 1660
LITTLE RIVER, Oklahoma 1535, 3305
LITTLE RIVER VALLEY 832
LITTLE SNAKE RIVER 917
LITTLE TRUCKEE RIVER 713, 1319
LITTLE WOOD RIVER DAM, Idaho 3422
LITTLE WOOD RIVER PROJECT, Idaho Authorized 1343
LITTLEFIELD SPRINGS 2869
LITTLETON, Colorado 2772
LLANO TRIBUTARY IRRIGATION UNIT 1660
LLOYD, EARL 2468, 2472

LOANS. See ADVANCE PAYMENTS, AGRICULTURE, DEPARTMENT OF; BANKHEAD-JONES FARM TENANT ACT; CONSOLIDATED FARMERS HOME ADMINISTRATION ACT OF 1961; CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT; DISTRIBUTION SYSTEM LOANS ACT; DRAINAGE AND MINOR CONSTRUCTION ACT; PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 (title iv); REHABILITATION AND BETTERMENT ACT; SETTLER ASSISTANCE; SMALL RECLAMATION PROJECTS ACT; WATER FACILITIES ACT; WATERSHED PROTECTION AND FLOOD PREVENTION ACT.

LOBATOS, Colorado 2750
LOBSTER CREEK BRIDGE 2430
LOCAL PUBLIC WORKS CAPITAL DEVELOPMENT AND INVESTMENT ACT OF 1976 Statutory references to 3038

S1249
INDEX TO VOLUME V AND SUPPLEMENT II

LOCHSA RIVER 2430

LODGEPOLE CREEK 343

LOGAN COUNTY, Oklahoma 2928

LOGGING CABIN CREEK 2440

LOMA SIPHON LAND EXTENSION, Grand Valley project 359

LOMPOC PROJECT, California
  Feasibility study authorized 1890

LONE MOUNTAIN DITCH 3183, 3184, 3186, 3193

LONG LAKE, Alaska 1704

LONGS PEAK DIVISION, P-SMBP, Colorado
  Front Range unit
  Feasibility study authorized 2478

LONG TOM BAR 2437

LOOKINGGLASS CREEK 1887

LOS ANGELES, CITY OF 423, 429, 430, 501

LOS ANGELES COUNTY 500

LOS ESTEROS RESERVOIR 1216

LOS PADRES NATIONAL FOREST 2906

LOS PINOS RIVER 623, 2446

LOS VAQUEROS DAM 3216, 3217

LOST CREEK DAM LAKE PROJECT, Oregon
  Renamed "William L. Jess Dam and Intake Structure" 4085

LOST CREEK PROJECT, Oregon 1909

LOST CREEK RESERVOIR 1703

LOST RIVER, Idaho 2942

LOST RIVER, Oregon and California 1228

LOST RIVER VALLEY, Oregon and California 1366

LOUD RESERVOIR 2445

LOUDEN IRRIGATING CANAL AND RESERVOIR COMPANY 1332

LOUISIANA, STATE OF
  Compacts of. See RED RIVER COMPACT; SABINE RIVER COMPACT.
  Executive Order No. 6964 and Taylor Grazing Act apply 516
  Included in marketing area of Southwestern Power Administration 974
  Reclamation investigations in 806

LOUP RIVER 1886, 1888

S1250
INDEX TO VOLUME V AND SUPPLEMENT II

LOVELAND, Ohio 2444
LOWELL, Idaho 2430
LOWER BIGHORN DIVISION, MRB, Montana
Hardin unit
Feasibility study authorized 1893
LOWER CALIFORNIA, Mexico 1018
LOWER COLORADO RIVER
Exchange of water rights in, for rights in Gila River 661
International flood control programs 1753
Lease of lands for recreation purposes 658
Permits to trespassers 658
Study of, as basis for treaty with Mexico 522
LOWER COLORADO RIVER BASIN
Defined 442, 910
LOWER COLORADO RIVER BASIN DEVELOPMENT FUND
Established 2413
Statutory references to 2403, 2410, 2411, 2419, 2858, 2870, 3200, 3452, S1036
LOWER COLORADO RIVER BASIN PROJECT
Additional studies authorized 1886
LOWER COLORADO RIVER LAND USE PLAN 38
LOWER COLORADO WATER SUPPLY ACT 3528
LOWER GRANDE RONDE DAM AND RESERVOIR 1856
LOWER GUNNISON BASIN SALINITY CONTROL STUDY 3220
LOWER GUNNISON 2869
LOWER JAMES-FORT RANDALL WATER DIVERSION, P-SMBP, South Dakota
Feasibility study authorized 2765
LOWER KLAMATH LAKE 95, 257, 307, 788, 1322
LOWER KLAMATH LAKE DIVISION, Klamath project 788, 789, 1738, 2480
LOWER KLAMATH RIVER BASIN 1890
LOWER KLAMATH RIVER DIVISION, North Coast project 1890
LOWER KLAMATH NATIONAL WILDLIFE REFUGE 1771, S22
LOWER MARIAS UNIT, P-SMBP, Marias division 3217
LOWER MONUMENTAL-ASHE TRANSMISSION LINE 2498, 3008
LOWER MOVALYA DEVELOPMENT S87
LOWER MUSSELHELL UNIT, MRB 1891

S1251
INDEX TO VOLUME V AND SUPPLEMENT II

LOWER NIOWRARA DIVISION, P-SMBP, MRB, Nebraska
O'Neill unit
Authorized 1186
Completion of studies authorized 1888
Miscellaneous references to 2498, 2499, S228
Reauthorized 2756

LOWER RIO GRANDE
Fort Quitman, Texas, as dividing point between Lower and Upper Rio Grande, explained 117
Salinity control
Drainage facilities under I.B.W.C. supervision authorized 1897
Statutory references to 522
United States Section, I.B.W.C.
Flood control project 524
Valley Gravity Canal and Storage project 716

LOWER RIO GRANDE FLOOD CONTROL PROJECT
Appropriation Act language relating to Anzaldus Dam 1096
Establishment of, explained 524

LOWER RIO GRANDE REHABILITATION PROJECT, Texas
La Feria division
Authorized 1505
Mercedes division
Authorized 1412
Work may be accomplished by contract, etc. 1556

LOWER SAINT CROIX RIVER 2431

LOWER TETON DIVISION, Teton Basin Project 3221

LOWER TETON VALLEY 2497

LOWER TETON DIVISION, Teton Basin project 1796

LOWER TRINITY RIVER DIVISION, North Coast project 1890

LOWER TWO MEDICINE DAM 635

LOWER VIRGIN RIVER SALINTY CONTROL STUDY 3220

LOWER YAMPA PROJECT, Colorado
Expeditious completion of planning report directed (including the Juniper and Great Northern units) 2417, S251

LOWER YELLOWSTONE IRRIGATION DISTRICT NUMBERED 1 877
LOWER YELLOWSTONE IRRIGATION DISTRICT NUMBERED 2 877

LOWER YELLOWSTONE PROJECT, Montana-North Dakota
Amended repayment contracts approved 877
Reduction and suspension of construction charges 362
Repayment contract required 353

LOXAHATCHEE RIVER 2447

LUCE, JOHN 2780

S1252
INDEX TO VOLUME V AND SUPPLEMENT II

LUCKY PEAK DAM  S164
LUCKY PEAK RESERVOIR  833
LUGERT RESERVOIR  615
LUGERT-ALTUS PROJECT, Oklahoma
   Authorized  616
   Limit of $3,000,000 on reimbursable construction costs  748
   Name changed to W. C. Austin project  849
   Relief act for Stamey Construction and/or Oklahoma Paving companies  1086
LUGERT-ALTUS RESERVOIR  3304
LUKE-WILLIAMS AIR FORCE RANGE  1679
LUKFATA  3305
LUTHER BROTHERS CONSTRUCTION COMPANY  906
LYM ENGINEERING COMPANY  1447
LYM, JOSEPH H.  1447
LYMAN PROJECT, Wyoming
   Authorized  1248
   Increased appropriations authorized  2657
LYNN CRANDALL DIVISION, Upper Snake River project  1889

M

MAD RIVER  1890, 1893
MADERA COUNTY  1617
MADERA EQUALIZING RESERVOIR  1617
MADERA IRRIGATION DISTRICT  585
MADISON COUNTY, Montana  2765
MALHEUR COUNTY, Oregon  989, 3216
MALIN, Oregon  2531
MALTA, CITY OF  1757
MALTA DIVISION, Milk River project  353
MALTA IRRIGATION DISTRICT  971, 1080
MANCOS PROJECT, Colorado
   Amended contract with Mancos Water Conservancy District approved  852
   Defemt of constrcution charges. See WATER CONSERVATION AND UTILIZATION
MANCOS PROJECT PRIVATE POWER DEVELOPMENT AUTHORIZATION ACT OF 1994  4037
MANCOS WATER CONSERVANCY DISTRICT  852

S1253
INDEX TO VOLUME V AND SUPPLEMENT II

MANHATTAN, Kansas 2648
MANISTEE RIVER 2446
MANN CREEK PROJECT, Idaho
  Appropriations authorization increased 1819
  Authorized 1668
MANSON UNIT, Chief Joseph Dam project 1884, 1886
MARCUS WHITMAN DIVISION, Walla Walla project 1889
MARIAS DIVISION, P-SMBP, MRB, Montana
  Lower Marias Unit
    Feasibility study of Tiber Dam powerplant authorized 3217
  Marias-Milk unit
    Feasibility study authorized 1892
MARIAS RIVER BASIN 1892
MARICOPA CANAL 1201
MARICOPA COUNTY, Arizona 1201, 1680, 1709, 2839, S407
MARICOPA-STANFIELD IRRIGATION DISTRICT, Arizona 3609
MARINE MAMMAL PROTECTION ACT OF 1972
  Statutory references to 2827, 3210
MARISCAL CANYON 2433
MARMON, WALTER 2476
MARSHALL DAM 3308
MARSHALL FORD DAM 587, 620
MARSHALL, R. C. 3315
MARTIN, JOHN, RESERVOIR PROJECT 931, 1855
MARTIN WUNDERLICH COMPANY 1390
MARYLAND, STATE OF
  Compacts of. See SUSQUEHANNA RIVER BASIN COMPACT.
MARYSVILLE CANAL COMPANY 3215
MARYSVILLE DAM AND RESERVOIR 1922
MARYSVILLE LAKE PROJECT, California 5426
MASON CITY SCHOOL DISTRICT 716
MATAMORAS, Pennsylvania 2444
MAUMEE RIVER 2444
MAXWELL IRRIGATION COMPANY 1036, 1153

S1254
INDEX TO VOLUME V AND SUPPLEMENT II

MAXWELL IRRIGATION DISTRICT, New Mexico 1036
MAXWELL NATIONAL WILDLIFE REFUGE 3274

MCARRAN AMENDMENT
Notes of Opinion S209
Text 1097

MCLENDON, ELMO W. 2647, 2654

MCCLURE AMENDMENT 3331

MCRRACKEN MESA 1466

MCDONALD, JAMES S., POST 5054, VFW 880

MCELMO CREEK 2869

MCELMO CREEK SALINITY CONTROL STUDY 3220

MCGEE CREEK DAM AND RESERVOIR
Access facilities to recreational areas nonreimbursable 3374
Feasibility Study authorized 2771
Dam and Reservoir authorized 2958

MCGEE CREEK PROJECT, Oklahoma
Authorized 2958
Directions as to acquisition of surface and mineral interests 3323
Directions regarding project completion, title transfer, contract termination deleted 3561, 3648
Repayment contract authorized 3660
Repayment contract number 0-07-50-X0822 termination 3660
Title to project facilities to remain with the United States 3660

MCGOVERN AMENDMENT 3057

MCKAY DAM AND RESERVOIR 491, 986, 2937

MCKAY, GUNN 2841

MCKINLEY COUNTY, New Mexico 2643

MCKINNEY BAYOU 3306

MCMASTER, ANDREW 2468, 2472

MCMLLAN DAM 2753

MCMLLAN DELTA PROJECT, New Mexico
Authorized 1391
Condition on clearing of floodway 1800

MCNARY DAM 575, 813, 1566, 1579, 1687

MCNEIL, FERNE M. 2640

MCPEE DAM 2446, S250

MCPherson County, South Dakota 3207

S1255
INDEX TO VOLUME V AND SUPPLEMENT II

MEADOW RIVER 2447
MEDFORD IRRIGATION DISTRICT 1184
MEDICINE CREEK 714
MEDICINE CREEK DAM AND RESERVOIR 1095
MEEEKER DOME SALINITY CONTROL STUDY 3220
MELOZITNA RIVER 2448
MENIFEE COUNTY, Kentucky 2447
MENOMINEE COUNTY, Wisconsin 2431
MERAMEC PARK LAKE PROJECT, Missouri 3039
MERCED RIVER 1546
MERCED IRRIGATION DISTRICT 1546
MERCEDES DIVISION, Lower Rio Grande Rehabilitation project 1412, 1556
MEREDITH, A. A. 1845
MERIDIAN IRRIGATION DISTRICT. See Nampa and Meridian Irrigation District.
MERT Systems Protection Board 5453
MERLIN DIVISION, Rogue River Basin project 1886, 2517
MERWIN DAM PROJECT, Washington 3500
MESA DIVISION, Yuma Auxiliary project 333
MESA COUNTY, Colorado 2765
METEOROLOGY. See research; weather modification.
METHOW-Okanogan Irrigation District 259
METROPOLITAN WATER DISTRICT OF SALT LAKE CITY 866, 962, 1515
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
Contract regarding Parker Dam described 539
Desalting Plant 2329
Miscellaneous references to 40, 428, 430, 1525
Payment for Indian lands acquired for Parker Dam project 695
Release Agreement between Soboba Indians 2553
Right of way granted for aqueduct and other facilities 500
San Diego aqueduct connected to Colorado River aqueduct. See San Diego Project.

MEXICALI 1030
MEXICALI VALLEY 2874, 2876
MEXICAN WATER TREATY
Background material on 415
Compact references to 443, 915, 921, 947, 415

S1256
INDEX TO VOLUME V AND SUPPLEMENT II

Protocol
  Statutory references to 1259, 3889
  Text 771
Miscellaneous reference 3889
Nonreimbursability of costs to satisfy 2409, 2412, 2864, 2864, 2870
Resolution of the Senate
  Statutory references to 1259
  Text 772
Satisfaction of treaty requirements from Colorado River a national obligation 2397, 2858
Statutory references to 420, 968, 1029, 1030, 1057, 1085, 1135, 1139, 1212, 1251, 1257, 1258, 1295, 1665, 1666, 1673, 1674, 1753, 1769, 1852, 2397, 2419, 2420, 2433, 2713, 2867, 2868, 2863, 2872, 3530, 3890
Text 750

MEXICO
  Expenditure of funds in, to protect property in United States from damage 161, 211
  International Boundary and Water Commission, United States and Mexico. See INTERNATIONAL BOUNDARY AND WATER COMMISSION.
  Payments for use of All-American Canal, application and appropriation of 896
  Salinity problems, Colorado River. See WELLTON-MOHAWK DIVISION, COLORADO RIVER BASIN SALINITY CONTROL ACT; GILA PROJECT: INTERNATIONAL BOUNDARY AND WATER COMMISSION.
  Treaties and conventions with. See MEXICAN WATER TREATY; TREATIES AND CONVENTIONS.

MICA CREEK DAM, Canada 1561, 1594

MICHAUD DIVISION, Fort Hall Indian project 1206, 2831

MICHAUD FLATS, Fort Hall Indian Reservation 311

MICHAUD FLATS PROJECT, Idaho
  Authorized 1205
  Statutory references to 3664

MICHIGAN, STATE OF
  Executive Order No. 6964 and Taylor Grazing Act apply 516

MID-DAKOTA RURAL WATER SYSTEM ACT OF 1992 3893

MID-STATE BOARD OF DIRECTORS 2338

MID-WEST ELECTRIC CONSUMERS ASSOCIATION, INC S67, SI31, SI57

MIDDLE LOUP RIVER 1326

MIDDLE RIO GRANDE CONSERVANCY DISTRICT 902, 1252, 1660, 1840, 3083

MIDDLE RIO GRANDE PROJECT, New Mexico
  Additional appropriations authorized 1002
  Authorized 901
  Construction of access road to Cochiti Reservoir by Chief of Engineers 3027
  Extend authority to pay operation and maintenance charges by Middle Rio Grande Conservancy District against Pueblo Indians 1840
  Miscellaneous references to 2342
  Operation of reservoirs 1544
  Storage of San Juan-Chama project water in Abiquiu Reservoir 3325

S1257
INDEX TO VOLUME V AND SUPPLEMENT II

Water from San Juan-Chama project to be made available for permanent recreation pool at Cochiti Reservoir 1744

MIDDLE RIO GRANDE VALLEY 903

MIDDLE RIO GRANDE WATER USERS ASSOCIATION 904

MIDDLE PARK PROJECT, Colorado
Expeditious completion of planning report directed (including the Troublesome, Rabbit Ear, and Azure units) 2417, S251

MIDSTATE DIVISION, MRB, Nebraska
Additional studies authorized 1886

MIDVALE IRRIGATION DISTRICT 458, 1060, 2536

MIDWAY CREEK 3131

MIGRATORY BIRD CONSERVATION ACT
Amendments to 4055
Compact references to 1375
Miscellaneous references to 1039
Statutory references to 1773, 2793

MIGRATORY BIRD TREATY ACT
Statutory references to 1773

MILES CITY: NEW UNDERWOOD TRANSMISSION LINE 2496, 3007, 3053

MILITARY PERSONNEL AND CIVILIAN EMPLOYEES CLAIMS ACT OF 1964
Statutory references to 2342

MILK CREEK, Washington 2434, 2445

MILK RIVER 34, 131

MILK RIVER BASIN, Montana 1892

MILK RIVER PROJECT, Montana
Allocation of costs to Saco Divide unit 708
Amended contract approved 1080
Boundary waters treaty allocation of waters of Milk River 132
Exchange of lands for Nelson Reservoir site 245
Miscellaneous references to 34, 971, S24
Reduction and suspension of construction charges 362, 478
Relief to Henkel for seepage damage 1522
Repayment of construction cost 303
Repayment contract required 353
Replacement of Paradise Valley Diversion Dam 1859
Sale of lands to Great Northern Railway Company 637
Secretary authorized to adjust or cancel certain charges 1198

MILLER ACT
Text 1976, S549

MILLERTON RANCHeria 725

MILLS, WILLARD B. 2780

S1258
INDEX TO VOLUME V AND SUPPLEMENT II

MILLS, TOWN OF 1031, 1074
MILLWOOD DAM 3305
MILNER, ALLEN D. 2348
MILNER DAM 399
MILNER DAM PROJECT, Idaho 3224
MILNER PUMPING PLANT 2754
MILNER-SALMON FALLS CANAL 2754
MILTON-FREewater DIVISION, Walla Walla project 1889
MIMBRES RIVER BASIN 1893
MIMBRES PROJECT, New Mexico
   Feasibility study authorized 1893
MINERAL LEASING ACT
   Amendments of 2994, S53, S809-S810, 3564, 4071
   Extracts from 239, 249, 851, S808
   Miscellaneous references to 33, 44, 138, 956, S810
   Statutory references to 144, 515, 1396, 1452, 1519, 1659, 1782, 1667, 2426, 2456,
      2693, 2604, 2605, 2612, 2301, 2767, 2975, 3564
MINIDOKA COUNTY, Idaho 2643, 2928
MINIDOKA DAM 2928
MINIDOKA IRRIGATION DISTRICT 352, 1111, 1655
MINIDOKA PROJECT, Idaho-Wyoming. See also JACKSON LAKE.
   Acquisition of War Relocation Centers 831
   Amended contract approved 1187, 1655
   Amendment of contracts for winter power replacement 1797
   American Falls Dam
      Replacement costs attributable to irrigation spaceholders, nonreimbursable 3128
      Replacement of 2828
   American Falls power facilities authorized 1040
   Application of power and other miscellaneous revenues 352
   Contracts for storage in American Falls Reservoir 1041
   Contracts relating to American Falls Reservoir 313
   Disposal of certain Federal property authorized 1610
   Fort Hall Indian Reservation lands, acquisition of 310
   Funds appropriated for cleaning up Jackson Lake 484
   Gravity Extension unit. See GRAVITY EXTENSION UNIT.
   Island Park Dam and Reservoir hydroelectric power development 3661
   Minidoka powerplant rehabilitation and enlargement
      Feasibility study authorized 2928
   Miscellaneous references to 321, 323, 382, 648
   North Side pumping division authorized 1040
   North Side Pumping division
      Severance payments to interior employees made nonreimbursable 2352
   North Side Pumping division extension
      Feasibility study authorized 2843

S1259
INDEX TO VOLUME V AND SUPPLEMENT II

Power revenues, application of 619
Power revenues available for operation and construction 405
Reduction and suspension of construction charges 364
Reduction in winter power replacement obligation 1797
Relocation of town of American Falls 290
Right of United States under Federal Power Act to take over Milner Dam revoked 3224
Sale of lands to Oregon Short Line Railroad Company 657
Southside Pumping Division 4126
Teton Dam disaster claims, unobligated funds for payment of, available to pay costs for 3168
Transfer of lands to City of Rupert 1111

MINIDOKA PROJECT CONVEYANCE OF FACILITIES ACT OF 1998
Burley Irrigation District, Idaho 4126

MINING LAWS
Miscellaneous references to 9, 41, 44, 956
Statutory references to 93, 155, 515, 523, 1463, 1782, 1867, 2426, 2606
Vacation of reclamation withdrawals of lands containing minerals authorized 498

MINING ACT OF 1866
Extracts from 9

MINING LAW OF 1872
Statutory references to 2969, 2975

MINING CLAIMS RESTORATION ACT OF 1955
Miscellaneous references to 44

MINING AND MINERALS POLICY ACT OF 1970
Amendments 4070
Statutory references to 2964

MINNESOTA, STATE OF
Compacts of. See RED RIVER OF THE NORTH COMPACT.
Construction of transmission lines in 808
Executive Order No. 6964 and Taylor Grazing Act apply 516

MINNESOTA UNIT, Paonia project 1248

MINOT, North Dakota 2343, 2539
Relieved of repayment liability 3561

MINOT EXTENSION 2343

MINUTE NO. 242. See INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO.

MIO RESERVOIR 2445

MIRAGE FLATS EXTENSION UNIT, MRB, Nebraska
Authorized 1186

MIRAGE FLATS IRRIGATION DISTRICT 1359

MIRAGE FLATS PROJECT, Nebraska
Amended contract 1359
INDEX TO VOLUME V AND SUPPLEMENT II

Completion of studies authorized 1888
Deferral of construction charges. See WATER CONSERVATION AND UTILIZATION ACT

MISCELLANEOUS WATER SUPPLY ACT OF 1920
Annotations of S55

MISHAWAKA NATIONAL WILDLIFE REFUGE 2748, 2750

MISSISSIPPI, STATE OF
Executive Order No. 6964 anti Taylor Grazing Act apply 516
Southeastern Power Administration markets power from Army dams in 801
Studies in, authorized 396

MISSISSIPPI RIVER 615, 804, 846, 974, 1922
Wild and scenic river system 2431, 2444, 2446

MISSOURI VALLEY PROJECT, Montana
Amended contract approved 1746
Authorization explained 1746
Deferral of construction charges. See WATER CONSERVATION AND UTILIZATION ACT.

MISSOURI BREAKS 2432

MISSOURI RIVER BASIN 2345, 2639

MISSOURI RIVER
Projects on main stem or tributaries of. See individual projects by name.
Statutory references to 2345, 2566
Streambank erosion control demonstration projects 2856
Water service from Army reservoirs on S196, S158
Wild and scenic river system 2432, 2435, 2444

MISSOURI, STATE OF
Included in marketing area of Southwestern Power Administration 974

MISSOURI VALLEY AUTHORITY 811

MISSOURI RIVER BASIN PROJECT. See also PICK-SLOAN MISSOURI BASIN PROGRAM.
Authorized 806
Appropriations authorized 807, 833, 1004, 1426, 1548, 1737, 1755, 1874, 2336, 2351, 2512, 2658
Miscellaneous references to S132, S135
Name changed to Pick-Sloan Missouri Basin Program 2601
Specific authorization or reauthorization of new units required 1755, S351
Units of. See individual units and divisions by name.

MISSOURI-SOURIS UNIT, MRB 1841

MITCHELL BUTTE DIVISION, Owyhee project 1102

MITCHELL ACT 602

MITCHELL SECTION, Oahe unit 1893

MNI WICONI PROJECT ACT OF 1988 3593
Amendments of 1994 4026, 4034
Amendments 3593, 3594, 3601, 3603-3607, 3872
Funds for irrigation purposes prohibited 3604

S1261
INDEX TO VOLUME V AND SUPPLEMENT II

Lower Brule Sioux Rural Water Supply System authorized 3599
Lyman-Jones Rural Water System authorized 3601
Miscellaneous references to S1030, S1032-S1035, S1037, S1054, S1083, S1087 Mitigation of fish and wildlife losses 3604
Oglala Sioux Rural Water Supply System authorized 3594
Pick-Sloan power use 3605
Pollock-Herred Unit, appropriations authorization repealed 3607
Rosebud Sioux Rural Water Supply System authorized 3597
Statutory references to 3872, 4025, 4034
Waste water disposal systems, feasibility studies authorized 3606, 3608
Water rights 3606
West River Rural Water System authorized 3601

MOAPA VALLEY PUMPING PROJECT, Nevada
Feasibility study authorized 1891

MODOC COUNTY 257, 307, 1771

MODOC UNIT, Klamath project 684, 788

MOGOLLON MESA PROJECT, Arizona
Winlow-Holbrook division
Feasibility study authorized 2343

MOHAVE COUNTY, Arizona 1612, 1816, 2928, 3220

MOHAWK MUNICIPAL WATER CONSERVATION DISTRICT 859

MOJAVE POWERPLANT 2632

MOJAVE RIVER BASIN 1893

MOJAVE RIVER PROJECT, California
Feasibility study authorized 1893

MOKELUMNE RIVER 1546

MOLALLA DIVISION, Willamette River project 1889

MOLALLA RIVER 1889

MOLOKAI IRRIGATION SYSTEM 2507, S55, S270, S276

MOLOKAI PROJECT, Hawaii
Investigation of, authorized 1188

MONMOUTH-DALLAS DIVISION, Willamette River project 1887

Montana irrigation projects 3914
See Projects by name.

MONTANA MAJOR FACILITY SITING ACT 3007

MONTANA, STATE OF
Approval of definite plan report for Moorhead Dam and Reservoir required 977
Compacts of, See COLUMBIA RIVER COMPACT; LITTLE MISSOURI RIVER COMPACT YELLOWSTONE RIVER COMPACT
Contract required for support of Sun River project 334
Desert Land Act applies 13

S1262
INDEX TO VOLUME V AND SUPPLEMENT II

3229

Executive Order No. 6910 and Taylor Grazing Act apply 515
Membership in Pacific Northwest Electric Power and Conservation Planning Council

Preferre to power from Hungry Horse and Libby Dams 3272
Projects in. See individual dams and projects by name.
Reclamation Act applies 31
School lands 92

Montecito County Water District 585
Monterey County 1454, 1530
Montezuma County, Colorado 3220
Montezuma Hills Unit, CVP 2643
Monticello Dam 1260, 1421, 1422, S33, S58, S126
Montrose, Colorado 2765
Montrose County, Colorado 2765, 3220
Montrose County, Oklahoma 2868
Moore County, Texas 3216
Moorhead Dam and Reservoir 976
Moorhead Unit, P-SMBP, Powder division 2771
Moovalya Marsh 87
Mora County, New Mexico 2928
Mora River Basin 2928
Moraine Creek 2438
Moratorium Acts, §66 Construction Charges, Operation and Maintenance Charges.
Morelos Dam 2864, 2875, 2876, 3201
Morgan County, Utah 965
Morgan County, Tennessee 2432
Morongo-Yucca-Upper Coachella Valley Project, California
Feasibility study authorized 1893
Morrill Act
Statutory references to 3108
Mortgages 299, 981, 1120, 1239, 1609, 1741
Moses Coulee Unit, Greater Wenatchee division 1415
Moses Lake Drainage Investigation 3216
Moses, Mary Saunders 161
Mosquito Fork, Alaska 2440

S1263
INDEX TO VOLUME V AND SUPPLEMENT II

MOSS, R. A. 2476
MOTT UNIT, MRB 18
MOUNT DANA 2446
MOUNT ELBERT PUMPED STORAGE POWERPLANT 2914
MOUNT EVANS DIVISION, MRB, Colorado
    Upper South Platte unit
    Feasibility study authorized 1892
MOUNT LYELL 2446
MOUNT VERNON, Washington 2445
MOUNTAIN HOME DIVISION, Southwest Idaho Water Development project 1887
MOUNTAIN PARK PROJECT, Oklahoma
    Amendments of S992, 3923, 4025
    Authorized 2388
    Facilities to deliver water to city of Frederick authorized 2006
    Feasibility study authorized 2343
    Name of Mountain Park Reservoir changed to Tom Steed Reservoir 2926
    Section 3101 repealed 4025
    Statutory references to 4023
MOUNTAIN FORK RIVER 3305
MOUNTAIN PARK RESERVOIR 2926
MOVABLE PROPERTY ACT
    Amendments of 1325, 1818
    Text 1162
MOVING EXPENSES
    Payment of, by Secretary of the Interior, to owners and tenants of lands acquired 1418
    Relocation assistance
        Generally 2919
MOVING EXPENSE ACT OF 1958
    Repeal and annotations of 2627, S283, S1022
MOYIE RIVER 2444
MRB. See MISSOURI RIVER BASIN PROJECT.
MUD CREEK, Texas 3305
MUD LAKE 3182
MUD CREEK, Colorado 1248
MUD CREEK RESERVOIR 245
MUDY RIVER BASIN, Nevada 1891
MUDY RIDGE 2928

S1264
INDEX TO VOLUME V AND SUPPLEMENT II

Muir Historic Site 3620
Mulchatna River 2438
Multiple-Use Sustained-Yield Act
Statutory references to 1780
Municipal Water Supply. See Water Supply.
Murtaugh Irrigation District 313
Muskogee, Oklahoma 2773
Musselshell Division, MRB, Montana
Lower Musselshell unit
Feasibility study authorized 1891
Musselshell River 1891
Myakka River 2447
Myakka River State Park 2447
Myers, W. 3195
Mystery Creek 2438

N
Nambe Reservoir 1661
Nambe Pueblo 1661
Namekago River 2430
Nampa and Meridian Irrigation District 450
Napa County, California 1260, 2332, 2505, 2909, S202
Napoleon Creek 2439
Narrows Dam, Arkansas S152
Narrows Dam and Reservoir, Colorado 2532
Narrows Unit, P-SMBP, , MRB Colorado
Construction funds denied 3124
Feasibility studies authorized 1888
Reauthorized 2532
Southwestern Power Administration designated the power marketing agency for the Narrows reservoir project 801
Nasworthy Dam 1354
National Climate Program Act
Text 3088
National Credit Union Administration 2356

S1265
INDEX TO VOLUME V AND SUPPLEMENT II

NATIONAL ENERGY CONSERVATION POLICY ACT
  Miscellaneous references to 3167
  Statutory references to 3149

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969
  Compact references to 3294
  Site specific environmental impact statements deemed sufficient 3105
  Statutory references to 2318, 2663, 2733, 2744, 2800, 2806, 2853, 2865, 2872, 3034
  3163, 3251, 3418, 3445, 3468, 3495, 3619, 3686, 3719, 3743, 3754, 3756, 3758,
  3762, 3764, 3787, 3816, 3829, 3830, 3838, 3841, 3865, 3872, 3876, 3892, 3902,
  3982, 4127, 4130, S235, S937, S972,
  Text 2492

NATIONAL FLOOD INSURANCE ACT OF 1968
  Amendments 3483
  Extracts from 2353
  Statutory references to 3483, 3485

NATIONAL FORESTS
  Administration of. See FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976.
  See also individual forests by name.
  Buildings materials, removal of. See BUILDING MATERIALS.
  Buildings on, not covered by Public Buildings Act of 1959 1494
  Lands added to and administered as
    Bostwick Park and Fruitland Mesa projects 1775
    Central Valley project, Shasta National Forest 865
    Central Valley project, Shasta and Trinity National Forests 1868
    Lands acquired for fish and wildlife purposes 844
    Palisades project, Targhee and Caribou National Forests 1442
    Weber Basin and Ogden River projects, Cache National Forest 1720
  Rights of way and easements. See RIGHTS OF WAY AND EASEMENTS.
  Wilderness system. See WILDERNESS ACT.
  Withdrawals within 39, 46

NATIONAL HISTORIC PRESERVATION ACT
  Amendment of S946-S991, 3987
  Statutory references to 3173, 3987
  Text 2304
  Text as amended S946-S991

NATIONAL HISTORIC LANDMARKS 2305

NATIONAL HOUSING ACT
  Statutory references to 1383, 1384, 1475, 1482

NATIONAL INDUSTRIAL RECOVERY ACT
  Miscellaneous references to 58, 524, 539
  Statutory references to 518, 855

NATIONAL MIGRATORY BIRD MANAGEMENT PROGRAM 845

NATIONAL PARKS. See also individual parks by name.
  Concessions 1945
  Dams in 3785
  Rights of way in, to others than United States
    Congressional authority required 288
    Generally 29, 173

$1266
# INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual parks</td>
<td>204, 244</td>
</tr>
<tr>
<td>Termination of reclamation withdrawals in</td>
<td>1799</td>
</tr>
<tr>
<td>Canyonlands National Park</td>
<td></td>
</tr>
<tr>
<td>Use of, for reclamation projects</td>
<td></td>
</tr>
<tr>
<td>Glacier National Park</td>
<td>139</td>
</tr>
<tr>
<td>Grand Canyon National Park</td>
<td>244</td>
</tr>
<tr>
<td>Lassen Volcanic National Park</td>
<td>218</td>
</tr>
<tr>
<td>Rocky Mountain National Park</td>
<td>203</td>
</tr>
<tr>
<td>Yosemite National Park</td>
<td>39</td>
</tr>
<tr>
<td>Wilderness system. See WILDERNESS ACT.</td>
<td></td>
</tr>
</tbody>
</table>

**NATIONAL PARK SERVICE.** See also individual units of the national park system by name.
- Concessions                                                | 1945      |
- Cooperation in conservation of fish and wildlife           | 509       |
- Cooperative agreements to administer project areas for recreational use | 838, 3723 |
- Extracts from Administration of Areas Act                  | 838, 3720 |
- Funds appropriated for Boulder Dam Recreational area       | 549       |
- Funds appropriated for cleaning up Jackson Lake             | 484       |
- Water rights                                               | S1, S2    |

**NATIONAL PARK SYSTEM**
- FLPMA references to                                        | 2975, 2978, 2981 |

**NATIONAL PARKS AND RECREATION ACT OF 1978**
- Statutory references to                                     | 2434      |

**NATIONAL REGISTER OF HISTORIC PLACES**
- 2305

**NATIONAL SYSTEM OF TRAILS**
- 2970, 2975, 2978

**NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES**
- 2304-2321

**NATIONAL WATER COMMISSION ACT**
- Text                                                      | 2391      |

**NATIONAL WATER COMMISSION**
- 2391, 2396

**NATIONAL WETLANDS INVENTORY**
- Statutory references to                                     | 2683      |

**NATIONAL WILD AND SCENIC RIVERS SYSTEM**
- 2970, 2975, 2978, 2981

**NATIONAL WILDERNESS PRESERVATION SYSTEM**
- 1777, 2970

**NATIONAL WILDLIFE REFUGE SYSTEM**
- 2975, 2978, 2981, 3851

**NATRONA COUNTY, Wyoming**
- 658, 3216

**NATURAL GAS POLICY ACT OF 1978**
- Miscellaneous references to                                 | 3167      |
- Statutory references to                                     | 3069      |

**NATURAL GAS ACT**
- Statutory references to                                     | 3061, 3062, 3063, 3064, 3140 |

**NAVAJO DAM**
- 2496, 2499, 2501, S167, S248, S250, S257

**NAVAJO DAM AND RESERVOIR**
- 1248, 1663, 1697

S1267
INDEX TO VOLUME V AND SUPPLEMENT II

NAVAJO GENERATING STATION 2858, 2867, 3200, 3202

NAVAJO INDIANS
   As a preference customer in the purchase of power 650
   Exchange of lands in connection with construction of Glen Canyon unit 1462
   Extension and conveyance of trust lands in connection with Navajo Indian irrigation project 1659
   Navajo Indian irrigation project. See NAVAJO INDIAN IRRIGATION PROJECT.
   Use of lands of Navajo Indian Reservation for Glen Canyon unit, CRSP 1249

NAVAJO INDIAN IRRIGATION PROJECT, New Mexico
   Authorized 1248, 1658
   Authorization amended 2542, S321-S323
   Costs of Colorado River Storage project allocated to serving Indian lands under, made nonreimbursable 1255
   Expeditious completion of planning report directed 1250
   Miscellaneous references to 2496, S248, S250, S320
   Status of permits on lands declared to be held in trust for the Navajo Tribe S321
   Statutory references to 2346, 2872, 3760

NAVAJO INDIAN TRIBE 2542, 2682, 2766, 2903, 2916, S179

NAVAJO INDIAN TRIBAL COUNCIL 2766

NAVAJO INDIAN RESERVATION 2903

NAVAJO POWERPLANT 2405, 2420, 2632, S128, S129, S179

NAVAJO RESERVOIR 2346, S321

NAVAJO RIVER 1660, 1662

NAVajo TRIBAL COUNCIL 2900, 2903

NAVAJO UNIT, CRSP 1248, 1257, 1697, 2657
   Surplus power 3607

NAVAL AIR STATION, Lemoore, California 2659, 3607

NAVAL PETROLEUM RESERVES PRODUCTION ACT OF 1976
   Statutory references to 2449

NAVARRO, ELOY C 2342

NAVIDAD RIVER 1886, 2463, 3181

NAVIGABLE WATERS
   Defacing public works on 1971
   Definition of 264
   Discharges into, permission required 2720, 2726, S13
   Policy of Congress toward 796
   Private dam on Rio Grande enjoined 98
   Structures on, permission required 27, 282, S12
   Water rights. See WATER RIGHTS.

NAVIGATION See also individual dams and projects by name.
   As a reclamation project purpose
      Generally 646

S1268
INDEX TO VOLUME V AND SUPPLEMENT II

Navigation benefits defined  S396
Regulation of reclamation projects for, by Army
  Generally  804
Reimbursement and cost sharing
  Reclamation projects, generally  646
Research. See Research.
Studies. See Studies and Reports.
Subject to use of waters west of 98th meridian for domestic, municipal, stock water,
  irrigation, mining, or industrial purposes  797
Treaty rights
  Boundary waters with Canada  129
  Rio Grande, Colorado River, and Tijuana River  765, 775
  St. Lawrence River  11
  Yukon, Porcupine, and Stikine  11

NAVY, DEPARTMENT OF THE
  De Luz dam, participation in  1158
  Lease of lands of Naval Air Station, Lemoore, California  2659, 3610
San Diego Aqueduct
  Construction and lease of first barrel ratified  867
  Construction of second barrel authorized  1057
  Transfer to Secretary of the Interior authorized  1347

NEBRASKA MID-STATE DIVISION, MRB
  Authorized  2337

NEBRASKA NATURAL RESOURCES COMMISSION  336

NEBRASKA, STATE OF
  Approval of definite plan report for Glendo unit required  976
  Compacts of. See Big Blue River Compact; Ground Water, Kansas-Nebraska; Niobrara River;
  Ponca Creek, Republican River Compact; South Platte River Compact; Upper Niobrara River Compact.
  Executive Order No. 6964 and Taylor Grazing Act apply  516
  Projects in. See individual dams and projects by name.
  Reclamation Act applies  31
  Studies
    Norden Dam Alternatives  3375
    Tricounty project  35

NEEDLES, California  791, 1612, 1693, 2339, S129, S130, S336

NEGLEY, Ohio  2444

NELLS AIR FORCE BASE  1852

NELSON RESERVOIR  245

NEMO BRIDGE  2432

NEPONSET RESERVOIR  3185, 3193

NET BILLING  2480, 2481, 2547

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  2484

NEVADA DEPARTMENT OF FISH AND GAME  S389

S1269
INDEX TO VOLUME V AND SUPPLEMENT II

NEVADA DEPARTMENT OF HEALTH, WELFARE AND REHABILITATION       2484

NEVADA, STATE OF
Apportionment by Congress of Colorado River water among three lower basin States       420, 427
Colorado River Commission. See COLORADO RIVER COMMISSION OF NEVADA.
Compacts of. See ARIZONA-NEVADA BOUNDARY COMPACT; COLORADO RIVER COMPACT COLUMBIA
RIVER COMPACT; TRUCKEE, CARSON AND WALKER RIVERS AND LAKE TAHOE COMPACT; TAHOE
REGIONAL PLANNING COMPACT.
Contract authorized for support of Spanish Springs division, Newlands project       336
Desert Land Act applies       13
Executive Order No. 6910 and Taylor Grazing Act apply       515
Projects in. See individual dams and projects by name.
Reclamation Act applies       31

NEW BONHAM RESERVOIR       3305

NEW EXCHEQUER DAM AND RESERVOIR       1546

NEW HOGAN RESERVOIR       810

NEW JERSEY, STATE OF
Compacts of. See DELAWARE RIVER BASIN COMPACT.

NEW MELONES DAM AND RESERVOIR       2497, 2499, 2502, 2507, 3214, S338

NEW MELONES PROJECT       1701

NEW MEXICO, STATE OF
Apportionment to, of excess revenues in Upper Colorado River Basin Fund       1253, 1258
Compacts of. See CANADIAN RIVER COMPACT; COLORADO RIVER COMPACT; COSTILLA CREEK
COMPACT; PECOS RIVER COMPACT; RIO GRANDE COMPACT; UPPER COLORADO RIVER BASIN
COMPACT.
Desert Land Act applies       13
Enabling Act
Extracts from       141
Irrigable lands reserved to United States       142
Power sites reserved to United States       142
School lands       143
Executive Order No. 6910 and Taylor Grazing Act apply       515
Projects in. See individual dams and projects by name.
Purchase or donation of lands of, for Middle Rio Grande project       902
Reclamation Act applies       31
Studies       35

NEW PRODUCTION REACTOR       1685

NEW RIVER       2428, 2447, 2453, 4136, 4139

NEW SIPHON DROP       3217

NEW YORK, STATE OF
Compacts of. See SUBSQUEHANNA RIVER BASIN COMPACT; DELAWARE RIVER BASIN COMPACT.

NEWELL, TOWNSITE OF       228

NEWLANDS PROJECT, Nevada
Amended contract with TCID approved       820

S1270
INDEX TO VOLUME V AND SUPPLEMENT II

Cancellation of charges against Paiute Indian lands 394
Contract with Southern Pacific Company required 336
Drainage system for Paiute Indian lands 304
Drainage works 314
Funds denied for operation of 2886
Miscellaneous references to S176
Payment authorized to TCID for share of costs of repair of Truckee Canal attributable to Paiute Indian lands 474
Reduction and suspension of construction charges 365
Repayment contract required 314, 335, 354, 399
Statutory references to 1319
Test wells in Truckee Meadows 453
Water rights settlement 3666, 3672

NEWTON PROJECT, Utah
Amended contract approved 1745
Authorization explained 1745
Deferment of construction charges. See WATER CONSERVATION AND UTILIZATION ACT.

NEWTON WATER USERS' ASSOCIATION 1745

NIAGARA RIVER 131

NICHOLAS COUNTY, West Virginia 2448

NINNESCAH RIVER 1557

NIOMBRA DIVISION, P-SMBP. See LOWER NIOMBA DIVISION, P-SMBP.

NIOMBRA RIVER 1888
See LOWER NIOMBA DIVISION, P-SMBP, UPPER NIOMBA RIVER COMPACT.

