FLOOD CONTROL ACT OF 1944

[Extracts from] An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes. (Act of December 22, 1944, ch. 665, 58 Stat. 887)

[Sec. 1. Policy of Congress—Federal-State cooperation in plans—Review of project proposals—Reports to Congress—Proposed works to which objections are made not to be deemed authorized unless by Act of Congress.]—In connection with the exercise of jurisdiction over the rivers of the Nation through the construction of works of improvement, for navigation or flood control, as herein authorized, it is hereby declared to be the policy of the Congress to recognize the interests and rights of the States in determining the development of the watersheds within their borders and likewise their interests and rights in water utilization and control, as herein authorized to preserve and protect to the fullest possible extent established and potential uses, for all purposes, of the waters of the Nation's rivers; to facilitate the consideration of projects on a basis of comprehensive and coordinated development; and to limit the authorization and construction of navigation works to those in which a substantial benefit to navigation will be realized therefrom and which can be operated consistently with appropriate and economic use of the waters of such rivers by other users.

In conformity with this policy:

(a) Plans, proposals, or reports of the Chief of Engineers, War Department, for any works of improvement for navigation or flood control not heretofore or herein authorized, shall be submitted to the Congress only upon compliance with the provisions of this paragraph (a). Investigations which form the basis of any such plans, proposals, or reports shall be conducted in such a manner as to give to the affected State or States, during the course of the investigations, information developed by the investigations and also opportunity for consultation regarding plans and proposals, and to the extent deemed practicable by the Chief of Engineers, opportunity to cooperate in the investigations. If such investigations in whole or part are concerned with the use or control of waters arising west of the ninety-seventh meridian, the Chief of Engineers shall give to the Secretary of the Interior, during the course of the investigations, information developed by the investigations and also opportunity for consultation regarding plans and proposals, and to the extent deemed practicable by the Chief of Engineers, opportunity to cooperate in the investigations. The relations of the Chief of Engineers with any State under this paragraph (a) shall be with the Governor of the State or such official or agency of the State as the Governor may designate. The term "affected State or States" shall include those in which the works or any part thereof are proposed to be located; those which in whole or part are both within the drainage basin involved and situated in a State lying wholly or in part west of the ninety-eighth meridian; and such of those which are east of the ninety-eighth meridian as, in the judgment of the Chief of Engineers, will be substantially affected. Such plans, proposals, or reports and

related investigations shall be made to the end, among other things, of facilitating the coordination of plans for the construction and operation of the proposed works with other plans involving the waters which would be used or controlled by such proposed works. Each report submitting any such plans or proposals to the Congress shall set out therein, among other things, the relationship between the plans for construction and operation of the proposed works and the plans, if any, submitted by the affected States and by the Secretary of the Interior. The Chief of Engineers shall transmit a copy of his proposed report to each affected State, and, in case the plans or proposals covered by the report are concerned with the use or control of waters which rise in whole or in part west of the ninety-seventh meridian, to the Secretary of the Interior. Within ninety days from the date of receipt of said proposed report, the written views and recommendations of each affected State and of the Secretary of the Interior may be submitted to the Chief of Engineers. The Secretary of War shall transmit to the Congress, with such comments and recommendations as he deems appropriate, the proposed report together with the submitted views and recommendations of affected States and of the Secretary of the Interior. The Secretary of War may prepare and make said transmittal any time following said ninety-day period. The letter of transmittal and its attachments shall be printed as a House or Senate document.

(b) The use for navigation, in connection with the operation and maintenance of such works herein authorized for construction, of waters arising in States lying wholly or partly west of the ninety-eighth meridian shall be only such use as does not conflict with any beneficial consumptive use, present or future, in States lying wholly or partly west of the ninety-eighth meridian, of such waters for domestic, municipal, stock water, irrigation, mining, or industrial purposes.