NIOMBRA RIVER BASIN 2468

NIOMBRA RIVER COMPACT
Consent to negotiate 1117

NISSANEN WILLIAM 3331

NO NAME CREEK 3131, S331

NOATAK NATIONAL PRESERVE 2438

NOATAK RIVER 2438

NOISE CONTROL S632, S663

NOISE CONTROL ACT OF 1972
Extracts from S632

NOLICHUCKEY RIVER 2446

NONVIANUK RIVER 2438

NONVIANUK TRIBUTARY 2439

NORDEN DAM AND RESERVOIR 2756, 3375

NORFOLK DAM 801

S1271
INDEX TO VOLUME V AND SUPPLEMENT II

NORMAL RETURNS
Term defined 635

NORMAL AND PERCENTAGES PLAN 636

NORMAN RESERVOIR 1537

NORMAN PROJECT, Oklahoma
Authorized 1535
Del City aqueduct repairs 2949

NORTH CANADIAN RIVER 832, 901, 1075

NORTH CANADIAN RIVER BASIN 567

NORTH CAROLINA, STATE OF
Southeastern Power Administration markets power from Army dams in 801

NORTH CASCADES NATIONAL PARK 2434

NORTH COAST PROJECT, California
Eel River division
Feasibility studies authorized of ultimate phase, English Ridge unit, and Knights Valley unit 1890
Eureka division
Feasibility study authorized 1893
Lower Klamath River division
Feasibility studies authorized 1890
Lower Trinity River division
Feasibility studies authorized 1890

NORTH DAKOTA PUMPING DIVISION, MRB, North Dakota
Feasibility study of Horsehead Flats and Winona units authorized 1893

NORTH DAKOTA, STATE OF
Compacts of. See LITTLE MISSOURI RIVER COMPACT; RED RIVER OF THE NORTH COMPACT;
YELLOWSTONE RIVER COMPACT.
Desert Land Act applies 13
Executive Order No. 6910 and Taylor Grazing Act apply 515
Projects in. See individual dams and projects by name.
Reclamation Act applies 31

NORTH FORK RED RIVER 3303

NORTH GILA VALLEY IRRIGATION DISTRICT 859

NORTH GILA VALLEY 858

NORTH LOUP RIVER 1886, 2759

NORTH LOUP DIVISION, MRB, P-SMBP, Nebraska
Additional studies authorized 1886
Reauthorized 2758

NORTH PAVILION AREA, Riverton project 1741

NORTH PLATTE PROJECT, Nebraska-Wyoming
Amended contract; application of revenues 1352
Amended contracts approved 1106

S1272
INDEX TO VOLUME V AND SUPPLEMENT II

Amended contract with Bridgeport Irrigation District authorized 550
Amended contract with Farmers' Irrigation District approved 850
Amended contract with Northport Irrigation District; application of revenues 871
Annual payment to Farmers' Irrigation District 1024
Cancellation of indebtedness of Bridgeport Irrigation District 726
Exchange of lands with Swan Land and Cattle Company and with Anton Hiersche 660
Guernsey Dam powerplant enlargement
  Feasibility study authorized 3217
Miscellaneous references to 322, 998, S211
No mineral reservation in patents where entry made prior to 1914 1131
Power revenues, application of 335, 405, 513, 871
Reduction and suspension of construction charges 365
Repayment contract required 353
Transmission lines authorized 488

NORTH PLATTE RIVER 550, 1148, 1445, 2637
NORTH PLATTE RIVER BASIN, Wyoming 2417, S251
NORTH PLATTE RIVER HYDROELECTRIC POWER STUDY, P-SMBP 3216
NORTH PORTAL AREA, Riverton project 1741
NORTH POUDRE IRRIGATION COMPANY S275
NORTH SIDE CANAL COMPANY 2755
NORTH SIDE PUMPING DIVISION EXTENSION 2643
NORTH SIDE PUMPING DIVISION, Minidoka project 1040, 2352
NORTH UNIT IRRIGATION DISTRICT 1173
NORTHERN CHEYENNE INDIAN RESERVED WATER RIGHTS SETTLEMENT ACT OF 1992
  Amendments of 3749, 3752, 4009
  Text 3747
NORTHERN COLORADO WATER CONSERVANCY DISTRICT 2505, S110
NORTHERN PACIFIC RAILWAY COMPANY 896, S22
NORTHERN STATES POWER COMPANY 2430
NORTHPORT IRRIGATION DISTRICT 366, 373, 513, 871, 1024, 1107, 1352
NORTHPORT DIVISION, North Platte project 366, 1131
NORTHWEST. See PACIFIC NORTHWEST.
NORTON RESERVOIR 1706
NOWITNA NATIONAL WILDLIFE REFUGE 2439
NOWITNA RIVER 2439
NOXON RAPIDS DAM 1579
NUECES RIVER BASIN 1548, 1891

S1273
INDEX TO VOLUME V AND SUPPLEMENT II

NUECES RIVER PROJECT, Texas
Feasibility study authorized 1891
Authorized 2912

O

OAHÉ, CONSERVANCY SUBDISTRICT 2378, 3328
OAHÉ DAM AND RESERVOIR 1888, 2345, 2376, 2938
OAHÉ PUMPING PLANT 2376
OAHÉ UNIT, MRB, P-SMBP, South Dakota 1888, 1893
Initial stage
Authorized 2376
Cancellation of contracts authorized 3328
Feasibility study of alternative uses of facilities authorized 3327
Miscellaneous references to 2498, 2622
M&I water facilities
Feasibility study authorized 2765

OAKLAND, Maryland 2445

OAKLEY FAN DIVISION, Upper Snake River project 1892

OBED RIVER 2432, 2444

O'BRIEN CREEK 2439

OCEAN LAKE 681

OCHOCO DAM PROJECT, Oregon
Appropriations for reconstruction of Ochoco Dam 976
Incorporated into Crooked River project 1340
Rehabilitation of Ochoco Dam authorized 894
Safety of dams 3422

OCHOCO IRRIGATION DISTRICT 1341

OFFICE OF THE COMMISSIONER. See COMMISSIONER OF RECLAMATION.

OFFICE OF EMERGENCY PLANNING 1045

OFFICE OF ENVIRONMENTAL QUALITY
Established 2513

OFFICE OF FEDERAL PROCUREMENT POLICY S604

OFFICE OF INFORMATION AND REGULATORY AFFAIRS S673

OFFICE OF WAR MOBILIZATION AND RECONVERSION 834

OGALLALA AQUIFER 3027, 3395, 3539
See WATER RESOURCES RESEARCH ACT OF 1984.

OGDEN RIVER PROJECT, Utah
Amended contract approved 1014
Lands acquired for Pineview Reservoir added to Cache National Forest 1720

S1274
INDEX TO VOLUME V AND SUPPLEMENT II

OGDEN RIVER WATER USERS' ASSOCIATION 967, 1014

OGEECHEE RIVER 2447

OHIO CREEK PROJECT, Colorado
  Expeditions completion of planning report directed 1249
  Included as unit of Upper Gunnison project 2417, S251

OHIO RIVER 804, 2836

OIL AND GAS LEASING. See MINERAL LEASING ACTS.

OIL POLLUTION ACT 1924
  Statutory references to 1301

OKANOGAN COUNTY 692, 1379, 1695, 1803

OKANOGAN IRRIGATION DISTRICT 411, 926, 1129, S180

OKANOGAN PROJECT, Washington
  Amended contract approved; earlier act for transfer of project to irrigation district repealed 926
  Certain administrative costs nonreimbursable 1129
  Reduction and suspension of construction charges 366
  Relief from liability to Methow-Okanogan irrigation district 259
  Transfer to Okanogan Irrigation District authorized 411

OKANOGAN RIVER 1151, 1889, 2952

OKANOGAN-SMILKAMEEN DIVISION, Chief Joseph Dam Project 1695, 1803, 1889, 1893, 2952, S4105
  See CROOILLE-TONASKET CLAIM SETTLEMENT AND CONVEYANCE ACT.

OKANOGAN UNIT, Chief Joseph Dam project 1889

OKFENOKEE SWAMP 2445

OKLAHOMA COUNTY, Oklahoma 2928

OKLAHOMA PAVING COMPANY 1086

OKLAHOMA, STATE OF
  Authority of Secretary to promote welfare of Indians in 863
  Compacts of. See ARKANSAS RIVER COMPACT; CANADIAN RIVER COMPACT; RED RIVER COMPACT.
  Executive Order No. 6964 and Taylor Grazing Act apply 516
  Included in marketing area of Southwestern Power Administration 974
  Jurisdiction over and rights in Red River above Denison Dam preserved 616
  Projects in. See individual dams and projects by name.
  Reclamation Act applies 31
  Studies of irrigation possibilities in Washita, North Canadian, and Cimarron River basins authorized 567

OKLAHOMA WATER RESOURCES BOARD 2776

OLD ALEXANDER BRIDGE LANDING 2447

OLD LANDS' UNIT, Kennewick division S191

S1275
INDEX TO VOLUME V AND SUPPLEMENT II

OLD RIVER 3302
OLDHAM COUNTY, Texas 3216
OLLALLA CREEK 1887
OLLALLA DIVISION, Umpqua River project 1887
OMAHA INDIAN RESERVATION 3328
O'MAHONEY-MILLIKIN AMENDMENT 798

OMNIBUS ADJUSTMENT ACT OF 1926
Amendments of
Section 14 502
Section 16 514
Section 20 478
Section 26 1352
Section 43 456
Section 46 1307
Annotations of 572-85
Statutory references to
Generally 412 note, 460, 492, 877, 878, 984, 1121, 3318, 3340, 3345, S1107, 1109
Section 43 927
Section 46 1318, 1351, 1456, 1550, 1687, S1099
Text 357

OMNIBUS BUDGET RECONCILIATION ACT OF 1987 3564
Miscellaneous references to S893, S896, S1102, S1107

ONE HUNDREDTH MERIDIAN 17
O'NEILL UNIT, MRB 1186, 1888
O'NEILL UNIT, P-SMBP,
Lower Niobrara division 2498, 2499, 2756, S228
Norden Dam alternatives, joint studies 3374

ONTARIO-NYSSA IRRIGATION DISTRICT 610, 1080

OOGOGAH RESERVOIR 1916

OPERATION AND MAINTENANCE. See also individual projects by name.
Appropriations for
Advance payments to United States, appropriation of 236, 398, 1021
Change from line-item to lump-sum basis 1027
Current appropriation act language 790, 1021
Authorized
Generally 69

Charges. See OPERATION AND MAINTENANCE CHARGES.
Costs of
Distinguished from construction costs. See CONSTRUCTION.
Repayment of. See OPERATION AND MAINTENANCE CHARGES, REIMBURSEMENT AND COST SHARING
Damage claims. See CLAIMS AGAINST UNITED STATES.

Exchange of property
Generally 660

S1276
INDEX TO VOLUME V AND SUPPLEMENT II

Protection against sabotage and vandalism 718
Rehabilitation and betterment. See REHABILITATION AND BETTERMENT.
Relocation of property
   Generally 660
Reserved works 405
Supplies and services. See SUPPLIES AND SERVICES.
Transfer to water users
   Generally 69, 191, 319, 325, 962, 1162
   Salt River project 1202
   Strawberry Valley project 137
   Title and ownership 69, 209, 458, 655, 1162
   Water supply works 1818
      See WATER SUPPLY.
   Yuma Auxiliary project 231
Warren Act 169

OPERATION AND MAINTENANCE CHARGES. See also CONSTRUCTION CHARGES, REIMBURSEMENT AND COST SHARING; and individual projects by name.
Advance payment of. See ADVANCE PAYMENTS
Apportionment 191, 197
Authorized
   Generally 59, 191, 3335, 3338, S45
   Warren Act 166
Credits against, from other revenues
   Miscellaneous revenues 236, 320, 451, 830
   Power revenues S163
Extension, deferment and other interim relief
   Generally 305, 308, 324, 325, 375
   Relief and moratorium acts 292, 294, 305, 308, 350, 375, 493, 3033
   When project transferred to water users 319
Payment of, by individual water users
   Discount for timely payment 193
   Generally 69, 191, 193
   Lien for 178, 179, 298
   To local organization as fiscal agent for United States 195
Penalties for delinquent payment
   Delivery of water withheld 193, 398, 405, 639, 1024
   Forfeiture 193
   Interest 193, 296, 320, 375, 639
Waiver or reduction of
   Generally 61

OPINIONS. See ATTORNEY GENERAL DECISION; COMMISSIONER OF INTERNAL REVENUE OPINION;
COMPTROLLER GENERAL DECISIONS; COURT DECISIONS; FEDERAL ENERGY REGULATORY COMMISSION
DECISION; FEDERAL POWER COMMISSION DECISIONS; OPINIONS AND DECISIONS OF THE DEPARTMENT
OF ENERGY; OPINIONS AND DECISIONS OF THE DEPARTMENT OF THE INTERIOR.

OPINIONS AND DECISIONS OF THE DEPARTMENT OF ENERGY

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
<th>Author</th>
<th>Source</th>
<th>Page</th>
</tr>
</thead>
</table>
# INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
<th>Author</th>
<th>File No.</th>
<th>Source</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nov. 17, 1978</td>
<td>Preference customers</td>
<td>Coleman</td>
<td>Memorandum</td>
<td>S130</td>
<td></td>
</tr>
<tr>
<td>Mar. 22, 1979</td>
<td>Preference customers</td>
<td>McPhail</td>
<td>Letter</td>
<td>S129</td>
<td></td>
</tr>
<tr>
<td>Dec. 19, 1980</td>
<td>CRSP power rates</td>
<td>Hine</td>
<td>Memorandum</td>
<td>S255</td>
<td></td>
</tr>
<tr>
<td>Nov. 26, 1982</td>
<td>Power rates</td>
<td>Peiz</td>
<td>Memorandum</td>
<td>S116, S151, S414</td>
<td></td>
</tr>
</tbody>
</table>

## OPINIONS AND DECISIONS OF THE DEPARTMENT OF THE INTERIOR

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
<th>Author</th>
<th>File No.</th>
<th>Source</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1896</td>
<td>Blue Water rights of way.</td>
<td>Smith</td>
<td>23 L.D. 275</td>
<td>16, 23</td>
<td></td>
</tr>
<tr>
<td>Mar. 1903</td>
<td>Artesian wells</td>
<td>Hitchcock</td>
<td>32 L.D. 278</td>
<td>37</td>
<td></td>
</tr>
<tr>
<td>June 1903</td>
<td>Canal Act</td>
<td>do</td>
<td>32 L.D. 147</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Aug. 1903</td>
<td>Homestead entries</td>
<td>do</td>
<td>32 L.D. 237</td>
<td>49</td>
<td></td>
</tr>
<tr>
<td>Sept. 1903</td>
<td>Water rights</td>
<td>Campbell</td>
<td>32 L.D. 254</td>
<td>42, 78</td>
<td></td>
</tr>
<tr>
<td>Jan. 1904</td>
<td>Withdrawals</td>
<td>Hitchcock</td>
<td>32 L.D. 387</td>
<td>41, 43</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Pike withdrawal</td>
<td>do</td>
<td>32 L.D. 395</td>
<td>41</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Leases</td>
<td>do</td>
<td>32 L.D. 416</td>
<td>73, 89</td>
<td></td>
</tr>
<tr>
<td>Feb. 1904</td>
<td>Exchange of lands</td>
<td>Campbell</td>
<td>32 L.D. 459</td>
<td>76</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Board of Control</td>
<td>Hitchcock</td>
<td>32 L.D. 472</td>
<td>42, 44</td>
<td></td>
</tr>
<tr>
<td>Mar. 1904</td>
<td>Page withdrawal</td>
<td>do</td>
<td>32 L.D. 536</td>
<td>43</td>
<td></td>
</tr>
<tr>
<td>Apr. 1904</td>
<td>Hopkins withdrawal</td>
<td>do</td>
<td>32 L.D. 560</td>
<td>44</td>
<td></td>
</tr>
<tr>
<td>May 1904</td>
<td>Withdrawals</td>
<td>Campbell</td>
<td>32 L.D. 597</td>
<td>43</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>School lands</td>
<td>Hitchcock</td>
<td>32 L.D. 604</td>
<td>73</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Entries</td>
<td>do</td>
<td>32 L.D. 633</td>
<td>48</td>
<td></td>
</tr>
<tr>
<td>May 1904</td>
<td>Residency</td>
<td>Ryan</td>
<td>32 L.D. 647</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>June 1904</td>
<td>Santa Fe withdrawal</td>
<td>Hitchcock</td>
<td>33 L.D. 360</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>July 1904</td>
<td>Military reservation</td>
<td>Ryan</td>
<td>33 L.D. 130</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Sept. 1904</td>
<td>Fist entry</td>
<td>Ryan</td>
<td>33 L.D. 257</td>
<td>48</td>
<td></td>
</tr>
<tr>
<td>Dec. 1904</td>
<td>Collins withdrawal</td>
<td>Hitchcock</td>
<td>33 L.D. 350</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Withdrawals</td>
<td>Campbell</td>
<td>33 L.D. 389</td>
<td>39, 40</td>
<td></td>
</tr>
<tr>
<td>Feb. 1905</td>
<td>Calif. Dev. Co.</td>
<td>do</td>
<td>33 L.D. 391</td>
<td>34, 72</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Colorado River</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apr. 1905</td>
<td>MacNamara withdrawal</td>
<td>Hitchcock</td>
<td>33 L.D. 520</td>
<td>41, 44</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Woodridge withdrawal</td>
<td>do</td>
<td>33 L.D. 525</td>
<td>44</td>
<td></td>
</tr>
<tr>
<td>May 1905</td>
<td>Rights of way</td>
<td>Campbell</td>
<td>33 L.D. 563</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>June 1905</td>
<td>Withdrawals</td>
<td>do</td>
<td>33 L.D. 607</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>July 1905</td>
<td>Desert lands</td>
<td>do</td>
<td>34 L.D. 29</td>
<td>54</td>
<td></td>
</tr>
<tr>
<td>Aug. 1905</td>
<td>Water charges</td>
<td>do</td>
<td>34 L.D. 78</td>
<td>61</td>
<td></td>
</tr>
<tr>
<td>Oct. 1905</td>
<td>Settlers</td>
<td>do</td>
<td>34 L.D. 155</td>
<td>74</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Property</td>
<td>do</td>
<td>34 L.D. 186</td>
<td>73</td>
<td></td>
</tr>
<tr>
<td>Dec. 1905</td>
<td>Yapple withdrawal</td>
<td>Hitchcock</td>
<td>34 L.D. 311</td>
<td>41</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Withdrawals</td>
<td>Campbell</td>
<td>34 L.D. 347</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Jan. 1906</td>
<td>Excess lands</td>
<td>do</td>
<td>34 L.D. 351</td>
<td>65, 73</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Entry</td>
<td>do</td>
<td>34 L.D. 421</td>
<td>41</td>
<td></td>
</tr>
<tr>
<td>Feb. 1906</td>
<td>Withdrawals</td>
<td>do</td>
<td>34 L.D. 445</td>
<td>48</td>
<td></td>
</tr>
<tr>
<td>Mar. 1906</td>
<td>Anderson withdrawal</td>
<td>Hitchcock</td>
<td>34 L.D. 478</td>
<td>41</td>
<td></td>
</tr>
</tbody>
</table>
INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Do</th>
<th>Withdrawals</th>
<th>Campbell</th>
<th>34 L.D. 480</th>
<th>45, 89</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do</td>
<td>Homestead entries</td>
<td>do</td>
<td>34 L.D. 532</td>
<td>48</td>
</tr>
<tr>
<td>Do</td>
<td>Drilling wells</td>
<td>do</td>
<td>34 L.D. 533</td>
<td>36</td>
</tr>
<tr>
<td>Apr. 1906</td>
<td>Guernsey withdrawal</td>
<td>Hitchcock</td>
<td>34 L.D. 560</td>
<td>41</td>
</tr>
<tr>
<td>Do</td>
<td>Force account</td>
<td>Campbell</td>
<td>34 L.D. 567</td>
<td>52</td>
</tr>
<tr>
<td>June 1906</td>
<td>Sands withdrawal</td>
<td>Hitchcock</td>
<td>34 L.D. 653</td>
<td>40, 44</td>
</tr>
<tr>
<td>July 1906</td>
<td>Charges</td>
<td>Ryan</td>
<td>35 L.D. 29</td>
<td>61</td>
</tr>
<tr>
<td>Aug. 1906</td>
<td>Yakima Indians</td>
<td>Campbell</td>
<td>35 L.D. 110</td>
<td>106, 121</td>
</tr>
<tr>
<td>Oct. 1906</td>
<td>Withdrawals</td>
<td>Ryan</td>
<td>35 L.D. 216</td>
<td>40, 44</td>
</tr>
<tr>
<td>Do</td>
<td>Carey Act</td>
<td>Campbell</td>
<td>35 L.D. 222</td>
<td>41, 55</td>
</tr>
<tr>
<td>Do</td>
<td>Maney withdrawal</td>
<td>Hitchcock</td>
<td>35 L.D. 250</td>
<td>41</td>
</tr>
<tr>
<td>Dec. 1906</td>
<td>Canals</td>
<td>F. Recl. L</td>
<td>53</td>
<td></td>
</tr>
<tr>
<td>Mar. 1907</td>
<td>Peper withdrawal</td>
<td>Garfield</td>
<td>35 L.D. 459</td>
<td>41</td>
</tr>
<tr>
<td>June 1907</td>
<td>Carlisle withdrawal</td>
<td>Woodruff</td>
<td>35 L.D. 649</td>
<td>41</td>
</tr>
<tr>
<td>Oct. 1907</td>
<td>Shively Indian lands</td>
<td>Wilson</td>
<td>36 L.D. 135</td>
<td>120</td>
</tr>
<tr>
<td>Do</td>
<td>Crafts withdrawal</td>
<td>do</td>
<td>36 L.D. 138</td>
<td>44</td>
</tr>
<tr>
<td>Mar. 1908</td>
<td>DeLong entry</td>
<td>Pierce</td>
<td>36 L.D. 332</td>
<td>50</td>
</tr>
<tr>
<td>May 1908</td>
<td>Hanna entry</td>
<td>do</td>
<td>36 L.D. 449</td>
<td>49</td>
</tr>
<tr>
<td>June 1908</td>
<td>Canal Act</td>
<td>do</td>
<td>36 L.D. 482</td>
<td>18</td>
</tr>
<tr>
<td>Do</td>
<td>Wright withdrawal</td>
<td>do</td>
<td>36 L.D. 499</td>
<td>47</td>
</tr>
<tr>
<td>July 1908</td>
<td>Property</td>
<td>Clements</td>
<td>37 L.D. 6</td>
<td>76</td>
</tr>
<tr>
<td>Do</td>
<td>Withdrawals</td>
<td>Pierce</td>
<td>37 L.D. 27</td>
<td>39</td>
</tr>
<tr>
<td>Dec. 1908</td>
<td>Fairchild withdrawal</td>
<td>do</td>
<td>37 L.D. 362</td>
<td>42</td>
</tr>
<tr>
<td>Jan. 1909</td>
<td>Residency</td>
<td>F. Recl. L</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>Feb. 1909</td>
<td>Williston water charges</td>
<td>F. Recl. L</td>
<td>37 L.D. 428</td>
<td>60</td>
</tr>
<tr>
<td>Do</td>
<td>Beneficial use</td>
<td>F. Recl. L</td>
<td>85</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Overdue payments</td>
<td>F. Recl. L</td>
<td>68</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>National forests</td>
<td>F. Recl. L</td>
<td>46</td>
<td></td>
</tr>
<tr>
<td>Apr. 1909</td>
<td>Overdue</td>
<td>F. Recl. L</td>
<td>86</td>
<td></td>
</tr>
<tr>
<td>May 1909</td>
<td>State government</td>
<td>F. Recl. L</td>
<td>54</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Higman farm units</td>
<td>Pierce</td>
<td>37 L.D. 718</td>
<td>49, 121</td>
</tr>
<tr>
<td>Aug. 1909</td>
<td>Pratt withdrawal</td>
<td>do</td>
<td>38 L.D. 146</td>
<td>47</td>
</tr>
<tr>
<td>Sept. 1909</td>
<td>Fumas desert land</td>
<td>do</td>
<td>38 L.D. 194</td>
<td>125</td>
</tr>
<tr>
<td>Do</td>
<td>Idaho Farm water charges</td>
<td>F. Recl. L</td>
<td>61</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Hammond water charges</td>
<td>F. Recl. L</td>
<td>61</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Williamson entry</td>
<td>Pierce</td>
<td>38 L.D. 233</td>
<td>50, 153</td>
</tr>
<tr>
<td>Nov. 1909</td>
<td>Bridgman excess land</td>
<td>F. Recl. L</td>
<td>66</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Newcastle withdrawal</td>
<td>Pierce</td>
<td>38 L.D. 314</td>
<td>42</td>
</tr>
<tr>
<td>Dec. 1909</td>
<td>Woodcock withdrawal</td>
<td>do</td>
<td>38 L.D. 349</td>
<td>38, 43</td>
</tr>
<tr>
<td>Jan. 1910</td>
<td>Residency of landowner</td>
<td>F. Recl. L</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Rewards</td>
<td>F. Recl. L</td>
<td>34</td>
<td></td>
</tr>
<tr>
<td>Mar. 1910</td>
<td>Warren Act</td>
<td>Ballinger</td>
<td>168</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Withdrawals</td>
<td>F. Recl. L</td>
<td>38</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>do</td>
<td>Ballinger</td>
<td>38 L.D. 513</td>
<td>49, 125</td>
</tr>
<tr>
<td>May 1910</td>
<td>do</td>
<td>Pierce</td>
<td>39 L.D. 2</td>
<td>60</td>
</tr>
<tr>
<td>June 1910</td>
<td>Williston water charges</td>
<td>do</td>
<td>39 L.D. 104</td>
<td>23, 100</td>
</tr>
<tr>
<td>Sept. 1910</td>
<td>Existing rights</td>
<td>do</td>
<td>39 L.D. 297</td>
<td>146, 147</td>
</tr>
<tr>
<td>Oct. 1910</td>
<td>Long assignment</td>
<td>Ballinger</td>
<td>39 L.D. 380</td>
<td>49, 125</td>
</tr>
<tr>
<td>Do</td>
<td>Prosser Falls charges</td>
<td>F. Recl. L</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>Nov. 1910</td>
<td>Minor water charges</td>
<td>Pierce</td>
<td>39 L.D. 351</td>
<td>57</td>
</tr>
<tr>
<td>Dec. 1910</td>
<td>Slater desert lands</td>
<td>Pierce</td>
<td>39 L.D. 432</td>
<td>153</td>
</tr>
</tbody>
</table>

S1279
<table>
<thead>
<tr>
<th>Date</th>
<th>Entry</th>
<th>Do</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb. 1911</td>
<td>Shell entry</td>
<td>39 L.D. 502</td>
</tr>
<tr>
<td>Do</td>
<td>Assignment of entry</td>
<td>39 L.D. 504</td>
</tr>
<tr>
<td>Do</td>
<td>Skinner desert lands</td>
<td>39 L.D. 519</td>
</tr>
<tr>
<td>Do</td>
<td>Leases</td>
<td>39 L.D. 525</td>
</tr>
<tr>
<td>Mar. 1911</td>
<td>McLain water rights</td>
<td>39 L.D. 580</td>
</tr>
<tr>
<td>Do</td>
<td>Ironsides Canal</td>
<td>39 L.D. 592</td>
</tr>
<tr>
<td>Apr. 1911</td>
<td>Ironsides Canal Act</td>
<td>40 L.D. 28</td>
</tr>
<tr>
<td>May 1911</td>
<td>Wright excess lands</td>
<td>40 L.D. 116</td>
</tr>
<tr>
<td>Aug. 1911</td>
<td>Hanson entry</td>
<td>40 L.D. 234</td>
</tr>
<tr>
<td>Sept. 1911</td>
<td>Water rights</td>
<td>40 L.D. 270</td>
</tr>
<tr>
<td>Oct. 1911</td>
<td>Roberta entry</td>
<td>40 L.D. 306</td>
</tr>
<tr>
<td>Do</td>
<td>Haynes entry</td>
<td>40 L.D. 291</td>
</tr>
<tr>
<td>Dec. 1911</td>
<td>Jacobs assignment</td>
<td>40 L.D. 322</td>
</tr>
<tr>
<td>Jan. 1912</td>
<td>Water charges</td>
<td>40 L.D. 406</td>
</tr>
<tr>
<td>Do</td>
<td>Excess desert lands</td>
<td>40 L.D. 386</td>
</tr>
<tr>
<td>Do</td>
<td>Schroeder water charges</td>
<td>40 L.D. 458</td>
</tr>
<tr>
<td>Mar. 1912</td>
<td>Allen withdrawal</td>
<td>40 L.D. 566</td>
</tr>
<tr>
<td>Do</td>
<td>Nonirrigable lands</td>
<td>F. Recl. L</td>
</tr>
<tr>
<td>Do</td>
<td>Upthegrove desert land assignment.</td>
<td>40 L.D. 622</td>
</tr>
<tr>
<td>Do</td>
<td>Ennman water payments</td>
<td>40 L.D. 600</td>
</tr>
<tr>
<td>Apr. 1912</td>
<td>Beach contestant</td>
<td>40 L.D. 607</td>
</tr>
<tr>
<td>Do</td>
<td>Farrington entries</td>
<td>40 L.D. 627</td>
</tr>
<tr>
<td>Do</td>
<td>Alhambra water rental</td>
<td>40 L.D. 573</td>
</tr>
<tr>
<td>May 1912</td>
<td>Hook entries</td>
<td>41 L.D. 67</td>
</tr>
<tr>
<td>Do</td>
<td>Williams entries</td>
<td>41 L.D. 68</td>
</tr>
<tr>
<td>May 1912</td>
<td>Rentals of water</td>
<td>F. Recl. L</td>
</tr>
<tr>
<td>June 1912</td>
<td>Linsea water charges</td>
<td>41 L.D. 86</td>
</tr>
<tr>
<td>July 1912</td>
<td>Land acquisition</td>
<td>F. Recl. L</td>
</tr>
<tr>
<td>Aug. 1912</td>
<td>Glidieux entry</td>
<td>41 L.D. 286</td>
</tr>
<tr>
<td>Do</td>
<td>Withdrawal</td>
<td>41 L.D. 171</td>
</tr>
<tr>
<td>Do</td>
<td>Deposits to fund</td>
<td>F. Recl. L</td>
</tr>
<tr>
<td>Sept. 1912</td>
<td>Newton assignment</td>
<td>41 L.D. 421</td>
</tr>
<tr>
<td>Do</td>
<td>Nonirrigable land</td>
<td>F. Recl. L</td>
</tr>
<tr>
<td>Oct. 1912</td>
<td>Long entry</td>
<td>41 L.D. 326</td>
</tr>
<tr>
<td>Do</td>
<td>Jones desert entry</td>
<td>41 L.D. 377</td>
</tr>
<tr>
<td>Do</td>
<td>Windecker entry</td>
<td>41 L.D. 389</td>
</tr>
<tr>
<td>Do</td>
<td>Snook assignment</td>
<td>41 L.D. 428</td>
</tr>
<tr>
<td>Nov. 1912</td>
<td>Bell assignment</td>
<td>41 L.D. 394</td>
</tr>
<tr>
<td>Mar. 1913</td>
<td>Ward assignment</td>
<td>41 L.D. 634</td>
</tr>
<tr>
<td>Do</td>
<td>Catron entries</td>
<td>42 L.D. 7</td>
</tr>
<tr>
<td>Do</td>
<td>Wilson irrigability</td>
<td>42 L.D. 8</td>
</tr>
<tr>
<td>Do</td>
<td>Rental of waters</td>
<td>F. Recl. L</td>
</tr>
<tr>
<td>May 1913</td>
<td>Lytle entries</td>
<td>42 L.D. 157</td>
</tr>
<tr>
<td>June 1913</td>
<td>Borough certificates</td>
<td>42 L.D. 207</td>
</tr>
<tr>
<td>July 1913</td>
<td>Corporations</td>
<td>42 L.D. 250</td>
</tr>
</tbody>
</table>
### INDEX TO VOLUME V AND SUPPLEMENT II

<p>| Aug. 1913 | Compensation | | | F. Recl. L | 20 |
| Do | Johnson excess lands | Jones | 42 L.D. 542 | 66, 181 |
| Do | Taylor entries | do | 42 L.D. 318 | 39, 48 |
| Do | Boughter rights of way | | | 42 L.D. 595 | 23, 45 |
| Sept. 1913 | Roactcap homestead | do | 42 L.D. 422 | 159 |
| Oct. 1913 | Keebaugh, Cook | do | 42 L.D. 543 | 181, 182 |
| Do | Kirkpatrick water rights | | | 42 L.D. 547 | 55, 59 |
| Nov. 1913 | McDonald farm units | do | 42 L.D. 554 | 50, 121 |
| Do | Yenson homestead | do | 42 L.D. 528 | 159 |
| Do | Mills cultivation | do | 42 L.D. 534 | 63 |
| Mar. 1914 | Mickelson entry | do | 43 L.D. 210 | 50, 54, 58, 198 |
| Do | Slaton entry | do | 43 L.D. 212 | 47 |
| Apr. 1914 | Residence | do | 43 L.D. 456 | 147 |
| May 1914 | Stiebner entry | do | 43 L.D. 263 | 154 |
| July 1914 | Excess lands | King | 43 L.D. 339 | 66, 181 |
| Aug. 1914 | Hawley entry | Jones | 43 L.D. 364 | 147 |
| Do | Entry | do | 43 L.D. 374 | 41 |
| Oct. 1914 | Voight homestead | do | 43 L.D. 436 | 63 |
| Do | Lands affected | | | C.L. 745 | 187 |
| Jan. 1915 | do | | | C.L. 751 | 187, 188 |
| Feb. 1915 | Colton water rights | Jones | 43 L.D. 518 | 67, 147, 178 |
| May 1915 | Extension Act | Davis | C.L. 497 | 188 |
| June 1915 | Park in townsite | | | F. Recl. L | 109 |
| July 1915 | Delano assignment | Jones | 44 L.D. 199 | 147 |
| Do | Entry | do | 44 L.D. 202 | 148 |
| Do | Peabody entry | do | 44 L.D. 219 | 146 |
| Aug. 1915 | Allen entry | do | 44 L.D. 331 | 48, 146 |
| Sept. 1915 | Construction charges | | | C.L. 516 | 188 |
| Sept. 1915 | do | | | C.L. 595 | 188 |
| Oct. 1915 | Baard desert lands | Jones | 44 L.D. 366 | 176 |
| Dec. 1915 | Lieu entry | King | 44 L.D. 544 | 213 |
| Feb. 1916 | Entry | Sweeney | 45 L.D. 22 | 148 |
| Do | Kinney withdrawal | Jones | 44 L.D. 580 | 41 |
| Do | Town site water | | | F. Recl. L | 111 |
| Apr. 1916 | O &amp; M charges | | | C.L. 555 | 192 |
| Do | Residency of landowner | | | F. Recl. L | 67 |
| Do | Default in charges | Jones | 45 L.D. 23 | 56, 68 |
| May 1916 | Construction charges | | | C.L. 603 | 188 |
| Do | Excess lands | | | 45 L.D. 385 | 66, 67, 147 |
| June 1916 | Calendar year | | | C.L. 564 | 194 |
| July 1916 | Sand and gravel | | | F. Recl. L | 46 |
| Do | Public reservations | | | F. Recl. L | 110 |
| Dec. 1916 | Corporations | | | F. Recl. L | 54 |
| Do | do | | | F. Recl. L | 54 |
| Do | Utility Co. contracts | | | F. Recl. L | 112 |</p>
<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Reference</th>
<th>Line</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do</td>
<td>O &amp; M charges</td>
<td>C.L. 622</td>
<td>192</td>
</tr>
<tr>
<td>Feb. 1917</td>
<td>Sand and gravel</td>
<td>F. Recl. L</td>
<td>96</td>
</tr>
<tr>
<td>Mar. 1917</td>
<td>Nafziger entry</td>
<td>Vogelsang</td>
<td>46 L.D. 61</td>
</tr>
<tr>
<td>Do</td>
<td>Extension Act</td>
<td>C.L. 640</td>
<td>196</td>
</tr>
<tr>
<td>Do</td>
<td>Leasing</td>
<td>F. Recl. L</td>
<td>45, 89</td>
</tr>
<tr>
<td>Do</td>
<td>Sale of town lots</td>
<td>F. Recl. L</td>
<td>110</td>
</tr>
<tr>
<td>Do</td>
<td>Patents</td>
<td>F. Recl. L</td>
<td>177</td>
</tr>
<tr>
<td>Do</td>
<td>Salt River</td>
<td>F. Recl. L</td>
<td>198</td>
</tr>
<tr>
<td>Apr. 1917</td>
<td>State laws</td>
<td>Lane</td>
<td>46 L.D. 89</td>
</tr>
<tr>
<td>May 1917</td>
<td>Chapman withdrawals</td>
<td>Vogelsang</td>
<td>46 L.D. 113</td>
</tr>
<tr>
<td>July 1917</td>
<td>Payment of charges</td>
<td>F. Recl. L</td>
<td>67</td>
</tr>
<tr>
<td>Do</td>
<td>State government</td>
<td>F. Recl. L</td>
<td>54</td>
</tr>
<tr>
<td>Do</td>
<td>Merritt residency</td>
<td>F. Recl. L</td>
<td>67</td>
</tr>
<tr>
<td>Aug. 1917</td>
<td>Payment of charges</td>
<td>C.L. 680</td>
<td>67</td>
</tr>
<tr>
<td>Do</td>
<td>do</td>
<td>F. Recl. L</td>
<td>68</td>
</tr>
<tr>
<td>Nov. 1917</td>
<td>Entry</td>
<td>Vogelsang</td>
<td>46 L.D. 227</td>
</tr>
<tr>
<td>Dec. 1917</td>
<td>Servicemen</td>
<td>C.L. 720</td>
<td>54</td>
</tr>
<tr>
<td>Do</td>
<td>Kilgrore payment</td>
<td>F. Recl. L . 88, 189, 194</td>
<td>1918</td>
</tr>
<tr>
<td>Feb. 1918</td>
<td>Charges</td>
<td>F. Recl. L</td>
<td>58</td>
</tr>
<tr>
<td>Do</td>
<td>Lands affected</td>
<td>F. Recl. L</td>
<td>187</td>
</tr>
<tr>
<td>Apr. 1918</td>
<td>Humphrey entry</td>
<td>Vogelsang</td>
<td>46 L.D. 370</td>
</tr>
<tr>
<td>Do</td>
<td>Lands affected</td>
<td>F. Recl. L</td>
<td>187</td>
</tr>
<tr>
<td>May 1918</td>
<td>Water users association</td>
<td>F. Recl. L</td>
<td>54</td>
</tr>
<tr>
<td>Do</td>
<td>Lewellen farm unit</td>
<td>Vogelsang</td>
<td>46 L.D. 385</td>
</tr>
<tr>
<td>May 1918</td>
<td>Newkirk school lands</td>
<td>Hopkins</td>
<td>46 L.D. 400</td>
</tr>
<tr>
<td>June 1918</td>
<td>Canal Act</td>
<td>King</td>
<td>Memorandum</td>
</tr>
<tr>
<td>Do</td>
<td>Galusha entry</td>
<td>Vogelsang</td>
<td>46 L.D. 417</td>
</tr>
<tr>
<td>July 1918</td>
<td>Drainage ditches</td>
<td>R. Rcrd. 328</td>
<td>18</td>
</tr>
<tr>
<td>Aug. 1918</td>
<td>Ankerly Canal, Klamath</td>
<td>R. Rcrd. 328</td>
<td>152</td>
</tr>
<tr>
<td>Apr. 1918</td>
<td>Smith Canal Act</td>
<td>Hallowell</td>
<td>47 L.D. 158</td>
</tr>
<tr>
<td>May 1918</td>
<td>Military service</td>
<td>47 L.D. 167</td>
<td>194</td>
</tr>
<tr>
<td>Do</td>
<td>Secretarial authority</td>
<td>C.L. 818</td>
<td>86</td>
</tr>
<tr>
<td>June 1919</td>
<td>California ceded lands</td>
<td>Vogelsang</td>
<td>47 L.D. 207</td>
</tr>
<tr>
<td>Oct. 1919</td>
<td>Advances</td>
<td>Davis</td>
<td>Memorandum</td>
</tr>
<tr>
<td>Do</td>
<td>Extension Act</td>
<td>do</td>
<td>47 L.D. 285</td>
</tr>
<tr>
<td>Do</td>
<td>Water charges</td>
<td>F. Reel. L</td>
<td>61</td>
</tr>
<tr>
<td>Do</td>
<td>Construction charges</td>
<td>C.L. 852</td>
<td>189</td>
</tr>
<tr>
<td>Nov. 1919</td>
<td>Wells withdrawal</td>
<td>Vogelsang</td>
<td>47 L.D. 288</td>
</tr>
<tr>
<td>Dec. 1919</td>
<td>Extension Act</td>
<td>C.L. 862</td>
<td>196</td>
</tr>
<tr>
<td>Jan. 1920</td>
<td>Lease revenues</td>
<td>Davis</td>
<td>C.L. 866</td>
</tr>
<tr>
<td>Do</td>
<td>Proceeds from lands</td>
<td>C.L. 866</td>
<td>204</td>
</tr>
<tr>
<td>Apr. 1920</td>
<td>Power site withdrawal</td>
<td>Vogelsang</td>
<td>47 L.D. 361</td>
</tr>
<tr>
<td>June 1920</td>
<td>Sale of water</td>
<td>Davis</td>
<td>47 L.D. 404</td>
</tr>
<tr>
<td>July 1920</td>
<td>Excess lands</td>
<td>C.L. 911</td>
<td>66</td>
</tr>
<tr>
<td>Aug. 1920</td>
<td>Publication of notice</td>
<td>R. Rcrd. 382</td>
<td>163, 255</td>
</tr>
<tr>
<td>Jan. 1921</td>
<td>Pierson entry</td>
<td>Vogelsang</td>
<td>47 L.D. 625</td>
</tr>
<tr>
<td>Feb. 1921</td>
<td>O &amp; P charges</td>
<td>R. Rcrd. 75</td>
<td>154</td>
</tr>
<tr>
<td>Apr. 1921</td>
<td>Scott entry</td>
<td>Finney</td>
<td>48 L.D. 85</td>
</tr>
<tr>
<td>June 1921</td>
<td>Carlisle entry</td>
<td>48 L.D. 153</td>
<td>36, 39,</td>
</tr>
<tr>
<td>Aug. 1921</td>
<td>Barker Belle Fourche</td>
<td>F. Recl. L</td>
<td>41, 53</td>
</tr>
<tr>
<td>Sept. 1921</td>
<td>State school lands</td>
<td>Finney</td>
<td>48 L.D. 614</td>
</tr>
</tbody>
</table>

S1282
<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
<th>Author</th>
<th>Reference</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct. 1921</td>
<td>Citizenship</td>
<td>do</td>
<td>48 L.D. 235</td>
<td>230</td>
</tr>
<tr>
<td>Do</td>
<td>Flathead proceeds</td>
<td>Booth</td>
<td>48 L.D. 468</td>
<td>247</td>
</tr>
<tr>
<td>Nov. 1921</td>
<td>Breipohl assignment</td>
<td>Finney</td>
<td>48 L.D. 295</td>
<td>146</td>
</tr>
<tr>
<td>Do</td>
<td>Flathead laws</td>
<td>Booth</td>
<td>48 L.D. 475</td>
<td>87</td>
</tr>
<tr>
<td>Do</td>
<td>Watson mortgage</td>
<td>Finney</td>
<td>48 L.D. 325</td>
<td>50, 149</td>
</tr>
<tr>
<td>Feb. 1922</td>
<td>Warnke withdrawal</td>
<td>do</td>
<td>48 L.D. 557</td>
<td>154</td>
</tr>
<tr>
<td>May 1922</td>
<td>Myers damage</td>
<td>do</td>
<td>9 L.D. 106</td>
<td>209</td>
</tr>
<tr>
<td>June 1922</td>
<td>Mulligan sale of water right</td>
<td>do</td>
<td>49 L.D. 155</td>
<td>183</td>
</tr>
<tr>
<td>Sept. 1922</td>
<td>Lower Yellowstone relief act</td>
<td>do</td>
<td>49 L.D. 301</td>
<td>195, 294</td>
</tr>
<tr>
<td>Jan. 1923</td>
<td>Reclamation fund</td>
<td>C.L. 1186</td>
<td>171, 297</td>
<td></td>
</tr>
<tr>
<td>Feb. 1923</td>
<td>Excess lands</td>
<td>Wilbur</td>
<td>Letter</td>
<td>417</td>
</tr>
<tr>
<td>June 1923</td>
<td>Lawrence Arizona grant.</td>
<td>Finney</td>
<td>49 L.D. 611</td>
<td>143</td>
</tr>
<tr>
<td>Do</td>
<td>Wolfe minerals</td>
<td>do</td>
<td>49 L.D. 625</td>
<td>44</td>
</tr>
<tr>
<td>July 1923</td>
<td>Dilley withdrawal</td>
<td>Goodwin</td>
<td>49 L.D. 644</td>
<td>46</td>
</tr>
<tr>
<td>Aug. 1923</td>
<td>Bennet foreclosure</td>
<td>Finney</td>
<td>50 L.D. 4</td>
<td>147, 148, 149</td>
</tr>
<tr>
<td>Sept. 1923</td>
<td>Irrigation districts</td>
<td>Edwards</td>
<td>50 L.D. 142</td>
<td>191, 293, 297</td>
</tr>
<tr>
<td>Oct. 1923</td>
<td>Havens desert lands</td>
<td>Finney</td>
<td>A-5580 Memorandum</td>
<td>14,124, 422</td>
</tr>
<tr>
<td>Feb. 1924</td>
<td>Kenny assignment</td>
<td>Finney</td>
<td>50 L.D. 268</td>
<td>147, 159</td>
</tr>
<tr>
<td>Mar. 1924</td>
<td>Mell proceeds</td>
<td>do</td>
<td>50 L.D. 308</td>
<td>33, 44, 103, 142, 162</td>
</tr>
<tr>
<td>Apr. 1924</td>
<td>Rouse entry</td>
<td>do</td>
<td>50 L.D. 379</td>
<td>49</td>
</tr>
<tr>
<td>Do</td>
<td>Power entry</td>
<td>do</td>
<td>50 L.D. 392</td>
<td>50</td>
</tr>
<tr>
<td>Do</td>
<td>Water charges</td>
<td>Edwards</td>
<td>M-11120 Memorandum</td>
<td>193, 294, 298</td>
</tr>
<tr>
<td>Do</td>
<td>do</td>
<td>M-12181</td>
<td>do</td>
<td>193, 294, 298</td>
</tr>
<tr>
<td>May 1924</td>
<td>Entries</td>
<td>Finney</td>
<td>55 L.D. 506</td>
<td>50</td>
</tr>
<tr>
<td>Nov. 1924</td>
<td>National parks</td>
<td>M-2896 F. Recl. L.</td>
<td>288</td>
<td></td>
</tr>
<tr>
<td>Jan. 1925</td>
<td>Fact Finders' Act</td>
<td>Mead</td>
<td>51 L.D. 207</td>
<td>168, 319, 321, 323, 324</td>
</tr>
<tr>
<td>Mar. 1925</td>
<td>do</td>
<td>do</td>
<td>51 L.D. 215</td>
<td>319, 320, 324</td>
</tr>
<tr>
<td>Do</td>
<td>do</td>
<td>do</td>
<td>51 L.D. 218</td>
<td>197, 320</td>
</tr>
<tr>
<td>July 1925</td>
<td>Baker project</td>
<td>Wright</td>
<td>M-2896 Memorandum</td>
<td>52, 300, 317, 351</td>
</tr>
<tr>
<td>Jan. 1926</td>
<td>Hargis refunds</td>
<td>Finney</td>
<td>51 L.D. 329</td>
<td>331</td>
</tr>
<tr>
<td>Do</td>
<td>Crehore refunds</td>
<td>do</td>
<td>51 L.D. 345</td>
<td>332</td>
</tr>
<tr>
<td>May 1926</td>
<td>Smith withdrawal</td>
<td>do</td>
<td>51 L.D. 454</td>
<td>42</td>
</tr>
<tr>
<td>June 1926</td>
<td>Baker project</td>
<td>do</td>
<td>M-2896 Memorandum</td>
<td>52, 300, 317, 351</td>
</tr>
<tr>
<td>Aug. 1926</td>
<td>Adjustment Act</td>
<td>Mead</td>
<td>51 L.D. 525</td>
<td>372, 375</td>
</tr>
<tr>
<td>Oct. 1926</td>
<td>Zumpfe charges</td>
<td>Finney</td>
<td>51 L.D. 608</td>
<td>178</td>
</tr>
<tr>
<td>Jan. 1927</td>
<td>American Falls</td>
<td>Patterson M-21227 Memorandum</td>
<td>168, 313</td>
<td></td>
</tr>
<tr>
<td>Feb. 1927</td>
<td>Exchanges</td>
<td>M-21655 do</td>
<td>325</td>
<td></td>
</tr>
<tr>
<td>Mar. 1927</td>
<td>Excess lands</td>
<td>Patterson M-21709 do</td>
<td>66, 170, 181, 399</td>
<td></td>
</tr>
</tbody>
</table>