(c) The Secretary of the Interior, in making investigations of and reports on works for irrigation and purposes incidental thereto shall, in relation to an affected State or States (as defined in paragraph (a) of this section), and to the Secretary of War, be subject to the same provisions regarding investigations, plans, proposals, and reports as prescribed in paragraph (a) of this section for the Chief of Engineers and the Secretary of War. In the event a submission of views and recommendations, made by an affected State or by the Secretary of War pursuant to said provisions, sets forth objections to the plans or proposals covered by the report of the Secretary of the Interior, the proposed works shall not be deemed authorized except upon approval by an Act of Congress; and subsection 9(a) of the Reclamation Project Act of 1939 (53 Stat. 1187) and subsection 3(a) of the Act of August 11, 1939 (53 Stat. 1418), as amended, are hereby amended accordingly. (58 Stat. 887; 33 U.S.C. § 701–1)

EXPLANATORY NOTES

Provisions Repeated. Language identical to that contained in section 1 above is repeated in section 1 of the Rivers and Harbors Act of 1945. These provisions are incorporated by reference in the Flood Control Acts of 1950, 1954 and 1965.

References in the Text. The Reclamation Project Act of 1939 (53 Stat. 1187), was enacted August 4, 1939. The Act of August 11, 1939 (53 Stat. 1418), is the Water Conservation and Utilization Act. Both Acts appear herein in chronological order.

Cross Reference, Glendo Unit, Missouri River Basin Project. Section 2 of the Joint Resolution of July 16, 1954, 68 Stat. 486, provides that "With respect to the Glendo Unit, the provisions of section 1(c) of the Flood Control Act of 1944 are hereby waived." The Resolution appears herein in chronological order.

NOTES OF OPINIONS

Priority of uses 2
Water rights 1

1. Water rights

The language in the first paragraph of section 1 stating a policy of Congress, inter alia, to "protect to the fullest extent possible established and potential uses," was not to prohibit the taking of state-created water rights by eminent domain, but rather to assure that just compensation would be provided in the event of such taking. *Turner v. Kings River Conservation Dist.*, 360 F. 2d 184, 192–93 (9th Cir. 1966).

2. Priority of uses

The use of water for the generation of hydroelectric energy is an "industrial use" within the meaning of the O'Mahoney-Millikin Amendment, § 1(b) of the Flood Control Act of 1944, and therefore it has a statutory priority over the use of water for navigational purposes. Letter of Solicitor Barry to Assistant Attorney General Katzenbach, June 15, 1961.

Sec. 2. [Jurisdiction of Secretaries of the Army and of Agriculture.]—The words "flood control" as used in section 1 of the Act of June 22, 1936, shall be construed to include channel and major drainage improvements, and that hereafter Federal investigations and improvements of rivers and other waterways for flood control and allied purposes shall be under the jurisdiction of and shall be prosecuted by the War Department under the direction of the Secretary of War and supervision of the Chief of Engineers, and Federal investigations of watersheds and measures for run-off and water-flow retardation and soil-erosion prevention on watersheds shall be under the jurisdiction of and shall be prosecuted by the Department of Agriculture under the direction of the Secretary of Agriculture, except as otherwise provided by Act of Congress. (58 Stat. 889; 33 U.S.C. § 701a–1)

EXPLANATORY NOTES

Reference in the Text. The Act of June 22, 1936, referred to in the text, is the Flood Control Act of 1936. Section 1 of the Act is a Declaration of Congressional Policy that, destructive floods being a national menace, flood control on navigable waters or their tributaries is a proper activity of the Federal Government in cooperation with the States, their political subdivisions, and localities thereof. The Act appears herein in chronological order.

Earlier Provisions. Similar provisions appeared in section 2 of the Flood Control Act of 1936 and the Flood Control Act of 1938. Extracts from these Acts appear herein in chronological order.

NOTE OF OPINION

1. Purpose

The statement in section 2 of the Flood Control Act of 1944 that investigations of flood control shall be under the jurisdiction of the War Department was intended to differentiate between the relative roles of the War Department and the Department of Agriculture, and does not prevent the Bureau of Reclamation from investigating multiple-purpose projects that include flood control, such as the Pleasant Valley development on the Snake River. Solicitor Bennett Opinion, 65 I.D. 129 (1958).