S1283
## INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Author(s)</th>
<th>Location/Memorandum</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1927</td>
<td>Thackeray exchanges</td>
<td>Finney</td>
<td>52 L.D.60</td>
<td>325</td>
</tr>
<tr>
<td></td>
<td>American Falls</td>
<td>Patterson</td>
<td>M-22401</td>
<td>378, 383, 399</td>
</tr>
<tr>
<td>Nov. 1927</td>
<td>Cady entry</td>
<td>Finney</td>
<td>52 L.D.222</td>
<td>318, 325</td>
</tr>
<tr>
<td>Jan. 1928</td>
<td>Yakima project</td>
<td>C.L.1689</td>
<td></td>
<td>189</td>
</tr>
<tr>
<td>Do</td>
<td>Craig, entryman</td>
<td>A-11100</td>
<td>Mem.</td>
<td>318</td>
</tr>
<tr>
<td>Feb. 1928</td>
<td>Leases</td>
<td>Finney</td>
<td>F. Recl. L.</td>
<td>45</td>
</tr>
<tr>
<td>Mar. 1928</td>
<td>Powerplant</td>
<td>M-24229</td>
<td>Mem.</td>
<td>319, 376</td>
</tr>
<tr>
<td>Apr. 1928</td>
<td>Advancement</td>
<td>F. Recl. L.</td>
<td></td>
<td>169</td>
</tr>
<tr>
<td>Nov. 1928</td>
<td>Irrigation districts</td>
<td></td>
<td></td>
<td>222, 409</td>
</tr>
<tr>
<td>Dec. 1928</td>
<td>Newlands project</td>
<td>M-24897</td>
<td></td>
<td>89</td>
</tr>
<tr>
<td>Feb. 1929</td>
<td>Hughes entry</td>
<td></td>
<td>52 L.D. 560</td>
<td>178</td>
</tr>
<tr>
<td>Do</td>
<td>Robichaux assignment</td>
<td>A-12228</td>
<td>Mem.</td>
<td>147</td>
</tr>
<tr>
<td>Apr. 1929</td>
<td>Boulder Canyon project</td>
<td>M-25151</td>
<td></td>
<td>46, 422</td>
</tr>
<tr>
<td>July 1929</td>
<td>Belle Fourche project</td>
<td>F. Recl. L.</td>
<td></td>
<td>57</td>
</tr>
<tr>
<td>Aug. 1929</td>
<td>Boulder Canyon project</td>
<td>Mem.</td>
<td></td>
<td>424</td>
</tr>
<tr>
<td>Jan. 1930</td>
<td>Hoover power</td>
<td>Finney</td>
<td>53 I.D. 1</td>
<td>429, 430, 440</td>
</tr>
<tr>
<td>Do</td>
<td>McLennon desert lands</td>
<td>Edwards</td>
<td>53 I.D. 21</td>
<td>124</td>
</tr>
<tr>
<td>Do</td>
<td>Taxation</td>
<td>do</td>
<td>53 I.D. 35</td>
<td>409</td>
</tr>
<tr>
<td>Feb. 1930</td>
<td>Longuemare, et al.,</td>
<td>West</td>
<td>Mem.</td>
<td>207</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mar. 1930</td>
<td>Subdivision of lands</td>
<td></td>
<td>F. Recl. L.</td>
<td>121</td>
</tr>
<tr>
<td>July 1930</td>
<td>District bonds</td>
<td>Finney</td>
<td>M-26043</td>
<td>458</td>
</tr>
<tr>
<td>Do</td>
<td>Desert lands</td>
<td></td>
<td>Mem.</td>
<td></td>
</tr>
<tr>
<td>Dec. 1930</td>
<td>Sale of surplus power</td>
<td></td>
<td>F. Recl. L.</td>
<td>458</td>
</tr>
<tr>
<td>Jan. 1931</td>
<td>Desert lands</td>
<td></td>
<td>C.L.1928</td>
<td>126</td>
</tr>
<tr>
<td>Feb. 1931</td>
<td>Power revenues</td>
<td>Dixon</td>
<td>53 I.D. 257</td>
<td>321, 335</td>
</tr>
<tr>
<td>Mar. 1931</td>
<td>Huntley charges</td>
<td>Finney</td>
<td>M-26425</td>
<td>374</td>
</tr>
<tr>
<td>Apr. 1931</td>
<td>Withdrawal</td>
<td></td>
<td>F. Recl. L.</td>
<td>43</td>
</tr>
<tr>
<td>July 1931</td>
<td>Statutory construction</td>
<td>Dixon</td>
<td>53 I.D. 418</td>
<td>222, 409</td>
</tr>
<tr>
<td>Do</td>
<td>Shoshone power revenues</td>
<td>Finney</td>
<td>M-26630</td>
<td>427, 454</td>
</tr>
<tr>
<td>Feb. 1932</td>
<td>Great Western Corporation</td>
<td>Edwards</td>
<td>A-16335</td>
<td>54, 66, 148, 182, 409</td>
</tr>
<tr>
<td>Mar. 1932</td>
<td>Backroth Yuma</td>
<td>Dixon</td>
<td>53 I.D. 617</td>
<td>230</td>
</tr>
<tr>
<td>Apr. 1932</td>
<td>Moratorium</td>
<td></td>
<td>Mem.</td>
<td>495</td>
</tr>
<tr>
<td>Do</td>
<td>do</td>
<td>Douglas</td>
<td>Letter</td>
<td>493</td>
</tr>
<tr>
<td>May 1932</td>
<td>Kimmel taxes</td>
<td>Edwars</td>
<td>53 I.D. 658</td>
<td>182, 222, 299</td>
</tr>
<tr>
<td>June 1932</td>
<td>Indian Lands</td>
<td>Finney</td>
<td>53 I.D. 660</td>
<td>158</td>
</tr>
<tr>
<td>Do</td>
<td>Lower Klamath Lake</td>
<td>do</td>
<td>M-27055</td>
<td>97, 258</td>
</tr>
<tr>
<td>July 1932</td>
<td>Moratorium</td>
<td>do</td>
<td>53 I.D. 13</td>
<td>491</td>
</tr>
<tr>
<td>Aug. 1932</td>
<td>Power revenues</td>
<td>M-25908</td>
<td>Mem.</td>
<td>322, 335</td>
</tr>
<tr>
<td>Do</td>
<td>Moratorium</td>
<td>M-27184</td>
<td>do</td>
<td>494, 495</td>
</tr>
<tr>
<td>Oct. 1932</td>
<td>do</td>
<td>Edwars</td>
<td>54 I.D. 86</td>
<td>490</td>
</tr>
<tr>
<td>Nov. 1932</td>
<td>Leavitt Act</td>
<td>Finney</td>
<td>M-27239</td>
<td>504</td>
</tr>
<tr>
<td>Feb. 1933</td>
<td>Excess lands</td>
<td>Wilbur</td>
<td>Letter</td>
<td>S19, S73, 589</td>
</tr>
<tr>
<td>Apr. 1933</td>
<td>Power eassements</td>
<td>A-17072</td>
<td>Mem.</td>
<td>174, 269</td>
</tr>
<tr>
<td>July 1933</td>
<td>Milk River project</td>
<td></td>
<td>F. Recl. L.</td>
<td>153</td>
</tr>
<tr>
<td>Do</td>
<td>Briscoe Smith Act</td>
<td>Chapman</td>
<td>54 I.D. 256</td>
<td>222, 339</td>
</tr>
<tr>
<td>Aug. 1933</td>
<td>Pioneer warrants</td>
<td>Fahey</td>
<td>54 I.D. 264</td>
<td>68, 168</td>
</tr>
<tr>
<td>Dec. 1933</td>
<td>Contract with State</td>
<td></td>
<td>F. Recl. L.</td>
<td>339</td>
</tr>
</tbody>
</table>

S1284
<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Page References</th>
<th>Law/Raw Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan. 1934</td>
<td>Leasing</td>
<td>45</td>
<td>F. Recl. L...</td>
</tr>
<tr>
<td>Mar. 1934</td>
<td>Shoshone project</td>
<td>213, 325</td>
<td>F. Recl. L...</td>
</tr>
<tr>
<td>Apr. 1934</td>
<td>Consultants</td>
<td>449</td>
<td>54 I.D. 411...</td>
</tr>
<tr>
<td>Do</td>
<td>Moratorium</td>
<td>494</td>
<td>54 I.D. 414...</td>
</tr>
<tr>
<td>Do</td>
<td>Municipal water</td>
<td>M-27679</td>
<td>415,</td>
</tr>
<tr>
<td></td>
<td>Moratorium</td>
<td></td>
<td>424, 429</td>
</tr>
<tr>
<td>July 1934</td>
<td>Examinig board</td>
<td>511</td>
<td>F. Recl. L...</td>
</tr>
<tr>
<td>Aug. 1934</td>
<td>Moratorium</td>
<td>511</td>
<td>54 I.D. 550...</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>67, 183</td>
<td>54 I.D. 566...</td>
</tr>
<tr>
<td>Do</td>
<td>Lower Colorado</td>
<td>422</td>
<td>54 I.D. 593...</td>
</tr>
<tr>
<td>Dec. 1934</td>
<td>Withdrawn land</td>
<td>516</td>
<td>Memorandum</td>
</tr>
<tr>
<td>Do</td>
<td>Leases</td>
<td>45</td>
<td>Margold M-27790...</td>
</tr>
<tr>
<td>Feb. 1935</td>
<td>Canal Act</td>
<td>516</td>
<td>M-27871</td>
</tr>
<tr>
<td>Do</td>
<td>Withdrawn land</td>
<td>45</td>
<td>do</td>
</tr>
<tr>
<td>Mar. 1935</td>
<td>Balkwill tax sales</td>
<td>516</td>
<td>55 I.D. 241...</td>
</tr>
<tr>
<td></td>
<td></td>
<td>66, 67,</td>
<td>147, 148, 182,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>410</td>
<td></td>
</tr>
<tr>
<td>Do</td>
<td>Withdrawals</td>
<td>43</td>
<td>Johnson 55 I.D. 247...</td>
</tr>
<tr>
<td>May 1935</td>
<td>Secretarial authority</td>
<td>319</td>
<td>F. Recl. L...</td>
</tr>
<tr>
<td>June 1935</td>
<td>Withholding water</td>
<td>194</td>
<td>F. Recl. L...</td>
</tr>
<tr>
<td>July 1935</td>
<td>Rocky Mountain Park</td>
<td>203, 289</td>
<td>Margold M-28081...</td>
</tr>
<tr>
<td>Aug. 1935</td>
<td>Butler, et al., damages</td>
<td>207</td>
<td>Dixon do</td>
</tr>
<tr>
<td>Jan. 1936</td>
<td>Black Smith Act</td>
<td>223, 516</td>
<td>55 I.D. 44...</td>
</tr>
<tr>
<td>Apr. 1936</td>
<td>State laws</td>
<td>78</td>
<td>F. Recl. L...</td>
</tr>
<tr>
<td>Do</td>
<td>Colorado River</td>
<td>442</td>
<td>Margold M-28389...</td>
</tr>
<tr>
<td></td>
<td>Compact.</td>
<td></td>
<td>Memorandum</td>
</tr>
<tr>
<td>July 1936</td>
<td>Withdrawals</td>
<td>516</td>
<td>Walters 55 I.D. 44...</td>
</tr>
<tr>
<td>Aug. 1936</td>
<td>Withdrawn land</td>
<td>60, 969</td>
<td>Margold M-28589...</td>
</tr>
<tr>
<td>Sept. 1936</td>
<td>Surplus lands</td>
<td>163, 256</td>
<td>Memorandum</td>
</tr>
<tr>
<td>Oct. 1936</td>
<td>Power lease</td>
<td>85, 112</td>
<td>M-28725</td>
</tr>
<tr>
<td></td>
<td></td>
<td>169, 171, 323</td>
<td>do</td>
</tr>
<tr>
<td>Do</td>
<td>Irrigation district</td>
<td>379, 635,</td>
<td>M-28771</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1332</td>
<td>do</td>
</tr>
<tr>
<td>Do</td>
<td>Boulder recreation</td>
<td>549</td>
<td>M-28693</td>
</tr>
<tr>
<td>Do</td>
<td>Boulder leases</td>
<td>45, 88,</td>
<td>M-28694</td>
</tr>
<tr>
<td></td>
<td></td>
<td>417, 549</td>
<td>do</td>
</tr>
<tr>
<td>Dec. 1936</td>
<td>Land acquisition</td>
<td>73</td>
<td>F. Recl. L...</td>
</tr>
<tr>
<td>Apr. 1937</td>
<td>Power proceeds All-American Canal</td>
<td>433, 440</td>
<td>Kirgis M-29092...</td>
</tr>
<tr>
<td>May 1937</td>
<td>Chapman entry</td>
<td>49</td>
<td>46 L.D.113...</td>
</tr>
<tr>
<td></td>
<td></td>
<td>138</td>
<td></td>
</tr>
<tr>
<td>July 1937</td>
<td>Hoover power</td>
<td>430</td>
<td>M-29291</td>
</tr>
<tr>
<td>Do</td>
<td>Appraisal of land</td>
<td>681</td>
<td>Kirgis M-29200...</td>
</tr>
<tr>
<td>Do</td>
<td>Railroad lands</td>
<td>19, 43</td>
<td>A-20886</td>
</tr>
<tr>
<td>Aug. 1937</td>
<td>Delinquent accounts</td>
<td>320</td>
<td>F. Recl. L...</td>
</tr>
<tr>
<td>Oct. 1937</td>
<td>Leases</td>
<td>323</td>
<td>M-29452</td>
</tr>
<tr>
<td>Do</td>
<td>Proceeds of leases</td>
<td>323</td>
<td>Walters M-29482...</td>
</tr>
<tr>
<td>Jan. 1938</td>
<td>Canal Act</td>
<td>21</td>
<td>Chapman A-21167...</td>
</tr>
<tr>
<td>Mar. 1938</td>
<td>White acretion</td>
<td>43</td>
<td>M-29482</td>
</tr>
<tr>
<td>Aug. 1938</td>
<td>F.P.C. licenses</td>
<td>269, 289</td>
<td>56 I.D. 300...</td>
</tr>
<tr>
<td>Dec. 1938</td>
<td></td>
<td>46</td>
<td>F. Recl. L...</td>
</tr>
<tr>
<td>Feb. 1939</td>
<td>Kesterson homestead</td>
<td>43</td>
<td>Chapman A-21260...</td>
</tr>
<tr>
<td>June 1939</td>
<td>Tax liens</td>
<td>179</td>
<td>Margold M-30184...</td>
</tr>
<tr>
<td>Date</td>
<td>Topic</td>
<td>Author</td>
<td>Page No.</td>
</tr>
<tr>
<td>------------</td>
<td>------------------------------------------------------</td>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td>July 1939</td>
<td>Rights of way</td>
<td>do</td>
<td>57 I.D. 31</td>
</tr>
<tr>
<td>Dec. 1939</td>
<td>Indian lands</td>
<td>do</td>
<td>M-30318</td>
</tr>
<tr>
<td>Feb. 1940</td>
<td>Simpson damages</td>
<td>Wirtz</td>
<td>M-30564</td>
</tr>
<tr>
<td>May 1940</td>
<td>Rights of way</td>
<td>do</td>
<td>M-30546</td>
</tr>
<tr>
<td>July 1940</td>
<td>Land acquisition</td>
<td>do</td>
<td>F. Recl. L</td>
</tr>
<tr>
<td>Sept. 1940</td>
<td>Nashua Booster Club damages.</td>
<td>Graham</td>
<td>M-30446</td>
</tr>
<tr>
<td></td>
<td>Do Power revenues</td>
<td>Ickes</td>
<td>do</td>
</tr>
<tr>
<td></td>
<td>Do Veterans preference</td>
<td>Kirgis</td>
<td>M-30795</td>
</tr>
<tr>
<td>Nov. 1940</td>
<td>Rights of way</td>
<td>Graham</td>
<td>M-30846</td>
</tr>
<tr>
<td>Jan. 1941</td>
<td>Elko County T&amp;T Co.损坏.</td>
<td>do</td>
<td>M-31026</td>
</tr>
<tr>
<td>Mar. 1941</td>
<td>Rieckhoff assignment</td>
<td>do</td>
<td>A-22739</td>
</tr>
<tr>
<td>Apr. 1941</td>
<td>Preference rights</td>
<td>Margold</td>
<td>M-31153</td>
</tr>
<tr>
<td>May 1941</td>
<td>Authorization</td>
<td>do</td>
<td>Cong. Rec.</td>
</tr>
<tr>
<td>Do</td>
<td>Relocation</td>
<td>Stinson</td>
<td>Memorandum</td>
</tr>
<tr>
<td>Do</td>
<td>Soil conservation</td>
<td>Margold</td>
<td>M-31174</td>
</tr>
<tr>
<td>July 1941</td>
<td>Pumping power</td>
<td>Ickes</td>
<td>F. Recl. L</td>
</tr>
<tr>
<td>Oct. 1941</td>
<td>Soil conservation</td>
<td>Flanery</td>
<td>M-30997</td>
</tr>
<tr>
<td>Dec. 1941</td>
<td>Bartlett damages</td>
<td>Graham</td>
<td>M-31208</td>
</tr>
<tr>
<td>Do</td>
<td>Rights of way</td>
<td>F. Recl. L.</td>
<td>46</td>
</tr>
<tr>
<td>Jan. 1942</td>
<td>Munro damages</td>
<td>Graham</td>
<td>M-31573</td>
</tr>
<tr>
<td>Feb. 1942</td>
<td>Harney damages</td>
<td>do</td>
<td>M-31651</td>
</tr>
<tr>
<td>Apr. 1942</td>
<td>Milk River</td>
<td>Page</td>
<td>do</td>
</tr>
<tr>
<td>June 1942</td>
<td>Barnes</td>
<td>Graham</td>
<td>M-31801</td>
</tr>
<tr>
<td>July 1942</td>
<td>Rights of way</td>
<td>do</td>
<td>58 I.D. 29</td>
</tr>
<tr>
<td>Aug. 1942</td>
<td>Tooko damages</td>
<td>Graham</td>
<td>M-31871</td>
</tr>
<tr>
<td>Nov. 1942</td>
<td>Shively damages</td>
<td>do</td>
<td>M-31625</td>
</tr>
<tr>
<td>Do</td>
<td>Columbia Basin</td>
<td>do</td>
<td>M-31669</td>
</tr>
<tr>
<td>Jan. 1943</td>
<td>Rights of way</td>
<td>Gardner</td>
<td>M-31156</td>
</tr>
<tr>
<td>Do</td>
<td>Burbridge damages</td>
<td>Graham</td>
<td>M-32045</td>
</tr>
<tr>
<td>Feb. 1943</td>
<td>Regulation of hunting</td>
<td>Gardner</td>
<td>M-31450</td>
</tr>
<tr>
<td></td>
<td>Do</td>
<td>do</td>
<td>361, 373, 643</td>
</tr>
<tr>
<td></td>
<td>Interest component</td>
<td>do</td>
<td>M-33473</td>
</tr>
<tr>
<td></td>
<td>do</td>
<td>do</td>
<td>645, 648, 650, 728</td>
</tr>
<tr>
<td>May 1945</td>
<td>Excess lands, Coachella.</td>
<td>Harper</td>
<td>M-33902</td>
</tr>
<tr>
<td>Aug. 1945</td>
<td>CVP excess lands</td>
<td>Graham</td>
<td>do</td>
</tr>
<tr>
<td>Do</td>
<td>W.C.U. excess lands</td>
<td>Harper</td>
<td>M-34062</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>do</td>
<td>M-34172</td>
</tr>
</tbody>
</table>
# INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Month</th>
<th>Item Description</th>
<th>Initials</th>
<th>Reference</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sept. 1945</td>
<td>Interest component</td>
<td>do</td>
<td>M-33473</td>
<td>600, 646, 650</td>
</tr>
<tr>
<td>Nov. 1945</td>
<td>Steam plants</td>
<td>Gardner</td>
<td>Letter</td>
<td>803</td>
</tr>
<tr>
<td>Dec. 1945</td>
<td>Indian rights</td>
<td>do</td>
<td>M-34326</td>
<td>689</td>
</tr>
<tr>
<td>May 1946</td>
<td>Flood control</td>
<td>Fix</td>
<td>Memorandum</td>
<td>100, 647, 804</td>
</tr>
<tr>
<td>July 1946</td>
<td>Arizona school lands</td>
<td>Davidson</td>
<td>do</td>
<td>59 I.D. 280</td>
</tr>
<tr>
<td>Sept. 1946</td>
<td>Preparatory work</td>
<td>White</td>
<td>do</td>
<td>39, 42, 143</td>
</tr>
<tr>
<td>Jan. 1947</td>
<td>Rights of way</td>
<td>White</td>
<td>M-34842</td>
<td>36, 519</td>
</tr>
<tr>
<td>Feb. 1947</td>
<td>S.W.P.A.</td>
<td>do</td>
<td>M-34873</td>
<td>802</td>
</tr>
<tr>
<td>Mar. 1947</td>
<td>Do</td>
<td>do</td>
<td>M-34893</td>
<td>721, 802</td>
</tr>
<tr>
<td>Do</td>
<td>Rights of way</td>
<td>do</td>
<td>M-31156</td>
<td>59 I.D. 641, 19</td>
</tr>
<tr>
<td></td>
<td>Water supply</td>
<td>Fix</td>
<td>Memorandum</td>
<td>640, 651</td>
</tr>
<tr>
<td></td>
<td>Crow lands</td>
<td>White</td>
<td>M-34393</td>
<td>do</td>
</tr>
<tr>
<td></td>
<td>Archeological</td>
<td>do</td>
<td>M-34840</td>
<td>93, 461</td>
</tr>
<tr>
<td></td>
<td>Flood costs</td>
<td>do</td>
<td>M-34900</td>
<td>716, 416, 548, 647</td>
</tr>
<tr>
<td>Do</td>
<td>Fish and wildlife</td>
<td>do</td>
<td>M-34808</td>
<td>59 I.D. 280</td>
</tr>
<tr>
<td>May 1947</td>
<td>Boulder wage rates</td>
<td>Burlew</td>
<td>Letter</td>
<td>843</td>
</tr>
<tr>
<td>Sept. 1947</td>
<td>Wage rates</td>
<td>White</td>
<td>M-34994</td>
<td>705</td>
</tr>
<tr>
<td>Oct. 1947</td>
<td>Hoover Dam</td>
<td>Fix</td>
<td>Memorandum</td>
<td>424, 540, 645, 697</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>Cohen</td>
<td>M-34999</td>
<td>do</td>
</tr>
<tr>
<td></td>
<td>do</td>
<td>do</td>
<td>M-35004</td>
<td>388, 387, 663</td>
</tr>
<tr>
<td>Dec. 1947</td>
<td>Leases, revenues</td>
<td>Fix</td>
<td>do</td>
<td>181, 382</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands payout</td>
<td>Cohen</td>
<td>Administrative letter</td>
<td>303.</td>
</tr>
<tr>
<td>Mar. 1948</td>
<td>Repayment</td>
<td>White</td>
<td>M-35031</td>
<td>60 I.D. 150</td>
</tr>
<tr>
<td>Apr. 1948</td>
<td>Power subsidy</td>
<td>Markwell</td>
<td>Letter</td>
<td>639, 655</td>
</tr>
<tr>
<td>Do</td>
<td>Construction cost</td>
<td>Fix</td>
<td>Memorandum</td>
<td>112, 646</td>
</tr>
<tr>
<td></td>
<td>do</td>
<td>do</td>
<td>M-37837</td>
<td>380, 646, 650, 654, 656, 749</td>
</tr>
<tr>
<td>May 1948</td>
<td>Excess lands</td>
<td>do</td>
<td>do</td>
<td>36, 64, 66, 170, 180, 181</td>
</tr>
<tr>
<td>Do</td>
<td>Repayment</td>
<td>White</td>
<td>M-35047</td>
<td>60 I.D. 180</td>
</tr>
<tr>
<td>July 1948</td>
<td>Rapp homestead</td>
<td>do</td>
<td>A-25284</td>
<td>60 I.D. 217</td>
</tr>
<tr>
<td>Sept.1948</td>
<td>Antispeculation</td>
<td>Fix</td>
<td>Memorandum</td>
<td>387</td>
</tr>
<tr>
<td>Oct. 1948</td>
<td>Purchase power</td>
<td>do</td>
<td>do</td>
<td>803</td>
</tr>
<tr>
<td>Dec. 1948</td>
<td>Investigations</td>
<td>do</td>
<td>do</td>
<td>326</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>Straus</td>
<td>Letter</td>
<td>67, 183</td>
</tr>
<tr>
<td>Jan.1949</td>
<td>do</td>
<td>Krug</td>
<td>do</td>
<td>386</td>
</tr>
<tr>
<td>Feb.1949</td>
<td>do</td>
<td>do</td>
<td>Statement</td>
<td>383</td>
</tr>
<tr>
<td>Mar. 1949</td>
<td>East Mesa</td>
<td>White</td>
<td>M-35090</td>
<td>435, 436</td>
</tr>
<tr>
<td>Do</td>
<td>Rights of way</td>
<td>do</td>
<td>M-35093</td>
<td>157, 862</td>
</tr>
<tr>
<td>May 1949</td>
<td>Excess lands</td>
<td>Aandahl</td>
<td>Letter</td>
<td>388</td>
</tr>
<tr>
<td>Do</td>
<td>CVP steam plant</td>
<td>Fix</td>
<td>Memorandum</td>
<td>586</td>
</tr>
<tr>
<td>July 1949</td>
<td>Taylor farm unit</td>
<td>White</td>
<td>A-25416</td>
<td>60 I.D. 333</td>
</tr>
<tr>
<td>Do</td>
<td>Power purchase</td>
<td>do</td>
<td>M-36009</td>
<td>13, 42, 199</td>
</tr>
<tr>
<td>Do</td>
<td>Koeitzow damages</td>
<td>do</td>
<td>TA-18</td>
<td>803</td>
</tr>
<tr>
<td>Aug. 1949</td>
<td>Ochoco Dam</td>
<td>Devries</td>
<td>do</td>
<td>208</td>
</tr>
</tbody>
</table>

S1287
INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Author</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aug. 1949</td>
<td>Excess lands</td>
<td>Coffey</td>
<td>Message</td>
</tr>
<tr>
<td>Sept. 1949</td>
<td>Grants pass pipeline</td>
<td>Fix</td>
<td>do</td>
</tr>
<tr>
<td>Do</td>
<td>Willoughby desert entry, Smith Act.</td>
<td>White</td>
<td>A-25292</td>
</tr>
<tr>
<td>Do</td>
<td>Tulare excess lands</td>
<td>do</td>
<td>M-36011</td>
</tr>
<tr>
<td>Oct. 1949</td>
<td>Rights of way</td>
<td>Flaney</td>
<td>M-36015</td>
</tr>
<tr>
<td>Do</td>
<td>Interest</td>
<td>Krug</td>
<td>do</td>
</tr>
<tr>
<td>Nov. 1949</td>
<td>Selstad homestead</td>
<td>White</td>
<td>A-25745</td>
</tr>
<tr>
<td>Do</td>
<td>Dondoro homestead</td>
<td>do</td>
<td>A-25582</td>
</tr>
<tr>
<td>Dec. 1949</td>
<td>CRSP investigation</td>
<td>Fix</td>
<td>do</td>
</tr>
<tr>
<td>Jan. 1950</td>
<td>Fish study funds</td>
<td>White</td>
<td>M-36021</td>
</tr>
<tr>
<td>Do</td>
<td>MRB power revenues</td>
<td>do</td>
<td>M-36022</td>
</tr>
<tr>
<td>Feb. 1950</td>
<td>Single purpose</td>
<td>Fix</td>
<td>do</td>
</tr>
<tr>
<td>June 1950</td>
<td>Boulder City</td>
<td>White</td>
<td>M-36019</td>
</tr>
<tr>
<td>Aug. 1950</td>
<td>Excess lands</td>
<td>do</td>
<td>M-36017</td>
</tr>
<tr>
<td>Do</td>
<td>Soil programs</td>
<td>do</td>
<td>M-36047</td>
</tr>
<tr>
<td>Sept. 1950</td>
<td>Water for town</td>
<td>Lineweaver</td>
<td>Memorandum 111, 251</td>
</tr>
<tr>
<td>Dec. 1950</td>
<td>Oil revenues</td>
<td>White</td>
<td>M-36051</td>
</tr>
<tr>
<td>Do</td>
<td>Damages</td>
<td>do</td>
<td>M-36064</td>
</tr>
<tr>
<td>May 1951</td>
<td>power study</td>
<td>do</td>
<td>M-36080</td>
</tr>
<tr>
<td>June 1951</td>
<td>Excess lands</td>
<td>Graham</td>
<td>Memorandum   584</td>
</tr>
<tr>
<td>June 1951</td>
<td>Withdrawals</td>
<td>Doty</td>
<td>A-26195</td>
</tr>
<tr>
<td>July 1951</td>
<td>Betterment work</td>
<td>White</td>
<td>M-36085</td>
</tr>
<tr>
<td>Aug. 1951</td>
<td>Railroad Act</td>
<td>do</td>
<td>A-26143</td>
</tr>
<tr>
<td>Sept. 1951</td>
<td>SWPA liability</td>
<td>do</td>
<td>M-36099</td>
</tr>
<tr>
<td>Nov. 1951</td>
<td>Oil leases</td>
<td>do</td>
<td>M-36051</td>
</tr>
<tr>
<td>Do</td>
<td>Gila water limit</td>
<td>Rose</td>
<td>Letter</td>
</tr>
<tr>
<td>Do</td>
<td>Relocation</td>
<td>Markwell</td>
<td>Memorandum</td>
</tr>
<tr>
<td>Dec. 1951</td>
<td>Shaw homestead</td>
<td>White</td>
<td>A-26247</td>
</tr>
<tr>
<td>Feb. 1952</td>
<td>Interest</td>
<td>Lineweaver</td>
<td>Letter</td>
</tr>
<tr>
<td>Mar. 1952</td>
<td>Simkins homestead</td>
<td>White</td>
<td>A-26274</td>
</tr>
<tr>
<td>Apr. 1952</td>
<td>Depreciation</td>
<td>Fisher</td>
<td>do</td>
</tr>
<tr>
<td>Do</td>
<td>Shasta Dam navigation</td>
<td>do</td>
<td>do</td>
</tr>
<tr>
<td>Sept.1952</td>
<td>Indian lands</td>
<td>Flaney</td>
<td>do</td>
</tr>
<tr>
<td>Do</td>
<td>Power subsidy</td>
<td>Fisher</td>
<td>do</td>
</tr>
<tr>
<td>Do</td>
<td>Reclamation. studies</td>
<td>do</td>
<td>do</td>
</tr>
<tr>
<td>Do</td>
<td>Navigation</td>
<td>Pace (Sec. of Army)</td>
<td>Letter</td>
</tr>
<tr>
<td>Oct. 1952</td>
<td>Olsen homestead</td>
<td>White</td>
<td>A-26432</td>
</tr>
<tr>
<td>Do</td>
<td>All-American costs</td>
<td>Fisher</td>
<td>do</td>
</tr>
<tr>
<td>Do</td>
<td>Power plant</td>
<td>do</td>
<td>do</td>
</tr>
<tr>
<td>Do</td>
<td>Minerals</td>
<td>White</td>
<td>M-36142</td>
</tr>
<tr>
<td>Nov. 1952</td>
<td>Coachella costs</td>
<td>White</td>
<td>M-36150</td>
</tr>
<tr>
<td>Dec. 1952</td>
<td>Klamath homestead</td>
<td>do</td>
<td>M-36157</td>
</tr>
<tr>
<td>Jan. 1953</td>
<td>Truscott damages</td>
<td>do</td>
<td>T-453</td>
</tr>
<tr>
<td>Do</td>
<td>Wiles damages</td>
<td>do</td>
<td>TA-462</td>
</tr>
<tr>
<td>Apr. 1953</td>
<td>All-American costs</td>
<td>Fisher</td>
<td>Memorandum</td>
</tr>
</tbody>
</table>

S1288
INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Month</th>
<th>Item Description</th>
<th>Author</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 1953</td>
<td>Coachella costs</td>
<td>Davis</td>
<td>379, 1056</td>
</tr>
<tr>
<td>Do</td>
<td>Unproductive lands</td>
<td>do</td>
<td>M-36171 61 I.D. 154 366, 374,</td>
</tr>
<tr>
<td>June 1953</td>
<td>Richards homestead</td>
<td>do</td>
<td>A-26718 Memorandum 64</td>
</tr>
<tr>
<td>July 1953</td>
<td>Emergency fund</td>
<td>Fisher</td>
<td>891</td>
</tr>
<tr>
<td>Do</td>
<td>Bobo minerals</td>
<td>Davis</td>
<td>44, 499, 860</td>
</tr>
<tr>
<td>Aug. 1953</td>
<td>Strahan homestead</td>
<td>Burke</td>
<td>A-26716 64</td>
</tr>
<tr>
<td>Sept. 1953</td>
<td>All-American costs</td>
<td>Aandahl</td>
<td>Letter 762</td>
</tr>
<tr>
<td>Do</td>
<td>Arizona school lands</td>
<td>Davis</td>
<td>A-26767 Memorandum 143</td>
</tr>
<tr>
<td>Oct. 1953</td>
<td>Fish screens</td>
<td>do</td>
<td>M-36160 843, 1093</td>
</tr>
<tr>
<td>Nov. 1953</td>
<td>Baird homestead</td>
<td>do</td>
<td>A-26773 46, 147</td>
</tr>
<tr>
<td>Do</td>
<td>All-American costs</td>
<td>Fisher</td>
<td>254, 326, 416</td>
</tr>
<tr>
<td>Dec. 1953</td>
<td>Schultz mining</td>
<td>Davis</td>
<td>A-26917 61 I.D. 259 44</td>
</tr>
<tr>
<td>Do</td>
<td>Bridge damages</td>
<td>Burke</td>
<td>T-512 61 I.D. 264 210</td>
</tr>
<tr>
<td>Feb. 1954</td>
<td>Indian lands</td>
<td>Davis</td>
<td>M-36148 Memorandum 73, 808</td>
</tr>
<tr>
<td>Do</td>
<td>Emergency fund</td>
<td>Burke</td>
<td>M-36210 do   891</td>
</tr>
<tr>
<td>Mar. 1954</td>
<td>Excess lands</td>
<td>Graham</td>
<td>Letter 384</td>
</tr>
<tr>
<td>Do</td>
<td>Wildlife habitat</td>
<td>Burke</td>
<td>M-36212 843</td>
</tr>
<tr>
<td>Apr. 1954</td>
<td>Excess lands</td>
<td>Aandahl</td>
<td>Letter 384</td>
</tr>
<tr>
<td>May 1954</td>
<td>No. Pac. damages</td>
<td>Burke</td>
<td>T-560 Memorandum 206, 202</td>
</tr>
<tr>
<td>Do</td>
<td>Development farm</td>
<td>do</td>
<td>M-36219 73, 74</td>
</tr>
<tr>
<td>June 1954</td>
<td>Lewis exchanges</td>
<td>Tudor</td>
<td>A-26748 do   45, 516</td>
</tr>
<tr>
<td>July 1954</td>
<td>Eklutna project</td>
<td>Crosthwait</td>
<td>do            891, 1011</td>
</tr>
<tr>
<td>Oct. 1954</td>
<td>All-American costs</td>
<td>Dexheimer</td>
<td>do            762</td>
</tr>
<tr>
<td>Do</td>
<td>Falls Smith Act</td>
<td>Armstrong</td>
<td>A-26927 61 I.D. 437 42, 222</td>
</tr>
<tr>
<td>Nov. 1954</td>
<td>CVP</td>
<td>do</td>
<td>Memorandum 587, 843, 1194</td>
</tr>
<tr>
<td>Jan. 1955</td>
<td>Relocation</td>
<td>Fritz</td>
<td>do            661</td>
</tr>
<tr>
<td>Do</td>
<td>Streit damages</td>
<td>Armstrong</td>
<td>T-476 62 I.D. 12 207, 208</td>
</tr>
<tr>
<td>Mar. 1955</td>
<td>Surplus property</td>
<td>Fritz</td>
<td>Memorandum 327, 962</td>
</tr>
<tr>
<td>Apr. 1955</td>
<td>Power lease</td>
<td>Armstrong</td>
<td>do            649</td>
</tr>
<tr>
<td>May 1955</td>
<td>Legal services</td>
<td>do</td>
<td>M-36233 62 I.D. 181 326</td>
</tr>
<tr>
<td>Sept. 1955</td>
<td>Gila housing</td>
<td>Fisher</td>
<td>Memorandum 860</td>
</tr>
<tr>
<td>Jan. 1956</td>
<td>Small tracts</td>
<td>Nielson</td>
<td>do            998</td>
</tr>
<tr>
<td>Do</td>
<td>Damages</td>
<td>Fritz</td>
<td>T-710 63 I.D. 12 209</td>
</tr>
<tr>
<td>Mar. 1956</td>
<td>Arnold project</td>
<td>Fisher</td>
<td>Memorandum 856, 970</td>
</tr>
<tr>
<td>Aug. 1956</td>
<td>Hospital</td>
<td>do</td>
<td>do            860</td>
</tr>
<tr>
<td>Oct. 1956</td>
<td>Colorado sediment</td>
<td>do</td>
<td>do            252, 415, 432</td>
</tr>
<tr>
<td>Do</td>
<td>Withdrawals</td>
<td>Soller</td>
<td>M-36382 do    39</td>
</tr>
<tr>
<td>Do</td>
<td>Cooling water</td>
<td>Fisher</td>
<td>do            651, 658</td>
</tr>
<tr>
<td>Nov. 1956</td>
<td>Fort Peck project</td>
<td>Beasley</td>
<td>Letter 609, 808</td>
</tr>
<tr>
<td>Jan. 1957</td>
<td>Mineral entry</td>
<td>McPhilllamey</td>
<td>M-36404 Memorandum 499</td>
</tr>
<tr>
<td>Do</td>
<td>Small projects</td>
<td>Fisher</td>
<td>do            1332</td>
</tr>
<tr>
<td>Mar. 1957</td>
<td>Rights of way</td>
<td>Fritz</td>
<td>M-36395 64 I.D. 70 862, 863, 1249</td>
</tr>
</tbody>
</table>
## INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
<th>Author</th>
<th>Document Type</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apr. 1957</td>
<td>Withdrawals</td>
<td>Fisher</td>
<td>Memorandum</td>
<td>39, 153, 499, 998</td>
</tr>
<tr>
<td>Do</td>
<td>Army irrigation revenues.</td>
<td>Beasley</td>
<td>Letter</td>
<td>806</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>Fisher</td>
<td>Memorandum</td>
<td>600, 998</td>
</tr>
<tr>
<td>Apr. 1957</td>
<td>Withdrawals</td>
<td>Fisher</td>
<td>Memorandum</td>
<td>S19, S37, S95</td>
</tr>
<tr>
<td>May 1957</td>
<td>MRB power revenues</td>
<td>Weinberg</td>
<td>Testimony</td>
<td>650, 804</td>
</tr>
<tr>
<td>July 1957</td>
<td>Kings excess lands</td>
<td>Bennett</td>
<td>64 I.D. 273</td>
<td>181, 381, 382, 383, 387, 805</td>
</tr>
<tr>
<td>July 1957</td>
<td>Excess lands</td>
<td>Bennett</td>
<td>64 I.D. 273</td>
<td>S73, S155</td>
</tr>
<tr>
<td>Sept. 1957</td>
<td>Small projects</td>
<td>Fisher</td>
<td>Memorandum</td>
<td>1332</td>
</tr>
<tr>
<td>Do</td>
<td>CRSP repayment</td>
<td>Weinberg</td>
<td>do</td>
<td>651, 1254</td>
</tr>
<tr>
<td>Do</td>
<td>R&amp;PP Act lease</td>
<td>Solier</td>
<td>do</td>
<td>45</td>
</tr>
<tr>
<td>Nov. 1957</td>
<td>Army projects</td>
<td>Bennett</td>
<td>M-36475</td>
<td>65 I.D. 525</td>
</tr>
<tr>
<td>Nov. 1957</td>
<td>Excess lands</td>
<td>Bennett</td>
<td>M-36475</td>
<td>65 I.D. 525</td>
</tr>
<tr>
<td>Mar. 1958</td>
<td>Flood studies</td>
<td>Bennett</td>
<td>M-36505</td>
<td>65 I.D. 129</td>
</tr>
<tr>
<td>Do</td>
<td>CRSP repayment</td>
<td>Fisher</td>
<td>Memorandum</td>
<td>651, 1254</td>
</tr>
<tr>
<td>Apr. 1958</td>
<td>W.C.U.excess lands</td>
<td>do</td>
<td>do</td>
<td>675</td>
</tr>
<tr>
<td>Do</td>
<td>Kimball mining</td>
<td>Fritz</td>
<td>A-27526</td>
<td>65 I.D. 166</td>
</tr>
<tr>
<td>Aug. 1958</td>
<td>Service facilities</td>
<td>Fisher</td>
<td>Memorandum</td>
<td>658</td>
</tr>
<tr>
<td>Oct. 1958</td>
<td>Resident owner</td>
<td>Fritz</td>
<td>do</td>
<td>998</td>
</tr>
<tr>
<td>Nov. 1958</td>
<td>Road relocation</td>
<td>Golze</td>
<td>do</td>
<td>661</td>
</tr>
<tr>
<td>Dec. 1958</td>
<td>Right of way</td>
<td>Dexheimer</td>
<td>Letter</td>
<td>20</td>
</tr>
<tr>
<td>Jan. 1959</td>
<td>Trinity taxes</td>
<td>do</td>
<td>do</td>
<td>1237</td>
</tr>
<tr>
<td>Feb. 1959</td>
<td>Strouff damages</td>
<td>Fritz</td>
<td>TA-180</td>
<td>208</td>
</tr>
<tr>
<td>Mar. 1959</td>
<td>Betterment costs</td>
<td>Abbott</td>
<td>do</td>
<td>971</td>
</tr>
<tr>
<td>Apr. 1959</td>
<td>Jones damages</td>
<td>Fritz</td>
<td>TA-185</td>
<td>do</td>
</tr>
<tr>
<td></td>
<td>(fr.)</td>
<td></td>
<td></td>
<td>208</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>Fisher</td>
<td>do</td>
<td>182, 384</td>
</tr>
<tr>
<td>May 1959</td>
<td>do</td>
<td>Aandahl</td>
<td>Letter</td>
<td>386</td>
</tr>
<tr>
<td>June 1959</td>
<td>Keating amendment</td>
<td>Fisher</td>
<td>M-36569</td>
<td>66 I.D. 226</td>
</tr>
<tr>
<td>Do</td>
<td>CRSP investigation</td>
<td>Beasley</td>
<td>Letter</td>
<td>700, 1257</td>
</tr>
<tr>
<td>July 1959</td>
<td>Exchanges</td>
<td>Fisher</td>
<td>Memorandum</td>
<td>327, 565, 662, 952, 1516</td>
</tr>
<tr>
<td>Sept. 1959</td>
<td>Treasure search</td>
<td>Weinberg</td>
<td>do</td>
<td>658</td>
</tr>
<tr>
<td>Oct. 1959</td>
<td>Well sites</td>
<td>Fisher</td>
<td>Teletype</td>
<td>18</td>
</tr>
<tr>
<td>Nov. 1959</td>
<td>Power preference</td>
<td>Coulter</td>
<td>Memorandum</td>
<td>572</td>
</tr>
<tr>
<td>Do</td>
<td>Small projects</td>
<td>Fisher</td>
<td>do</td>
<td>1332</td>
</tr>
<tr>
<td>Jan.1960</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>1338</td>
</tr>
<tr>
<td>Feb. 1960</td>
<td>Columbia basin</td>
<td>Aandahl</td>
<td>do</td>
<td>1024</td>
</tr>
<tr>
<td>Mar. 1960</td>
<td>Small projects</td>
<td>Abbott</td>
<td>Letter</td>
<td>1338</td>
</tr>
<tr>
<td>Apr. 1960</td>
<td>Coker withdrawals</td>
<td>Fritz</td>
<td>A-28188</td>
<td>67 I.D. 132</td>
</tr>
<tr>
<td>May 1960</td>
<td>Gallethine damages</td>
<td>do</td>
<td>T-906</td>
<td>67 I.D. 191</td>
</tr>
<tr>
<td>Do</td>
<td>Power sales</td>
<td>Fisher</td>
<td>Memorandum</td>
<td>649</td>
</tr>
<tr>
<td>May 1960</td>
<td>Hulse homesteads</td>
<td>Fritz</td>
<td>A-28288</td>
<td>67 I.D. 212</td>
</tr>
<tr>
<td>Do</td>
<td>P&amp;G Mining</td>
<td>Emst</td>
<td>A-27829</td>
<td>67 I.D. 217</td>
</tr>
</tbody>
</table>
INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Date</th>
<th>Project/Issue</th>
<th>Author(s)</th>
<th>Type</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nov. 1960</td>
<td>Small projects</td>
<td>Golze</td>
<td>Letter</td>
<td>1336</td>
</tr>
<tr>
<td>Apr. 1961</td>
<td>Power preference</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>650 1256</td>
</tr>
<tr>
<td>Do</td>
<td>Trespassers</td>
<td>Udall</td>
<td>Letter</td>
<td>658</td>
</tr>
<tr>
<td>Do</td>
<td>Soil and moisture</td>
<td>Davis</td>
<td>do</td>
<td>1022</td>
</tr>
<tr>
<td>May 1961</td>
<td>Well sites</td>
<td>Fisher</td>
<td>Memorandum</td>
<td>18</td>
</tr>
<tr>
<td>June 1961</td>
<td>Water use, power</td>
<td>Barry</td>
<td>Letter</td>
<td>798</td>
</tr>
<tr>
<td>July 1961</td>
<td>Repayment</td>
<td>do</td>
<td>M-36620</td>
<td>68 I.D. 305 . . . 379, 634, 641, 644, 645, 654, 655, 729</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>Fisher</td>
<td>M-36613</td>
<td>68 I.D. 433 . . . 182</td>
</tr>
<tr>
<td>Aug. 1961</td>
<td>Criminal sanctions</td>
<td>do</td>
<td>M-36614</td>
<td>68 I.D. 273 . . . 938</td>
</tr>
<tr>
<td>Sept. 1961</td>
<td>Excess lands</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>182 843</td>
</tr>
<tr>
<td>Do</td>
<td>Rehabilitation</td>
<td>Barry</td>
<td>M-36621</td>
<td>68 I.D. 263 . . . 970</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands, State</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>384</td>
</tr>
<tr>
<td>Dec. 1961</td>
<td>San Luis, CVP</td>
<td>Barry</td>
<td>M-36635</td>
<td>68 I.D. 412 . . . 167, 170, 381, 1525</td>
</tr>
<tr>
<td>Do</td>
<td>Kings excess lands</td>
<td>do</td>
<td>M-36634</td>
<td>68 I.D. 372 . . . 48, 64, 180, 181, 182, 198, 381, 382, 384, 386, 811</td>
</tr>
<tr>
<td>Mar. 1962</td>
<td>Fontanelle power</td>
<td>do</td>
<td>Memorandum</td>
<td>1249</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>Dominy</td>
<td>do</td>
<td>384</td>
</tr>
<tr>
<td>Apr. 1962</td>
<td>do</td>
<td>Udall</td>
<td>Letter</td>
<td>382, 642, 988, 987, 1080, 1082, 1108, 1138, 1141, 1173, 1187, 1190, 1324</td>
</tr>
<tr>
<td>Do</td>
<td>MRB-SW intertie</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>808</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>Barry</td>
<td>do</td>
<td>1550</td>
</tr>
<tr>
<td>July 1962</td>
<td>Reversible turbines</td>
<td>do</td>
<td>do</td>
<td>1529</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>do</td>
<td>do</td>
<td>574</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>Barry</td>
<td>Letter</td>
<td>383</td>
</tr>
<tr>
<td>Do</td>
<td>Glen Canyon</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>424, 697, 1255</td>
</tr>
<tr>
<td>Do</td>
<td>MRB-SW intertie</td>
<td>do</td>
<td>do</td>
<td>651, 662, 808</td>
</tr>
<tr>
<td>Aug. 1962</td>
<td>Excess lands</td>
<td>Udall</td>
<td>Letter</td>
<td>382</td>
</tr>
<tr>
<td>Nov. 1962</td>
<td>Cassady damages</td>
<td></td>
<td>TA-235</td>
<td>69 I.D. 193 . . . 207 (ir.).</td>
</tr>
<tr>
<td>Do</td>
<td>Arizona lands</td>
<td>Holum</td>
<td>Letter</td>
<td>142</td>
</tr>
<tr>
<td>Do</td>
<td>Water rights</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>586</td>
</tr>
<tr>
<td>Dec. 1962</td>
<td>Road relocation</td>
<td>do</td>
<td>do</td>
<td>645, 661, 1706</td>
</tr>
<tr>
<td>Do</td>
<td>Fish and wildlife</td>
<td>Barry</td>
<td>M-36643</td>
<td>69 I.D. 224 . . . 845</td>
</tr>
<tr>
<td>Mar. 1963</td>
<td>Rainbow Bridge</td>
<td>Barry</td>
<td>M-36653</td>
<td>70 I.D. 200 . . . 1249, 1250, 1552</td>
</tr>
<tr>
<td>June 1963</td>
<td>Pacific intertie</td>
<td>do</td>
<td>M-36656</td>
<td>70 I.D. 237 . . . 540, 571, 651, 803</td>
</tr>
<tr>
<td>July 1963</td>
<td>Rampart Dam</td>
<td>Hogan</td>
<td>Memorandum</td>
<td>11</td>
</tr>
</tbody>
</table>