Sec. 3. [Local cooperation in Federal projects.]—Section 3 of the Act approved June 22, 1936 (Public Numbered 738, Seventy-fourth Congress), as amended by section 2 of the Act approved June 28, 1938 (Public, Numbered 761, Seventy-fifth Congress), shall apply to all works authorized in this Act, except

that for any channel improvement or channel rectification project, provisions (a), (b), and (c) of section 3 of said Act of June 22, 1936, shall apply thereto, and except as otherwise provided by law: *Provided,* That the authorization for any flood-control project herein adopted requiring local cooperation shall expire five years from the date on which local interests are notified in writing by the War Department of the requirements of local cooperation, unless said interests shall within said time furnish assurances satisfactory to the Secretary of War that the required cooperation will be furnished. (58 Stat. 889; 33 U.S.C. § 701c, note)

EXPLANATORY NOTES

Provision Repeated. A similar provision was contained in the Act of August 18, 1941, 55 Stat. 638, and in the subsequent Acts of July 24, 1946, 60 Stat. 641; June 30, 1948, 62 Stat. 1175; May 17, 1950, 64 Stat. 170; September 3, 1954, 68 Stat. 1256; and of November 7, 1966, 80 Stat. 1418.

Reference in the Text. Section 3 of the Act approved June 22, 1936 (Public, Numbered 738, Seventy-fourth Congress), as amended by section 2 of the Act approved June 28, 1938 (Public, Numbered 761, Seventy-fifth Congress), referred to in the text, deals with the required financial participation of States and their political subdivisions in flood control projects. Extracts from both Acts, including the sections referred to, appear herein in chronological order.

Sec. 4. **[Recreation facilities at Army water resource development projects—Leases at such projects for other purposes—Natural resources development—Disposition of revenues.]**—The Chief of Engineers, under the supervision of the Secretary of the Army, is authorized to construct, maintain, and operate public park and recreational facilities at water resource development projects under the control of the Department of the Army, to permit the construction of such facilities by local interests (particularly those to be operated and maintained by such interests), and to permit the maintenance and operation of such facilities by local interests. The Secretary of the Army is also authorized to grant leases of lands, including structures or facilities thereon, at water resource development projects for such periods, and upon such terms and for such purposes as he may deem reasonable in the public interest: *Provided,* That leases to nonprofit organizations for park or recreational purposes may be granted at reduced or nominal considerations in recognition of the public service to be rendered in utilizing the leased premises: *Provided further,* That preference shall be given to Federal, State, or local governmental agencies, and licenses or leases where appropriate, may be granted without monetary considerations, to such agencies for the use of all or any portion of a project area for any public purpose, when the Secretary of the Army determines such action to be in the public interest, and for such periods of time and upon such conditions as he may find advisable: *And provided further,* That in any such lease or license to a Federal, State, or local governmental agency which involves lands to be utilized for the development and conservation of fish and wildlife, forests, and other natural resources, the licensee or lessee may be authorized to cut timber and harvest crops as may be necessary to further such beneficial uses and to collect and utilize the proceeds of any sales of timber and crops in the development, conservation, maintenance, and utilization of such lands. Any balance of proceeds not so utilized shall be paid to the United States at such time or times as the Secretary of the Army may determine appro-

priate. The water areas of all such projects shall be open to public use generally for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such areas along the shores of such projects shall be maintained for general public use, when such use is determined by the Secretary of the Army not to be contrary to the public interest, all under such rules and regulations as the Secretary of the Army may deem necessary. No use of any area to which this section applies shall be permitted which is inconsistent with the laws for the protection of fish and game of the State in which such area is situated. All moneys received by the United States for leases or privileges shall be deposited in the Treasury of the United States as miscellaneous receipts. (58 Stat. 889; § 4, Act of July 24, 1946, 60 Stat. 642; § 209, Act of September 3, 1954, 68 Stat. 1266; § 207, Act of October 23, 1962, 76 Stat. 1195; § 2(a), Act of September 3, 1964, 78 Stat. 899; 16 U.S.C. § 460d)