S1291
## INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Author</th>
<th>Code</th>
<th>Notes</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aug. 1963</td>
<td>Brock damages</td>
<td>Barry</td>
<td>TA-249</td>
<td>70 I.D. 397</td>
<td>208</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td></td>
<td></td>
<td>Letter</td>
<td>385</td>
</tr>
<tr>
<td>Sept. 1963</td>
<td>Forest revenues</td>
<td>Hogan</td>
<td></td>
<td>Memorandum</td>
<td>246</td>
</tr>
<tr>
<td>Dec. 1963</td>
<td>Excess lands</td>
<td>Barry</td>
<td></td>
<td>Letter</td>
<td>385</td>
</tr>
<tr>
<td>Do</td>
<td>Bird refuge</td>
<td></td>
<td>M-36664</td>
<td>70 I.D. 527</td>
<td>1039</td>
</tr>
<tr>
<td>Do</td>
<td>Nevada water use</td>
<td>Holm</td>
<td></td>
<td>Letter</td>
<td>428</td>
</tr>
<tr>
<td>Jan. 1964</td>
<td>Recreation lease</td>
<td>Hogan</td>
<td></td>
<td>Memorandum</td>
<td>558</td>
</tr>
<tr>
<td>Do</td>
<td>Big Bend power</td>
<td></td>
<td></td>
<td>do</td>
<td>1425</td>
</tr>
<tr>
<td>Feb. 1964</td>
<td>Strait, et al., damages</td>
<td>Weinberg</td>
<td>T-1100</td>
<td>do</td>
<td>207</td>
</tr>
<tr>
<td>Do</td>
<td>Hanover damages</td>
<td></td>
<td>TA-256</td>
<td>do</td>
<td>208</td>
</tr>
<tr>
<td>Mar. 1964</td>
<td>Brewer damages</td>
<td></td>
<td>TA-253</td>
<td>71 I.D. 84</td>
<td>209</td>
</tr>
<tr>
<td>Apr. 1964</td>
<td>San Luis drain</td>
<td>Barry</td>
<td></td>
<td>Memorandum</td>
<td>291, 1530</td>
</tr>
<tr>
<td>Do</td>
<td>Emergency funds</td>
<td>Weinberg</td>
<td></td>
<td>do</td>
<td>33, 891, 1026</td>
</tr>
<tr>
<td>Do</td>
<td>Small projects</td>
<td>Kane</td>
<td></td>
<td>do</td>
<td>1358</td>
</tr>
<tr>
<td>Do</td>
<td>Anderson mill site</td>
<td>Hom</td>
<td>A-29881</td>
<td>71 I.D. 140</td>
<td>499</td>
</tr>
<tr>
<td>May 1964</td>
<td>Crop damages</td>
<td>Hogan</td>
<td></td>
<td>Memorandum</td>
<td>20</td>
</tr>
<tr>
<td>June 1964</td>
<td>Powers damages</td>
<td>Weinberg</td>
<td>TA-271</td>
<td>71 I.D. 237</td>
<td>206, 889</td>
</tr>
<tr>
<td>Do</td>
<td>Weather modification</td>
<td>Barry</td>
<td></td>
<td>Letter</td>
<td>34, 326, 1023</td>
</tr>
<tr>
<td>Do</td>
<td>Leavitt Act, MRB</td>
<td>Hogan</td>
<td></td>
<td>Memorandum</td>
<td>504, 808, 600, 648, 650, 803</td>
</tr>
<tr>
<td>Do</td>
<td>Power accounting</td>
<td>Holm</td>
<td></td>
<td>Memorandum</td>
<td>575, 599, 600, 648, 650, 803</td>
</tr>
<tr>
<td>July 1964</td>
<td>Canadian exchange</td>
<td>Barry</td>
<td>M-36669</td>
<td>71 I.D. 315</td>
<td>570, 573, 574, 662</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td></td>
<td></td>
<td>Letter</td>
<td>1526</td>
</tr>
<tr>
<td>Do</td>
<td>Leavitt Act, San Juan-Chama.</td>
<td>Lanning</td>
<td></td>
<td>Memorandum</td>
<td>505, 1252, 1255, 1659, 1662</td>
</tr>
<tr>
<td>Aug. 1964</td>
<td>Keating amendment</td>
<td>Barry</td>
<td></td>
<td>do</td>
<td>1054, 1758</td>
</tr>
<tr>
<td>Do</td>
<td>Bird refuge</td>
<td>Weinberg</td>
<td>M-36664</td>
<td>71 I.D. 311</td>
<td>1039</td>
</tr>
<tr>
<td>Do</td>
<td>Small projects</td>
<td>Hogan</td>
<td></td>
<td>(Supp.)</td>
<td>Memoran</td>
</tr>
<tr>
<td>Sept. 1964</td>
<td>Flood damage</td>
<td></td>
<td></td>
<td>do</td>
<td>1045</td>
</tr>
<tr>
<td>Do</td>
<td>do</td>
<td></td>
<td></td>
<td>do</td>
<td>1526</td>
</tr>
<tr>
<td>Do</td>
<td>Small projects</td>
<td>Weinberg</td>
<td></td>
<td>do</td>
<td>1338</td>
</tr>
<tr>
<td>Oct. 1964</td>
<td>Withdrawals</td>
<td>Hogan</td>
<td></td>
<td>do</td>
<td>38</td>
</tr>
<tr>
<td>Do</td>
<td>California Aqueduct</td>
<td>Weinberg</td>
<td></td>
<td>do</td>
<td>386, 1530, 1531</td>
</tr>
<tr>
<td>Nov. 1964</td>
<td>Edison wheeling</td>
<td></td>
<td>A-30325</td>
<td>71 I.D. 405</td>
<td>174</td>
</tr>
<tr>
<td>Do</td>
<td>Public service wheeling</td>
<td></td>
<td></td>
<td>do</td>
<td>174</td>
</tr>
<tr>
<td>Do</td>
<td>Myll desert lands</td>
<td></td>
<td>A-29620</td>
<td>71 I.D. 458</td>
<td>14, 422</td>
</tr>
<tr>
<td>Dec. 1964</td>
<td>Myll desert lands</td>
<td>Weinberg</td>
<td>A-29620</td>
<td>71 I.D. 486</td>
<td>4, 124, 422</td>
</tr>
<tr>
<td></td>
<td>(Supp. I)</td>
<td></td>
<td></td>
<td>do</td>
<td>1481</td>
</tr>
<tr>
<td>Do</td>
<td>Boulder City storage</td>
<td>Hogan</td>
<td></td>
<td>Memorandum</td>
<td>1481</td>
</tr>
<tr>
<td>Do</td>
<td>Small projects</td>
<td></td>
<td></td>
<td>do</td>
<td>1332</td>
</tr>
<tr>
<td>Do</td>
<td>Imperial Irr. Dist.</td>
<td>Hogan</td>
<td>M-36675</td>
<td>71 I.D. 496</td>
<td>13, 54, 64, 65</td>
</tr>
<tr>
<td>Dec. 1964</td>
<td>Excess lands</td>
<td>Barry</td>
<td>M-36675</td>
<td>711, D. 496, S19, S20,</td>
<td>1481</td>
</tr>
</tbody>
</table>

S1292
## INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Author(s)</th>
<th>Type</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan. 1965</td>
<td>Excess lands</td>
<td>do</td>
<td>Letter</td>
<td>383</td>
</tr>
<tr>
<td>Feb. 1965</td>
<td>Canal Act</td>
<td>Weinberg</td>
<td>do</td>
<td>1767</td>
</tr>
<tr>
<td>Do</td>
<td>Canadian exchange</td>
<td>Barry</td>
<td></td>
<td>1764</td>
</tr>
<tr>
<td>Do</td>
<td>Soil conservation</td>
<td>do</td>
<td></td>
<td>519</td>
</tr>
<tr>
<td>Do</td>
<td>Harris entry exchange</td>
<td>Weinberg</td>
<td>A-29243</td>
<td>1740</td>
</tr>
<tr>
<td>Do</td>
<td>Ritter desert lands</td>
<td>Carver</td>
<td>A-30415</td>
<td>516</td>
</tr>
<tr>
<td>Mar. 1965</td>
<td>Power preference</td>
<td>Coulter</td>
<td>Memorandum</td>
<td>650, 1256</td>
</tr>
<tr>
<td>Do</td>
<td>Clarkson desert</td>
<td>Carver</td>
<td>A-30438</td>
<td>14, 422,</td>
</tr>
<tr>
<td>Do</td>
<td>Future capacity</td>
<td>Hogan</td>
<td>Memorandum</td>
<td>1428</td>
</tr>
<tr>
<td>Mar. 1965</td>
<td>Water storage</td>
<td>Hogan</td>
<td>Memorandum</td>
<td>S284</td>
</tr>
<tr>
<td>Apr. 1965</td>
<td>Small projects</td>
<td>do</td>
<td>do</td>
<td>1332</td>
</tr>
<tr>
<td>Do</td>
<td>Eden project</td>
<td>do</td>
<td>do</td>
<td>675, 955</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>do</td>
<td>do</td>
<td>386</td>
</tr>
<tr>
<td>May 1965</td>
<td>Eden project</td>
<td>do</td>
<td>do</td>
<td>955</td>
</tr>
<tr>
<td>Do</td>
<td>CRSP power rates</td>
<td>Udall</td>
<td>Letter</td>
<td>575, 649</td>
</tr>
<tr>
<td>June 1965</td>
<td>Excess lands</td>
<td>Weinberg</td>
<td>M-36666</td>
<td>182, 384</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>386, 387</td>
</tr>
<tr>
<td>July 1965</td>
<td>McNary costs</td>
<td>Barry</td>
<td>Memorandum</td>
<td>575</td>
</tr>
<tr>
<td>Aug. 1965</td>
<td>Columbia Treaty</td>
<td>Weinberg</td>
<td>do</td>
<td>1825</td>
</tr>
<tr>
<td>Sept. 1965</td>
<td>Recreation costs</td>
<td>Hogan</td>
<td>do</td>
<td>1825</td>
</tr>
<tr>
<td>Oct. 1965</td>
<td>Palo Verde claims</td>
<td>Barry</td>
<td>M-36684</td>
<td>43</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>Weinberg</td>
<td>do</td>
<td>386</td>
</tr>
<tr>
<td>Do</td>
<td>do</td>
<td>Barry</td>
<td>do</td>
<td>385</td>
</tr>
<tr>
<td>Nov. 1965</td>
<td>do</td>
<td>Weinberg</td>
<td>do</td>
<td>385</td>
</tr>
<tr>
<td>Do</td>
<td>do</td>
<td>do</td>
<td>do</td>
<td>385</td>
</tr>
<tr>
<td>Do</td>
<td>do</td>
<td>Barry</td>
<td>Letter</td>
<td>385</td>
</tr>
<tr>
<td>Dec. 1965</td>
<td>Desert lands, California.</td>
<td>Udall</td>
<td>Notice</td>
<td>422</td>
</tr>
<tr>
<td>Do</td>
<td>Excess lands</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>182, 384</td>
</tr>
<tr>
<td>Do</td>
<td>Myll desert lands</td>
<td>A-29920</td>
<td></td>
<td>14, 124,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>422</td>
</tr>
<tr>
<td>July 1966</td>
<td>Weather research</td>
<td>Hogan</td>
<td>Memorandum</td>
<td>34, 36,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>326, 806,1023</td>
</tr>
<tr>
<td>Do</td>
<td>CRSP emergencies</td>
<td>Bennett</td>
<td>do</td>
<td>1254</td>
</tr>
<tr>
<td>Aug. 1966</td>
<td>Clay removed</td>
<td>Coulter</td>
<td>do</td>
<td>23, 94,</td>
</tr>
<tr>
<td>Do</td>
<td>Gila exchange</td>
<td>Barry</td>
<td>M-36694</td>
<td>662</td>
</tr>
<tr>
<td>Sept. 1966</td>
<td>Recreation repayment</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>1821</td>
</tr>
<tr>
<td>Do</td>
<td>Recreation Act</td>
<td>Meyer</td>
<td>do</td>
<td>1821</td>
</tr>
<tr>
<td>Oct. 1966</td>
<td>Indian projects</td>
<td>Hogan</td>
<td>do</td>
<td>1823, 1825</td>
</tr>
<tr>
<td>Feb. 1967</td>
<td>Project modification</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>S414,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>S415</td>
</tr>
<tr>
<td>Feb. 1967</td>
<td>Recreation revenues</td>
<td>Hogan</td>
<td>Memorandum</td>
<td>S41, S52,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>S70, S361,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>S394, S395</td>
</tr>
<tr>
<td>Mar. 1967</td>
<td>San Luis drain</td>
<td>Hogan</td>
<td>Memorandum</td>
<td>S67, S297</td>
</tr>
<tr>
<td>Apr. 1967</td>
<td>Power R&amp;D authority</td>
<td>Hogan</td>
<td>Memorandum</td>
<td>S18, S71,</td>
</tr>
</tbody>
</table>

S1293
## INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Author</th>
<th>Type</th>
<th>P. No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apr. 1967</td>
<td>Excess lands</td>
<td>Hogan</td>
<td>Memorandum</td>
<td>S125, S131</td>
</tr>
<tr>
<td>June 1967</td>
<td>Transmission lines</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>S158, S351, S416</td>
</tr>
<tr>
<td>July 1967</td>
<td>Indian lands</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>S97, S35711</td>
</tr>
<tr>
<td>July 1967</td>
<td>Indian lands</td>
<td>Allan</td>
<td>Memorandum</td>
<td>S97, S35711</td>
</tr>
<tr>
<td>July 1967</td>
<td>Preference customers</td>
<td>Barry</td>
<td>Memorandum</td>
<td>S130, S35771</td>
</tr>
<tr>
<td>Sep. 1967</td>
<td>Cost allocation</td>
<td>Killin</td>
<td>Memorandum</td>
<td>S284, S321</td>
</tr>
<tr>
<td>Oct. 1967</td>
<td>Navajo water use</td>
<td>Holum</td>
<td>Letter</td>
<td>S323, S326</td>
</tr>
<tr>
<td>Dec. 1967</td>
<td>Excess lands</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>S44, S76, S265</td>
</tr>
<tr>
<td>Jan. 1968</td>
<td>Centralia power</td>
<td>Pelz</td>
<td>Memorandum</td>
<td>S112, S119, S131, S151</td>
</tr>
<tr>
<td>Jan. 1968</td>
<td>Excess lands</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>S81, S373</td>
</tr>
<tr>
<td>Feb. 1968</td>
<td>R&amp;B restrictions</td>
<td>Miron</td>
<td>Memorandum</td>
<td>S191, S393</td>
</tr>
<tr>
<td>Mar. 1968</td>
<td>Recreation</td>
<td>Meyer</td>
<td>Memorandum</td>
<td>S239, S343</td>
</tr>
<tr>
<td>Mar. 1968</td>
<td>Alaska power studies</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>S151, S197</td>
</tr>
<tr>
<td>Mar. 1968</td>
<td>Small projects</td>
<td>M-36698</td>
<td>Memorandum</td>
<td>S270, S324</td>
</tr>
<tr>
<td>Apr. 1968</td>
<td>Indian lands</td>
<td>Soller</td>
<td>Memorandum</td>
<td>S87, S348</td>
</tr>
<tr>
<td>Apr. 1968</td>
<td>Contributed funds</td>
<td>Miron</td>
<td>Memorandum</td>
<td>S348, S296</td>
</tr>
<tr>
<td>Apr. 1968</td>
<td>Excess lands</td>
<td>Weinberg</td>
<td>M-36729 to 75 I.D. 115, 119</td>
<td>S22, S322, S84, S122, S373</td>
</tr>
<tr>
<td>May 1968</td>
<td>R&amp;B funds</td>
<td>Miron</td>
<td>Memorandum</td>
<td>S191, S81, S82</td>
</tr>
<tr>
<td>May 1968</td>
<td>Small projects</td>
<td>Miron</td>
<td>Memorandum</td>
<td>S270, S324</td>
</tr>
<tr>
<td>June 1968</td>
<td>Small projects</td>
<td>Allan</td>
<td>Letter</td>
<td>S270, S326, S278</td>
</tr>
<tr>
<td>June 1968</td>
<td>Excess lands</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>S81, S348</td>
</tr>
<tr>
<td>June 1968</td>
<td>Excess lands</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>S82, S81, S348</td>
</tr>
<tr>
<td>July 1968</td>
<td>Labor standards</td>
<td>Davis</td>
<td>Memorandum</td>
<td>S91, S393</td>
</tr>
<tr>
<td>Sep. 1968</td>
<td>Excess lands</td>
<td>Miron</td>
<td>M-36751</td>
<td>S306, S311</td>
</tr>
<tr>
<td>Oct. 1968</td>
<td>Excess lands</td>
<td>Weinberg</td>
<td>M-36755</td>
<td>75 I.D. 335, S82</td>
</tr>
<tr>
<td>Oct. 1968</td>
<td>Excess lands</td>
<td>Miron</td>
<td>Memorandum</td>
<td>S81, S82, S348</td>
</tr>
<tr>
<td>Nov. 1968</td>
<td>Excess lands</td>
<td>Miron</td>
<td>Memorandum</td>
<td>S81, S348</td>
</tr>
<tr>
<td>Dec. 1968</td>
<td>BPA authority</td>
<td>Weinberg</td>
<td>M-36769</td>
<td>75 I.D. 403, S111, S113, S114, S116, S126, S131, S150, S151</td>
</tr>
<tr>
<td>Jan. 1969</td>
<td>Project modification</td>
<td>Miron</td>
<td>Memorandum</td>
<td>S405, S138</td>
</tr>
<tr>
<td>Jan. 1969</td>
<td>Small projects</td>
<td>Miron</td>
<td>Memorandum</td>
<td>S275, S348</td>
</tr>
<tr>
<td>Jan. 1969</td>
<td>Excess lands</td>
<td>Miron</td>
<td>Memorandum</td>
<td>S348, S80</td>
</tr>
<tr>
<td>Feb. 1969</td>
<td>Oahe Unit hunting</td>
<td>Weinberg</td>
<td>Memorandum</td>
<td>2376, S357</td>
</tr>
<tr>
<td>Mar. 1969</td>
<td>Excess lands</td>
<td>Miron</td>
<td>Memorandum</td>
<td>S80, S82, S348</td>
</tr>
<tr>
<td>Apr. 1969</td>
<td>Excess lands</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>S348, S83</td>
</tr>
<tr>
<td>Apr. 1969</td>
<td>CAP thermal capacity</td>
<td>Melich</td>
<td>Memorandum</td>
<td>2405, 2411</td>
</tr>
<tr>
<td>May 1969</td>
<td>Easement revenues</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>S70, S136, S188</td>
</tr>
<tr>
<td>May 1969</td>
<td>Easement revenues</td>
<td>Melich</td>
<td>Letter</td>
<td>S70, S188</td>
</tr>
</tbody>
</table>

S1294
INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Date</th>
<th>Item</th>
<th>Author</th>
<th>Type</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sep. 1969</td>
<td>Recreation, F&amp;W</td>
<td>Davis</td>
<td>Memorandum</td>
<td>S109,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>S391,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>S392</td>
</tr>
<tr>
<td>Sep. 1969</td>
<td>Excess lands</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>S78, S83,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>S264</td>
</tr>
<tr>
<td>Dec. 1969</td>
<td>Navajo project water</td>
<td>Melich</td>
<td>M-36799</td>
<td>76 I.D. 357</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2405,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2420, S179</td>
</tr>
<tr>
<td>Dec. 1969</td>
<td>Public access</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>S276</td>
</tr>
<tr>
<td>Jan. 1970</td>
<td>Small projects</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>S271</td>
</tr>
<tr>
<td>Mar. 1970</td>
<td>Relocations</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>S137, S283,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>S283</td>
</tr>
<tr>
<td>Mar. 1970</td>
<td>Excess lands</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>S22</td>
</tr>
<tr>
<td>Mar. 1970</td>
<td>Excess lands</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>S81</td>
</tr>
<tr>
<td>Apr. 1970</td>
<td>Excess lands</td>
<td>Davis</td>
<td>Memorandum</td>
<td>S80, S275,</td>
</tr>
<tr>
<td>Apr. 1970</td>
<td>Irrigation diversions</td>
<td>Smith</td>
<td>Letter</td>
<td>S21, S74,</td>
</tr>
<tr>
<td>Oct. 1970</td>
<td>State excess lands</td>
<td>Davis</td>
<td>Memorandum</td>
<td>S259</td>
</tr>
<tr>
<td>Oct. 1970</td>
<td>Excess lands</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>S44</td>
</tr>
<tr>
<td>Jan. 1971</td>
<td>Small projects</td>
<td>Davis</td>
<td>Memorandum</td>
<td>S271, S276,</td>
</tr>
<tr>
<td>Feb. 1971</td>
<td>Small projects</td>
<td>Melich</td>
<td>Memorandum</td>
<td>S270</td>
</tr>
<tr>
<td>Apr. 1971</td>
<td>Johnson withdrawals</td>
<td>Ritvo</td>
<td>IBLA 70-14</td>
<td>S19, S37,</td>
</tr>
<tr>
<td>May 1971</td>
<td>Excess lands</td>
<td>Morthland</td>
<td>Letter</td>
<td>S80, S275,</td>
</tr>
<tr>
<td>May 1971</td>
<td>Eklutna project</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>S67, S197,</td>
</tr>
<tr>
<td>June 1971</td>
<td>Gingery Smith Act</td>
<td>Ritvo</td>
<td>IBLA 70-6</td>
<td>S50</td>
</tr>
<tr>
<td>June 1971</td>
<td>Relocation assistance</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>2618, S263, S237,</td>
</tr>
<tr>
<td>June 1971</td>
<td>Augmenting Colorado</td>
<td>Melich</td>
<td>M-36830</td>
<td>2397, S349,</td>
</tr>
<tr>
<td>July 1971</td>
<td>Recreation, F&amp;W</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>S389, S392, S393,</td>
</tr>
<tr>
<td>July 1971</td>
<td>Relocation assistance</td>
<td>Morthland</td>
<td>Memorandum</td>
<td>2619, 2632, S9, S354,</td>
</tr>
<tr>
<td>May 1972</td>
<td>COE permits</td>
<td>Meade</td>
<td>Memorandum</td>
<td>S15, S89,</td>
</tr>
<tr>
<td>May 1972</td>
<td>Texas projects</td>
<td>Robison</td>
<td>Memorandum</td>
<td>S57</td>
</tr>
<tr>
<td>June 1972</td>
<td>Water storage</td>
<td>Robison</td>
<td>Memorandum</td>
<td>S233</td>
</tr>
<tr>
<td>Aug. 1972</td>
<td>Strawberry Valley</td>
<td>Melich</td>
<td>M-36883</td>
<td>79 I.D. 513, S36, S69, S120, S163,</td>
</tr>
<tr>
<td>Sep. 1972</td>
<td>Tule Lake</td>
<td>Coulter</td>
<td>Memorandum</td>
<td>S356</td>
</tr>
<tr>
<td>Nov. 1972</td>
<td>Rio Grande revenues</td>
<td>Robison</td>
<td>Memorandum</td>
<td>S40, S69, S120, S187,</td>
</tr>
<tr>
<td>Nov. 1972</td>
<td>CAP water priorities</td>
<td>Melich</td>
<td>Memorandum</td>
<td>2407, S2408,</td>
</tr>
<tr>
<td>June 1973</td>
<td>P-SMBP cost allocation</td>
<td>Pelz</td>
<td>Memorandum</td>
<td>S157, S403,</td>
</tr>
<tr>
<td>July 1973</td>
<td>Excess lands</td>
<td>Frizzell</td>
<td>Letter</td>
<td>S80, S82,</td>
</tr>
<tr>
<td>Nov. 1973</td>
<td>Excess lands</td>
<td>Frizzell</td>
<td>Memorandum</td>
<td>S80</td>
</tr>
<tr>
<td>Feb. 1974</td>
<td>Power rates</td>
<td>Pelz</td>
<td>M-36874</td>
<td>81 I.D. 72, S128,</td>
</tr>
</tbody>
</table>

S1295
## INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Authors</th>
<th>Corresponding Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mar. 1974</td>
<td>Excess lands</td>
<td>Long</td>
<td>Memorandum S81, S84</td>
</tr>
<tr>
<td>Apr. 1974</td>
<td>Navajo irrigation</td>
<td>Robison</td>
<td>Memorandum S321,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>S323</td>
</tr>
<tr>
<td>Apr. 1974</td>
<td>Dredging</td>
<td>Robison</td>
<td>Memorandum S87</td>
</tr>
<tr>
<td>May 1974</td>
<td>Navajo irrigation</td>
<td>Sullivan</td>
<td>Memorandum S327</td>
</tr>
<tr>
<td>May 1974</td>
<td>Navajo irrigation</td>
<td>Frizzell</td>
<td>Memorandum S327</td>
</tr>
<tr>
<td>June 1974</td>
<td>Indian lands</td>
<td>Frizzell</td>
<td>M-36887</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>84 I.D. 72</td>
</tr>
<tr>
<td>July 1974</td>
<td><em>Diedrich</em> fraud</td>
<td>Doane</td>
<td>OHA 72-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>BR-1.</td>
</tr>
<tr>
<td>July 1974</td>
<td>CAP power revenues</td>
<td>Pelz</td>
<td>Memorandum 2413</td>
</tr>
<tr>
<td>Sep. 1974</td>
<td>Water rates</td>
<td>London</td>
<td>Memorandum S133</td>
</tr>
<tr>
<td>Nov. 1974</td>
<td>Supplemental power</td>
<td>Pelz</td>
<td>Memorandum S130,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>S131, S151</td>
</tr>
<tr>
<td>Nov. 1974</td>
<td>P-SMBP M&amp;I water</td>
<td>Frizzell</td>
<td>Memorandum, S133,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>S159</td>
</tr>
<tr>
<td>Dec. 1974</td>
<td>New Melones water</td>
<td>London</td>
<td>Memorandum S341</td>
</tr>
<tr>
<td>Jan. 1975</td>
<td>Power rates</td>
<td>Lindgren</td>
<td>Letter S128</td>
</tr>
<tr>
<td>Jan. 1975</td>
<td>Excess lands</td>
<td>Stamm, Garner</td>
<td>Memorandum S79, S80</td>
</tr>
<tr>
<td>Feb. 1975</td>
<td>Supplemental power</td>
<td>Garner</td>
<td>Memorandum S67,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>S131, S157</td>
</tr>
<tr>
<td>Apr. 1975</td>
<td>Arvin-Edison power rates</td>
<td>Pelz</td>
<td>Memorandum S33,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>S127, S128, S236, S237</td>
</tr>
<tr>
<td>May 1975</td>
<td>COE permits</td>
<td>Gamer</td>
<td>Letter S13, S32</td>
</tr>
<tr>
<td>June 1975</td>
<td>R&amp;B costs</td>
<td>Gamer</td>
<td>Memorandum S124,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>S190</td>
</tr>
<tr>
<td>June 1975</td>
<td>Excess lands</td>
<td>Stamm, Garner</td>
<td>Memorandum S79</td>
</tr>
<tr>
<td>Aug. 1975</td>
<td>Excess lands</td>
<td>Stamm</td>
<td>Memorandum S79, S83</td>
</tr>
<tr>
<td>Sep. 1975</td>
<td>Water quality, CVP</td>
<td>Garner</td>
<td>Memorandum 2715,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>S119</td>
</tr>
<tr>
<td>Nov. 1975</td>
<td>Yuma M&amp;I water</td>
<td>Gamer</td>
<td>Memorandum S55</td>
</tr>
<tr>
<td>Feb. 1976</td>
<td>Uintah discount rate</td>
<td>Austin</td>
<td>Letter 2417,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2841</td>
</tr>
<tr>
<td>May 1976</td>
<td>Power sales</td>
<td>Pelz</td>
<td>Memorandum S127,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>S130</td>
</tr>
<tr>
<td>July 1976</td>
<td>Excess lands</td>
<td>Tidwell</td>
<td>Memorandum S79</td>
</tr>
<tr>
<td>Aug. 1976</td>
<td>Power licensing</td>
<td>McDowell</td>
<td>Memorandum S33, S58,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>S128</td>
</tr>
<tr>
<td>Sep. 1976</td>
<td>Excess lands</td>
<td>Tidwell</td>
<td>Memorandum S79</td>
</tr>
<tr>
<td>Sep. 1976</td>
<td>Excess lands</td>
<td>Tidwell</td>
<td>Memorandum S82</td>
</tr>
<tr>
<td>Nov. 1976</td>
<td>BPA authority</td>
<td>Halvorson</td>
<td>M-36885</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>83 I.D. 569</td>
</tr>
<tr>
<td>Dec. 1976</td>
<td>Excess lands</td>
<td>London</td>
<td>Letter S84</td>
</tr>
<tr>
<td>Dec. 1976</td>
<td>Excess lands</td>
<td>Austin</td>
<td>Letter S83</td>
</tr>
<tr>
<td>Dec. 1976</td>
<td><em>Island Park</em> claim.</td>
<td>Richards</td>
<td>1 Teton 1 83 I.D. 660</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2942, 2943, 2945</td>
</tr>
<tr>
<td>Jan. 1977</td>
<td>Indian lands</td>
<td>Austin</td>
<td>84 I.D. 1</td>
</tr>
<tr>
<td>Jan. 1977</td>
<td>Excess lands</td>
<td>London</td>
<td>Memorandum S82</td>
</tr>
<tr>
<td>Jan. 1977</td>
<td>Excess lands</td>
<td>Stamm</td>
<td>Memorandum S79, S83</td>
</tr>
<tr>
<td>Feb. 1977</td>
<td>Welton-Mohawk</td>
<td>Ferguson</td>
<td>Memorandum 2861,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>costs S191</td>
</tr>
<tr>
<td>Feb. 1977</td>
<td>Water storage</td>
<td>Ferguson</td>
<td>Memorandum S284</td>
</tr>
<tr>
<td>May 1977</td>
<td>Ellingsen exchange</td>
<td>McDowell</td>
<td>Memorandum S144,</td>
</tr>
</tbody>
</table>

S1296
# INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Author</th>
<th>Type</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1977</td>
<td>Private projects</td>
<td>McDowell</td>
<td>Memorandum</td>
<td>S167, S190</td>
</tr>
<tr>
<td>Sep. 1977</td>
<td>Small projects</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S137, S277</td>
</tr>
<tr>
<td>Sep. 1977</td>
<td>Excess lands</td>
<td>Krulitz</td>
<td>Memorandum</td>
<td>S20, S22, S250</td>
</tr>
<tr>
<td>Sep. 1977</td>
<td>Excess lands, R &amp; B loans.</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S192, S211</td>
</tr>
<tr>
<td>Dec. 1977</td>
<td>Excess lands</td>
<td>Lowman</td>
<td>Memorandum</td>
<td>S22</td>
</tr>
<tr>
<td>May 1978</td>
<td>New Melones water</td>
<td>Krulitz</td>
<td>Memorandum</td>
<td>S341</td>
</tr>
<tr>
<td>July 1978</td>
<td>Excess lands</td>
<td>Krulitz</td>
<td>Mem. M-36904, 85 I.D. 254, S21, S274</td>
<td></td>
</tr>
<tr>
<td>Sept. 1978</td>
<td>Excess lands, R &amp; B payout.</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S192, S211</td>
</tr>
<tr>
<td>May 1979</td>
<td>Land reclassification</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S124</td>
</tr>
<tr>
<td>May 1979</td>
<td>Excess lands</td>
<td>Krulitz</td>
<td>Mem. M-36813, 86 I.D. 306, S78, S84</td>
<td></td>
</tr>
<tr>
<td>June 1979</td>
<td>SODA, Island Park Dam.</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>3125</td>
</tr>
<tr>
<td>June 1979</td>
<td>Nonreserved water rights.</td>
<td>Krulitz</td>
<td>Mem. M-36914, 86 I.D. 553, S2, S4</td>
<td></td>
</tr>
<tr>
<td>June 1979</td>
<td>Rights-of-way</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>3009, S71</td>
</tr>
<tr>
<td>Aug. 1979</td>
<td>Excess lands</td>
<td>Krulitz</td>
<td>Memorandum</td>
<td>S78, S265</td>
</tr>
<tr>
<td>Aug. 1979</td>
<td>Excess lands</td>
<td>Andrus</td>
<td>Letter</td>
<td>S44, S77</td>
</tr>
<tr>
<td>Sep. 1979</td>
<td>Transmission lines</td>
<td>Krulitz</td>
<td>Memorandum</td>
<td>2400, S3059</td>
</tr>
<tr>
<td>Oct. 1979</td>
<td>Land classification</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S212</td>
</tr>
<tr>
<td>Oct. 1979</td>
<td>CAP interest charges</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S246</td>
</tr>
<tr>
<td>Oct. 1979</td>
<td>Small projects</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S269</td>
</tr>
<tr>
<td>Nov. 1979</td>
<td>Oahe termination</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>2378</td>
</tr>
<tr>
<td>Dec. 1979</td>
<td>Small projects</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>S272, S275</td>
</tr>
<tr>
<td>Dec. 1979</td>
<td>Emergency fund</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S178</td>
</tr>
<tr>
<td>Jan. 1980</td>
<td>Delaware withdrawals</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>S317</td>
</tr>
<tr>
<td>Jan. 1980</td>
<td>Excess lands</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S78, S265</td>
</tr>
<tr>
<td>Feb. 1980</td>
<td>Indian preference</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>2399</td>
</tr>
<tr>
<td>Feb. 1980</td>
<td>Orme Dam</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>2400, S395</td>
</tr>
</tbody>
</table>
### INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Author(s)</th>
<th>Type</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apr. 1980</td>
<td>Archeological</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S257, S302</td>
</tr>
<tr>
<td>Apr. 1980</td>
<td>Foresthill Bridge</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>S344</td>
</tr>
<tr>
<td>Apr. 1980</td>
<td>Dam rehabilitation</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S127, S191, S269</td>
</tr>
<tr>
<td>May 1980</td>
<td>Small projects</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S269</td>
</tr>
<tr>
<td>May 1980</td>
<td>Irrigation diversions</td>
<td>Andrus</td>
<td>Letter</td>
<td>S156</td>
</tr>
<tr>
<td>May 1980</td>
<td>from COE reservoirs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>June 1980</td>
<td>Excess lands</td>
<td>Leshy</td>
<td>Memorandum</td>
<td>S78, S264</td>
</tr>
<tr>
<td>July 1980</td>
<td>Tehama-Colusa</td>
<td>Leshy, Dauber</td>
<td>Memorandum</td>
<td>S203</td>
</tr>
<tr>
<td>July 1980</td>
<td>CRSP power</td>
<td>Little</td>
<td>Memorandum</td>
<td>S250</td>
</tr>
<tr>
<td>July 1980</td>
<td>Tucson Aqueduct</td>
<td>Little</td>
<td>Memorandum</td>
<td>2400, 2401</td>
</tr>
<tr>
<td>July 1980</td>
<td>Power licensing</td>
<td>Little</td>
<td>Memorandum</td>
<td>S59, S157, S157</td>
</tr>
<tr>
<td>Aug. 1980</td>
<td>Power licensing</td>
<td>Little</td>
<td>Memorandum</td>
<td>S59, S157</td>
</tr>
<tr>
<td>Sep. 1990</td>
<td>Recreation</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>S269, S418</td>
</tr>
<tr>
<td>Oct. 1980</td>
<td>P-SMBP cost allocations</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>3058, S157, S403</td>
</tr>
<tr>
<td>Oct. 1980</td>
<td>M&amp;I water rates</td>
<td>Little</td>
<td>Memorandum</td>
<td>S133</td>
</tr>
<tr>
<td>Oct. 1980</td>
<td>Historic preservation</td>
<td>Little</td>
<td>Memorandum</td>
<td>2317, 2333</td>
</tr>
<tr>
<td>Oct. 1980</td>
<td>Power licensing</td>
<td>Little</td>
<td>Memorandum</td>
<td>S58, S59, S61, S126</td>
</tr>
<tr>
<td>Nov. 1980</td>
<td>Excess lands</td>
<td>Little</td>
<td>Memorandum</td>
<td>S297</td>
</tr>
<tr>
<td>Nov. 1980</td>
<td>CVP repayment</td>
<td>Little</td>
<td>Memorandum</td>
<td>S118, S134, S135</td>
</tr>
<tr>
<td>Dec. 1980</td>
<td>Interest rates</td>
<td>Little</td>
<td>Memorandum</td>
<td>S255</td>
</tr>
<tr>
<td>Dec. 1980</td>
<td>Stampede Reservoir</td>
<td>Martz</td>
<td>Memorandum</td>
<td>S266</td>
</tr>
<tr>
<td>Dec. 1980</td>
<td>Loan repayment</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>S236</td>
</tr>
<tr>
<td>Jan. 1981</td>
<td>Recreation, F&amp;W</td>
<td>Martz</td>
<td>Memorandum</td>
<td>M-36931 S393</td>
</tr>
<tr>
<td>Jan. 1981</td>
<td>Stampede Reservoir</td>
<td>Martz</td>
<td>Memorandum</td>
<td>2808, S265, S267, S284</td>
</tr>
<tr>
<td>Jan. 1981</td>
<td>Yuma desalting plant</td>
<td>Martz</td>
<td>Memorandum</td>
<td>2861</td>
</tr>
<tr>
<td>Feb. 1981</td>
<td>Sewer systems</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>S236</td>
</tr>
<tr>
<td>Feb. 1981</td>
<td>R&amp;B funds</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>S165, S190</td>
</tr>
<tr>
<td>Apr. 1981</td>
<td>Excess lands</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>S21, S275</td>
</tr>
<tr>
<td>June 1981</td>
<td>Reclamation fund</td>
<td>Elliott</td>
<td>Memorandum</td>
<td>S63</td>
</tr>
<tr>
<td>June 1981</td>
<td>Construction charges</td>
<td>Mauro</td>
<td>Memorandum</td>
<td>S69, S134</td>
</tr>
<tr>
<td>June 1981</td>
<td>P-SMBP reauthorization</td>
<td>McBride</td>
<td>Memorandum</td>
<td>S127, S158, S351</td>
</tr>
<tr>
<td>June 1981</td>
<td>R&amp;B funds</td>
<td>Elliott</td>
<td>Memorandum</td>
<td>S165, S191</td>
</tr>
<tr>
<td>Sep. 1981</td>
<td>Nonreserved water rights</td>
<td>Coldiron</td>
<td>Memorandum</td>
<td>M-36914 88 I. D. 1055, 1055, 81, S2, S4, S27</td>
</tr>
<tr>
<td>Sep. 1981</td>
<td>Orma Dam</td>
<td>Coldiron</td>
<td>Memorandum</td>
<td>2400, 2403, 2411</td>
</tr>
</tbody>
</table>

S1298
INDEX TO VOLUME V AND SUPPLEMENT II

Dec. 1981 . Power lease charge . . Good . . . . . . . . . . Memorandum S3163,
S33, S61, S126
2752, S390, S393
Mar. 1982 . CAP distribution . Fisher . . . . . . . . . . Memorandum 2399,
systems.
2411, 2412, S236
Apr. 1982 . Navajo water users . Coldiron . . . . . . . . . . Memorandum S321,
S323
Sep. 1982 . Reclamation fund . Good . . . . . . . . . . Memorandum 2416,
2873, S17, S18, S46,
S237, S255, S258, S278
Dec. 1982 . P-SMBP cost allocation . Coldiron . . . . . . . . . . Memorandum 3058,
S158, S402, S403

OPTIMA RESERVOIR 1002

ORANGE COVE IRRIGATION DISTRICT 383

OREGON & CALIFORNIA RAILROAD COMPANY 33

OREGON GAME AND FISH COMMISSION 2930

OREGON SHORT LINE RAILROAD COMPANY 657

OREGON, STATE OF

Compacts of. See COLUMBIA RIVER COMPACT; KLAMATH RIVER BASIN COMPACT.
Contract required for support of Vale project 337
Desert Land Act applies 13
Executive Order No. 6910 and Taylor Grazing Act apply 515
Lands ceded by, for Klamath project subject to reclamation laws 788
Legislation ceding lands exposed by lowering of Lower Klamath, Tule and Goose
Lakes 95
Membership in Pacific Northwest Electric Power and Conservation Planning Council
3229
Projects in. See individual dams and projects by name.
Quitclaim to, of lands of Goose Lake 723
Reclamation Act applies 31
Transfer by GSA of certain property in Klamath County to 1203

OREGON TRAIL DIVISION, MRB, P-SMBP, Wyoming
Corn Creek unit
Feasibility study authorized 2478
Glendo inundated water rights irrigation unit
Feasibility study authorized 1893
La Prele unit
Feasibility study authorized 1892

ORGANIZATION. See also IRRIGATION DISTRICTS.
Term defined 635, 1331

ORLAND PROJECT, California
Adjustment of water rights and construction charges 552

ORLAND UNIT WATER USERS' ASSOCIATION 553

S1299
INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Topic</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>ORME DAM AND RESERVOIR</td>
<td>2398, 2399, 2401, 2402, 2411</td>
</tr>
<tr>
<td>ORMSBY COUNTY, Nevada</td>
<td>2482, 2483, 2484</td>
</tr>
<tr>
<td>ORVILLE-TONASKET CLAIM SETTLEMENT AND CONVEYANCE ACT</td>
<td>4106</td>
</tr>
<tr>
<td>ORVILLE-TONASKET IRRIGATION DISTRICT</td>
<td>2952, 2953</td>
</tr>
<tr>
<td>ORVILLE-TONASKET UNIT, Chief Joseph Dam project</td>
<td>1695, 1893, 2950</td>
</tr>
<tr>
<td>ORVILLE-TONASKET UNIT EXTENSION</td>
<td>2952</td>
</tr>
<tr>
<td>ORR DITCH PROCEEDINGS</td>
<td>S27, S28, S267</td>
</tr>
<tr>
<td>OSCODA, Michigan</td>
<td>2445</td>
</tr>
<tr>
<td>O’SULLIVAN DAM</td>
<td>892</td>
</tr>
<tr>
<td>OTTER CREEK DAM AND RESERVOIR</td>
<td>2388</td>
</tr>
<tr>
<td>OTTER TAIL RIVER</td>
<td>592</td>
</tr>
<tr>
<td>OUACHITA RIVER</td>
<td>3309</td>
</tr>
<tr>
<td>OURAY COUNTY, Colorado</td>
<td>3220</td>
</tr>
<tr>
<td>OURAY INDIAN RESERVATION</td>
<td>S36</td>
</tr>
<tr>
<td>OWL CREEK IRRIGATION DISTRICT</td>
<td>381</td>
</tr>
<tr>
<td>OWL CREEK UNIT, MRB, Wyoming Conveyance of Wind River, Reservation land to United States</td>
<td>1328</td>
</tr>
<tr>
<td>OWYHEE DAM</td>
<td>3217</td>
</tr>
<tr>
<td>OWYHEE IRRIGATION DISTRICT</td>
<td>1080</td>
</tr>
<tr>
<td>OWYHEE PROJECT, Idaho-Oregon Amended contract approved</td>
<td>1080</td>
</tr>
<tr>
<td>OWYHEE Project, Idaho-Oregon Delayed payment of 1932-1935 construction charges</td>
<td>610</td>
</tr>
<tr>
<td>OWYHEE Project, Idaho-Oregon Investigation of claims arising from break in North Canal</td>
<td>722</td>
</tr>
<tr>
<td>OWYHEE Project, Idaho-Oregon Miscellaneous references to</td>
<td>491</td>
</tr>
<tr>
<td>OWYHEE Dam powerplant Feasibility study authorized</td>
<td>3217</td>
</tr>
<tr>
<td>OWYHEE Dam powerplant Payment to George B. Henly Construction Company</td>
<td>1102</td>
</tr>
<tr>
<td>OWYHEE Dam powerplant Repayment contract required</td>
<td>350</td>
</tr>
<tr>
<td>OWYHEE RIVER</td>
<td>2446</td>
</tr>
<tr>
<td>OWYHEE RESERVOIR</td>
<td>2446</td>
</tr>
<tr>
<td>OXBOW DAM</td>
<td>1579</td>
</tr>
<tr>
<td>OZARK LOCK AND DAM</td>
<td>801</td>
</tr>
<tr>
<td>PACHECO TUNNEL</td>
<td>1454, 1530, 2333</td>
</tr>
</tbody>
</table>

S1300
INDEX TO VOLUME V AND SUPPLEMENT II

**PACIFIC NORTHWEST**  
Definition of 3228, 3264, S352

**PACIFIC NORTHWEST POWER MARKETING ACT**  
Amendments of S352-S353 3402  
Construction of facilities to allow power sales in California authorized 1739, 1758  
Enactment of, made precondition to construction of Pacific Northwest-Pacific Southwest Intertie 1760  
Statutory references to 1871, 2888, 3402, 4067  
Text 3225

**PACIFIC NORTHWEST POWER COMPANY** S59

**PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL**  
Established 3229

**PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT**  
Miscellaneous references to 2504, S114, 2896  
Statutory references to 2893, 2894, 2895, S846, S847 3414, 3780, 3790, 4043, 4053, 4067  
Text 3225

**PACIFIC NORTHWEST-PACIFIC SOUTHWEST INTERTIE** 1054, 1739, 1757, 1763, 2414

**PACIFIC GAS & ELECTRIC COMPANY** 112

**PACIFIC POWER AND LIGHT COMPANY** 1340

**PACTOLA SCHOOL DISTRICT NUMBERED 5** 1312

**PACTOLA DAM AND RESERVOIR** 661, 1115, 2772

**PACTOLA METHODIST ASSEMBLY PARK ASSOCIATION** 1312

**PAGE, ARIZONA** 2867, 2898, S128

**PAGE, ARIZONA, COMMUNITY ACT OF 1974**  
Text 2898

**PAGE, ARIZONA, ACCOMMODATION SCHOOL** 1859

**PAINTED ROCK DAM AND RESERVOIR** 2857, 2860, 3358

**PAUITE INDIANS**  
Cancellation of charges against lands irrigated from Newlands project 394  
Drainage of lands within Newlands project 304, 394  
Payment authorized to TCID for share of costs of repair of Truckee Canal attributable to Paiute Indian lands 474  
Water Rights Settlement Act of 1990. See FALLON PAUITE SHOSHONE INDIAN TRIBES WATER RIGHTS SETTLEMENT ACT.

**PAJARITO CREEK** 1048

**PAJARO RIVER BASIN** 1887

**PALISADES RESERVOIR** 2446

**PALISADES DAM AND RESERVOIR** 1039, 1041, 1206, 1889

S1301
INDEX TO VOLUME V AND SUPPLEMENT II

PALSADIES PROJECT, Idaho-Wyoming
  Contract authority in excess of appropriations 659
  Lands acquired for, incorporated into Targhee and Caribou National Forests 1442
  Power revenues applied to repayment of part of irrigation allocation of Michaud Flats project 1205, 1206
  Purchase of certain improvements on public lands authorized 1157
  Reauthorized 1039

PALMER LAKE 1695

PALMETTO BEND DAM AND RESERVOIR 2463, 3181

PALMETTO BEND PROJECT, Texas
  Additional studies authorized 1886
  Construction of first stage and land acquisition for second stage authorized 2463
  Name of Palmetto Reservoir changed to Lake Texana 3181

PALO VERDE DIVERSION DAM 1210, 1876, 3322, S231

PALO VERDE DIVERSION PROJECT, Arizona-California
  Authorized 1210
  Palo Verde Irrigation District given exclusive right to install powerplant under license from FERC 3322, S231

PALO VERDE WEIR 1093

PALO VERDE IRRIGATION DISTRICT 428, 785, 1210, 2869, 3322, S231

PALO VERDE VALLEY 35, 43, 503

PALOMAS VALLEY 367

PAONIA PROJECT, Colorado
  Authorized 853, 1248
  Increased appropriations authorized 2657
  Statutory references to 1251, 1253

PAPAGO RESERVATION 3348

PAPAGO INDIAN TRIBE 3348, 3349

PAPERWORK REDUCTION ACT OF 1980
  Extracts from 5670

PARADISE VALLEY IRRIGATION DISTRICT 1859

PARADISE VALLEY DIVERSION DAM 1859

PARADOX VALLEY UNIT, CRBSCP, Colorado 2868

PARIA RIVER 442, 910, 2924

PARISH BROTHERS 1013

PARK COUNTY, Wyoming 349, 2640

PARK MOAB 658

PARKER DAM. See PARKER-DAVIS PROJECT.
INDEX TO VOLUME V AND SUPPLEMENT II

PARKER-DAVIS PROJECT, Arizona-California-Nevada
Consolidation of Davis Dam and Parker Dam power projects as Parker-Davis project 1135

Davis Dam project
Appropriations for construction of Bullhead Dam project 716
Archeological excavations 716
Bullhead Dam renamed Davis Dam 716
Compact references to 1602
Deliveries to Mexico conditional on completion of 759, 762
Miscellaneous references to 528
Reservoir behind Davis Dam named Lake Mohave 1006
Statutory references to 1602
Treaty obligation to construct and operate 760

Parker Dam project
Acquisition of Indian lands for 695, 727
Amendments S851, 3793
Appropriations for Parker Dam power project 618
Authorization of 538
Compact references to 1876
Miscellaneous references to S129, S855
Not authorized under Act of April 21, 1904 91
Power revenues, application of 724
Statutory references to 791, 828, 3793

Power
Allocation of S4
Statutory references to 2413
Transfer of Basic Magnesium project power facilities to 897

PARKER-GILA VALLEY PROJECT 436

PARKEY, FRED 3315

PARKS BAR SITE S426

PARKS AND COMMUNITY CENTERS
Twenty-acre tracts and water supply for 201

PARSHALL PROJECT, Colorado
See also MIDDLE PARK PROJECT.
Expeditious completion of planning report directed 1249
Reference to planning report deleted 2417

PASKENTA-NEWVILLE RESERVOIR 1890

PAT MAYSE 3305

PATTERSON, EDWARD ARTHUR, LAKE 1490

S1303
INDEX TO VOLUME V AND SUPPLEMENT II

PAULDEN, Arizona 2447
PAXON LAKE 2440
PAYETTE COUNTY, Idaho 3216
PAYETTE DIVISION, Boise project 715
PAYETTE NATIONAL FOREST 1485
PAYETTE-OREGON SLOPE IRRIGATION DISTRICT 1080
PAYETTE RIVER 1169, 1889
PAYMENTS IN LIEU OF TAXES ACT Extracts from S540
PEABODY COAL COMPANY 2632
PEAVY, PATRICK 2476
PECAN BAYOU 3305
PECOS RIVER 392, 667, 753, 963, 1004, 1391, 1891, 2753
PECOS RIVER BASIN 942, 1216, 1391, 1800, 2752
PECOS RIVER COMMISSION Established 944
Statutory references to 1392
PECOS RIVER COMPACT Statutory references to 1391, 1393, 1801, 2753
Text 942
PELTON DAM CASE 268
PENNSYLVANIA, COMMONWEALTH OF Compacts of. See DELAWARE RIVER BASIN COMPACT.
PENNSYLVANIA, STATE OF Compacts of. See SUSQUEHANNA RIVER BASIN COMPACT.
PENOBSCOT RIVER 2444
PERE MARQUETTE RIVER 2432, 2444
PERELLI-MINETTI CORPORATION S81
PEREZ, THOMAS S78, S83
PERHAM FRUIT CORPORATION 1134
PERIPHERAL CANAL, CVP 1887
PERMANENT ENGINEERING BOARD 1570, 1601, 1828
PERMITS. See BUILDING MATERIALS; LEASES AND PERMITS; EASEMENTS.
PERRYSBURG, Ohio 2444

S1304
INDEX TO VOLUME V AND SUPPLEMENT II

PERRYSVILLE, Maryland 2665

PERSHING COUNTY WATER CONSERVATION DISTRICT 712, S124, S190

PERSON, H. T 2468, 2472

PFISTER, RICHARD 2468, 2472

PHILIPPINES 687

PHILLIPS COUNTY 1080

PHILLIPS, ANSELM L. 2348

PHIPPS ACT 309

PHOENIX, CITY OF 112, 1420

PHREATOPHYTE CONTROL

   McMillan Delta project 1391
   Middle Rio Grande project 902
   Pecos River basin 1800

PICK-SLOAN MISSOURI BASIN PROGRAM (P-SMBP)

   Appropriations authorized 2658, 3816
   Authorization of, general annotations S157
   Certain study costs nonreimbursable 2639
   Cost allocation. See COST ALLOCATION.
   Integration of Buffalo Bill Dam and Reservoir modifications with P-SMBP directed 3333
   Integration of units. See KANOPOLIS UNIT; POLLOCK-WREID UNIT.
   Miscellaneous references to S130, S131, S133
   Missouri River Basin Project renamed as 2601
   Pumping power. See POWER.
   Statutory references 3539, 3543
   Units of. See Individual units or divisions by name; Hilltop and Gray Goose Irrigation Districts.

PICKETT ACT

   Extracts from 155

PIEDRA RIVER 2446

PIERCE, ROBERT L. S82

PILOT BUTTE DIVISION, Riverton project 458, 3374

PILOT KNOB 415, 762

PILOT KNOB WASTEWAY 760

PILTA. See PAYMENTS IN LIEU OF TAXES ACT.

PIMA COUNTY 1680

PIMA INDIANS

   Irrigation from Salt River project 126

PINAL COUNTY 1202

S1305
INDEX TO VOLUME V AND SUPPLEMENT II

PINE CREEK, Wyoming   3184, 3187
PINE CREEK, Texas     3305
PINE FLAT DAM AND RESERVOIR  805, 806, 810, 2344, S73, S75, S155
PINE CREEK SPRINGS 3184, 3187
PINE CREEK, Pennsylvania  2444
PINE CREEK, Oklahoma   3305
PINE RIDGE UNIT, MRB    1888
PINE RIVER, Colorado    1390
PINE RIVER EXTENSION PROJECT. See PINE RIVER PROJECT.
PINE RIVER INDIANS  
   One-sixth of construction costs of Pine River project chargeable to lands of Pine River Indian project  1150
PINE RIVER INDIAN PROJECT, Colorado  1150
PINE RIVER IRRIGATION DISTRICT 1150
PINE RIVER PROJECT, Colorado  
   Amended contract approved  1150
   Extension Authorized  1248
   Deauthorized  2416
   Miscellaneous references to  379
   Nonreimbursable appropriation  620
   Relief of Martin Wunderlich Company  1390
PINE VIEW DAM AND RESERVOIR  967, 1720
PINTO CREEK  753
PIONEER IRRIGATION COMPANY  743
PIONEER CANAL  328, 743
PIT RIVER  1890
PIT RIVER DIVISION, CVP  1890, 2956
PITTMAN-ROBERTSON WILDLIFE RESTORATION ACT  
   Statutory references to  3212
PITTSBURGH LANDING  2431
PIUTE INDIANS. See PAlute Indians.
PIXLEY DAM  1396, 3182, 3188, 8186, 3187
PLACER COUNTY, California  979, 2482, 2483, 2484, 3277, 3278, 3281, 3287, 3288, 3296
PLACER COUNTY ROAD  2615

S1306
INDEX TO VOLUME V AND SUPPLEMENT II

PLANS AND PLANNING. See STUDIES AND REPORTS.

PLATERO DAM AND RESERVOIR 1083, 2445, 3907
  Transfer of operation and maintenance 3907

PLATERO UNIT, SAN LUIS VALLEY PROJECT 1083

PLATTE RIVER 35, 1886, 2337

PLATTE RIVER BASIN 3362

PLATTE RIVER WATER RESOURCE USE AND DEVELOPMENT STUDY 3362

PLEASANT VALLEY CANAL 1524, 2530

PLEASANT VALLEY DEVELOPMENT STUDY 646, 798

PNWPPCA. See PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT.

POINT OF ORDER S193

POJOAQUE TRIBUTARY IRRIGATION UNIT 1660

POLECAT BENCH 1891

POLECAT BENCH AREA, SHOSHONE PROJECT, WYOMING 1891, 2934

POLS COUNTY, OREGON 2478

POLLACK-HERREID UNIT, MRB, P-SMBP, SOUTH DAKOTA PUMPING DIVISION 1892, 2938, 3328
  Authorization of appropriations repealed 3607

Pollution Control. See FEDERAL WATER POLLUTION CONTROL ACT; RESEARCH STUDIES AND REPORTS;
  WATER QUALITY CONTROL.

POMPEY'S PILLAR, TOWNSITE 1497

PONCA CREEK COMPACT
  Consent to negotiate 1117

PONCA STATE PARK 2435

POND CREEK 1242

PONDS LODGE 2942

POND-POSO IMPROVEMENT DISTRICT S270

PORCUPINE LAKE 2439

PORCUPINE RIVER 11, 2448

PORT CHICAGO 1858

PORT MANSFIELD, TEXAS 1493

PORTALES PROJECT, NEW MEXICO
  Feasibility study authorized 1891

PORTLAND GENERAL ELECTRIC COMPANY 2480, 2547

S1307
INDEX TO VOLUME V AND SUPPLEMENT II

PORTNEUF RIVER 1207
POST FALLS IRRIGATION DISTRICT 2770
POTEAU RIVER 2774
POTHOLES DAM 892
POTTER COUNTY, Texas 1846, 3216
POTTER COUNTY, South Dakota 3207
POWDER RIVER 1063, 1891
POWDER RIVER COUNTY, Montana 2771
POWDER RIVER DIVISION, MRB, P-SMBP, Montana-Wyoming
   Kaycee Unit Feasibility study authorized 1891
   Moorehead unit Feasibility study authorized 2771
POWELL COUNTY, Kentucky 2447
POWELL RANGER STATION 2430
POWELL, TOWN OF 718
POWELL, TOWN SITE OF 248, 349, 793, 880, 1133, 1610
POWER
   See also individual dams and projects by name.
   Accounting practices of Federal agencies 532, 576, 607
   Conservation of
      Investment in 3248
      Planning 3234, 3270, 3271
      Rates. See Rates and reimbursement, below.
   Contracts, validation of 3517
   Cost allocation. See COST ALLOCATION.
   Cost Sharing. See COST SHARING.
   Federal Power Act. See FEDERAL POWER ACT.
   Generation facilities
      Army projects, generally 234, 800
      Pumped storage 1529
      Reclamation projects, generally 111, 544
      Single-purpose power projects 646
      Small power production, cogeneration, solar, and geothermal 556, 3157, 3562
      Small reclamation projects 1336
      Steam plants 586
      Wind energy 3204
      W.C.U. projects, generally 677
      Integrated resource planning 3415
   International aspects
      Canada. See CANADIAN ENTITLEMENT EXCHANGE AGREEMENTS; CANADIAN ENTITLEMENT PURCHASE AGREEMENT; COLUMBIA RIVER TREATY; COLUMBIA STORAGE POWER EXCHANGE; TREATIES AND CONVENTIONS.
      Mexico. See AMISTAD DAM; FALCON DAM; INTERNATIONAL BOUNDARY AND WATER COMMISSION; MEXICAN WATER TREATY, TREATIES AND CONVENTIONS.
INDEX TO VOLUME V AND SUPPLEMENT II

Transmission of power to foreign countries 530

Marketing
Allocation S4, S131, S150, S194, S256
Compliance with State laws S3, S130
Contracts 112, 429, 4430, 570, 647, 803, 3243-48, 3265, S33, S125, S126, S151, S152, S154
Geographical preference 426, 786, 1155, 1237, 1425, 1792, 1739, 1760, 1763, 3265, 3266
Power exchanges 573, 660, 3244, 3255, 3266, S131, S161
Power purchases 802, 975, 3248, S111, S112, S131, S151, S193
Preference clause 111, 428, 571, 573, 606, 647, 678, 800, 1011, 1040, 1139, 1337, 1425, 1704, 3242, 3271, S113, S128, S150, S151, S1815
Sale of excess power. See Bonneville Power Administration.
Transfer of power marketing functions to Secretary of Energy 3056

Power marketing administrations.
Generally 3056
Employment levels, Section 510, Public Law 101-514, 104 Stat. 2074, repealed 4065
Individual administrations. See ALASKA POWER ADMINISTRATION; BONNEVILLE POWER ADMINISTRATION; SOUTHEASTERN POWER ADMINISTRATION; SOUTHWESTERN POWER ADMINISTRATION; WESTERN AREA POWER ADMINISTRATION.

Power privileges. See LEASES AND PERMITS.

Power sites. See POWER SITES.

Provision of special services, such as load factoring, storage or purchasing, to other entities
Bonneville Power Administration 3266, 3269
Bureau of Reclamation S67, S157

Rates and reimbursement
Conservation credit 3253
Conservation surcharge 3236, 3260
Discounts 291, 586, 649, 3259, S128
FPC or FERC approval of 572, 606, 800, 1011, 1139, 2891, 3055, 3062, 3256, 3261, S114, S115, S152, S153
Generally 574, 575, 598, 644, 647, 800, 2890, 3055, 3056, 3064, 3137, 3256, S114, S117, S127, S131, S151, S152
Interest S255
Irrigation pumping power 3267, 3268, S236
Irrigation subsidy S255
Prohibition on market-based pricing studies 3331, 3366
Secretary of Energy approval of 3055, 3056, 3064
Southwestern Power Administration 3099
Interest 490, 647, 678, 801, 881
Irrigation pumping power 607, 648, 1151
Irrigation subsidy 111, 320, 598, 645, 654, 1084, 1185, 1205

See also CONSTRUCTION CHARGES.

Research. See RESEARCH.

Revenues credited against other charges. See CONSTRUCTION CHARGES.

Rights of way for power facilities
In Federal lands. See INDIAN LANDS; NATIONAL PARKS; RIGHTS OF WAY AND EASEMENTS.
In non-Federal lands. See ACQUISITION OF PROPERTY.

Special provisions relating to individual projects and irrigation districts
Boise project 312
Bonneville project 568
Boulder Canyon project 425, 431, 433, 697, 702
Buffalo Bill Dam and Reservoir modifications 3333

S1309
INDEX TO VOLUME V AND SUPPLEMENT II

Central Arizona project 2403
Collibran project 1084
Colorado River Basin Salinity Control program 2858, 2871, 3200
Colorado River Storage project 1255
Columbia River power system. See BONNEVILLE POWER ADMINISTRATION; COLUMBIA RIVER POWER SYSTEM.
Fort Peck project 604
Grand Valley project. See GRAND VALLEY PROJECT.
Haidle Irrigation Project, Montana 3914
Hammond Irrigation District, Montana 3914
Kennewick division, Yakima project 881
Page, Arizona 2902
Prosper Dam powerplant 458
P-SMBP pumping power S127, S158, 3228, 3543, 3577
P-SMBP cost allocations to power S157, S158, S159, 3533
Salt River project 302
Uncompahgre project 613
Yuma project 312

Studies. See STUDIES AND REPORTS.

Transmission facilities
Authority of Bureau of Reclamation to construct, after Department of Energy was established 3059
California-Oregon Transmission project 3460
Colorado River Storage project 1652
Compliance with State law 3007, 3053
Construction of, generally 291, 569, 650, 800, 808, S131
Disposal of 2041
Electric Reliability Council of Texas (ERCOT) S848, 3775
Federal Columbia River Transmission System. See FEDERAL COLUMBIA RIVER TRANSMISSION SYSTEM.

Lease or purchase of 569, 586, 800, 803, 975
Nonavailability of wheeling service, as condition to construction, generally 1054, 1092
Pacific Northwest-Pacific Southwest Intertie. See PACIFIC NORTHWEST-PACIFIC SOUTHWEST INTERTIE.
Requests for wholesale transmission services S848, 3779
Regulation of by FERC S101-107
Seasonal diversity exchange with Canada 3165
Study of power intertie potentials for 17 Western States authorized 2928

Transmission of non-federal power
Bonneville Power Administration 2890, 3266, 3270
Regulation of Electric Utility Companies engaged in interstate commerce S841

TVA. See TENNESSEE VALLEY AUTHORITY.

Use of water for
As an element of power site value. See POWER SITES.
As an "industrial" purpose 798
Priorities of use. See WATER RIGHTS.

POWER MARKETING ADMINISTRATIONS. See POWER.

POWER SITES
Reservation of. See also RIGHTS OF WAY AND EASEMENTS
Generally 155
In Arizona and New Mexico 142

S1310
INDEX TO VOLUME V AND SUPPLEMENT II

Under Federal Power Act 282, S63, S814
Value of 2, 7, 74, 808

POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978
Miscellaneous references to 3167

PRAIRIE BEND UNIT, P-SMBP, Dawson, Buffalo, and Hall counties, Nebraska
Feasibility study for 3373

PRAIRIE DOG CREEK 741

PRAIRIE DOG TOWN FORK, RED RIVER, Texas 1489, 3303

PRAIRIE DIVISION, Rathdrum Prairie project 1887

PRAIRIE DU CHIEN 2446

PRAIRIE DU SAC 2446

PRATT, T. M. 199

PREFERENCE CLAUSE. See power.

PREPARATORY WORK. See settler assistance.

PRESBYTERIAN RETIREMENT FACILITIES CORPORATION 1718

PRESCOTT NATIONAL FOREST 2447

PRESENT PERFECTED RIGHTS. See Boulder Canyon Project Act.

PRESIDENT

Executive orders. See Executive Orders.

Executive power 3

Letter to Secretary of State regarding international flood control works and credits to
Imperial Irrigation District 1019

Signing statements

Belle Fourche River Compact 783
Colorado River Basin Salinity Control Act 2874
Flood Control Act of 1944 811
Fort Sumner project 963
Interior Department Appropriation Act, 1949 899
Kings River and Tulare Lake project 823
Republican River Compact 746
River and Harbor and Flood Control Acts of 1946 833
Small Reclamation Projects Act of 1956 1334
Southern Nevada water project 1853
Water Resources Research Act of 1964 1750
Weber Basin project 956

Veto messages

Appropriations for projects on the Carter administration 'hit list' 3124
Crow Tribe lands, Yellowtail Dam and Reservoir 1430
San Luis Valley project, excess land laws waiver 1083
Withdrawal of lands by 155

PRESIDENT'S SCIENCE ADVISORY COMMITTEE 1807

S1311
INDEX TO VOLUME V AND SUPPLEMENT II

PRESIDIO FLOOD CONTROL PROJECT
Authorized 2763

PRESIDIO-OJINAGA VALLEY 2764

PRESTON BENCH PROJECT, Idaho
Authorized 883

PRICE RIVER 2869

PRICE RIVER PROJECT, Utah
Expeditious completion of planning report directed 2417, S251
Feasibility study authorized 1893

PRICE-SAN RAFAEL RIVERS SALINITY CONTROL STUDY 3220

PRIEST RAPIDS DAM 1154, 1566, 1579

PRIEST RIVER, Idaho 2444

PRINEVILLE DAM 1340, 3217

PRIVACY ACT OF 1974
Statutory references to 2802
Text S453

PROCUREMENT. See ACQUISITION OF PROPERTY; CONSTRUCTION; SUPPLIES AND SERVICES.

PROJECT
Term defined 634, 2932, 3335

PROJECT CONTRACT UNIT
Term defined 635

PROJECTS. See also individual projects by name.
Army projects. See ARMY, DEPARTMENT OF THE; FLOOD CONTROL ACTS; RIVER AND HARBOR ACTS.
Cordon amendment projects. See CORDON AMENDMENT PROJECTS.
Indian irrigation projects. See INDIAN IRRIGATION PROJECTS.
Reclamation projects. See individual topics throughout this index.
Small reclamation projects. See SMALL RECLAMATION PROJECTS ACT.
Small watershed projects. See AGRICULTURE, DEPARTMENT OF; WATERSHED PROTECTION AND FLOOD PREVENTION ACT.
Water conservation and utilization projects. See GREAT PLAINS; WATER CONSERVATION AND UTILIZATION ACT.

PROMPT PAYMENT ACT
Text S530

PROPERTY CLAUSE 3, S1

PROSSER IRRIGATION DISTRICT 987, 1129

PROSSER DAM 457

PROSSER-Chandler Power Canal 457, 881

PROTECTIVE AND REGULATORY PUMPING UNIT, CRBSCP 2865, 3202

S1312
INDEX TO VOLUME V AND SUPPLEMENT II

PROVO, Utah S254

PROVO RIVER PROJECT, Utah
Authorization explained 866
Disposition of property donated by Metropolitan Water District of Salt Lake City 962
Facilitate construction of Deer Creek and Aqueduct divisions 866
Reconveyance of land to Metropolitan Water District of Salt Lake City 1515

PROVO RIVER WATER USERS ASSOCIATION 866

PRYOR DIVISION, Huntley project 359

P-SMBP. See PICK-SLOAN MISSOURI BASIN PROGRAM.

PUBLIC BUILDINGS ACT OF 1959
Extracts from 1494

PUBLIC INFORMATION ACT
Disclosure of confidential information 1949
Text 1930

PUBLIC IRRIGATION DISTRICT 379

PUBLIC LAND ADMINISTRATION ACT OF 1961
Miscellaneous references to S197

PUBLIC LAND LAW REVIEW COMMISSION 1808, S386

PUBLIC LANDS. See ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979; ARIZONA, STATE OF; BUILDING MATERIALS; CANAL ACT; CAREY ACT COLORADO RIVER COMMISSION OF NEVADA; DESERT LAND ACT; FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976; HOMESTEAD LAWS INDIAN LANDS; IRRIGATION DISTRICTS; MINERAL LEASING ACTS; MINING LAWS; NATIONAL FORESTS; NATIONAL PARKS; POWER SITES; PUBLIC LAND LAW REVIEW COMMISSION; RAILROAD LANDS; RECLAMATION ENTRIES; RECLAMATION WITHDRAWALS; RIGHTS OF WAY AND EASEMENTS; SOIL AND MOISTURE CONSERVATION; SURPLUS PROPERTY; TAYLOR GRAZING ACT; WATER RIGHTS, WITHDRAWALS. See also individual projects by name.

PUBLIC NOTICE
Of water availability and terms. See CONSTRUCTION CHARGES, RECLAMATION ENTRIES.

PUBLIC RANGELAND IMPROVEMENT ACT OF 1978
Statutory references to 3000

PUBLIC SERVICE COMPANY OF COLORADO 486, 651, 1543

PUBLIC SERVICE COMPANY OF NEW MEXICO 2346

PUBLIC USE FACILITIES. See recreation.

PUBLIC UTILITY COMMISSION OF TEXAS S848, 3775

PUBLIC UTILITY DISTRICT NUMBER 2 OF GRANT COUNTY 1154

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Miscellaneous references to 527
Statutory interpretation of 3268
Statutory references to S813, S849, 3158, 3782, 3783

PUBLIC UTILITY ACT OF 1935
Extracts from 527

S1313
# INDEX TO VOLUME V AND SUPPLEMENT II

**PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978**
- Amendments of S1071, 3493, 3767
- Extracts from 3137
- Miscellaneous references to S57, S64, S100, S101, S102, S104, S105, S117, S835
- Statutory references to S813, 3270, 3418, 3493, 3562, 3767

**PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965**
- Miscellaneous references to 1168
- Reorganization plan references to 1304

**PUBLIC WORKS ADMINISTRATION** 393, 433, 481, 524, 539, 590

**PUBLIC WORKS EMPLOYMENT ACT OF 1977**
- Extracts from 3038

**PUDDING RIVER** 1889

**PUEBLO DAM AND RESERVOIR** 3197

**PUEBLO INDIANS** 3083
- Extend authority to pay operation and maintenance charges by Middle Rio Grande Conservancy District 1840
- Miscellaneous references to 1662
- Rights of way in lands of, authorized 862
- Texas Panhandle Pueblo culture site 1846

**PUGET SOUND POWER AND LIGHT COMPANY** 2547

**PURDY, W. E. and ZEMMA** 1310

**PURGATOIRE RIVER** 932, 1424

**PURPA. See PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978.**

**PUTAH CREEK** 1887

**PUTAH CREEK BASIN** 1887

**PYRAMID LAKE** 1320, 2763, S266, S267

**PYRAMID LAKE INDIANS**
- Reclamation of irrigable lands of 91

**Q**

**QUAY COUNTY, New Mexico** 3216

**QUECHAN INDIANS**
- Miscellaneous references to S28

**QUINCY-COLUMBIA BASIN IRRIGATION DISTRICT** 1614, 1690, 2352

**QUINCY SUBAREA** S82

**R**

**RABASA, EMILIO O.** 2875

S1314
INDEX TO VOLUME V AND SUPPLEMENT II

RABBIT EAR PROJECT, Colorado
Expeditious completion of planning report directed 2417, S25
Included as unit of Middle Park project 1249

RAILROAD LANDS
See also individual railway companies by name.
Canal Act 19
Withdrawals of Generally 42, 46

RAILROAD RIGHT OF WAY ACT OF 1875
Miscellaneous references to 46

RAINBOW BRIDGE 2399

RAINBOW BRIDGE NATIONAL MONUMENT 1248, 1250, 1465, 1551, S248, S253

RAINBOW INLET CANAL 3187

RAKER ACT. See SAN FRANCISCO, CITY AND COUNTY OF.

RAMPT DAM 11

RAMPARTS 2448

RANDALL LAKE 3305

RANDOLPH, Utah 3183

RAPID CITY, South Dakota 1330, 2772

RAPID VALLEY UNIT, MRB, South Dakota
Amendment of water supply contract to Rapid City 1330
Cost of Pactola Dam allocated to serving Ellsworth Air Force Base made nonreimbursable 1115
Payment for improvements on public lands 1312

RAPID VALLEY PROJECT, South Dakota
Amendment of water supply contract to Rapid City 1330
Deferment of construction charges. See WATER CONSERVATION AND UTILIZATION ACT.

RAPID RIVER, Idaho 2431

RATES AND CHARGES. See CONSTRUCTION CHARGES; ELECTRIC RELIABILITY COUNCIL OF TEXAS (ERCOT);
FEES AND CHARGES; INTEREST; LEASES AND PERMITS; OPERATION AND MAINTENANCE CHARGES;
POWER, RECLAMATION ENTRIES; RECREATION, RIGHTS OF WAY AND EASEMENTS, WATER SUPPLY.

RATHDRUM PRAIRIE PROJECT, Idaho
East Greenacres unit
Authorized 2522
Emergency funds 2770
Prairie division
Completion of studies authorized 1887

Hayden Lake unit
Additional work authorized 1615
Authorization explained 1615
Funds appropriated for rehabilitation 1273, 1551
Reclamation laws, application of. See CORDON AMENDMENT PROJECTS.
INDEX TO VOLUME V AND SUPPLEMENT II

RAYBURN, SAM, DAM 801

RECLAMATION ACT
Annotations of S17-27
Constitutionality 1, 4, 5, 87
Purpose 32, 64, 86
States covered 31, 33, 34, 806, 808
States not covered. See ALASKA.
Text 31

RECLAMATION AUTHORIZATION ACT OF 1975
Section 407 repealed S1054, 3607
Statutory references to 3561, 3607
Text 2934

RECLAMATION AUTHORIZATIONS ACT OF 1976
Amendments S1056, 3558
American Canal Extension repealed 2955, S1056
Miscellaneous references to S1056
Statutory references to 3558, 4106
Text 2950

RECLAMATION DEVELOPMENT ACT OF 1974
Amendments S1053, 4026
Miscellaneous references to S992
Statutory references 4026
Text 2898

RECLAMATION ENTRIES. See also individual projects by name.
Assignment of 145, 198, 214
Authorized
Coal lands 144
Generally 37, 165
Farm units. See FARM UNITS.
Homestead laws
Generally 37, 63, S18
Leave of absence to homesteaders
Authorized, generally 159, 175
Patents
Generally 50, 177, 184
Payment of charges as precondition to receipt of 62, 177, 298
Preferences
Needy families 685
Servicemen. See SERVICEMEN.
Public notice of water availability and terms
Generally 51, 196, 197, 213
Required before entry 152
Withdrawal of lands before giving 37
Withdrawal of notice 164
Qualifications of entrymen 317, 666, 686
Reclamation of, by entryman
Required, generally 62, 195
Taxation of. See TAXATION.
Water rights. See EXCESS LANDS, WATER RIGHTS.

S1316
INDEX TO VOLUME V AND SUPPLEMENT II

RECLAMATION EXTENSION ACT
Acceptance of 199, 217
Amendments of 217
Statutory references to
Generally 357, 359, 365, 368, 369, 492
Section 2 303, 553
Section 4 303, 312, 983
Section 5 683
Section 9 983
Text 186

RECLAMATION FUND
Advances to, from Treasury funds
Authorized 150, 487
Reimbursement 150, 236, 482, 487, 495, 598
Allocation of, among States and Territories 86, 154
Established 31
Expenditures from
Appropriation by Congress as precondition 199
Appropriations for reclamation program, explanatory note 31
Appropriations for reclamation program limited to reclamation fund 210
Current appropriation act language 1021, 1022, 1023
Generally 31, 51, 71, 236, 325, 388, S17, S237, S255, S278
Operation and maintenance 59, 69, S120
Town sites. See Town sites.
Receipts to
Generally 31, 58, 59, 62, 69, 171, 388, 598, S188
Leases and permits 33, 45, 56, 103, 246, 249, 278, 320, S53, S63
Power revenues 111, 320, 598
Refunds and other miscellaneous revenues 33, 102, 236, 274, 463, 3121
Sales of land and other property 31, 102, 109, 122, 139, 163, 201, 204, 228, 239, 246, 249, 256, 257, 320, 451, 461, 598, 999, S53
Service to Indian lands 90, 91, 106, 126, 185, 215
Water supply revenues 251

RECLAMATION LOANS
Sale of 3570

RECLAMATION PROJECT ACT OF 1939
Amendments and annotations of 3347, S124-138
Administration of subsections 9 (e) and (d) 1275
Deferred of construction charges 1503
Extend time for entering into amendatory repayment contracts 1073, 1209, 1358
Irrigation blocks; development period; semiannual installments 1681
Revisions of normal and percentages plan agreements 817
Section 9 (a) 797
Section 9(f) S1106
Section 10 1017
Variable repayment plan 1432
Notice of and comment on new or amended repayment contracts or contracts for delivery of irrigation water 3347
Statutory references to
Generally S885, S102, 683, 728, 3761, S886

S1317
INDEX TO VOLUME V AND SUPPLEMENT II

Section 2 951, 969, 1218, 1242, 1251, 1319, 1535, 1676, 1899, 2388, 2464, 2522, 2539, 2661
Section 7 926, 976, 984, 1014, 1015, 1080, 1106, 1113, 1115, 1138, 1141, 1150, 1173, 1187, 1189, 1322, 1389, 1471, 1613, 1655
Section 8 877, 927, 1081, 1656, 1713
Section 9, generally 716, 842; 898, 1104, 1528, 3333, 3344, S1104, S1109
Section 9(b) 717
Section 9(c) 965, 1337, 1427, 1714, 2830, 2863, 3201, 3914
Section 9(c), last sentence 1251, 1536, 1558., 1677, 1852, 1899, 2388, 2406, 2464, 2523, 2539, 2904, 2913
Section 9(d) 965, 1084, 1151, 1158, 1184, 1218, 1243, 1318, 1326, 1341, 1343, 1346, 1354, 1432, 1492, 1521, 1554, 1657, 1686, 1688, 1671, 1681, 1687, 1695, 1708, 1740, 1796, 2406, 2661, 2953, 3934
Section 9(e) 2406, 3934, 4084
Section 9(f) S1106
Section 10 1867, 2426, 2767
Section 12 1140, 1496
Section 14 1140
Section 17 2642
Text 634

RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENT ACT OF 1992 3801
Amendments 4022-4025, 4061, 4065, 4087, 4093
Miscellaneous references to S922, S924, S925, S927, S938, S943, S948, S951, S954, G56, S961-S965, S973, S974, S977, S982, S985-S987, S991, S992, S995, S1086, S1089-S1091
Statutory references to 3597, 4087

RECLAMATION PROJECT AUTHORIZATION ACT OF 1972
Amendments of 3219, S1030, 3456, 3475, 3611
Text 2748
Statutory references to S1030, 3613, 3650
Text as amended S1030

RECLAMATION RECREATION MANAGEMENT ACT OF 1992 3914

RECLAMATION RECYCLING AND WATER CONSERVATION ACT OF 1996 4087

RECLAMATION REFORM ACT OF 1982
Amendments S1101, S1106, 3571, 4061, 4071
Exemption, special program under title 7, C.F.R. 770 3374
Miscellaneous references to S73, S74, S86, S125, S155
Statutory references to S273, S881, S938, S942, S1069, 3422, 3468, 3471, 3506, 3571, 3574, 3647, 3585, 3603, 3711, 3739, 3754, 3829, 3911, 3934, 3977, 4038, 4071, 4110
Text 3334
Text as amended S1090-S1111

RECLAMATION SAFETY OF DAMS ACT OF 1978
Amendments of S1068, 3421
Miscellaneous references to S1070
Reimbursable and nonreimbursable costs S1068, 3127, 3421
Statutory references to 2396, 3168, 3421, 3582, 3659
Text 3127

S1318
INDEX TO VOLUME V AND SUPPLEMENT II

RECLAMATION SERVICE 86

RECLAMATION STATES DROUGHT ASSISTANCE ACT OF 1988 3573

RECLAMATION STATES EMERGENCY DROUGHT RELIEF ACT OF 1991
Amendments of 3741, 3745, 4061, 4083
Drought contingency planning 3742
Drought program 3738
Excess storage and carrying capacity 3745
General and miscellaneous provisions 3744
Statutory references to 3935, 4061, 4083
Text 3738

RECLAMATION WASTEWATER AND GROUND WATER STUDIES and Facilities Act
Amendments of 3877, 3878, 3879, 3880, 3882, 3884, 3886, 3889, 4087, 4089, 4114
Statutory references to 4087
Text 3875

RECLAMATION WITHDRAWALS
Authorized
Coal lands 144
Generally 37, 246, 3022, S18, S19
Parks and community centers 201
Town sites 109
In Arizona and New Mexico 141, 143
Lands in irrigation district covered by Smith Act 222
Public notice of water availability and terms. See RECLAMATION ENTRIES.
Sale of small tracts. See SMALL TRACTS ACT.
Sale of surplus withdrawn land. See SURPLUS PROPERTY.
Vacation of withdrawals of lands containing minerals authorized 498

RECONCILIATION PROCESS S434
Recordable contracts 3336, 3338, 3339, 3343, S45, S83, S79-85
Records management S661

RECONSTRUCTION FINANCE CORPORATION 898, 899, 1037, 1153, 1194

RECORDABLE CONTRACTS 351, 354, 377, 386, 556, 586, 596, 731, 1034, 1038, 1550

RECREATION. See individual projects by name.
Administration of project areas by Forest Service. See NATIONAL FORESTS.
Administration of project areas by National Park Service
Areas in national park system. See individual areas by name.
Criminal sanctions 838
Generally 838
See also NATIONAL PARK SERVICE.
Administration of project areas by State or local bodies
Existing reclamation projects; generally 1825
Federal water projects, generally 1820, 1823
Reclamation projects, generally 1825
Allocation of costs. See COST ALLOCATION.
As a project purpose
Army projects, generally 799, S148
Federal water projects, generally 1820
Policy against projects with more than half of costs allocated to recreation and fish and wildlife enhancement 1826

S1319
INDEX TO VOLUME V AND SUPPLEMENT II

Reclamation projects, generally 1825, S333
Small reclamation projects. See SMALL RECLAMATION PROJECTS ACT.
Watershed projects. See AGRICULTURE, DEPARTMENT OF, WATERSHED PROTECTION AND FLOOD PREVENTION ACT.
Coordination of recreation programs 1711, 1823
Parks and community centers, reservation of 20-acre tracts for 201
Reimbursement and cost sharing
Fees and charges 1785, 1821, 1824, 1827, 2387, S361, S362, S378
Generally 1793, 1820, S374, S389, S391
Small reclamation projects 1336
Research. See RESEARCH
Studies. See STUDIES AND REPORTS.

RECREATION AND PUBLIC PURPOSES ACT
Amendments of 2981
Miscellaneous references to 43, 45
Statutory references to 1716, 2980

RED CROSS 1043

RED BLUFF DAM, Texas 943

RED BLUFF DIVERSION DAM, California 1032

RED BLUFF PROJECT, Texas
Authorized 392
Feasibility study of rehabilitation plan authorized 2643

RED BLUFF WATER POWER CONTROL DISTRICT 393, 1392

RED FLEET DAM 3214

RED PRAIRIE DIVISION, Willamette River project, Oregon 1887

RED RIVER 615, 1489, 1888, 1922, 2343, 2430

RED RIVER, Kentucky 2447

RED RIVER BASIN 615, 806, 1003, 1737, 1922, 3302

RED RIVER COMPACT
Consent to negotiate 1231
Text 3299

RED RIVER COMPACT COMMISSION
Established 3310

RED RIVER OF THE NORTH 1922

RED RIVER OF THE NORTH COMPACT
Text 590

RED WILLOW COUNTY, Nebraska 2928

RED WILLOW CREEK 741

RED WILLOW DAM AND RESERVOIR 1261, 1453

RED ROCK VALLEY 1386

S1320
INDEX TO VOLUME V AND SUPPLEMENT II

REDFIELD CANAL 3328
REDWOOD VALLEY COUNTY WATER DISTRICT, California 3609
Sale of loans and title transfer 3910
REEVES COUNTY WATER IMPROVEMENT DISTRICT 675, 1338
REFUNDS 33, 102, 236, 259, 316, 331, 372, 391, 406, 513, 559, 1025
See also CONSTRUCTION CHARGES.
REFUSE ACT OF 1899
Miscellaneous references to 2496
Statutory references to 1301
Text 513
REGULATORY FLEXIBILITY ACT
Text 5471
REHABILITATION AND BETTERMENT
See also REHABILITATION AND BETTERMENT ACT.
Certain study costs nonreimbursable 2639
See also individual projects by name.
Loans or advances to repayment organizations
Authorized, generally 969
Bitter Root project 475, 526
Included within term "construction" for purposes of small reclamation project loans 1331
Reclamation projects, generally
Express statutory authorization 969
Rehabilitation of private irrigation works by Bureau of Reclamation.
See BITTER ROOT PROJECT; CENTRAL OREGON IRRIGATION DISTRICT; CORDON AMENDMENT
PROJECTS; FARMERS IRRIGATION DISTRICT; FREMONT-MADISON IRRIGATION DISTRICT; FORT SUMNER
PROJECT; LA FERIA DIVISION; MERCEDES DIVISION; ROGUE RIVER BASIN PROJECT; SANTA CRUZ DAM
AND RESERVOIR.
REHABILITATION AND BETTERMENT ACT
Amendments and annotations of 2927, S189-S192, S864, 4061
Congressional committee approval of contracts 988
Miscellaneous references to 3127, 865
Statutory references to 1164, 1316, 1505, 2480, 3215, 3323, 3570, 4061
Text 959
REICHERT FARMS, INC. S78
REICHERT, GENE D. S78
REIMBURSEMENT AND COST SHARING. See APPROPRIATIONS; AQUATIC PLANT CONTROL; ARMY,
DEPARTMENT OF THE; CONSTRUCTION CHARGES; COST SHARING; DAM SAFETY; DEPRESSED AREAS,
DISASTER RELIEF ACTS; DRAINAGE AND MINOR CONSTRUCTION ACT; EMERGENCY DROUGHT ACT;
ENVIRONMENTAL PROTECTION, FEDERAL AGENCIES; FISH AND WILDLIFE; FLOOD CONTROL; INDIAN
LANDS; LEADVILLE MINE DRAINAGE TUNNEL PROJECT; NAVAJO INDIAN IRRIGATION PROJECT;
NAVIGATION; OPERATION AND MAINTENANCE CHARGES; POWER; RECLAMATION REFORM ACT OF 1982;
RECREATION; REHABILITATION AND BETTERMENT; REPAYMENT CONTRACTS; RESEARCH; ROADS;
SETTLER ASSISTANCE; SMALL RECLAMATION PROJECTS ACT; STUDIES AND REPORTS; TETON DISASTER
ASSISTANCE ACT; TREATIES AND CONVENTIONS; WATER QUALITY AND SALINITY CONTROL; WATER
SERVICE; WATER SUPPLY. See also individual irrigation districts and projects by name.
RELICION 2301

S1321
INDEX TO VOLUME V AND SUPPLEMENT II

RELOCATION. See acquisition of property, Army, Department of; construction, moving expenses; operation and maintenance, roads.