EXPLANATORY NOTES

1964 Amendment. Section 2(a) of the Land and Water Conservation Fund Act of 1965 (enacted September 3, 1964), amended Section 4, as amended by the Flood Control Act of 1962 (76 Stat. 1195) by deleting ", without charge," which appeared after the word "generally" in the third sentence from the end of the section. The 1964 Act appears herein in chronological order.

1962 Amendment. Section 207 of the Flood Control Act of 1962 (76 Stat. 1195), amended section 4 of this Act by substituting references to water resource development projects for references to reservoir areas wherever appearing, and by authorizing the Chief of Engineers to permit the construction, maintenance and operation of facilities by local interests.

1954 Amendment. The Act of September 3, 1954, 68 Stat. 1266, amended the section generally.

1946 Amendment. The Act of July 24, 1946, 60 Stat. 642, amended the section by inserting the first proviso.

Sec. 5. [Surplus electric power and energy generated at Army projects shall be marketed by Secretary of the Interior—Rate schedules—Construction of transmission facilities—Preference customers—Disposition of revenues.]—Electric power and energy generated at reservoir projects under the control of the War Department and in the opinion of the Secretary of War not required in the operation of such projects shall be delivered to the Secretary of the Interior, who shall transmit and dispose of such power and energy in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles, the rate schedules to become effective upon confirmation and approval by the Federal Power Commission. Rate schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment allocated to power over a reasonable period of years. Preference in the sale of such power and energy shall be given to public bodies and cooperatives. The Secretary of the Interior is authorized, from funds to be appropriated by the Congress, to construct or acquire, by purchase or other agreement, only such transmission lines and related facilities as may be necessary in order to make the power and energy generated at said projects available in wholesale quantities for sale on fair and reasonable terms and conditions to facilities owned by the Federal Government, public bodies, cooperatives,

and privately owned companies. All moneys received from such sales shall be deposited in the Treasury of the United States as miscellaneous receipts (58 Stat. 890; 16 U. S. C. § 825s)

EXPLANATORY NOTES

Southwestern Power Administration. The Southwestern Power Administration, which was created by the Secretary of the Interior in 1943, is designated as the agency to market available surplus electric power and energy at the following reservoir projects pursuant to section 5 of the Flood Control Act of 1944: Beaver, Blakely Mountain, Broken Bow, Bull Shoals, Clarence Cannon, Dardanelle, DeGray, Denison, Eufaula, Fort Gibson, Greers Ferry, Kaysinger Bluff, Keystone, Narrows, Norfork, Ozark Lock and Dam, Robert S. Kerr, Sam Rayburn, Stockton, Table Rock, Tenkiller Ferry, Webber Falls Lock and Dam, and Whitney. 270 DM 2.1.

Southeastern Power Administration. The Southeastern Power Administration was created by the Secretary of the Interior in 1950 to carry out functions under section 5 of the Flood Control Act of 1944 pertaining to the transmission and disposition of surplus electric power and energy generated at reservoir projects which are or may be under the control of the Department of the Army in the States of West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Kentucky. 165 DM 1.1

Cumberland Projects Rates Controversy. On December 18, 1948, the Secretary of the Interior entered into an agreement to sell to the Tennessee Valley Authority the entire output of the Department of the Army Wolf Creek, Center Hill, and Dale Hollow projects on the Cumberland River and its tributaries. On September 15, 1955, the Secretary submitted the rates and charges of the contract as amended to the Federal Power Commission for confirmation and approval. By its order of May 20, 1958, the Commission disapproved the rate schedules on the grounds that the incremental method of allocating costs was not proper and that an interest rate of 2.5%, rather than 2%, should be used. 19 F.P.C. 774 (1958). The Department continued to honor the contractual rate schedule, however, and reported the disagreement with the Commission to the Congress on May 5, 1959. In October and November 1964, the Secretary filed a substitute rate schedule with the Commission that follows the incremental method of cost allocation but utilizes a 2.5% interest rate. The revised schedule was approved by order of the Commission on December 23, 1964. 32 F.P.C. 1523 (1964).