RENEWABLE ENERGY RESOURCES ACT OF 1980
Miscellaneous references to 3165

RENO, CITY OF, Nevada 453, S266

REORGANIZATION PLAN NO. IV OF 1940
Extracts from 520

REORGANIZATION PLAN NO. 3 OF 1946
Statutory references to 2984

REORGANIZATION PLAN NO. 3 OF 1950
Miscellaneous references to 1760, S114
Reorganization plan references to 1305
Statutory references to 2984
Text 1005

REORGANIZATION PLAN NO. 14 OF 1950
Miscellaneous references to S561

REORGANIZATION PLAN NO. 4 OF 1965
Miscellaneous references to 570

REORGANIZATION PLAN NO. 2 OF 1966
Text 1303

REORGANIZATION PLAN NO. 4 OF 1970
Miscellaneous references to S121
Statutory references to 2785, 2786, 2793

REPAYMENT CONTRACTS. See also individual projects and irrigation, districts by name.
Amendment of, generally
Conversion of "9(e)" water service contracts to "9(d)" repayment contracts 1275
Extension of repayment period to 40 years 636
Interim relief. See CONSTRUCTION CHARGES
Normal and percentages plan 636, 817
To conform to Reclamation Reform Act of 1982 3336
To incorporate provisions temporarily suspending excess land laws where lands acquired involuntarily 1307
To provide equitable treatment of repayment problems 640, 663
When congressional approval required 663, 817, S124
Annual installment payable in two parts 1681
Charges covered by. See CONSTRUCTION CHARGES; OPERATION AND MAINTENANCE CHARGES.
Contracts for
Generally S133, S134
Defined 634
Deferment under title 7, C.F.R. 7703374
Elections to approve
Amendatory contract S143
Interpretation of S36
Miscellaneous provisions of 639
Optional contract with districts or associations 296, 375
Payments on an annual, semiannual, bimonthly or monthly basis 3219, S262
Public notice of contracts or amendments required 3347, S135

S1322
INDEX TO VOLUME V AND SUPPLEMENT II

Required as a prerequisite to:
- Acquisition of property 75, 378
- Construction of project 334, 337, 338, 350, 378, 392, 398, 399, 422, 496, 1460
- Delivery of water 335, 354, 376, 640, 651
- Operation and maintenance 353
- Validation of contracts defining or describing the delivery of project water or nonproject water 3347
- Warren Act 166
- W.C.U. projects 672

REPORTS. See STUDIES AND REPORTS.

REPUBLICAN RIVER 2478

REPUBLICAN RIVER COMPACT
- Text 740

REPUBLICAN RIVER 930

RESEARCH
- Bonneville Power Administration 570
- Desalting 1087, 1467
- Farms for agricultural research
  - Arizona, University of 598, 819
  - Authority to develop 73
  - Farson Pilot Farm 1653, 1911
  - Washington State University 1484, 1692
- Water charges 61
- Fish and wildlife 509, 602, 839, 1860
- Pollution control 509, 845, 1281, 1283, 1862
- Reclamation program, generally
  - Authorized 34, 35, 325, 806, S18, S71, S125
  - Current appropriation act language 1023
- Recreation 1711
- Reimbursement of costs of
  - Generally 325, 1023, 2639
- Salton Sea, California
  - Salinity Control 3871
- Scientific and technical research, generally 1907, 2007
- Soil and moisture conservation 517, 520
- Underground power transmission S18
- Water resources, generally 1747, 3107
- Weather modification 34, 326, 570, 806, 1023

RESERVATION DIVISION, Yuma Project S44, S45

RESERVED WORKS. See ADVANCE PAYMENTS; OPERATION AND MAINTENANCE.

RESERVOIRS. See ACQUISITION OF PROPERTY; CLEAN WATER ACT; FEDERAL POWER ACT; GROUND WATER; INDIAN LANDS; NATIONAL PARKS; RIGHTS OF WAY AND EASEMENTS; SMALL RESERVOIRS. See also individual dams, reservoirs and projects by name.

RESERVOIR SALVAGE ACT
- Text S298

RESIDENCE
- As a requirement to receive water 50, 62, 147, 177, 188

S1323
INDEX TO VOLUME V AND SUPPLEMENT II

Generally  S20, S22, S43, S92, S274
Requirement repealed  3341
Study of, on San Luis unit, CVP  3042
Eligibility for purchase of small tracts  998
Farm Unit Exchange Act  1118
Homestead laws  48, 159, 2023
Leave of absence  159, 175, 2031
Suspension of residence requirements for servicemen. See SERVICEMEN.
Waived for purchasers of land on Yuma Auxiliary project  230

RESIDENTIAL WATER SUPPLY. See WATER SUPPLY.

RETROP PROJECT, Oklahoma
Feasibility study authorized  2343

REVILLAGIGEDO ISLAND  1892

REVISED STATUTES
Section 161, departmental regulations
Text  1927

Section 236, settlement of accounts
Text  1959

Section 355, acquisition of property
Text  1972

Sections 2289-309, homestead laws
Extracts from  2023

Section 2339, recognition of vested water rights
Text  9

Section 2340, patents subject to vested water rights
Text  10

Section 3469, compromise of claims
Text  1960

Section 3617, deposit of receipts in Treasury
Text  1961

Section 3618, proceeds of sales of material
Text  1961

Section 3648, prohibition against advance payments
Statutory references to  1281, 1711, 1751, 2329, 3112
Text  1962

Text, as amended  S518

Section 3678, application of moneys appropriated
Text  1963

Section 3679, antideficiency law
Miscellaneous references to  570
Text  1963

Section 3709, advertisement for bids
Statutory references to  1281
Text  1987

Section 3710, bid openings
Text  1957

Section 3732, no contract without authorization or appropriation
Miscellaneous references to  570
Text  1989

Section 3733, no contract to exceed appropriation
Text  1989

S1324
INDEX TO VOLUME V AND SUPPLEMENT II

Section 3735, contracts limited to 1 year
  Text  1989
Section 3736, restriction on purchases of land
  Text  1989
Section 3743, deposit of contracts
  Text  1990

REWARDS  34
REXBURG BENCH AREA, Teton Basin Project  1797, 3221
REYNOLDS METAL COMPANY  802
REYNOLDS, MARY K.  508, 1196
RHETT LAKE. See TULE LAKE.
RICO, Colorado  2446
RIDENBAUGH IRRIGATION DISTRICT  450
RIDGEVIEW IRRIGATION DISTRICT  1080
RIDGWAY, Pennsylvania  2444
RIDGWAY DAM  S250

RIGHTS OF WAY AND EASEMENTS. See also individual projects by name.
  Acquisition of. See ACQUISITION OF PROPERTY.
  Distribution System Loans Act projects  2662
  Granted to United States for canals and ditches under State laws  78, 1766, 1902
  Indian lands. See INDIAN LANDS.
  National parks. See NATIONAL PARKS.
  Patented lands
    Recognition of vested rights of others  10
    Rights of way for canals and ditches reserved to United States  17, 1766, 1902
    Rights of way for reclamation projects  326
  Public lands and national forests, generally.
    Canals, ditches, reservoirs, etc.  9, 15, 22; 29, 3002, 3024, S6, S7, S8, S9, S10
    Distribution systems  1219
    Federal agencies, generally  3007, 3008
    Federal Land Policy and Management Act  2966, 3002
    Federal Power Act  264, 267, 272, 282
    Homesteaded lands  50
    Power and communication facilities  29, 173, 3002, 3024, S16, S42
    Public buildings and other public works  1214
    Reclamation purposes  326, 3008, S71
    Real property of United States other than public lands  1699
    Reclamation project lands, generally
      Express statutory authority  498, 657, 660, 1017, S136
      Relationship of other laws  23, 45, 3009

RIO BLANCO COUNTY, Colorado  3220
RIO BRAVO. See RIO GRANDE.
RIO GRANDE AMERICAN CANAL EXTENSION ACT  3655
  Miscellaneous references to  S1057

S1325
INDEX TO VOLUME V AND SUPPLEMENT II

RIO GRANDE: See also LOWER RIO GRANDE.
Augmentation of flow of 2748
Channel rectification 2748
Wild and scenic river system 2430, 2433, 2444
Works authorized to protect Rio Grande as boundary 2761
Compacts relating to. See COSTILLA CREEK COMPACT; RIO GRANDE COMPACT.
Construction of private dam on, enjoined 98
Framework study by Army authorized 1857
Projects on main stem or tributaries of. See INTERNATIONAL BOUNDARY AND WATER
COMMISSION and individual dams and projects by name.
Secretary authorized to compensate named property owners for flood damages near
Hatch, New Mexico 404
Specific provisions of Mexican Water Treaty related to 753, 770
Treaties and conventions relating to. See MEXICAN WATER TREATY; TREATIES AND
CONVENTIONS.

RIO GRANDE BASIN 466, 622, 901, 1002, 1544, 1660, 1888, 2750, S252

RIO GRANDE CANALIZATION PROJECT
American Diversion Dam, relation of, explained 537
Authorized 543
Increased appropriation authorized S108
Public Resolution No. 4, 74th Congress, explained 536
Watershed control works authorized to facilitate 1805

RIO GRANDE COMPACT
Annotation of S123
Miscellaneous references to S30
Permanent compact
Statutory references to 685, 902, 1250, 1257, 1258, 1545, 1661, S1031
Text 622
Statutory references to 2750, 2752, 2916, 2917, 3325, S1033
Temporary compact
Text 466

RIO GRANDE COMPACT COMMISSION
Statutory references to 629, 902, 1545, 1661, 2916, 3325

RIO GRANDE FLOODWAY: San Acacia to Bosque Del Apache unit, New Mexico 3906

RIO GRANDE PROJECT: New Mexico-Texas
Acquisition of pipeline from, and water supply for, railway 216
Amended contract approved 1881
American Canal extension authorized 2955, 3653
Authorized 98
Compact references to 623
Contract with irrigation district required; drainage works 235, 240
Extension of time for construction payments 412
Fifty-year power lease authorized 111, 172
Miscellaneous references to S30, S40, S69, S120, S123
Power revenues, application of 684
Recreation facilities at Elephant Butte and Caballo Reservoirs authorized 1667
Recreation pool in Elephant Butte Reservoir authorized 2916
Reduction of construction charges 367
Storage of San Juan-Chama project water in Elephant Butte Reservoir 3325

S1326
INDEX TO VOLUME V AND SUPPLEMENT II

Suit for flood damages allegedly resulting in 1929 from construction of Elephant Butte Dam 1308
Termination of rights of districts in Elephant Butte powerplant and application of power revenues 564

RIO GRANDE RECTIFICATION PROJECT
   Establishment of, explained 524, 775

RIO GRANDE WATER CONSERVATION DISTRICT, Colorado 2749, 2750, 2751

RIO GRANDE VALLEY 1661

RIO GRANDE WATER SALVAGE PROJECT
   Feasibility study authorized 1891

RIRIE DAM AND RESERVOIR 1703

RIVAS, S., FERNANDO 2876

RIVER BASIN COMMISSIONS
   Compact commissions. See individual compacts by name.
   Federal-State planning commissions. See Title II of WATER RESOURCES PLANNING ACT.
   International commissions. See INTERNATIONAL BOUNDARY AND WATER COMMISSION.

RIVER BASIN MONETARY AUTHORIZATION AND MISCELLANEOUS CIVIL WORKS AMENDMENT ACT OF 1970
   Extracts from 2520

RIVER BASIN MONETARY AUTHORIZATION ACT OF 1971
   Extracts from 2646

RIVER AND HARBOR (OR RIVERS AND HARBORS APPROPRIATION) ACT OF 1899
   Extracts from 27, 1971, 512
   Statutory references to 1301

RIVERS AND HARBORS ACT OF 1910
   Statutory references to 2744

RIVER AND HARBOR ACT OF 1925
   Extract from 340

RIVER AND HARBOR ACT OF 1927
   Extracts from 401

RIVER AND HARBOR ACT OF 1935
   Extracts from 538
   Statutory references to 791

RIVER AND HARBOR ACT OF 1937
   Extracts from 583

RIVER AND HARBOR ACT OF 1940
   Extract from 711

RIVER AND HARBOR ACT OF 1945
   Extracts from 813
   Miscellaneous references to 797

S1327
INDEX TO VOLUME V AND SUPPLEMENT II

RIVER AND HARBOR ACT OF 1958
Extracts from 1423

RIVER AND HARBOR ACT OF 1966
Extracts from 1914

RIVER AND HARBOR ACT OF 1970
Extracts from 2814

RIVER MOUNTAINS DAM AND RESERVOIR 1851

RIVER OF NO RETURN WILDERNESS 2437

RIVER REGULATION
Boulder Canyon Project Act 414, 415, 431
Central Valley project 584
Colorado River 2395

RIVERSIDE CANAL, Idaho 1316

RIVERSIDE COUNTY, California 422, 500, 867, 1457, 1893, 2550

RIVERSIDE HEADING 2955

RIVERSIDE IRRIGATION DISTRICT 1316

RIVERTON PROJECT, Wyoming
Amended contract approved 1080
Authorization explained 1657
Compensation to Shoshone and Arapahoe Indians for lands on Wind River Indian Reservation 1125, 1451
Easement on Indian lands for Bull Lake Dam and Reservoir 660
Miscellaneous references to 317
Payments for homestead entries 291
Power revenues available for operation and maintenance 406
Proceeds from sale of reclamation town sites 291
Purchase of lands, adjustment of costs and delivery of water, Third division 1740
Reauthorized as Riverton unit, MRB 2536
Reclamation of ceded portion of Wind River or Shoshone Reservation 260
Repayment contract, sugar factory, and branch railroad required 456
Temporary delivery of water to Third division 1521, 1657, 1708, 1740

RIVERTON UNIT, P-SMBP, Wyoming
Authorized 2536
Muddy Ridge area
Feasibility study authorized 2928
Pilot Butte power plant
Feasibility study authorized 3374

RIVERTON EXTENSION UNIT, P-SMBP. See Riverton Unit

ROADS. See also individual projects by name.
Bridges. See BRIDGES.
Payment to city of Malta for street improvements 1757
Relocation, use, or reconstruction of existing roads; reimbursement of costs
Army projects, generally 1423, 1705, 2835, S343
Reclamation projects, generally 660, 1705, 2835, S137, S343

S1328
INDEX TO VOLUME V AND SUPPLEMENT II

Widening of streets, conveyance of Federal property for 1986, S564

ROANOKE RAPIDS 802
ROARING FORK 3131, S330
ROARING FORK RIVER 1670
ROBBINS, TERRENCE L. 1132
ROBERT B. GRIFFITH WATER PROJECT, Nevada
Name changed from Southern Nevada Water Project 3365
ROBERTS, J. DANIEL 3195
ROBERTS, DARYL L., et al. 132
ROBINSON BRIDGE 2432
ROBINSON FLAT 367
ROBINSON-PATMAN ACT
Statutory references to 3139
ROBLES DIVERSION DAM 1245
ROCK CREEK 741
ROCK CREEK, Oklahoma 1676
ROCK ISLAND DAM 1579
ROCK SLough 3216
ROCKY MOUNTAIN NATIONAL PARK 2445
Utilization of, for reclamation purposes, authorized 203
ROCKY REACH DAM 1579
RODRIGUEZ, YDELFONSO S88
ROECELS, DUANE D. AND JUNE M. S78
ROGUE RIVER 1703, 1886, 1887, 1889, 2343, 2430
ROGUE RIVER BASIN 1703
ROGUE RIVER BASIN PROJECT, Oregon
Applegate Valley division
   Feasibility study authorized 1889
   Evans Valley division
   Feasibility study authorized 2343
   Grants Pass division
   Feasibility study authorized 2643
   Savage Rapids Dam fish way authorized 2915, 2930
   Illinois Valley division
   Completion of studies authorized 1887
   Medford division
   Feasibility study authorized 1889
   Merlin division

S1329
INDEX TO VOLUME V AND SUPPLEMENT II

Additional studies authorized 1886
Authorized 2517
Rehabilitation of works of Medford and Rogue River Basin
Irrigation Districts authorized 1184
Talent division
Additional features authorized 1689
Authorized 1184

ROGUE RIVER BASIN PROJECT, Oregon-California (Army)
Modified 2841

ROGUE RIVER VALLEY IRRIGATION DISTRICT 1184

ROOSEVELT DAM 2400
ROOSEVELT, FRANKLIN D., LAKE 1222
ROOSEVELT, THEODORE, DAM, RESERVOIR, AND POWERPLANT 112, 1202, 1499
ROOSEVELT IRRIGATION DISTRICT S275, 3580
ROOSEVELT NATIONAL FOREST 2445
ROSS FORK CREEK 1207
ROSWELL TEST FACILITY, New Mexico
Land conveyance 3393

ROZA IRRIGATION DISTRICT 1141
RUEDE RESERVOIR 1670, S133, S285, S330

RULES AND REGULATIONS
Authority to issue
Generally 86, 199, 663, S442, S464

RUPERT, CITY OF 1111
RUPERT, TOWN SITE OF 122, 1610, S35

RURAL DEVELOPMENT ACT OF 1972
Miscellaneous references to S309

RURAL DEVELOPMENT POLICY ACT OF 1980
Amendments of 3327
Extracts from 3207
Statutory references to 3577

RURAL ELECTRIFICATION ACT OF 1936
Statutory references to 648, 678, 3164, S845

RURAL ELECTRIFICATION ADMINISTRATION 433

RUSSIAN RIVER BASIN 1002, 1890

RYAN ISLAND 2444

RYE PATCH DAM S124, S173, S190

S1330
INDEX TO VOLUME V AND SUPPLEMENT II

S

SABINE LAKE  1175
SABINE RIVER  1891

SABINE RIVER COMPACT
   Amendments of  S226-S227
   Consent to negotiate  1071
   Text  1174

SABOTAGE  718

SACKSTEDER, F.H., JR.  2876

SACO DIVIDE UNIT, MILK RIVER PROJECT  708

SACRAMENTO COUNTY, CALIFORNIA  979, 1847, 2771, 3216

SACRAMENTO RIVER  583, 585, 711, 809, 1032, 1144, 1235, 1890, 3217, S175

SACRAMENTO RIVER BASIN  1856, 1890, 1922

SACRAMENTO RIVER DIVERTERS  585

SACRAMENTO RIVER DIVISION, CVP  1887

SACRAMENTO RIVER VALLEY  1887

SACRAMENTO-SAN JOAQUIN DELTA  1529, 1887, 3218, S13, S118

SACRAMENTO-SAN JOAQUIN DELTA-SUISUN BAY AREA  3216

SACRAMENTO-SAN JOAQUIN RIVER BASIN  809

SACRAMENTO VALLEY CANALS  1032

SACRAMENTO VALLEY  1529

SACRAMENTO VALLEY CANALS  2332, 3317, S202

SAFE DRINKING WATER ACT
   Statutory references to  3120

SAFFORD VALLEY  1425

SAINT CROIX RIVER  2430, 2444

SAINT JOE LAKE  2436

SAINT JOE RIVER  2436, 2444

SAINT JOHNS.  S90 BLACK RIVER-SPRINGERVILLE-SAINT JOHNS PROJECT.

S1331
INDEX TO VOLUME V AND SUPPLEMENT II

SAINT LAWRENCE RIVER  11, 1856, 1922
SAINT MARY EAST CANAL  363
SAINT MARY CANAL     1522
SAINT MARY RIVER     34, 131, 363, 478
SAINT VRAN CREEK     2478
SALADO RIVER         753
SALERATUS DRAINAGE   3195
SALINE RIVER, Kansas 1545,
SALINE RIVER         3309

SALINE WATER RESEARCH AND DEMONSTRATION
  Demonstration plants Plants demonstrating membrane and phase-change desalting
  processes authorized 3044, 3115
  Research Authorized 3118

SALINE WATER CONVERSION ACT
  Name explained 5207

SALINE WATER CONVERSION ACT OF 1952
  Repeal explained 3122

SALINE WATER CONVERSION ACT OF 1971
  Repealed 3122
  Statutory references to 3044

SALINE WATER RESEARCH AND DEMONSTRATION
  See also WATER QUALITY CONTROL.
  Demonstration plants
  Five plants authorized 1467
  Research
  Authorized 1087

SALINITY CONTROL.
  See COLORADO RIVER BASIN SALINITY CONTROL PROJECT; COLORADO RIVER WATER QUALITY
  IMPROVEMENT PROGRAM; DRAINAGE WORK; METROPOLITAN WATER DISTRICT OF SOUTHERN
  CALIFORNIA; SALINE WATER RESEARCH AND DEMONSTRATION; SEEPAGE; WATER QUALITY CONTROL.

SALMON     602
SALISBURY RIDGE 3027, S342
SALMON FALLS DIVISION, Upper Snake River project 1889, 2754
SALMON LAKE RESERVOIR 367
SALMON RIVER 2431, 2437, 2438, 2444

S1332
INDEX TO VOLUME V AND SUPPLEMENT II

SALMON RIVER CANAL COMPANY 2755
SALT CEDAR. See phreatophyte control.
SALT FORK RIVER, Kansas 1916
SALT FORK RED RIVER 3303, 1489
SALT LAKE. See great salt lake.
SALT LAKE AQUEDUCT 866
SALT LAKE BASIN PROJECT, Utah Repayment contract required 338, 496, 457
SALT LAKE CITY STREAMS 2385
SALT LAKE COUNTY 1515
SALT RIVER 2839, 2447, 3094, 3095
SALT RIVER, Arizona 1201, 1425
SALT RIVER, Idaho-Wyoming 992, 1887
SALT RIVER INDIANS Service to, from Salt River project, authorized 215
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY 2401
SALT RIVER PIMA-MARICOPA INDIAN RESERVATION 3094
SALT RIVER PROJECT, Arizona Credit for value of property conveyed to United States for Federal building in Phoenix 1420 Miscellaneous references to 53, 54, 65, 71, 112, 147 Name of Roosevelt Dam, Reservoir, and Power Plant changed to Theodore Roosevelt Dam, Lake, and Power Plant 1499 Power development authorized 302 Quitclaim of United States' interest in certain lands 1201 Service to Indians, authorized 126, 215
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT 1420
SALT RIVER VALLEY CANAL 1201
SALT RIVER VALLEY WATER USERS' ASSOCIATION 65, 302, 491, 1201, 1420
SAN DIEGO AQUEDUCT. See san diego project.
SAN DIEGO, CITY OF 424, 867
SAN ANGELO PROJECT, Texas Authorized 1354

S1333
INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Antonio River</td>
<td>623</td>
</tr>
<tr>
<td>San Antonio River Basin</td>
<td>974, 1548, 1891</td>
</tr>
<tr>
<td>San Bernardino County</td>
<td>500, 1612, 1693</td>
</tr>
<tr>
<td>San Benito County</td>
<td>979, 1454, 1530</td>
</tr>
<tr>
<td>San Carlos Reservoir</td>
<td>35, 1425</td>
</tr>
<tr>
<td>Sand and Gravel</td>
<td>See building materials.</td>
</tr>
<tr>
<td>Sabine River Compact</td>
<td></td>
</tr>
<tr>
<td>Amendments of S226-S227, S870, 3873</td>
<td></td>
</tr>
<tr>
<td>Consent to negotiate</td>
<td>1071</td>
</tr>
<tr>
<td>Miscellaneous references to S871</td>
<td></td>
</tr>
<tr>
<td>Statutory references to 3873</td>
<td></td>
</tr>
<tr>
<td>Text</td>
<td>1174</td>
</tr>
<tr>
<td>Sabine River</td>
<td>1891</td>
</tr>
<tr>
<td>Sabine Lake</td>
<td>1175</td>
</tr>
<tr>
<td>Sabotage</td>
<td>718</td>
</tr>
<tr>
<td>Sacksteder, F.H., JR.</td>
<td>2876</td>
</tr>
<tr>
<td>Saco Divide Unit, Milk River project</td>
<td>708</td>
</tr>
<tr>
<td>Sacramento Area Flood Control Agency</td>
<td>4099</td>
</tr>
<tr>
<td>Sacramento River Diversers</td>
<td>585</td>
</tr>
<tr>
<td>Sacramento River Valley</td>
<td>1887</td>
</tr>
<tr>
<td>Sacramento River Basin</td>
<td>1856, 1890, 1922</td>
</tr>
<tr>
<td>Sacramento River</td>
<td>583, 585, 711, 809, 1032, 1144, 1235, 1890, 3217, S175</td>
</tr>
<tr>
<td>Sacramento County, California</td>
<td>979, 1847, 2771, 3216</td>
</tr>
<tr>
<td>Sacramento River Division, CVP</td>
<td>1887</td>
</tr>
<tr>
<td>Sacramento Valley</td>
<td>1529</td>
</tr>
<tr>
<td>Sacramento Valley Canals</td>
<td>1032, 2332, S202, S866,</td>
</tr>
<tr>
<td>Extension of Service area</td>
<td>3317, 3961, S867</td>
</tr>
<tr>
<td>Sacramento-San Joaquin River Basin</td>
<td>809</td>
</tr>
<tr>
<td>Sacramento-San Joaquin Delta</td>
<td>1529, 1887, 3218, S13, S118</td>
</tr>
<tr>
<td>Sacramento-San Joaquin Delta-Suisun Bay Area</td>
<td>3216, 4133</td>
</tr>
<tr>
<td>Safe Drinking Water Act</td>
<td></td>
</tr>
<tr>
<td>Statutory references to 3120</td>
<td></td>
</tr>
<tr>
<td>Safford Valley</td>
<td>1425</td>
</tr>
<tr>
<td>Saint Croix River</td>
<td>2430, 2444</td>
</tr>
</tbody>
</table>

S1334
INDEX TO VOLUME V AND SUPPLEMENT II

SAINT JOE LAKE 2436
SAINT JOE RIVER 2436, 2444
SAINT JOHNS. See BLACK RIVER-SPRINGERVILLE-SAINT JOHNS PROJECT.
SAINT LAWRENCE RIVER 11, 1856, 1922
SAINT MARY CANAL 1522
SAINT MARY EAST CANAL 363
SAINT MARY RIVER 34, 131, 363, 478
SAINT VRAIN CREEK 2478
SALADO RIVER 753
SALERATUS DRAINAGE 3195
SALINE RIVER 3309
SALINE RIVER, KANSAS 1545
SALINE WATER CONVERSION ACT
Name explained  S207
SALINE WATER CONVERSION ACT OF 1952
Repeal explained  3122
SALINE WATER CONVERSION ACT OF 1971
Repealed  3122
Statutory references to  3044
SALINE WATER RESEARCH AND DEMONSTRATION. See also WATER QUALITY CONTROL, WATER DESALINATION ACT OF 1966.
Demonstration plants
Five plants authorized  1467
Plants demonstrating membrane and phase-change desalting processes authorized 3044, 3115
Research
Authorized  1087, 3118, 4095
SALINITY CONTROL. See COLORADO RIVER BASIN SALINITY CONTROL PROJECT; COLORADO RIVER WATER QUALITY IMPROVEMENT PROGRAM; DRAINAGE WORK; METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA; SALINE WATER RESEARCH AND DEMONSTRATION; SEEPAGE; WATER QUALITY CONTROL.
SALISBURY RIDGE 3027, S342
SALMON 602
SALMON FALLS DIVISION, Upper Snake River project 1889, 2754
SALMON LAKE RESERVOIR 367
SALMON RIVER 2431, 2437, 2438, 2444
SALMON RIVER CANAL COMPANY 2755

S1335
INDEX TO VOLUME V AND SUPPLEMENT II

SALT CEDAR. See phreatophyte control.
SALT FORK RIVER, Kansas 1916
SALT FORK RIVER 3303, 1489
SALT-GILA AQUEDUCTS, Arizona 2398
  Redesignated Fannin-McFarland Aqueduct 3673
SALT LAKE. See GREAT SALT LAKE.
SALT LAKE AQUEDUCT 866
SALT LAKE BASIN PROJECT, Utah
  Repayment contract required 338, 496, 457
SALT LAKE CITY STREAMS 2385
SALT LAKE COUNTY 1515
SALT RIVER, Arizona 1201, 1425, 2839, 2447, 3094, 3095
SALT RIVER, Idaho-Wyoming 992, 1887
SALT RIVER INDIANS
  Service to, from Salt River project, authorized 215
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY 2401
  WATER RIGHTS SETTLEMENT ACT OF 1988 3579
    Statutory references to 3721
SALT RIVER PIMA-MARICOPA INDIAN RESERVATION
  Land addition Act 3615
  Reservation boundary 3094
SALT RIVER PROJECT, Arizona
  Credit for value of property conveyed to United States for Federal building in Phoenix
  Theodore Roosevelt Dam 1420
    Feasibility study of increasing the height of the dam authorized 3217
    Miscellaneous references to 53, 54, 65, 71, 112, 147, 2839
    Name of Roosevelt Dam, Reservoir, and Power Plant changed to Theodore Roosevelt
    Dam, Lake, and Power Plant 1499
    Power development authorized 302
    Quitclaim of United States' interest in certain lands 1201
    Reimbursement for modifications of Bartlett Dam spillway and outfall channel 3128
    Service to Indians, authorized 126, 215
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT 1420
SALT RIVER VALLEY CANAL 1201
SALT RIVER VALLEY WATER USERS' ASSOCIATION 65, 302, 491, 1201, 1420
SALTON SEA RESEARCH PROJECT, California 3872
SALTON SEA RECLAMATION ACT OF 1998 4136
  Feasibility study authorized 4136

S1336
INDEX TO VOLUME V AND SUPPLEMENT II

Salton Sea National Wildlife Refuge renamed "Sonny Bono Salton Sea National Wildlife Refuge" 4139
Emergency action authorized 4139
Wildlife resource studies 4138

SAMOA. See AMERICAN SAMOA.

SAN ANGELO PROJECT, Texas
Amendment of S884, 4025
Authorized 1354
Revised repayment contract authorized 2638
Statutory references to 4025

SAN ANGELO WATER SUPPLY CORPORATION 2638

SAN ANTONIO RIVER 623

SAN ANTONIO RIVER AUTHORITY 2905

SAN ANTONIO RIVER BASIN 974, 1548, 1891

SAN BERNARDINO COUNTY 500, 1612, 1693

SAN BENITO COUNTY 979, 1454, 1530

SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT ACT OF 1992 3971
Amendments of 3975, 4010

SAN CARLOS IRRIGATION PROJECT, Arizona
Coolidge Dam modifications 3659
Divestiture Act of 1991 3727
Amendments of 3731, 3800
CAP power revenues 3649
Statutory references to 3800

SAN CARLOS RESERVOIR 35, 1425

SAN DIEGO AQUEDUCT. See SAN DIEGO PROJECT.

SAN DIEGO, CITY OF, California 424, 867, S421

SAN DIEGO COUNTY 867, 1057, 1158

SAN DIEGO COUNTY WATER AUTHORITY 1057

SAN DIEGO PROJECT, California
Construction of first aqueduct ratified 867
Construction of second aqueduct authorized 1057
Transfer of aqueduct to Secretary of the Interior authorized 1347

SAN DIEGO RIVER 753

SAN FELIPE CREEK 753

SAN FELIPE DIVISION, CVP 979, 1454, 1530, 1887, 2333, 2498

SAN FRANCISCO BAY 1857, 1858, 1890, 3218

SAN FRANCISCO BAY-Delta Model 2833

S1337
INDEX TO VOLUME V AND SUPPLEMENT II

SAN FRANCISCO BAY AREA WASTE WATER RECLAMATION PROJECT, California
Feasibility study authorized 3216

SAN FRANCISCO, CITY AND COUNTY OF
Act of December 19, 1913 (rights of way for Hetch Hetchy water and power system)
Statutory references to 285

SAN FRANCISCO RIVER, Arizona 2447

SAN FRANCISCO WATER RECLAMATION AND REUSE DEMONSTRATION PROJECT 3986

SAN JACINTO TUNNEL 867, 1057, 2553

SAN JOAQUIN COUNTY, California 979, 1847, 2771, 3216, S339

SAN JOAQUIN DRAINAGE PROBLEM S297

SAN JOAQUIN RIVER 583, 585, 711, 809, 1032, 1701

SAN JOAQUIN RIVER BASIN 1701, 3216

SAN JOAQUIN VALLEY 809, 1191, 1524, 1887, 1890, 2660, 3216, S229

SAN JOAQUIN VALLEY DRAINAGE INVESTIGATION 3216

SAN JUAN BASIN 920

SAN JUAN COUNTY, New Mexico 2643

SAN JUAN COUNTY, Utah 1463, 3017

SAN JUAN COUNTY PROJECT, Utah
Expeditious completion of planning report directed 2417, S251

SAN JUAN PRIMITIVE AREA 2445

SAN JUAN-CHAMA PROJECT, Colorado-New Mexico
Consideration directed to developing Santa Cruz Dam and Reservoir as a part of the project 3129
Expeditious completion of planning report directed and conditions stated 1249
Initial stage
Authorized 1658, 1660
Limitations on storage and use of water S251, S252
Miscellaneous references to 2506, S319
Statutory references to 2872
Storage of project water in other reservoirs 3325
Water from, to be made available to maintain a permanent recreation pool at Cochiti Reservoir 1744
Water releases from Heron Reservoir authorized for recreation pool in Elephant Butte Reservoir 2916

SAN JUAN RIVER, Mexico 753, 770

SAN JUAN RIVER 628, 920, 2346, 2499, S248, S250, S257
See also SAN JUAN-CHAMA PROJECT.

SAN JUAN SUBURBAN WATER DISTRICT, CVP California 3918

SAN LUIS, Arizona 2864, 2875, 2876, 3201

S1338
INDEX TO VOLUME V AND SUPPLEMENT II

SAN LUIS LAKES, Colorado 622
SAN LUIS POWER AND WATER COMPANY, Colorado 1727
SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT ACT 3635
SAN LUIS VALLEY, Colorado 367, 466, 1725, 2748
   Export of water prohibited 3874
SAN LUIS VALLEY PROJECT, Colorado. See PLATERO DAM AND RESERVOIR.
   Amended contract approved 1514
   Authorization explained 1083
   Closed Basin division
   Authorized 2748
   Completion of studies authorized 1888
   Excess land laws modified 1083
   Funds appropriated to commence construction 685
   Miscellaneous references to S390, S393, S1030, 3907
   Permit to withdraw water prohibited 3874

SAN LUIS UNIT FEATURES, CVP. See SPECIFIC FEATURE OF SAN LUIS UNIT, CENTRAL VALLEY PROJECT, CALIFORNIA.

SAN MIGUEL COUNTY, New Mexico 2765
SAN MIGUEL PROJECT, Colorado.
   Authorized 2416, S247
   Expedient completion of planning report directed 1249

SAN MIGUEL RIVER 2446
SAN PABLO BAY 1857
SAN PEDRO AQUEDUCT 2400, 2401
SAN PEDRO RIVER 1425
SAN PEDRO RIVER BASIN, Arizona 1891
SAN PEDRO-SANTA CRUZ PROJECT, Arizona
   Feasibility study authorized 1891
SAN RAFAEL RIVER 2869, 3220
SAN RODRIGO RIVER 753
SAN VICENTE RESERVOIR 867, 1057
SAN XAVIER RESERVATION 3348-57
SANCHEZ, ERNEST G. 2476
SAND AND GRAVEL. See BUILDING MATERIALS.
SAND (LEBOS ) CREEK 3303
SANDERS CREEK 3305
SANDY CREEK, Texas 3305

S1339
INDEX TO VOLUME V AND SUPPLEMENT II

SANFORD DAM AND RESERVOIR 1759, 1845, 1846
SANPETE COUNTY, Utah 3220
SANTA BARBARA, CITY OF 585
SANTA BARBARA COUNTY WATER AGENCY 585, 975
SANTA BARBARA PROJECT, California
Construction of Cachuma unit conditional on participation of member districts 975
Contract authority in excess of appropriations 659
SANTA CLARA-ALAMEDA-SAN BENITO WATER AUTHORITY 1454
SANTA CLARA COUNTY 979, 1454, 1530
SANTA CLARA RIVER, Utah 1768
SANTA CLARA RIVER, California 1887
SANTA CLARA RIVER BASIN, California 1887
SANTA CLARA SLough, Mexico 2857, 2858, 2876
SANTA CLARA SUBAREAS 2334
SANTA CLARA VALLEY WATER DISTRICT 2333
SANTA CRUZ COUNTY 1454, 1530
SANTA CRUZ DAM AND RESERVOIR 3129
SANTA CRUZ IRRIGATION DISTRICT 3129
SANTA CRUZ RIVER BASIN, Arizona 1891
SANTA MARGARITA PROJECT, California
Construction of De Luz Dam authorized 1158
Feasibility study authorized 1893
Reports by Attorney General, Interior and Navy eliminated 2922
SANTA MARGARITA RIVER 1158, 1893, 2922
SANTA MARIA PROJECT, California
Authorized 1215
SANTA MARIA RIVER 1215
SANTA TERESA, TOWN OF 404
SANTA THERESA, New Mexico S88
SANTA YNEZ INDIAN RESERVATION 2961
SANTA YNEZ RIVER 1890
SANTA YNEZ RIVER WATER CONSERVATION DISTRICT 2961
SAPPA CREEK 741
SATSOP, Washington 2931

S1340
INDEX TO VOLUME V AND SUPPLEMENT II

SAUK RIVER 2434, 2445
SAUNDERS, ORVILLE B. 3315
SAUSALITO, California 2833
Savage Irrigation District 655
Savage, John L. 687
Savage Rapids Dam, Oregon 1093, 1273, 2915, 2930, 3422
Savage Rapids Fish Way, Oregon 2915, 2930
Savery Creek 917
Savery-Pot Hook Project, Colorado-Wyoming
Authorized 1248, 1774
Construction funds denied 3124
Statutory references to 3816
Saxton, John P. 3315
Scandia Unit, MRB 1893
Scarsborough Creek 2447
Schools
Support of, in connection with project construction and operation Authorized, generally 893
Boulder Canyon project 418, 497, 619, 715, 868, 895
Colorado River Storage project 1859 Columbia Basin project 1053
Fort Peck project 876
Grand Coulee Dam project 716
Townsite land for 248
School Construction Act of 1950
Miscellaneous references to 893
Schuk Toke District 3348-3357
Scroggin Creek 1899
Scoggin Valley Road 2930, 3130
Scotts Creek, California 1656
Scottsdale, Arizona 2839
Seattle Association of Credit Men 1134
Seattle City Light 2547
Second Liberty Bond Act
Statutory references to 2896
Secretarial Order No. 2929 S255
Secretary of the Interior
Powers of all Interior agencies and offices vested in 1005
INDEX TO VOLUME V AND SUPPLEMENT II

SEDRO-WOOLLEY, Washington 2433

SEEDSKADEE PROJECT, Wyoming
  Acquisition of lands; size of farm units 1455
  Authorized 1248
  Class 1 equivalency for excess lands 2418
  Construction of powerplant 1249
  Emergency repairs on Fontenelle Dam 1254
  Increased appropriations authorized 2657
  Provisions of authorizing act made applicable to Savery-Pot Hock, Bostwick Park, and Fruitland Mesa projects 1774

SEEPAGE
  Damage claims involving
    Generally 207, 889, S175
    Relief to Henkel, Milk River project 1522
  Drainage works. See DRAINAGE AND MINOR CONSTRUCTION ACT; DRAINAGE WORKS.
  Salinity and water-logging caused by Exchange of seeped lands on Klamath project 507, 508
  Reduction or suspension of construction charges 357
  Special authorizations for individual projects. See DRAINAGE WORKS; WATER QUALITY CONTROL.
  Water rights in. See WATER RIGHTS.

SELAWIK NATIONAL WILDLIFE REFUGE 2439

SELAWIK RIVER 2439

SELLS PAPAGO RESERVATION 3348-57

SELMA, Alabama 2445

SELWAY RIVER 2430

SEMINOE DAM 2643

SEMINOE DAM AND RESERVOIR 1389

SEMITROPIC WATER STORAGE DISTRICT S270

SEQUOIA NATIONAL PARK S66
  Rights of way 29

SERVICE CONTRACT ACT OF 1965
  Text 2003, S599

SERVICE CREEK BRIDGE 2446

SERVICEMEN. See also HOMESTEAD LAWS.
  Acquisition of War Relocation Centers to assist 830
  Miscellaneous references to 54, 324, 374, 435
  Patents to disabled soldier entrymes 286, 295
  Qualifications, Secretary may establish 317
  Refunds of construction charges 331
  Suspension of residence requirements
    World War I 238
    World War II 710
  Transfer of surplus property at Yuma Army Air Base to Bureau of Reclamation to assist veterans 857

S1342
INDEX TO VOLUME V AND SUPPLEMENT II

Veterans preference
  Boulder Canyon project  821
  Farm Unit Exchange Act  1120
  Homestead laws. See Homestead laws.
  Klamath project  258
  Middle Rio Grande project  903

SERVICES. See SUPPLIES AND SERVICES.

SESPE CREEK PROJECT, California
  Completion of studies authorized  1887

SETTLER ASSISTANCE
  Information and advice, generally  484, 790
  Land preparation
    All-American Canal  748
    Generally  36, 519
    Gilia project  748
    W.C.U. projects  675, 955

Loans by Federal agencies
  Farm Security Administration  666
  Federal Farm Loan Act  299
  Secretary of Agriculture  581, 1120

SETTLERS IRRIGATION DISTRICT  S190

SEVERANCE PAY  1942, 2352

SEVIER COUNTY, Utah  3220

SEWAGE TREATMENT. See ARMY, DEPARTMENT OF THE, CLEAN WATER ACT.

SEWARD PROJECT, Oklahoma
  Feasibility study authorized  2928

SEWERAGE SYSTEMS  658, 1031, 1074, 1226

SEXTON DAM AND RESERVOIR  2517

SHADOW MOUNTAIN NATIONAL RECREATION AREA  838

SHASTA COUNTY, California  658, 2467, S373

SHASTA DAM AND RESERVOIR  584, 585, 587, 647, 804, 925, 1144, 1863, S175

SHASTA NATIONAL FOREST  865, 1868, S169

SHASTA VIEW IRRIGATION DISTRICT  925, 2479

SHAWNEE CREEK  3305

SHEENJIK RIVER  2439, 2448

SHEEP CREEK  918

SHEEPY LAKE  97

SHEPAUG RIVER  2446

S1343
INDEX TO VOLUME V AND SUPPLEMENT II

SHERBURNLE AKE DAM  971

SHERMAN ACT
  Miscellaneous references to  S127
  Statutory references to  3139

SHERMAN COUNTY  1326

SHERMAN RESERVOIR  1326

SHIPSTEAD-NOLAN ACT
  Statutory references to  1780

SHOShONE DAM  454, 595

SHOShONE EXTENSIONS UNIT, MRB, P-SMPB, Wyoming  1891
  Polecat Bench area
    Reauthorized  2934

SHOShONE INDIANS
  Acquisition of lands of, for Boysen unit, MRB  1109
  Compensation for lands on Wind River Indian Reservation used for Riverton project  1125
  Conveyance of Wind River Reservation land to United States  1328
  Easement on lands of, for Bull Lake Dam and Reservoir  680
  Minerals in lands covered by Act of August 15, 1953, held in trust for Shoshone and Arapahoe tribes  1451
  Payment by reclamation entrymes  291
  Proceeds from sales of reclamation townsites  291
  Reclamation of ceded portion of reservation  260
  Water rights settlement. See FALLON PAUITE SHOShONE INDIAN TRIBES WATER RIGHTS SETTLEMENT ACT OF 1900

SHOShONE IRRIGATION DISTRICT; Wyoming  65, 376, 454, 1145, 1247
  Energy purchase from  3610

SHOShONE POWERPLANT  3332

SHOShONE PROJECT, Montana-Wyoming
  Acquisition of War Relocation Centers  831
  Amended contract approved  927, 985, 1145, 1471
  Buffalo Bill Dam and Reservoir modifications
    Authorized  3332
    Feasibility study authorized  2478
  Certain administrative costs nonreimbursable  1129
  Continued delivery of water authorized  1346
  Conveyance of land to Big Horn County School district  4026
  Conveyance of land to Park County for fairground  349
  Conveyance of land in Powell town site to V.F.W. Post  880
  Conveyance of Powell town site lands to University of Wyoming  793, 1133
  Disposal of certain Federal property authorized  1610
  Lands conveyed for school purposes  248
  Limitation on funds for operation of Frannie division  355
  Miscellaneous references to  319, 322, 376, 491
  Payment of certain claims for damage attributable to water seepage from Heart Mountain division  1247
  Power revenues, application of  406, 454, 595, 985, 1145

S1344
INDEX TO VOLUME V AND SUPPLEMENT II

Reduction and suspension of construction charges 368
Resident landowners of Heart Mountain Division allowed to exchange lands with Polecat Bench area of Shoshone Extensions unit 2934
Sale of surplus power facilities authorized 458
Transfer of Defense Plant Corporation building 899

SHOSHONE RIVER 2478

SILAS MASON COMPANY 907

SILKY CANAL COMPANY S215

SLT

Canton Reservoir 832, 901
Desilting operations. See ALL-AMERICAN CANAL.
Damage claims
Dry silt blown over adjacent lands 209
Flooding attributable to silt deposited in river 6, 7
Enlargement of Arrowrock Dam to offset deposit of 683
San Juan-Chama and Navaho Indian projects 1658

SLT PROJECT, Colorado

Authorized 1248
Increased appropriations authorized 2657
Reservation of 5,000 acre-feet annually of stored water in Green Mountain Reservoir for 1249

SIMilkAMEEN RIVER 2952

SIoux CITY, IOWA 2836

SIoux FALLS, South Dakota 2478

SIoux TRIBE S130

SIPHON DROP POWERPLANT 1271, 1738

SIPSEY FORK 2446

SISK, CONGRESSMAN B.F. S81, S83, S85

SISKIYOU COUNTY, California 257, 307, 788, 1110, 1322, 1771, 2643

SIUk RIVER 2448

SKAGIT RIVER 2433, 2445

SKAMANIA COUNTY, Washington 2928

SKINNER, CLIFFORD J. 3191

SLIDE IRRIGATION DISTRICT 1080

SLY PARK CREEK 978

SLY PARK EXTENSION UNIT, CVP 3217

SMALL POWER PRODUCTION FACILITIES. See generation facilities under power.

S1345
INDEX TO VOLUME V AND SUPPLEMENT II

SMALL RECLAMATION PROJECTS ACT OF 1956
   Amendments and annotations of 1348, 1882, 2641, 2932, 3203, 3345, S268-S278,
   Section 1 S875, 3515
   Section 3 S875, 3515
   Section 4 S876, 3516, 4061
   Section 5 S880, S1103, 3516
   Section 8 S881, 3517
   Section 10 S882, 3517
   Title III 99-546, Sec. 16(b) 103-437 3515, 4060
   Miscellaneous references to 2961, 3217, S876, S879
   Statutory references to 1496, 1824, 2927, 3035, S189, S864, S925, S1105, 3515,
   3570, 3591, 3715, 3738, 3910, 3912, 4036, 4081
   Use of emergency fund authorized 3330

SMALL RESERVOIRS
   Construction of, authorized S82

SMALL TRACTS ACT
   Text 998

SMALL WATERSHED PROJECTS. See AGRICULTURE, DEPARTMENT OF; WATERSHED PROTECTION AND FLOOD PREVENTION ACT.

SMITH ACT S50
   Statutory references to 299
   Text 220

SMITHS FORK, Wyoming 1399, 3183, 3184, 3187

SMITH FORK PROJECT, Colorado
   Authorized 1248
   Increased appropriations authorized 2657

SMITH, WALTER M. 1052

SMITH, WILLIAM ROBERT, MEMORIAL ASSOCIATION OF EL PASO, TEXAS 489

SMITHSONIAN INSTITUTION 1534

SMOKY HILL DIVISION, MRB, Kansas
   Ellis unit
      Completion of studies authorized 1888
   Kanopolis unit
      Feasibility study authorized 1894

SMOKY HILL RIVER 741, 1894

SMOKY MOUNTAINS NATIONAL PARK 1787

SNAKE PLAINS RECHARGE DIVISION, Upper Snake River project 1889

SNAKE RIVER 684, 813, 1039, 1207, 1889
   Miscellaneous references to 294, S59, S162, S411
   Statutory references to 2928, 3224
   Wild and scenic river system 2431, 2437, 2444, 2446

SNAKE RIVER BASIN 1655, 1796, 1887

S1346
INDEX TO VOLUME V AND SUPPLEMENT II

SNAKE RIVER COMPACT
  Consent to negotiate 875
  Text 990

SNAKE RIVER PLAINS AREA 1889

SNELLING DAM AND RESERVOIR 1546

SNETTISHAM PROJECT, Alaska
  Cost of replacing and relocating Salisbury Ridge transmission nonreimbursable 3027, S342
  Crater-Long Lakes division 1704

SNOHOMISH COUNTY PUBLIC UTILITY DISTRICT 2547

SNYDER, Oklahoma 2388, 2906

SOAP LAKE 1273

SOBOBA BAND OF MISSION INDIANS 2553

SOBOBA INDIAN RESERVATION 2553

SOIL CONSERVATION AND DOMESTIC ALLOTMENT ACT
  Statutory references to 2561

SOIL CONSERVATION SERVICE 3078
  Established 518

SOIL AND MOISTURE CONSERVATION
  See soil and water resources conservation act of 1977.
  Appropriation act language 1021
  Authorized
    Generally 517, 520
  Reimbursement policy 1022
  Studies and reports. See studies and reports.

SOIL SURVEY. See land classification.

SOIL AND WATER RESOURCES CONSERVATION ACT OF 1977
  Text 3078

SOLANO COUNTY, California 2332, 2643, 3216, 3222, S202

SOLANO COUNTY WATER PROJECT, California
  Total water management study authorized 2915

SOLANO IRRIGATION DISTRICT 2634, S58, S192

SOLANO PROJECT, California
  Appropriation for safety and public-use facilities 1460
  Authorization explained 1421
  Lake above diversion dam and below Monticello Dam named Lake Solano 1421
  Main dam named Monticello Dam 1422
  Miscellaneous references to S33, S58
  Recreation facilities and administration at Lake Berryessa 2909, S5
  Reservoir formed by Monticello Dam named Lake Berryessa 1260

SOLAR ENERGY. See studies and reports.

S1347
INDEX TO VOLUME V AND SUPPLEMENT II

SOLDIER CREEK 2447
SOLDIER CREEK DAM 2502, S36, S249

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940
Extract from 710

SOLICITOR'S OPINIONS. See OPINIONS AND DECISIONS OF THE DEPARTMENT OF THE INTERIOR.

SOLOMON DIVISION, MRB, Kansas
Glen Elder irrigation unit
Feasibility study authorized 1894

SOLOMON RIVER 1894

SONOMA BAYLANDS WETLAND DEMONSTRATION PROJECT, California 3969

SONORA-KEYSTONE UNIT, CVP 1890

SONNY BONO SALTON SEA NATIONAL WILDLIFE REFUGE, California 4139
See SALTON SEA RECLAMATION ACT OF 1948.

SOURDOUGH CREEK 2440

SOURIS RIVER 1922, 2539

SOUTH CACHE WATER USERS’ ASSOCIATION 1015

SOUTH CANAL 3096

SOUTH CAROLINA, STATE OF
Southeastern Power Administration markets power from Army dams in 801

SOUTH COLUMBIA BASIN IRRIGATION DISTRICT 1814, 1690, 2352, 3168

SOUTH COULEE DAM 1099

SOUTH DAKOTA, STATE OF
Compacts of. See BELLE FOURCHE RIVER COMPACT; GROUND WATER; LITTLE MISSOURI RIVER COMPACT; NIORBRA RIVER; PONCA CREEK; RED RIVER OF THE NORTH COMPACT.
Desert Land Act applies 13
Executive Order No. 6910 and Taylor Grazing Act apply 515
Laws on hunting migratory waterfowl 2376
Preservation and Restoration Trust 3924
Biological Diversity Trust 3924
Wetland Habitat Restoration Program 3927
Projects in. See individual dams and projects by name.
Reclamation Act applies 31

SOUTH DAKOTA PRESERVATION AND RESTORATION TRUST 3925

SOUTH DAKOTA PROJECTS, PICK-SLOAN PUMPING POWER 3327
Amendments 3577, 3607, S1087, 4034
Statutory references 3577, 3607

SOUTH DAKOTA PUMPING DIVISION, MRB, P-SMBP, South Dakota
Completion of studies of Tower, Greenwood, Yankton, and Wagner units authorized 1888

S1348
INDEX TO VOLUME V AND SUPPLEMENT II

Feasibility study of Grass Rope and Fort Thompson units authorized 1893
Pollock-Herrell unit
Feasibility study authorized 1892
Authorized 2938
Feasibility study of reformulated plan authorized 3328

SOUTH DAKOTA WATER PLANNING STUDIES
Authorized 3871

SOUTH FORK OF THE FLATHEAD RIVER 3216

SOUTH GILA UNIT 2341

SOUTH GILA VALLEY 858

SOUTH LAKE TAHOE, California 2483, 2484, 3278, 3281, 3287, 3288, 3296

SOUTH PLATTE DIVISION, MRB, Colorado
Narrows unit
Completion of studies authorized 1888

SOUTH PLATTE RIVER 1889, 1892, 2532

SOUTH PLATTE RIVER COMPACT
Text 342

SOUTH SIDE PUMPING DIVISION, Minidoka project, Idaho 364

SOUTH SUTTER WATER DISTRICT 1338

SOUTH YAMHILL RIVER, Oregon 1887, 2478

SOUTHEASTERN POWER ADMINISTRATION
Appropriation act language, geographical area 974
Condition on construction of transmission lines 1092
Continuing fund established 1053
Disposition of Clark Hill-Greenwood transmission facility 1114
Environmental impact statements 2504
Establishment of, explained 801
Transferred to Department of Energy 3056

SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT OF 1982
Amendments S1110, S1113, 3438, 3800
Statutory references to 3506, 3438, 3800
Text 3348

SOUTHERN CALIFORNIA EDISON COMPANY 423, 432, 528, S66

SOUTHERN COMPANIES 2504

SOUTHERN Lassen Project, California
Study authorized 315

SOUTHERN NEVADA WATER PROJECT, Nevada
Amendment of section 6 1873
Authorized 1851
Name changed to Robert B. Griffith Water Project 3368

S1349
INDEX TO VOLUME V AND SUPPLEMENT II

Reservation for, of lands conveyed to City of Henderson 1716
Site specific environmental impact statement for a feature deemed adequate 3105

SOUTHERN PACIFIC BASIN, California 1215
SOUTHERN PACIFIC COMPANY 161, 336, S82
SOUTHERN PACIFIC LAND COMPANY S82
SOUTHERN PACIFIC RAILWAY COMPANY 1270
SOUTHERN SAN JOAQUIN MUNICIPAL UTILITY DISTRICT 1350
SOUTHERN UNION GAS COMPANY 2346

SOUTHERN UTE INDIANS 2916
Exchange of lands in connection with Navajo Dam and Reservoir 1697
One-sixth of construction costs of Pine River project chargeable to lands of Pine River
Indian project 1150

SOUTHWEST CONTRA COUNTY WATER DISTRICT SYSTEM 1092

SOUTHWEST IDAHO WATER DEVELOPMENT PROJECT, Idaho
Bruneau division
Feasibility study authorized 1893

Garden Valley division
Feasibility study authorized 1889

Mountain Home division
Completion of studies authorized 1887

Weiser River division
Feasibility study authorized 1889

SOUTHWEST OREGON SERVICE 3214

SOUTHWESTERN POWER ADMINISTRATION
See also EMERGENCY WORK.
Appropriation act language, geographical area 974
Continuing fund established 974
Delegations. See DELEGATION OF AUTHORITY.
Establishment of, explained 801
Miscellaneous references to 662, 802
Nondiscriminatory rates required 3099
Relief to Dolton 1523
Restriction on transfer of funds 1460
Transferred to Department of Energy 3056

SPA. See SOUTHWESTERN POWER ADMINISTRATION.

SPANISH DRY DIGGINGS 2616, 2837
SPANISH SPRINGS DIVISION, Newlands project 335, 354
SPARKS, Nevada S266
SPARR BUSH, New York 2434
SPAVINAW CREEK 1916, 2773

SPECIAL COUNSEL S453

S1350
INDEX TO VOLUME V AND SUPPLEMENT II

SPECULATION. See excess lands.

SPOKANE INDIANS
   Lands used for Columbia Basin project; hunting, fishing, and boating rights 688, 794

SPOKANE INDIAN RESERVATION  S141

SPOKANE RIVER  1501

SPOKANE VALLEY PROJECT, Washington-Idaho
   Authorized  1501
   Reduction of acreage; water supply; cost allocations  1683

SPRADLIN BRIDGE  2447

SPRING CREEK, Wyoming  3184, 3187

SPRINGERVILLE. See BLACK RIVER-SPRINGERVILLE-SAINT JOHNS PROJECT.

SPRUCE TREE CAMPGROUND  2436

SQUIRREL CREEK CANAL COMPANY  3215

SQUIRREL RIVER  2448

ST. MARY'S IRRIGATION CANAL  S24

ST. GEORGE, Utah  S254

STACKHOUSE, DONALD W,  2348

STAGECOACH PROJECT ACT OF 1994
   Authority to sell reservoir loan  4035

STAMEY CONSTRUCTION COMPANY  1086

STAMPEDE DIVISION, Washoe Project  2808

STAMPEDE RESERVOIR  1319, 2783, 2808, S266, S267

STANDING ROCK INDIAN RESERVATION
   Irrigation on  3468, 3889
   Pick-Sloan Missouri basin program pumping power  3328

STANDING TO SUE. See suits.

STANFIELD IRRIGATION DISTRICT  985, 2937

STANISLAUS COUNTY, California  S339

STANISLAUS RIVER  1701, 1890

STANISLAUS RIVER BASIN  S341

STANISLAUS RIVER DIVISION, CVP  1890

S1351
INDEX TO VOLUME V AND SUPPLEMENT II

STARK COUNTY, North Dakota 2928

STATE AND LOCAL AGENCIES
Comprehensive water resource planning
Grants for 1836
Consultation with Chief of Engineers on forestry and other conservation measures at Army reservoirs 1553
Contributed funds. See ADVANCE PAYMENTS.
Outdoor recreation planning and assistance. See LAND AND WATER CONSERVATION FUND ACT OF 1965.
Protection, reconstruction or relocation of structures or facilities of, by Secretary of the Army. See ARMY, DEPARTMENT OF THE.
Research farms. See RESEARCH.
Review of Federal feasibility reports. See STUDIES AND REPORTS.
Small watershed projects (Public Law 566). See WATERSHED PROTECTION AND FLOOD PREVENTION ACT.
Support of reclamation efforts 25, 334, 336, 337, 339, 350, 354, 377
Water service to 61

STATE COLLEGE OF WASHINGTON 1484

STATE, DEPARTMENT OF
Participation in program of IBWC. See INTERNATIONAL BOUNDARY AND WATER COMMISSION.

STATE LAWS
Applicable to public lands within irrigation districts, generally 220, 299
Prohibiting exportation of water from State 2
Relationship to reclamation projects. See also POWER.
Excess lands 381
Generally 5338
Miscellaneous opinions 76, 77, 378, 416, S24
Water rights. See WATER RIGHTS.

STATE LINE RESERVOIR 467
STEAMBOAT BERTRAND 2547
STEBBINS CONSTRUCTION COMPANY 1008, 1130
STEESE HIGHWAY 2439
STEPSHENS ARCH 2768
STEVENS COUNTY, Washington 665, 1199
STEWART DAM 1398, 3182, 3187, 3189, 3190
STIKINE RIVER 11
STILLWATER COUNTY 898
STIPLEX UNIT, MRB 1892
STOCKTON DAM 801
STONE COUNTY, Mississippi 2447
STONE. See BUILDING MATERIALS.

S1532
INDEX TO VOLUME V AND SUPPLEMENT II

STONY CREEK, California 1890, 2549
STONY GORGE RESERVOIR 552
STRADLEY, JAMES A 2348
STRAUS, MICHAEL W, 694
STRAWBERRY AQUEDUCT AND COLLECTION SYSTEM 2496, 2497, 2502, S249
STRAWBERRY RESERVOIR S36, S249
STRAWBERRY VALLEY PROJECT, Utah
Miscellaneous references to S36, S69, S120
Payment for Uintah Indian lands withdrawn for project 137
Settlement of delinquent payment for overhead charges 706
Statutory references 3621
STRAWBERRY VALLEY WATER USERS ASSOCIATION 706, S36, S120
STREAMBANK EROSION CONTROL EVALUATION AND DEMONSTRATION ACT OF 1974
Extracts from 2885
STREETS. See ROADS.
STRUNK, HARRY, LAKE 1095
STUDIES AND REPORTS
All departments and agencies
Reports eliminated 4071
Reports modified 4072
Termination of reporting requirements 4072
See also ARMY, DEPARTMENT OF THE.
See also individual rivers and projects by name.
Advance planning of public works 1969
Annual reports required
Boulder Canyon project, distribution of costs 1480
Colorado River Storage project 1254, 1255
Colorado River water quality (biennial) 1665, 1674
Columbia River Power System 1870
Grants for scientific research 2007
Reclamation program, repealed 837
Requirements repealed 1539
Saline water research 1089
Water resources research 1752
Wilderness system 1784
Appropriations for investigations, current appropriation act language.
See APPROPRIATIONS.
Archeology. See ARCHEOLOGY.
Comprehensive, coordinated river basin plans 1828
James River, South Dakota 3560
Contributed funds for. See ADVANCE PAYMENTS.
Dam safety. See ARMY, DEPARTMENT OF THE.
Desalting
Generally 1087
Economic impact. See ECONOMIC IMPACT INFORMATION.
Employee requirements, reports to Congress on 1941, S480

S1353
INDEX TO VOLUME V AND SUPPLEMENT II

Environmental impacts. See ENVIRONMENTAL IMPACT STATEMENTS; NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.

Estuaries
National study and inventory 2379
Pollution in 2674

Feasibility studies and reports
Act of September 7, 1966 S418, 1886, 3611, 4109
Act of October 3, 1980 3216, 4133, S1084, S1031, S1033
Army projects 545, 796
Colorado Coastal Plains project, Texas (Shaw’s Bend dam site) 1886, 3608
Congressional authorization required after July 1, 1966 1826
Cordon Amendment projects 976
Definition of "feasibility report" 1826
Discount rate. See DISCOUNT RATES.
Fish and wildlife, views of Secretary on 840, 1823
Individual studies authorized after July 1, 1966 1886, 2343
Outdoor recreation, views of Secretary on 1823
Pilot Butte powerplant
Principles, standards and procedures 1829, 2615, 2840, S396
Recreation, views of Secretary on 1823
Required for reclamation projects, generally 37, 51, 150, 300, 316
Required for small reclamation projects 1332
Review of by State and Federal agencies, generally 150, 796, 797, W.C.U. projects 669, 797
Wastewater and groundwater 3875
Yakima River Basin Water Enhancement project. See entry under the project name.

Fish and wildlife
Columbia River fisheries. See COLUMBIA RIVER.
Generally 509, 839, 1860

Flood control
Generally 234, 545, 614, 646, 796, 798, 1426, 1547, 1684

Framework studies by Department of the Army 1856, 1922

Geothermal energy 3537
Reconnaissance level studies for utility systems 2928

Ground water studies 3875
See Reclamation Wastewater and Groundwater Studies and Facilities Act.

Individual studies, explanatory note 35
Information to House and Senate Committees when requested S481, S507
Irrigation possibilities and reservoir sites in arid region 15

Navigation
Generally 234, 545, 796, 797

Periodic reports eliminated
Audits in Federal royalty management systems 4071
Domestic mining, minerals, and mineral reclamation industries sentence 4071
Phase I of the High Plains States Groundwater Demonstration Project 4071
Reclamation Reform Act compliance, Sec. 224(g) 4071
Reports on wind energy systems 4070

Periodic reports modified
Levels of the Ogallala Aquifer—Title III of the Water Resources Research Act of 1984 4072, 3395
Report on cost-effective ways to increase Hydropower production 4070

Periodic reports required
Boulder City water supply (quintennial) 2923
Colorado River Basin project (annual) 2416
INDEX TO VOLUME V AND SUPPLEMENT II

Colorado River Basin Sainity Control Program (biennial) 2872
Colorado River water quality (biennial) 2872
Colorado River water use and losses (quintennial) 2420
Leavitt Act (annual) 3365
Metropolitan Water District desalting plant (annual) 2330
Pacific Northwest Electric Power and Conservation Planning Council (annual) 3241
Protection of archaeological resources (annual) 3178
Relocation assistance (annual) 2625
Teton Dam disaster assistance (annual) 2947
Western water needs (biennial) 2396

Power
Federal Energy Regulatory Commission 3154, 3156
Federal Power Commission 266
Federal projects in the Pacific Northwest 3788
Generally 234, 802, S150, 3786
Single-purpose power projects 646
Small power production facilities 3560
Tidal currents for hydropower S851, 3792

Reclamation program, generally
Authorized 39, 323, 325
Contributed funds. See ADVANCE PAYMENTS.
Current appropriation act language 1020, 1023
Investigation of repayment problems 640
Land classification 642, 2922, 4134
Outside 17 western States 806, 1020
Study commissions 327, 357, 541, 580
Swamp and cut-over timber lands 242, 327, 396

Reclamation Safety of Dams S1066, 3127, 3421

Recreation
Generally 1820
Land and Water Conservation Fund Act of 1965
Section 4(h) repealed 4072

Reimbursement of costs of
Certain study costs nonreimbursable 2639, 3901
Emergency relief program 58
Expenditures from Colorado River Development Fund 700
Funds contributed for study of All-American Canal 254
Generally 60, 325, 816, 1023

Research. See RESEARCH.
Sections 306 and 308 of Water Resources Research Act of 1984 amended 4072

Soil and moisture conservation
Generally 517, 520, 545, 614, 798, 3078

Solar energy
Feasibility study of integrating a solar powerplant in Arizona, Nevada, and California into the Federal hydroelectric system authorized 3219

South Dakota water planning 3871
Surplus crops 3344
Trans-basin diversions 1829
Generally 2396, 2397, 3537
Prohibitions against 2396, 3537, 3874
San Luis Valley protection, Colorado 3874

Wastewater and Groundwater studies 3875
See RECLAMATION WASTEWATER AND GROUNDWATER STUDIES.
INDEX TO VOLUME V AND SUPPLEMENT II

Water quality control
  Colorado River  1258, 1665, 1674, 1807
  Desalting. See SALINE WATER RESEARCH AND DEMONSTRATION
  Generally  509, 845, 1087, 1278, 1862, 2668
  Salton Sea Research Project, California  3872
  San Francisco Bay  1857, 1858
  Sacramento-San Joaquin Delta and San Francisco Bay Estuarine Systems  3216, S1084, 4133

Water resources, generally. See NATIONAL WATER COMMISSION ACT; WATER RESOURCES PLANNING ACT.

Watershed protection
  Generally  545, 614, 798, 1165, 1169, 1171, 1684
  Western water needs  2396, 2615

Wild and scenic and recreational rivers
  Generally  2450, 2453

SUBLETTE CREEK  3184, 3187

SUBLETTE PROJECT, Wyoming
  Expedient completion of planning report directed  1249

SUCCESS RESERVOIR  809

SUGAR PINE DAM AND RESERVOIR  1847

SUGAR FACTORY  458

SUASLE RIVER  2433, 2445

SUISUN BAY  1857

SUISUN MARSH PRESERVATION AND RESTORATION ACT OF 1979
  Text  3222

SUISUN MARSH PRESERVATION AGREEMENT  3514
  See Central Valley Project.

SUIITS

Claims. See CLAIMS AGAINST UNITED STATES; CLAIMS OF UNITED STATES; FEDERAL TORT CLAIMS ACT; TUCKER ACT.

Claims Court. See CLAIMS COURT.

Costs and fees of parties  S444, S497

Costs of
  Payable from reclamation fund  34

Payment of judgments and compromise settlements. See CLAIMS AGAINST UNITED STATES.

Private right of action  S166, S167

Standing to sue  269, 382, 802, 975, S23, S76, S295

Statutory provisions relating to jurisdiction or joinder
  Act of August 9, 1912, district courts  183
  Colorado River Storage project, Supreme Court  1258
  Compensation for canal rights-of-way, district courts  1766, 1902
  Contracts executed pursuant to Federal reclamation law  3344
  Federal agencies, generally  S477, S493, S494
  Fryingpan-Arkansas, Supreme Court  1674
  Navajo, San Juan-Chama, Supreme Court  1665
  Pacific Northwest Electric Power Planning and Conservation Act  3230, 3266, 3267

S1356
INDEX TO VOLUME V AND SUPPLEMENT II

Tort claims against United States 884
Tucker Act. See TUCKER ACT.
Water rights in a river system 1097, S209, 3755
Time for commencing S496
United States an indispensable party 69, 70, 83, 100, 167, 302, 416, 631, 805, 967, S30, S123, S143
United States not an indispensable party 70, 82, 805

SULPHUR RIVER 3306
SUMMERLAND COUNTY WATER DISTRICT 585
SUMMIT CITY PUBLIC UTILITY DISTRICT 2467
SUMMIT COUNTY, Utah 3184
SUMNER DAM 2753, 2887, S139

SUN RIVER, Montana 1892

SUN RIVER PROJECT, Montana
  Adjustment of reimbursable construction costs of Greenfields main canal 1112
  Authorization explained 1112, 1656
  Control by water users required 433
  Exchange of lands for Muddy Creek Reservoir site 245
  Fort Shaw division 118
  Lands conveyed for school purposes 248
  Reduction and suspension of construction charges 368
  Refund of construction charges on permanently unproductive farm unit 513
  Refund of construction charges to Great Northern Railway 559
  Repayment contract required 334, 350, 353
  Revised land reclassification and repayment contract approved 1656

SUN DIAL GROVES S79, S83

SUN-TETON DIVISION, MRB, Montana
  Sun-Teton unit
    Feasibility study authorized 1892

SUNBEAM UNIT, MRB 1892

SUNFISH POND 2520

SUNNYSIDE DIVISION, Yakima project 371, 715, 1611

Sunnyside Valley Irrigation District, Washington
  Conveyance of a certain parcel of land 3905

SUPERIOR NATIONAL FOREST 1780

SUPPLEMENTAL APPROPRIATIONS ACT OF 1983
  Extracts from 3373

SUPPLEMENTAL APPROPRIATIONS ACT OF 1985
  Extracts from 3458
  Statutory references to 3625

S1357
INDEX TO VOLUME V AND SUPPLEMENT II

SUPERVISORY HARBORS ACT OF 1888
Statutory references to 2744

SUPPLIES AND SERVICES
Construction contracts. See CONSTRUCTION.
Consulting engineers, economists, etc. See CONSULTANTS.
Contracts for
Buy American Act 1987, S568
Labor provisions S571, S599
Persons convicted of polluting waters 2741
Procurement procedures, generally S578, S661
Public contracts, generally 1987, S567
Contracts contingent upon appropriations 659
Contracts under $300 659
Editor's note, annotations 52
Miscellaneous services
State highway engineer 661
Property, acquisition of. See ACQUISITION OF PROPERTY.

SUPREMACY CLAUSE 5, S3, S130

SURPLUS FARM COMMODITIES. See AGRICULTURAL ACT OF 1949; AGRICULTURAL ADJUSTMENT ACT OF 1938; STUDIES AND REPORTS.

SURPLUS PROPERTY
General laws relating to S181, S556, S685
See FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949; LAND AND WATER CONSERVATION FUND ACT OF 1965; SURPLUS PROPERTY ACT OF 1944.
Housing. See HOUSING.
Proceeds from sale of
Federal agencies, generally 1961
See also LAND AND WATER CONSERVATION FUND ACT OF 1965.
Reclamation projects. See RECLAMATION FUND.
Located within Indian reservations S181
Reconveyance of donated property 327, 962, 1515
Sale of, authorized
Acquired lands 162, 658, S40
Improved withdrawn lands 255, 658, 956
Power facilities at Shoshone project 458
Unproductive vacant public lands 460
Withdrawn lands too small to be classed as a farm unit 998
Townsites. See TOWNSITES.
Transfer of movable property to operating organization 1162

SURPLUS PROPERTY ACT OF 1944
Extract from 2041, S685
Statutory references to 961, S184, S185

SURPRISE VALLEY AREA SERVICE 3324

SUSANVILLE, California 2928

SUSITNA RIVER 1132

SUSQUEHANNA RIVER BASIN COMPACT
Text 2563

S1358
INDEX TO VOLUME V AND SUPPLEMENT II

SUWANNEE RIVER 2445
SWAMP AND CUT-OVER TIMBER LANDS. See studies and reports.
SWAN LAKE VALLEY 1366
SWAN LAND AND CATTLE COMPANY 660
SWANZA, FRANK 1132
SWANSON LAKE 930
SWANSON, CARL H. 930
SWEETWATER COUNTY 1653, 1911
SWEETWATER CREEK, TEXAS 3303
SWEETWATER RIVER 2446
SWPA. See SOUTHWESTERN POWER ADMINISTRATION.
SYKESTON CANAL 3758
SYLMAR SUBSTATION 1758
SYNOD OF THE PRESBYTERIAN CHURCH OF SOUTH DAKOTA 1312

T
T CANAL, Newlands project S176
TABLE MOUNTAIN DAM 809
TABLE MOUNTAIN, ARIZONA 2447
TABLE ROCK DAM 801
TACOMA CITY LIGHT 2547
TAHOE BASIN 2482, 3277
TAHOE REGIONAL PLANNING AGENCY
   Established 2483, 3278
TAHOE REGIONAL PLANNING COMPACT
   Text 2482, 3276
   Statutory references to 2544
TAKATZ CREEK, ALASKA 1892
TAKATZ CREEK PROJECT, ALASKA
   Feasibility study authorized 1892
TALENT DIVISION, ROGUE RIVER BASIN PROJECT 1184, 1689
TALLAHATCHIE RIVER 396
TANGLE LAKES 2439
TAOS TRIBUTARY IRRIGATION UNIT 1660

S1359
INDEX TO VOLUME V AND SUPPLEMENT II

TARGHEE NATIONAL FOREST S286
TARGHEE NATIONAL FOREST 1442
TARIFF ACT OF 1930 Amendment of 2763
TARRANT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBERED 1 3325
TAUM SAUK PUMPED STORAGE PROJECT S58

TAXATION
Arizona and New Mexico Enabling Act 141
Certificates of indebtedness sold to finance advances to reclamation fund 151
Federal income tax
Construction charges 58
Exclusion from gross income of interest on municipal bonds issued to finance
construction of resources acquired by the Bonneville Power Administration
3268
Lands of entrymen or other water users
Miscellaneous references to 149, 178, 179
Relocation payments not considered income 2626
Sale of, for State or local taxes 175, 221, 408
Taxation of reclamation entries, desert-land entries served by reclamation projects, and
entries on ceded lands within Indian irrigation projects by States and political
subdivisions authorized 408, 464
Of Boulder Canyon project facilities as basis for reducing payment to Arizona and
Nevada 698
Payments in lieu of taxes
Bonneville Power Administration 3262
Boulder Canyon project 2414
Columbia Basin project 735
Generally S540
Klamath project wildlife refuge lands 1772
Reconstruction Finance Corporation 898
Trinity River division, CVP 1237
Power of, not necessary for eligible organization 1332

TAYLOR GRAZING ACT
Amendments of 2998
Extract from 515
Miscellaneous references to 13, 33, 45, 323, 422
Statutory references to 2977, 2997

TAYLORS FALLS, MINNESOTA 2430, 2431, 2444
TECHNICAL CORRECTIONS ACT, extracts from 4008
See NORTHERN CHEYENNE INDIAN RESERVED WATER RIGHTS SETTLEMENT AMENDMENTS; SAN CARLOS
APACHE TRIBE WATER RIGHTS SETTLEMENT ACT AMENDMENTS.

TEHACHAPI MOUNTAINS 1887, 1890
TEHAMA COUNTY, CALIFORNIA 1032, 3317, S203
TEHAMA-COLUSA CANAL 2332, 3317, S202, S203
TEHAMA-COLUSA CONDUIT 1032

S1360
INDEX TO VOLUME V AND SUPPLEMENT II

TEICHERT, JOHN A. 3195

TENKILLER FERRY RESERVOIR 2445

TENKILLER FERRY DAM 801

TENNESSEE, STATE OF
Southeastern Power Administration markets power from Army dams in 801

TENNESSEE VALLEY AUTHORITY 801, 804, 846, 1785, 1824, 1943, 1951, 1973, 2655, 3140, 3150, 3177, S57, S392, S813, S841

TENNESSEE WILDLIFE RESOURCES AGENCY 2432

TERLINGUA CREEK 753

TERMINUS RESERVOIR 809

TERRELL COUNTY, TEXAS 2433, 2444

TERTELING, J. A., & SONS, INC. 1263

TETON BASIN PROJECT, Idaho
Lower Teton division
Authorized 1796
Claims arising from failure of Teton Dam 2941, 2943
Miscellaneous references to S380
Preconstruction requirements for Rexburg Bench area repealed 3221

TETON DAM 2497, 2499, 2502, 2941, 2943, 3168, S380

TETON DAM DISASTER ASSISTANCE ACT
Section 8 repealed S1055, 4135
Statutory reference to 4135
Text 2943

TETON NATIONAL PARK 2446

TETON RIVER 1892

TETON RIVER DAM. See TETON DAM.

TEXARKANA DAM 3306

TEXAS, STATE OF
Compacts of. See CANADIAN RIVER COMPACT; PECOS RIVER COMPACT; RED RIVER COMPACT; RIO GRANDE COMPACT; SABINE RIVER COMPACT.
Framework plan by Army authorized for coastal basins 1922
Included in marketing area of Southwestern Power Administration 974
Jurisdiction over and rights in Red River above Denison Dam preserved 616
Projects in. See individual dams and projects by name.
Reclamation Act applies 31, 98, 119
Review by, of planning report of San Juan-Chama project directed 1249
Statute of, disclaiming right to use of water in Pecos River or its tributaries at or above Avalon Dam 393

TEXAS BASINS PROJECT, Texas
Feasibility study authorized 1891
Findings, Shaws Bend dam site 3610

S1361
INDEX TO VOLUME V AND SUPPLEMENT II

Funding for study of Shaws Bend dam site prohibited 3611

TH E D A L L E S, Oregon 1562, 1575, 1580
TH E D A L L E S D A M 341, 1554, 1579, 1758
TH E D A L L E S I R R I G A T I O N W O R K S 2552
TH E D A L L E S P R O J E C T, Oregon
Western division
Authorized 1554
TH E D A L L E S I R R I G A T I O N D I S T R I C T 1045
TH E I S, ARTHUR R. 3315
TH E O D O R E R O O S E V E L T D A M, LAKE A N D P O W E R P L A N T 1499, 3217
TH IR D D I V I S I O N, Riverton project 1521, 1857, 1708, 1740
TH IR D P O W E R P L A N T (P O W E R H O U S E), Grand Coulee Dam 1870, 1886, S414
Statutory references to 4109
TH O M A S F O R K 3183, 3189
TH O M A S, B R E C K I N R I D G E S306
TH O M A S V I L L E, Missouri 2430
TH O M E S C R E E K, California 1890
TH O M P S O N F A L L S D A M 1579
Sections 3508 (except for subsection (b)) and 3509 of Public Law 102-575 repealed 3961, 4008
TH R E E F O R K S D I V I S I O N, MRB, P-SMBP, Montana
Feasibility study authorized 2765
Completion of studies of Jefferson, Whitehall, and West Bench units authorized 1888
TH Y E-B L A T N I K A C T
Statutory references to 1780
T I B E R D A M 3217
T I E T O N D A M 3217
T I E T O N D I V I S I O N, Yakima project 371
T J U A N A R I V E R 522, 750, 765, 1903, S421
T I L L M A N C O U N T Y, Oklahoma 2765
T I M B E R. See BUILDING MATERIALS.
T I N A Y G U K R I V E R 2439
INDEX TO VOLUME V AND SUPPLEMENT II

TINKER AIR FORCE BASE  1535
TIPPY RESERVOIR  2446

TITLE TO LANDS. SELL ACQUISITION OF PROPERTY. OPERATION AND MAINTENANCE.
TITUS COUNTY DAM  3308
TLIKAKILA RIVER  2439
TOCKS ISLAND DAM AND RESERVOIR  2520
TOM GREEN COUNTY  1354
TOM STEED RESERVOIR  2926
TOMICHI CREEK PROJECT, Colorado
  Expedientious completion of planning report directed  1249
  Included as unit of Upper Gunnison project  2417, S251
TONGUE RIVER  1063
TOLONAS UNIT, Upper Yampa project  2417, S251
TORRES-MARTINEZ INDIAN RESERVATION  1457
TORRES, SINESIO  2476
TOSTON IRRIGATION DISTRICT  1233
TOUCHET DIVISION, Walla Walla project  2525, 2929
TOWER UNIT, MRB  1888

TOWN SITES
  Under reclamation laws
    Authorized  109, 123
    Disposal of  122, 248, 451
    Reappraisal and sale of unsold lots  140
    Statutes relating to individual town sites  122, 228, 248, 349, 356, 391, 880,
      1497, 1710, 1718, 3511, 3543, 3608
    Under other laws
      Statutory references to  93, 122

TRACY PUMPING PLANT  1529, S13, S118

TRANSMISSION LINES. SELL POWER.

TRANSMISSION SERVICE CHARGE  3099

TRANSPORTATION, DEPARTMENT OF
  Approval by, of bridges across navigable waters  S12
  Establishment of, explained  1450

TREASURES  658

TREASURY, DEPARTMENT OF THE
  Authority for revenue bonds of Bonneville Power Administration  2895, 3263

TREATIES AND CONVENTIONS

S1363
INDEX TO VOLUME V AND SUPPLEMENT II

1848, Mexico, Treaty of Guadalupe Hidalgo
   Miscellaneous references to 774, 750

1853, Mexico, Gadsden Treaty
   Miscellaneous references to 775

1871, Great Britain, Treaty of Washington
   Extracts from, re St. Lawrence and Yukon, etc., Rivers 11

1884, Mexico, Rio Grande and Rio Colorado boundaries
   Miscellaneous references to 775

1889, Mexico, International Boundary Commission established
   Miscellaneous references to 752, 769, 775

1900, Mexico, International Boundary Commission made permanent
   Miscellaneous references to 775

1905, Mexico, boundary rule for "bancos"
   Miscellaneous references to 775

1906, Mexico, distribution of waters of Upper Rio Grande
   Miscellaneous references to 467, 537, S34, S1028
   Nonreimbursability of Rio Grande project costs to meet obligations under 127
   Statutory references to 536, 543, 2748, 2955
   Text 114

1909, Great Britain, Boundary Waters Treaty
   Miscellaneous references to 34
   Statutory references to 1295, 2718, 3399, 3464, 3758, S933, S940, S939, S1031
   Text 129
   Treaty references to 1561 et seq.

1933, Mexico, Rio Grande rectification project
   Miscellaneous references to 524, 767, 775

1944, Mexico, Rio Grande, Colorado River, Tijuana River. See MEXICAN WATER TREATY.

1960, Mexico, Amistad Dam
   Miscellaneous references to 1542

1961, Canada, Columbia River. See COLUMBIA RIVER TREATY.

1963, Mexico, solution of El Chamizal problem
   Miscellaneous references to 99, 775

1970, Mexico, resolve boundary differences
   Implementation of 2761

1970, Mexico, Rio Grande and Colorado River as boundary
   Statutory references to 2483

TRENTON DAM 930
TRESPASSERS 658
TRI-COUNTY PROJECT, Nebraska 35
TRI-STATE WATERS COMMISSION 590
TRI-VALLEY WATER DISTRICT S79, S83
TRINCHERA CREEK 932
TRINIDAD DAM 1424, 1817
TRINITY COUNTY, California 3198
TRINITY LAKE, California 4113
   See Clair Engle Lake.

S1364
INDEX TO VOLUME V AND SUPPLEMENT II

TRINITY NATIONAL FOREST 1868
TRINITY RIVER 1235, 2500, 3034, 3198, S5, S166 S242
TRINITY RIVER BASIN 1890
TRINITY RIVER BASIN FISH AND WILDLIFE TASK FORCE 3198
TRINITY RIVER DIVISION, CVP S5, S175, S242, 1235, 1273, 1529, 1817, 2506, 3034, 3198, 3439, 3941, 3948, 4066, 4077
TRINITY RIVER BASIN FISH AND WILDLIFE MANAGEMENT ACT 1984 3439
  Amendments 3439-3446, 4066, 4077
  Statutory references to 4066, 4077
TRINITY RIVER BASIN FISH AND WILDLIFE MANAGEMENT REAUTHORIZATION ACT OF 1995 4077
  Amendments 3446
  Statutory references to 3439, 3441, 3443, 3444, 3446
TRINITY RIVER STREAM RECTIFICATION ACT 3198
  Statutory references to 3439, 3445
TROJAN NUCLEAR POWER PROJECT 2481, S111, S116
TROJAN PLANT 2481
TROUBLESOME PROJECT, Colorado
  Expeditious completion of planning report directed 1249
  Included as part of Middle Park project 2417, S251
TRUCKEE CANAL 399, 474
TRUCKEE RIVER 365, 453, 1232, 1319, 2808
TRUCKEE, CARSON AND WALKER RIVERS AND LAKE TAHOE COMPACT
  Consent to negotiate 1232
  Statutory references to 1319
TRUCKEE-CARSON IRRIGATION DISTRICT 314, 354, 394, 399, 474, 820
TRUCKEE-CARSON PROJECT, Nevada. See NEWLANDS PROJECT.
TRUCKEE-CARBON-PYRAMID LAKE WATER RIGHTS SETTLEMENT ACT 3675
TRUCKEE STORAGE PROJECT, California-Nevada
  Completion of Boca Dam 713
  Statutory references to 1319
  Waiver of excess land laws 712
TRUST FUNDS S544
TUALATIN PROJECT, Oregon
  Additional studies authorized 1886
  Authorized 1899
  Repairs of Scoggins Valley Road authorized 3130
  Second phase
  Feasibility study authorized 1892
TUALATIN RIVER 1886

S1365
INDEX TO VOLUME V AND SUPPLEMENT II

TUALATIN RIVER BASIN 1892
TUALATIN RIVER VALLEY 1899

TUCKER ACT
Extracts from 1950, S493, S494
Miscellaneous references to 6, 2910, S4
Statutory references to 2597

TUCSON, Arizona 3356, 3359
TUCSON ACTIVE MANAGEMENT AREA 3348-57
TUCSON DIVISION, CAP 2398, 2400
TUCSON AQUEDUCT 2398, 2400, 3352, 4083

TUCUMCARI PROJECT (San Miguel County), New Mexico
Amended contract approved 1113, 1444
Authorized 562, 596
Feasibility study authorized 2765
Relief of Lynn Engineering Company 1447
Repeal of incremental value provisions 1224

TUGALOO RESERVOIR 2431

TULARE BASIN 3216
TULARE FORMULA 383, 1525
TULARE IRRIGATION DISTRICT 383
TULARE LAKE 823
TULARE LAKE BASIN 809
TULARE LAKE CANAL COMPANY 2344, S73, S74, S75, S155
TULELAKE, CITY OF 1110
TULELAKE DIVISION, Klamath project 2480
TULE LAKE 95, 257, 307, 406, S29
TULE LAKE DIVISION, Klamath project 361, 507, 508, 788, 831, 1322, 1738
TULE LAKE IRRIGATION DISTRICT 1322, 1738, 1772
TULE LAKE-KLAMATH MARSH S356
TULE LAKE NATIONAL WILDLIFE REFUGE 1771
TULE LAKE WILDLIFE REFUGE 97
TULE RIVER 809
TULLOCH DAM 2497, S340
TUMALO IRRIGATION DISTRICT, Washington 2547
TUMWATER FALLS 2446

S1366
INDEX TO VOLUME V AND SUPPLEMENT II

TUOLUMNE COUNTY, California 1702, S339
TUOLUMNE RIVER 2446
TURKEY CREEK 2651
TWELVE MILE BAYOU 3307
TWICHELL, TRIGG 2780
TWIN BUTTES DAM AND RESERVOIR 1354, 3370, 3423
TWIN FALLS CANAL COMPANY 210, 399, 3369
TWIN FALLS LAND AND WATER COMPANY 399
TWIN LAKES CANAL AND RESERVOIR COMPANY S330
TWIN SPRINGS DAM 684
TWITCHELL DAM AND RESERVOIR 1215

U

UHLER CREEK 2439
UNITA BASIN SALINITY CONTROL STUDY 3220
UNITA COUNTY, Wyoming 3185
UNITA MOUNTAIN streams S249, 2502
UNITA RIVER 1891
UNIATAH BASIN 2869
UNIATAH COUNTY, Utah 3220
UNIATAH INDIANS
Miscellaneous references to 33, 40
Payment for lands withdrawn for Strawberry Valley project 137
UNIATAH INDIAN RESERVATION S36
UNIATAH MOUNTAINS 3182
UNIATAH UNIT, CUP 1891, 2416, 2841, 2955, 3124, 3221, S247
UNIATAH WATER CONSERVANCY DISTRICT 2910
ULLMAN, CONGRESSMAN AT S156
ULTIMATE DEVELOPMENT CONCEPT 3057, 3058, S157, S158, 5255
UMATILLA BASIN PROJECT, Oregon
Feasibility study authorized 1889

S1367
INDEX TO VOLUME V AND SUPPLEMENT II

UMATILLA DAM 813

UMATILLA PROJECT, Oregon
   Amended contracts approved 1138
   Amended contracts approved; operation costs for McKay Dam and Reservoir 986
   Miscellaneous references to 65, 491
   McKay Dam and Reservoir reauthorized 2937
   Reduction and suspension of construction charges 369

UMATILLA RIVER BASIN 1889

UMPQUA RIVER 1892

UMPQUA RIVER PROJECT, Oregon
   Azalea division
      Feasibility study authorized 1892
   Olalla division
      Completion of studies authorized 1887

UNALAKLEET RIVER 2440

UNCOMPAGHRE PROJECT, Colorado
   Amended contract approved, land reclassification, and sale 927
   Amended contract authorized with Uncompahgre Valley Water Users' Association 479, 491, 506, 511, 521
   Contract for sale or development of surplus power
      Authorized 613
   Improvement
      Feasibility study authorized 2765
   Reduction and suspension of construction charges 370
   Temporary delivery of water authorized 455

UNCOMPAGHRE VALLEY WATER USERS' ASSOCIATION 370, 479, 511, 521, 613, 927

UNDERGROUND WATER. See ground water.

UNIFORM RELLOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970
   Miscellaneous references to S283
   Statutory references to 2865, 2872
   Text 2617

UNION ELECTRIC COMPANY S58

UNIT
   Term defined 2415

UNIT B IRRIGATION AND DRAINAGE DISTRICT 1241

UNITED CALIFORNIA BANK S79

UNITED STATES. See claims against United States; claims of United States; suits; water rights.

S1368
INDEX TO VOLUME V AND SUPPLEMENT II

UNITED STATES CODE
Extracts from 2853, 2664, 5429
Rules of construction S429

UNITED STATES INFORMATION AND EDUCATIONAL EXCHANGE ACT
Miscellaneous references to 687

UNIVERSITY OF WYOMING 793, 1133
UNIVERSITY OF ARIZONA 819
UPALCO Unit, CUP 2657, 3124

UPPER CANADIAN RIVER BASIN 2928
UPPER CHEHALIS RIVER BASIN 1892
UPPER COLORADO RIVER BASIN 442, 538, 910, 1248, 1831

UPPER COLORADO RIVER BASIN FUND
Established 1252
Expenditures for salinity control S254
Miscellaneous references to 1758, S248
Statutory references to 1651, 1859, 2419, 2870, 2902, 2903, 2910

UPPER COLORADO RIVER BASIN COMPACT
Annotations of S179
Compact references to 2418
Statutory references to 1085, 1248, 1250, 1251, 1255, 1257, 1258, 1661, 1664, 1665, 1673, 1674, 2346, 2404, 2419, 2420, 2872, 2900
Text 909

UPPER COLORADO RIVER COMMISSION
Established 913
Statutory references to 1661, 2421, 2423

UPPER COLORADO RIVER STORAGE PROJECT. See COLORADO RIVER STORAGE PROJECT.

UPPER DIVISION, Baker project 1687

UPPER ELKHORN RIVER 1894

UPPER GILA RIVER PROJECT, Arizona-New Mexico
Feasibility study authorized 1891

UPPER GUNNISON PROJECT, Colorado
Expeditious completion of planning report directed (including the East River, Ohio Creek and Tomichi Creek units) 2417, S251

UPPER JOHN DAY PROJECT, Oregon
Feasibility study authorized 2643

UPPER Klamath Lake 97, 257

S1369
### INDEX TO VOLUME V AND SUPPLEMENT II

<table>
<thead>
<tr>
<th>Location / Project</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upper Klamath National Wildlife Refuge</td>
<td>171</td>
</tr>
<tr>
<td>Upper Klamath River Basin</td>
<td>1366</td>
</tr>
<tr>
<td>Upper Niobrara River</td>
<td>1888, 2421, 2423</td>
</tr>
<tr>
<td>Upper Niobrara River Compact</td>
<td>2468</td>
</tr>
<tr>
<td>Upper Owyhee River Basin</td>
<td>1892</td>
</tr>
<tr>
<td>Upper Owyhee Project, Oregon-Idaho</td>
<td></td>
</tr>
<tr>
<td>Jordan Valley division</td>
<td>1892</td>
</tr>
<tr>
<td>Feasibility study authorized</td>
<td></td>
</tr>
<tr>
<td>Upper Republican Division, P-SMBP, Colorado</td>
<td>2478</td>
</tr>
<tr>
<td>Armel unit</td>
<td></td>
</tr>
<tr>
<td>Feasibility study authorized</td>
<td></td>
</tr>
<tr>
<td>Upper Santa Cruz Basin</td>
<td>3348-57</td>
</tr>
<tr>
<td>Upper Snake River Project, Idaho-Wyoming</td>
<td></td>
</tr>
<tr>
<td>American Falls Dam replacement</td>
<td>1889</td>
</tr>
<tr>
<td>Feasibility study authorized</td>
<td></td>
</tr>
<tr>
<td>Big Wood and Oakley Fan divisions</td>
<td>1892</td>
</tr>
<tr>
<td>Feasibility studies authorized</td>
<td></td>
</tr>
<tr>
<td>Lynn Crandall division</td>
<td>1889</td>
</tr>
<tr>
<td>Feasibility study authorized</td>
<td></td>
</tr>
<tr>
<td>Salmon Falls division</td>
<td>1889</td>
</tr>
<tr>
<td>Feasibility study authorized Authorized 2754</td>
<td></td>
</tr>
<tr>
<td>Snake Plains recharge division</td>
<td>1889</td>
</tr>
<tr>
<td>Feasibility study authorized</td>
<td></td>
</tr>
<tr>
<td>Upper Star Valley division</td>
<td>1887</td>
</tr>
<tr>
<td>Completion of studies authorized</td>
<td></td>
</tr>
<tr>
<td>Upper Snake River Valley</td>
<td>1041</td>
</tr>
<tr>
<td>Upper South Platte Unit, MRB</td>
<td>1892</td>
</tr>
<tr>
<td>Upper Star Valley Division, Upper Snake River project</td>
<td>1887</td>
</tr>
<tr>
<td>Upper Stillwater Reservoir</td>
<td>2502, 249</td>
</tr>
<tr>
<td>Utah and Ouray Indian Reservation</td>
<td>2417, S36, S251</td>
</tr>
<tr>
<td>Utah Construction Company</td>
<td>1263</td>
</tr>
<tr>
<td>Uhler Creek</td>
<td>2439</td>
</tr>
<tr>
<td>Uinta Basin Salinity Control Study</td>
<td>3220</td>
</tr>
<tr>
<td>Uinta County, Wyoming</td>
<td>3185</td>
</tr>
<tr>
<td>Uinta Mountain streams</td>
<td>S249, 2502</td>
</tr>
</tbody>
</table>

S1370
INDEX TO VOLUME V AND SUPPLEMENT II

UNITA RIVER 1891
UNITA BASIN 2869
UNITA COUNTY, Utah 3220

UNITA INDIANS
Miscellaneous references to 33, 40
Payment for lands withdrawn for Strawberry Valley project 137
Statutory references to 3618

UNITA INDIAN RESERVATION S36

UNITA MOUNTAINS 3182
UNITA UNIT, CUP 1891, 2416, 2841, 2955, 3124, 3221, S247

UNITA WATER CONSERVANCY DISTRICT 2910

ULLMAN, CONGRESSMAN 65, S156

ULTIMATE DEVELOPMENT CONCEPT 3057, 3058, S157, S158, S255

UMATILLA BASIN PROJECT, Oregon
Feasibility study authorized 1889

UMATILLA DAM 813

UMATILLA PROJECT, Oregon
Amended contracts approved 1138
Amended contracts approved; operation costs for McKay Dam and Reservoir 986
Miscellaneous references to 65, 491
McKay Dam and Reservoir reauthorized 2937
Reduction and suspension of construction charges 369

UMATILLA RIVER BASIN 1889

UMPOUA RIVER 1892

UMPOUA RIVER PROJECT, Oregon
Azalea division
Feasibility study authorized 1892
Ollalla division
Completion of studies authorized 1887

UNALAKLEET RIVER 2440

UNCOMPAGHRE PROJECT, Colorado
Amended contract approved, land reclassification, and sale 927
Amended contract authorized with Uncompahgre Valley Water Users' Association 479, 491, 506, 511, 521
Contract for sale or development of surplus power
Authorized 613
Improvement
Feasibility study authorized 2765
Reduction and suspension of construction charges 370
Temporary delivery of water authorized 455

UNCOMPAGHRE VALLEY WATER USERS' ASSOCIATION 370, 479, 511, 521, 613, 927

S1371
INDEX TO VOLUME V AND SUPPLEMENT II

UNDERGROUND WATER. See ground water.

UNIFORM RELLOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970
Amendments of 1987  S998, 3545-3557
Amendments of 1997  4116, 4117
Miscellaneous references to  S283, S1001-S1028
Statutory references to  S1051, 2865, 2872, 3545, 4116
Text  2617
Text as amended  S998

UNION ELECTRIC COMPANY  S58

UNIT
Term defined  2415

UNIT B IRRIGATION AND DRAINAGE DISTRICT  1241

UNITED CALIFORNIA BANK  S79

UNITED STATES. See claims against United States; claims of United States; suits; water rights.

UNITED STATES CODE
Extracts from  2853, 2664, S429
Rules of construction  S429
TECHNICAL IMPROVEMENT ACT OF 1994  4061
Miscellaneous references to  3476, S665, S6059, S1107

UNITED STATES GEOLOGICAL SURVEY. See geological survey.

UNITED STATES INFORMATION AND EDUCATIONAL EXCHANGE ACT
Miscellaneous references to  687

UNITED WATER CONSERVATION DISTRICT, California
Loan sale  3911

UNIVERSITY OF ARIZONA  819

UNIVERSITY OF WYOMING  793, 1133

UPALCO UNIT, CUP  2657, 3124

UPPER CANADIAN RIVER BASIN  2928

UPPER CHEHALIS RIVER BASIN  1692

UPPER COLORADO RIVER BASIN  442, 538, 910, 1248, 1831, 2657, 3619, 3813

UPPER COLORADO RIVER BASIN COMPACT
Annotations of  S179
Compact references to  2418
Statutory references to  1085, 1248, 1250, 1251, 1255, 1257, 1258, 1261, 1661, 1664, 1665,
1673, 1674, 2346, 2404, 2419, 2420, 2872, 2900, 3890
Text  909

UPPER COLORADO RIVER BASIN FUND
Established  1252
Expenditures for salinity control  S254
Miscellaneous references to  1758, S248
Statutory references to  1651, 1859, 2419, 2870, 2902, 2903, 2910, 3457

S1372
INDEX TO VOLUME V AND SUPPLEMENT II

UPPER COLORADO RIVER COMMISSION
Established 913
Statutory references to 1661, 2421, 2423

UPPER COLORADO RIVER STORAGE PROJECT. See COLORADO RIVER STORAGE PROJECT.

UPPER DIVISION, Baker project 1687

UPPER ELKHORN RIVER 1894

UPPER GILA RIVER PROJECT, Arizona-New Mexico
Feasibility study authorized 1891

UPPER GUNNISON PROJECT, Colorado
Expeditious completion of planning report directed (including the East River, Ohio Creek and Tomichi Creek units) 2417, S251

UPPER JOHN DAY PROJECT, Oregon
Feasibility study authorized 2643

UPPER KLAMATH LAKE 97, 257

UPPER KLAMATH NATIONAL WILDLIFE REFUGE 171

UPPER KLAMATH RIVER BASIN 1366

UPPER NIOMARA RIVER 1888, 2421, 2423

UPPER NIOMARA RIVER COMPACT
Text 2468

UPPER OMYHEE PROJECT, Oregon-Idaho
Jordan Valley division
Feasibility study authorized 1892

UPPER OMYHEE RIVER BASIN 1892

UPPER REPUBLICAN DIVISION, P-SMBP, Colorado
Amel unit
Feasibility study authorized 2478

UPPER SANTA CRUZ BASIN 3348-57

UPPER SNAKE RIVER PROJECT, Idaho-Wyoming
American Falls Dam replacement
Feasibility study authorized 1889
Big Wood and Oakley Fan divisions
Feasibility studies authorized 1892
Lynn Crandall division
Feasibility study authorized 1889
Salmon Falls division
Feasibility study authorized 1889
Authorized 2754
Snake Plains recharge division
Feasibility study authorized 1889
Upper Star Valley division
Completion of studies authorized 1887

S1373
INDEX TO VOLUME V AND SUPPLEMENT II

UPPER SNAKE RIVER VALLEY 1041
UPPER SOUTH PLATTE UNIT, MRB 1892
UPPER STAR VALLEY DIVISION, Upper Snake River project 1887
UPPER STILLWATER RESERVOIR 2502, S249
UPPER YAMPA PROJECT, Colorado
  Authority to sell Stagecoach Reservoir project loan 4036
  Expeditious completion of planning report directed (including the Hayden Mesa Wessels,
  and Toponas units) 2417, S251
UTAH CONSTRUCTION AND MINING COMPANY 2346
UTAH CONSTRUCTION COMPANY 1263
UTAH FISH, WILDLIFE, AND RECREATION MITIGATION AND CONSERVATION 3838
UTAH LAKE 338
UTAH AND OURAY INDIAN RESERVATION 2417, S36, S251
UTAH POWER AND LIGHT COMPANY 528, 1405, 1578, 1767, 3190, 3191

UTAH, State of
  Apportionment to, of excess revenues in Upper Colorado River Basin Fund 1253, 1258
  Compacts of. See BEAR RIVER COMPACT; COLORADO RIVER COMPACT; COLUMBIA RIVER COMPACT;
  UPPER COLORADO RIVER BASIN COMPACT.
  Desert Land Act applies 13
  Executive Order No. 6910 and Taylor Grazing Act apply 515
  Great Salt Lake relictued lands 2301
  Indemnity selection lands 1465
  Phosphate reserve 43
  Projects in. See individual dams and projects by name.
  Reclamation Act applies 31
UTE CREEK 1048
UTE INDIANS. See also SOUTHERN UTE INDIANS.
  Miscellaneous references to 18, 41, 47
UTE INDIAN TRIBE 2417, S251
UTE INDIAN RESERVED WATER RIGHTS SETTLEMENT ACT 3859
UTE INDIAN UNIT, Central Utah Project 2417, S251
UTE MOUNTAIN INDIANS 2916
UTUKOK RIVER 2448

V

VAL VERDE COUNTY, TEXAS 2433
VALDEZ RESERVOIR 1661

S1374
INDEX TO VOLUME V AND SUPPLEMENT II

VALE-OREGON IRRIGATION DISTRICT 986, 989, 1492

VALE PROJECT, Oregon
   Amended contract approved 986
   Authorization explained 1493
   Bully Creek extension
      Authorized 1492
      Repayment contract required 337, 351

VALENCE COUNTY, New Mexico 2643

VALLECITO DAM 1390

VALLEY COUNTY, Idaho 1485, 3216

VALLEY COUNTY, Montana 1080

VALLEY COUNTY, Nebraska 1326

VALLEY DIVISION, Yuma project 1270

VALLEY GRAVITY CANAL AND STORAGE PROJECT, Texas
   Appropriations for construction of 716

VALLEY LAKE 3305

VAN BUREN, Arkansas 2773

VAN CAMP, E. J. 2468, 2472

VAN DUZEN RIVER 1890, 1893

VAN TASSEL CREEK 2469

VAQUERO DAM AND RESERVOIR 1215

VEGA DAM AND RESERVOIR 1896

VELARDE COMMUNITY DITCH PROJECT 3369

VELIE ESTATE 2431, 2440

VENTURA COUNTY, California 2907

VENTURA COUNTY WATER MANAGEMENT PROJECT, California
   Feasibility study authorized 2755

VENTURA PROJECT CALIFORNIA
   Acquisition of open space lands for Casitas Reservoir authorized 2906

VENTURA RIVER BASIN 1890

VENTURA RIVER PROJECT, California
   Authorized 1245
   Extension
      Feasibility study authorized 1890

VERDE RIVER IRRIGATION AND POWER DISTRICT 611

S1375
INDEX TO VOLUME V AND SUPPLEMENT II

VERDE PROJECT, Arizona
Relief of holders of unpaid notes and warrants of Verde River Irrigation and Power District 611

VERDE RIVER 2447

VERDIGRIS RIVER 1916

VERMEJO CONSERVANCY DISTRICT 1037, 1153, 3274, 3872, S1083

VERMEJO PROJECT, New Mexico
Amendment relating to Maxwell Irrigation Company 1153
Authorized 1036, 1072
Transfer of project to Vermejo Conservancy District and deferral of repayment obligation 3274
Amendment of title transfer authorizing act S1085, 3873

VERNAL UNIT 1254

VERNAL UNIT, CUP 2657

VETERAN, Wyoming 3608

VETERANS. See SERVICEMEN.

VINCENT SUBSTATION 1758

VIRGIN CITY DAM AND RESERVOIR 1768

VIRGIN RIVER, Arizona, Nevada, Utah 1768, 3220

VIRGINIA SMITH DAM AND CALAMAS LAKE RECREATION AREA. See CALAMAS LAKE AND RESERVOIR.

VIRGINIA, STATE OF
Southeastern Power Administration markets power from Army dams in 801

VOLUNTARY SERVICES
Prohibition on accepting S510

W

W. C. AUSTIN PROJECT, Oklahoma
Miscellaneous references to 2
Name of Lugert-Altus project changed to 849
Payment to L. M. Abernathy for cave-in of well 1007
Statutory references to 2843

W.C.U. See WATER CONSERVATION AND UTILIZATION ACT.

WABASH RIVER 1507

WABASH VALLEY COMPACT
Text 1507

WADE CREEK 2439

WAGNER, JOHN W. 1016

WAGNER UNIT, MRB 1888

S1376
INDEX TO VOLUME V AND SUPPLEMENT II

WAHLUKE SLOPE 1274

WAIMANALO PROJECT, Hawaii Investigation of, authorized 1188

WAIMEA PROJECT, Hawaii Investigation of, authorized 1188

WALKER FORK, Alaska 2439

WALKER, MARY GEORGENE 883

WALKER RIVER 1232, 1887

WALKER RIVER PROJECT, California-Nevada Completion of studies authorized 1887

WALLA WALLA PROJECT, Oregon-Washington Marcus Whitman division Feasibility study authorized 1889
Milton-Freewater division Feasibility study authorized 1889
Touchet division Authorized 2525
 Increased appropriations authorized 2929

WALLA WALLA RIVER 2525

WALNUT CREEK 2651

WALSH CONSTRUCTION COMPANY 907

WALSH-HEALY ACT Text 1991

WALSH-HEALEY PUBLIC CONTRACTS ACT Statutory references to 2596, S559 Text 5571

WALWORTH COUNTY, South Dakota 3207

WANAPUM DAM 1579

WAPA. See WESTERN AREA POWER ADMINISTRATION.

WAPATO DIVISION, Yakima project 589

WAPATO INDIANS Wapato Indian irrigation project Appropriation to defray cost of providing additional water to 693 Determination of costs of Yakima project attributable to 1491 Rate fixed for payment of construction costs on 589

WAPATO INDIAN IRRIGATION PROJECT 589, 693, 1491

WAPINITIA PROJECT, Oregon Juniper division authorized 1268

WAR ASSETS ADMINISTRATION 831, 897, 898, 961

S1377
INDEX TO VOLUME V AND SUPPLEMENT II

WAR, DEPARTMENT OF. See ARMY, DEPARTMENT OF THE.

WAR RELocation AUTHORITY 831
WAR RELocation CENTERS 830, 857, 899
WARM SPRINGS RESERVOIR, Oregon 337, 3422

WARREN ACT
Annotations of S41
Appropriations for operation of reserved works 405
Miscellaneous references to 112, 297
Statutory references to 323, 492, 1529, 3746, 4022
Text 166

WARREN COUNTY, Ohio 2444
WASATCH MOUNTAINS, Utah 1893
WASCO COUNTY 1268, 1554
WASHINGTON COUNTY, Alabama 2447
WASHINGTON COUNTY, Colorado 342
WASHINGTON COUNTY, Utah 1768, 3220
WASHINGTON ENERGY FACILITY SITING ACT 3008
WASHINGTON PUBLIC POWER SUPPLY SYSTEM 1686, 2547, 2931

WASHINGTON, STATE OF
Compact of. See COLUMBIA RIVER COMPACT.
Consent to provisions of Columbia Basin Project Act required 737
Contract required for support of Yakima project 339
Desert Land Act applies 13
Executive Order No. 6964 and Taylor Grazing Act apply 516
Membership in Pacific Northwest Electric Power and Conservation Planning Council 3229
Projects in. See individual dams and projects by name.
Reclamation Act applies 31
School lands 738, 1038
Statutes of 820

WASHINGTON STATE COLLEGE 1484
WASHINGTON STATE UNIVERSITY 1692
WASHINGTON, TREATY OF. See TREATIES AND CONVENTIONS.

WASHITA BASIN PROJECT, Oklahoma
Authorized 1242

WASHITA RIVER 1242, 2343, 3303

WASHITA RIVER BASIN 567
Costs of Foss Dam and Reservoir attributable to furnishing water supply to Clinton
Sherman Air Force Base made nonreimbursable 1460

S1378
INDEX TO VOLUME V AND SUPPLEMENT II

WASHITA RIVER BASIN PROJECT, Oklahoma

Foss Dam and Reservoir
  Feasibility study of water quality improvement authorized 2343, 2349
  Miscellaneous references to 249

WASHOE COUNTY, Nevada 453, 2482, 2483, 2484, 3277, 3278, 3281, 3287, 3288, 3296

WASHOE COUNTY WATER CONSERVATION DISTRICT 712, 713

WASHOE PROJECT, Nevada-California
  Authorized 1319
  Hope Valley division
    Feasibility study authorized 1890
    Increased appropriations authorized 1446
    Miscellaneous references to 2808, S266
  Newlands extension division
    Feasibility study authorized 1890
    Water service costs to national forest lands nonreimbursable 2383

WASHOE PROJECT ACT
  Annotations of S266
  Miscellaneous references to 2783
  Statutory references to 3690

WATASHEAMU RESERVOIR 1319

WATER BANK ACT
  Text 2558

WATER CONSERVATION
  Reclamation projects, generally 3340

WATER CONSERVATION AND UTILIZATION ACT
  Deferment of construction charges 1503
  Earlier Great Plains program
    Authorized 620
  Projects under. See ANGOSTURA UNIT, MRB; BALMORHEA PROJECT; BUFFALO RAPIDS PROJECT;
  BUFORD-TRENTON PROJECT; EDEN PROJECT; MANGOS PROJECT; MIRAGE FLATS PROJECT; MISSOULA
  VALLEY PROJECT; NEWTON PROJECT; RAPID VALLEY PROJECT; SAGO DIVIDE UNIT.
  Statutory references to 721, 797, 855, 972, 973, 1223, 1269, 1350, 1432, 4038
  Text 668

WATER DESALINATION ACT OF 1996 4096

WATER FACILITIES ACT
  Enactment and termination explained 621
  Miscellaneous references to 520
  Statutory references to 981, 1607

WATER QUALITY ACT OF 1965
  Compact references to 2651
  Miscellaneous references to 1278
  Reorganization plan references to 1303
  Statutory references to 2535, 2536, 2539, 2542 2749, 1031
  Text. See FEDERAL WATER POLLUTION CONTROL ACT; CLEAN WATER ACT.

S1379
INDEX TO VOLUME V AND SUPPLEMENT II

WATER QUALITY CONTROL
As a project purpose
   Generally 1279, 2668, 2670
   Modification of storage for streamflow regulation 2837
Federal agencies, generally
   Required to comply with all Federal, State, interstate, and local water pollution control requirements 2714
National pollutant discharge elimination system
   Established 2720
Prevention of water pollution from Federal lands and installations 1299
Reimbursement and cost sharing 1279, 2668, 2860, 2864, 2870, 2873
Research. See RESEARCH; SALINE WATER RESEARCH AND DEMONSTRATION.
Sacramento-San Joaquin Delta and San Francisco Bay Estuarine Systems 4133
Safety of public water systems 5624
Special authorizations for individual projects or rivers. See also DRAINAGE WORKS.
   Arkansas and Red River Basins 1922
   Central Valley 1857, 1858, S118
   Colorado River 1258, 1757, 1807, 1858
   Dixie project 1768
   Gila project desalting complex 2857
   Lower Rio Grande 1897
   Pecos River 1392
   Pecos River Basin 1392
   Sacramento Valley Canals 3317
   Virgin River 1768
Studies. See SALINE WATER RESEARCH AND DEMONSTRATION; STUDIES AND REPORTS.

WATER RESEARCH AND DEVELOPMENT ACT OF 1978
   Act repealed S1067, 3390
   Text 3107

WATER RESOURCES COUNCIL
   Established 1829
   Membership in S396
   Statutory references to 1282, 2392, 2396, 2685, 2840, 2905

WATER RESOURCES DEVELOPMENT ACT OF 1967
   Miscellaneous references to 2385

WATER RESOURCES DEVELOPMENT ACT OF 1974
   Extracts from 2833
   Miscellaneous references to S922, S924
   Statutory references to 3039, 3162

WATER RESOURCES DEVELOPMENT ACT OF 1976
   Extracts from 3026
   Miscellaneous references to 2834, 2836, S147, S162, S164

WATER RESOURCES DEVELOPMENT ACT OF 1978
   Repealed 3391, S1065
   Statutory references 3390

WATER RESOURCES DEVELOPMENT ACT OF 1986
   Extracts from 3532
   Miscellaneous references to S862, S866
   Statutory references 3725, 3743

S1380
INDEX TO VOLUME V AND SUPPLEMENT II

WATER RESOURCES DEVELOPMENT ACT OF 1996
Extracts from 4100

WATER RESOURCES PLANNING ACT
   Amendments and annotations of S396-S399
   Statutory references to 2392, 2393, 2396, 2442, 2685
   Text 1828

WATER RESOURCES RESEARCH ACT OF 1964
   Annotations of S349
   Repealed 3122
   Text 1747

WATER RESOURCES RESEARCH ACT OF 1984
   Amendments 3382-3391, 3397, 3398, 3538, 3540, 3651, 4072, 4081, 4082
   Amendments Act 4081
   Miscellaneous references to S1067
   Statutory references to 3540, 3651, 4081, 4082
   Text as amended 3381

WATER RIGHTS. See also individual projects and rivers by name.
   Areas of origin
      Water exported from river basins 2397
   Areas of origin, preference to
      Recognition of State laws dealing with 1850
   Army projects 804, 805, 1426, 1722
   Compacts, generally 631, 783, 3574
      See also provisions in individual compacts.
   Indians, rights of
      Colorado River. See COLORADO RIVER.
      Statutes relating to individual projects or tribes 105, 106, 185, 215, 688, 904,
         1208, 1377, 3084, 3348, 3431, 3579, 3615, 3625, 3635, 3663, 3669, 3747, 3758,
         3798, 3800, 3858, 3960, 3970, 4008, 4009, 4010, 4018, 4056
      Winters doctrine 4, 427, S2
   Interstate streams, generally 76, 566, 616, 1097
      See also individual rivers by name.
   Priority of uses of water
      See also individual compacts by name.
         Amistad Dam 1541
         Boulder Canyon project 431
         Central Arizona project 2407
         Central Valley project 584
         Colorado River Storage project 1255
         Falcon Dam 1140
         Irrigation use superior to use of reclamation projects for water supply, power
            or other purposes 111, 251, 648
         Navigation use subject to use of waters west of 98th meridian for domestic,
            municipal, stock water, irrigation, mining, or industrial purposes 797
         W.C.U. projects 678
   Reclamation projects, generally S3
   Seepage 83, 99, 167, 337, 383
   State laws, recognition of
      Generally S1, S2
      Reclamation projects, generally S338
      Reclamation laws, generally 76, 169, 586, 1276, 1427

S1381
INDEX TO VOLUME V AND SUPPLEMENT II

Statutes relating to individual projects 440, 616, 704, 858, 903, 979, 1158, 1159, 1160, 1192, 1207, 1215, 1255, 1319, 1344, 1674, 1850, S331
Under other laws 9, 12, 22, 271, 284, 616, 671, 783, 796, 1278, 1377, S5

Suits
Action by United States to quantify Federal rights S27
Statutory consent to joinder of United States 1097, S209, 3753
United States, rights of
Exchanges 585, 660
Navigable waters 2, 7, 14, 28, 74, 77, 268, 282, 427, 585, 1424
Public lands 4, 14, 268, 427, 1160, S1, S2, S3, S374
Reclamation projects, generally 6, 79, 80, 99, 167, 378, 379, 585
Vested rights, recognition of
Reclamation laws, generally 6, 65, 76, 110, 124, 251, 585, 805
Statutes relating to individual projects 336, 393, 420, 431, 566, 704, 726, 1672, 1692, 1853
Under other laws 9, 10, 284, 673, 1070, 1079, 1182

Water users, rights of
Army reservoirs 1722
Certificates 177, 184, 220, 298
Contracts with or charges to individuals, including water right applications, generally 54, 62, 164, 175, 186, 195, 221, 296, 332, 357, 371, 372, 373, 374, 375, 388
Contracts with organizations, generally. See repayment contracts. Water service: water supply.
Excess lands 5, 62, 170, 179, 336, 337, 339, 351, 354, 377, 382, 386, 409
Under “9(e)” water service contracts 655, 1275

WATER RIGHTS ACT OF 1866
Text 9

WATER RIGHTS CERTIFICATES. See water rights.

WATER SERVICE (for irrigation). See also repayment contracts.
Contracts for
Conversion of “9(e)” water service contracts to “9(d)” repayment contracts 1275
Generally 655, S133, S135
Excess lands. See excess lands.
Indian lands. See Indian lands.
Payments on an annual, semiannual, bimonthly or monthly basis 3219, S262
Priorities of use. See water rights.
Public notice of contracts or amendments required 3347, S135
Temporary service
During development period 652
Generally 53, 56, 197, 371, 491, 640
Users eligible to receive
Generally 54, 195
Users, rights of. See water rights.
Utilization of Army projects for irrigation
Generally 805, S155
Water supply. See water supply.

WATER SUPPLY (for municipal, industrial and domestic purposes)
Army projects

S1382
INDEX TO VOLUME V AND SUPPLEMENT II

Authorized, generally 804, 1426
Interest of local agencies in reservoirs 1722

Contracts
Generally 647
Renewal of 1714

Interim use for irrigation 3535

Parks and community centers, 20-acre tracts 201

Priorities of use. See WATER RIGHTS.

Rates and reimbursement
Different rates for irrigation and municipal uses permitted 585, S133
Generally 644, 647, 1427, S133, S134
Interest 647, 651, 678, 1427, S234
Irrigation subsidy 655, 1084, 1245

Reclamation projects
Authorized, generally 251, 644, 647, 1426, S55, S132
Transfer of operation of water supply works 1818, 2389

Small reclamation projects. See SMALL RECLAMATION PROJECTS ACT.

Small watershed projects (Public Law 566). See WATERSHED PROTECTION AND FLOOD PREVENTION ACT.

Townsites
Authorized 110
W.C.U. projects, generally 677

WATER SUPPLY ACT OF 1958
Amendment of 5885, 3538
Annotations of S284-S285
Interest rate formula. See INTEREST.
Statutory references to 1535, 1676, 1851, 2912, 2646, 3333, 3340, S1090, S1098, 3529, 3538
Text 1426

WATERSHED PROTECTION AND FLOOD PREVENTION ACT
Amendments of S217-S225
Statutory references to 1684, 1805, 1824, S926
Text 1164

WATERSHED MANAGEMENT. See AGRICULTURE, DEPARTMENT OF; FLOOD CONTROL; PHREATOPHYTE CONTROL; SOIL AND MOISTURE CONSERVATION; STUDIES AND REPORTS; WATERSHED PROTECTION AND FLOOD PREVENTION ACT. See also individual compacts, projects, river basins and rivers by name.

WATERVILLE, Pennsylvania 2444

WATSONVILLE SUBAREA 2333

WAUNETA, VILLAGE OF 1364

WAUNETA LIGHT AND POWER COMPANY 1364

WAURIKA DAM AND RESERVOIR 1737, S347

WAYNE COUNTY, Utah 3220

WAYNE N. ASPINALL STORAGE UNIT, CRSP 3218

WEATHER MODIFICATION
Activities must be reported to Secretary of Commerce 2644

S1383
INDEX TO VOLUME V AND SUPPLEMENT II

Authority for 36, 570
Horizontal budget for meteorology 1953
Research. See RESEARCH.

WEATHERFORD, Texas 3325

WEB WATER DEVELOPMENT ASSOCIATION, INC. 3207

WEB RURAL WATER DEVELOPMENT PROJECT, South Dakota
   Additional Appropriations authorized 3577
   Authorized 3207
   Enlargement of pipeline nonreimbursable 3459
   Miscellaneous references to S1088
   Reauthorized 3327

WEBBER FALLS LOCK AND DAM 801

WEBER BASIN PROJECT, Utah
   Authorized 965
   Conveyance of certain public lands to occupants 1213
   Funds for improvement of access roads 1757
   Lands acquired for Pineview Reservoir added to Cache National Forest 1720
   Miscellaneous references to 1757, S69, S136, S188
   Statutory references to 2301

WEBER BASIN WATER CONSERVANCY, et al. (DISTRICT) 967, S188

WEBER COUNTY 965

WEBER RIVER WATER USERS ASSOCIATION S69, S136, S188

WEBER-PROVO CANAL 338

WEEDS. See AQUATIC PLANT CONTROL, HALOGETON GLOMERATUS CONTROL ACT.

WEEKS ACT
   Statutory references to 844, 1442, 1486

WEIMAR, California 2816, 2837

WEISER RIVER BASIN 1889

WEISER RIVER DIVISION, Southwest Idaho water development project 1889

WELLS. See also DRAINAGE WORKS, GROUND WATER.
   Artesian wells 35
   Canal Act 18
   Damage claims 209
   Drilling of, as part of investigation 36

WELLS DAM 1579

WELLTON-MOHAWK DISTRICT 2875

WELLTON-MOHAWK DIVISION, Gila project 858, 1757, 1858, 2341, 2857, 2858, 2875, 2876

WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT 859, 2859, 2860, 2861, 3215, S191

WESSELS UNIT, Upper Yampa Project 2417, S251

S1384
INDEX TO VOLUME V AND SUPPLEMENT II

WEST BENCH UNIT, MRB 1888
WEST BROWN IRRIGATION DISTRICT 3328
WEST DIVIDE PROJECT, Colorado
   Authorized 2416, S247
   Expeditious completion of planning report directed 1249
WEST DIVISION, Umatilla project 369, 370
WEST END EXTENSION, Grand Valley project 359
WEST EXTENSION IRRIGATION DISTRICT 1138
WEST FORK CANAL 3187
WEST MAIN CANAL, Oahe Unit 3328
WEST POINT DAM 2504
WEST SACRAMENTO CANAL UNIT, CVP 1887, 2332
WEST VIRGINIA, STATE OF
   Southeastern Power Administration markets power from Army dams in 801
WESTERN AREA POWER ADMINISTRATION
   Creation of, explained 3057
   Miscellaneous references to S127
   Statutory references to 3541
WESTERN WATER POLICY REVIEW ACT OF 1992 3918
   Amendments to 3920, 4065
WESTERN DIVISION, The Dalles project 1554
WESTLAND IRRIGATION DISTRICT, Oregon 491, 986, 2546, 2937
WESTLANDS WATER DISTRICT, California
   S83, S80, S81, S85, S296, 3610
WESTON, SIMON 3195
WETLANDS. SEE WATER BANK ACT.
WHEATLAND UNIT, MRB 1892
WHEELER-CASE ACT
   Text 668
WHEELER COUNTY, Oregon 2643
WHEELER-HOWARD ACT
   Statutory references to 862
WHEELING STIPULATION S42
WHEELING. SEE POWER.
WHISKEYTOWN RESERVOIR 1765, 1863

S1385
INDEX TO VOLUME V AND SUPPLEMENT II

WHISKEYTOWN-SHASTA-TRINITY NATIONAL RECREATION AREA
Authorized 1863

WHITE LAKE 1771

WHITE RIVER, Arkansas-Missouri 806, 1922

WHITE RIVER BASIN, Arkansas-Missouri 1003

WHITE DIVISION, MRB, South Dakota
Pine Ridge unit
Completion of studies authorized 1888

WHITE RIVER, South Dakota 1888

WHITE RIVER NATIONAL FOREST S210

WHITE SALMON RIVER 2928

WHITE SALMON DIVISION, Columbia Northside project 2928

WHITE MOUNTAINS NATIONAL RECREATION AREA, Alaska 2439

WHITEHALL UNIT, MRB 1888

WHITEROCK RIVER 1891

WHITESTONE COULEE UNIT, Chief Joseph Dam project 1803

WHITNEY DAM 801

WICHITA, CITY OF 1557

WICHITA PROJECT, Kansas
Cheney division
Authorized 1557

WICKUP DAM 3217

WIDE RIVER FARMS, INC 2919

WILBUR LETTER S73, S89

WILD AND SCENIC RIVERS ACT
Text 2428

WILDERNESS ACT
Amendment of S358
Statutory references to 2457, 2769, 2966, 3013
Text 1777

WILDLIFE. S99 FISH AND WILDLIFE.

WILHELM, FRANK L. 1540

WILKINSON, GREGORY K. S84

WILLAMETTE RIVER 2478

WILLAMETTE RIVER BASIN 617

S1386
INDEX TO VOLUME V AND SUPPLEMENT II

WILLAMETTE RIVER PROJECT, Oregon
   Calapooia division
      Feasibility study authorized  2478
   Carlton division
      Feasibility study authorized  1889
   Molalla division
      Feasibility study authorized  1889
   Monmouth-Dallas division
      Completion of studies authorized  1887
   Red Prairie division
      Completion of studies authorized  1887
   South Yamhill division
      Feasibility study authorized  2478

WILLARD CANAL  1767

WILLARD GRAVITY CANAL  S188

WILLIAM B. BANKHEAD NATIONAL FOREST  2446

WILLIAM I JESS DAM AND INTAKE STRUCTURE  4085
   See also LOST CREEK DAM LAKE PROJECT; LOST CREEK PROJECT; LOST CREEK RESERVOIR.

WILLISTON PROJECT, North Dakota
   Cancellation of charges and sale of property  389

WILLOW CREEK, Idaho  1703

WILLOW CREEK, Oregon  1856

WILLOW CREEK, South Dakota  357

WILLSON, EUGENE P.  2468, 2472

WILLWOOD IRRIGATION DISTRICT  927, 1129, S180

WILSON BAR, Wyoming  2446

WILSON DAM AND RESERVOIR  1261, 1545

WILSON TARIFF ACT
   Statutory references to  3139

WIND ENERGY SYSTEMS ACT OF 1980
   Amendments  4070
   Extracts from  3204
   Statutory references to  4070

WIND RIVER  680, 2536

WIND RIVER, Alaska  2439

WIND RIVER INDIAN RESERVATION
   Compensation to Shoshone and Arapahoe Indians for lands on reservation used for Riverton project  1125
   Conveyance of land of, to United States  1109, 1328
   Easement on lands of, for Bull Lake Dam and Reservoir  680
   Minerals in lands covered by Act of August 15, 1953, held in trust for Shoshone and
INDEX TO VOLUME V AND SUPPLEMENT II

Arapahoe tribes 1451
Payment by reclamation entrymes 291
Proceeds from sales of reclamation townsites 291
Reclamation of ceded portion of reservation 260

WIND RIVER IRRIGATION PROJECT, Wyoming
Miscellaneous references to  S97

WIND-HYDROELECTRIC ENERGY PROJECT, Wyoming
Feasibility study authorized  3216

WINONA UNIT, MRB  1893

WINSLOW, Arizona  2343

WINSLOW-HOLBROOK DIVISION  2343

Winston Bros. Company  1263

WINTERS DOCTRINE.  See WATER RIGHTS.

WISCONSIN RIVER  2446

WISCONSIN, STATE OF
Executive Order No. 6964 and Taylor Grazing Act apply  516

WITHDRAWALS
International Boundary and Water Commission, for purposes of  523
Irrigable lands  15
Power sites.  See POWER SITES.
Presidential
Executive Orders 6910 and 6964  43, 515
Generally  155
Public lands, generally  2972
Reclamation projects.  See RECLAMATION WITHDRAWALS.
Reservoir sites  15
Wild and scenic river system lands  2455, 2457

WOLF COUNTY, Kentucky  2447

WOLF CREEK DAM  801

WOLF RIVER, Wisconsin  2431, 2428

WOLFSKILL TRUST  S80

WOODRUFF, Utah  3183

WOODS, RUFUS, LAKE  1091

WORKING CAPITAL FUND.  See CAPITAL INVESTMENT PROGRAM.
Establishment of  3462

WORKS PROGRESS ADMINISTRATION  591, 620, 669

WORLD HERITAGE LIST  2306

WORLD WAR  238, 258, 331, 435

S1388
INDEX TO VOLUME V AND SUPPLEMENT II

WORLD WAR II  435, 674, 710, 821, 903

WPPSS.  See WASHINGTON PUBLIC POWER SUPPLY SYSTEM.

WRIGHTSVILLE BEACH TEST FACILITY, North Carolina
  Land conveyance  3391

WUNDERLICH ACT  S598
  Background explained  1390
  Text  2002

WYNOOCHEE PROJECT, Washington  1909

WYNOOCHEE RIVER  1703

WYOMING, STATE OF
  Apportionment to, of excess revenues, Upper Colorado River Basin Fund  1253, 1258
  Approval of definite plan report for Glendo unit required  976
  Approval of definite plan report for Moorhead Dam and Reservoir required  977
  Compacts of.  See BEAR RIVER COMPACT; BELLE FOURCHE RIVER COMPACT; COLORADO RIVER COMPACT; COLUMBIA RIVER COMPACT; GROUND WATER; LITTLE MISSOURI RIVER COMPACT; NIOBRA RIVER; PONCA CREEK; SNAKE RIVER COMPACT; UPPER COLORADO RIVER BASIN COMPACT; UPPER NIUBRA RIVER; YELLOWSTONE RIVER COMPACT.
  Desert Land Act applies  13
  Executive Order No. 6910 and Taylor Grazing Act apply  515

Projects in.  See individual dams and projects by name.
  Reclamation Act applies  31

Y

YAKAMA INDIAN NATION
  Redesignation  4044
  Wapato Irrigation Project improvements  4044

YAKIMA INDIANS
  Additional water for Wapato Indian irrigation project  683
  Reclamation of surplus, or unallotted lands authorized  105
  Settlement of water rights of, authorized  185

YAKIMA PROJECT, Washington  2928
  Ahtanum unit
    Feasibility study authorized  1889
    Amended contract approved  987, 1141
    Amended contract approved, land reclassification  928
    Authorization explained  1491
    Bumping Lake enlargement
      Completion of studies authorized  1887
    Certain administrative costs nonreimbursable  1129
    Delivery of water to Yakima Indians  185
    Determination of costs of Yakima project attributable to serving Wapato Indian irrigation project  1491
    Disposal of certain Federal property authorized  1610
    Feasibility study of Cle Elum Dam and Tieton Dam powerplants authorized  321
    Fish and Wildlife enhancement  4050
    Kennewick division

S1389
INDEX TO VOLUME V AND SUPPLEMENT II

Miscellaneous references to S191
Authorized 881
Kennewick division extension
Additional studies authorized 1886
Authorized 2474, S171
Power for project pumping 4052
Power revenues, application of 457
Rate fixed for payment of construction costs on Wapato Indian irrigation project 589
Reduction and suspension of construction charges 371
Repayment contract required 338, 715
Title to Prosser Dam and power canal right of way required 457

YAKIMA RIVER 1886
YAKIMA RIVER BASIN 1889, 3180
Fish passage facilities 3413

YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT, Washington
Feasibility study authorized 3180
Program establishment 4039
Section 1208 amended 4053, 4114
Statutory references to 4044

YAMHILL COUNTY, Oregon 2478

YAMHILL RIVER 1889

YAMPA RIVER 919, 2446

YANKTON UNIT, MRB 1888

YAVAPAI COUNTY, Arizona 3216

YAVAPAI-PREScott INDIAN TRIBE WATER RIGHTS SETTLEMENT ACT OF 1994 4010
Amendment of 3594, 3597, 4114
Miscellaneous references to S884, S992, S1053, S1067
Statutory references to Title VIII 3594, 3597, 3601, 3603-3607
Title IX 3376-3379

YAZOO RIVER 396

YAZOO RIVER BASIN 2836

YELLEN, DR. BEN S74, S89

YELLOWHOUSE BRANCH 2447

YELLOW-JACKET PROJECT, Colorado
Expeditious completion of planning report directed 1249

YELLOWSTONE CANAL COMPANY 3215

YELLOWSTONE COUNTY 1497

YELLOWSTONE DIVISION, MRB, P-SMBP, Montana
Billings Municipal Water Supply unit
Feasibility study authorized 2643
Feasibility studies of Billings pump, Cracker Box, and Stipek units authorized 1892

S1390
INDEX TO VOLUME V AND SUPPLEMENT II

YELLOWSTONE NATIONAL PARK 875, 940, 996, 1061
YELLOWSTONE RIVER 104, 940, 1892, 2836, S13, S32
YELLOWSTONE RIVER BASIN 1062
YELLOWSTONE RIVER COMPACT
Annotations of S206
Consent to negotiate 940
Miscellaneous references to S159
Statutory reference to 3753
Text 1061
YELLOWSTONE RIVER SYSTEM 1062
YELLOWTAIL DAM S160, S175
YELLOWTAIL DAM AND RESERVOIR 808, 863, 1429, 1904
YELLOWTAIL RESERVOIR 2504, 2506, S55, S132, S135, S159, S160, S166, S206
YELLOWTAIL UNIT, MRB, Montana
Certain funds for access roads made nonreimbursable 1651
Compensation to Crow Tribe of Indians for lands utilized for Yellowtail Dam and Reservoir 1429
Recreation development. See BIGHORN CANYON NATIONAL RECREATION AREA
YOLI COUNTY, California 2332, 3317, S202, S203
YOLI COUNTY WATER USERS S271, S275
YOLI-ZAMORA WATER DISTRICT 3317, 3311
YOSEMITE NATIONAL PARK
Expansion of reservoir capacity prohibited 3524
Potential additions to Wild and Scenic Rivers System 2446
Rights of way 29
YOUGHIOGHENY DAM AND RESERVOIR 2445
YOUGHIOGHENY RIVER 2445
YUBA RIVER BASIN 1922
YUCCA. See MORONGO-YUCA-UPPER COACHELLA VALLEY PROJECT.
YUKON RIVER 11, 2439, 2448
YUKON-CHARLEY RIVERS NATIONAL PRESERVE 2438
YUKON FLATS NATIONAL WILDLIFE REFUGE 2439
YUMA, ARIZONA, CITY OF 1271, 2859, 2915, S55
YUMA ARMY AIR BASE 857
YUMA AUXILIARY PROJECT, ARIZONA
Authorized 229, 241
Certain irrigable lands in Yuma County excluded 1241
Credit for payments made by Imperial Irrigation District 395, 447, 950

S1391
INDEX TO VOLUME V AND SUPPLEMENT II

Lands severed from, and arrangements established for furnishing water to, from works of
Gila project 950
Mesa division authorized 333
Transfer of accounts to Colorado Front Work and Levee System 1018

YUMA COUNTY, ARIZONA 1241, 1680, 2919
YUMA COUNTY WATER USERS' ASSOCIATION 1270, 1738, S55
YUMA DESALTING COMPLEX 2861

YUMA INDIANS
Credit lands in reservation for payments made by Imperial Irrigation District 395, 447
Miscellaneous references to 19, 427, S28
Reclamation of irrigable lands of 90

YUMA MAIN CANAL 1270, S55
YUMA MESA 858, 2863
YUMA MESA DIVISION, Gila Project 858, 1240, 2341, 2535, S243
YUMA MESA IRRIGATION DISTRICT 2535
YUMA MESA IRRIGATION AND DRAINAGE DISTRICT 97, 657, 1239, 2863, S243
YUMA MESA PUMPING PLANT S243

YUMA PROJECT, Arizona -California
Appropriations for Colorado River flood protection works adjacent to.
See Colorado River Front Work and Levee System.
Authorization explained 1019
Construction of powerplant on main canal 312
Contract with Yuma County Water Users' Association relating to Valley division
authorized 1271
Credit for payments made by Imperial Irrigation District 395, 447, 950
Entry rights for settlers 227
Miscellaneous references to 491, S44, S45
New Siphon Drop powerplant
Feasibility study authorized 3217
Power revenues, application of 405, 503
Relief of Charles Cooper 1060
Relief from further costs 1018
Reserve funds for Siphon Drop powerplant transferred to Yuma County Water
Users' Association 1738
Statutory references to 694
Transfer of accounts to Colorado River Front Work and Levee System 1018
Withdrawal of public notices and reduction of water-right charges 963
Yuma auxiliary project authorized on lands withdrawn for 229

Z
ZILLAH, TOWN OF 1610

S1392