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1. Construction with other laws

The preference provisions of section 5 of the Flood Control Act of 1944 must be read in *pari materia* with the preference provisions of section 5(c) of the Boulder Canyon Project Act (43 U.S.C. § 617d(c)), the Tennessee Valley Authority Act (16 U.S.C. § 831k), and Section 4 of the Bonneville Project Act (16 U.S.C. § 832c(d)). 41 Op. Atty Gen. 236, 245 (1955), in re disposition of power from Clark Hill reservoir project.

The provisions relating to power marketing and power rates in section 9(c) of the Reclamation Project Act of 1939, section 5 of the Flood Control Act of 1944, and section 6 of the Bonneville Power Act are *in pari materia,* and each may be examined to shed light on the Congressional intent with respect to the others. Indeed, as a practical matter, as illustrated by the Bonneville Power Administration, because a single system may be used to market power from three different sources, the three statutes have to be read together and interpreted as establishing identical criteria for power rates. Consequently, the mandate of the Flood Control Act of 1944 to market power from Army projects "in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles," applies also to power marketed from reclamation projects under reclamation law. Letter of Secretary Udall to Representative Aspinall, May 15, 1965, in re basis for establishing power rates for the Colorado River Storage Project.

2. Federal Power Act

The Secretary of the Interior and an association of power cooperatives have standing to petition for judicial review of an order of the Federal Power Commission granting a license to a private power company to construct a hydroelectric generating plant on a site (Roanoke Rapids) allegedly approved by Congress for Federal development. *United States ex rel Chapman v. Federal Power Commission,* 345 U.S. 153 (1953), *reversing on this ground* 191 F. 2d 796 (4th Cir. 1951).

The authority of the Federal Power Commission under section 5 of the Flood Control Act of 1944 is limited to the review of rates submitted by the Secretary for future application and does not extend to the adjudication of the legal rights of others, and therefore the Commission is without jurisdiction to pass upon the validity and continued applicability of rates specified in an existing contract between the Southwestern Power Administration and Arkansas Power and Light Co. and Reynolds Metals Co. 18 F.P.C. 153, 156–57 (1957).

3. Judicial proceedings

The competition which private electric power companies would suffer as the result of contracts between the Southwestern Power Administration and five federated cooperatives does not constitute a sufficient interest to enable the power companies to sue to enjoin implementation of the contracts. *Kansas City Power & Light Co. v. McKay,* 225 F. 2d 924 (D.C. Cir. 1955), *cert. denied,* 350 U.S. 884 (1955).

4. Delegation

The 1945 reestablishment of the Southwestern Power Administration by the Secretary of the Interior (Departmental Order No. 2135, 10 F.R. 14527) to carry out in the southwestern area the functions vested in him by section 5 of the Flood Control Act of 1944, seems clearly within the general authority of the Secretary to determine, and to make appropriate provisions concerning, the manner in which the business of the Department shall be distributed and performed (R.S. 161; 5 U.S.C. § 22). Solicitor White Opinion, 59 I.D. 449 (1947).

The action of the Secretary of the Interior in requesting passage of the Act of December 19, 1941, must be regarded as an effort to obtain specific authority to delegate to officials of the Bureau of Reclamation those functions, if any, under the reclamation laws which could not otherwise be delegated to subordinate officials of the Department. Consequently, the Act of December 19, 1941, does not preclude the Secretary from assigning to the Southwestern Power Administration the function of marketing power from reclamation projects. Solicitor White Opinion, 59 I.D. 453 (1947).

5. Studies

The Secretary of the Interior has implied authority under section 5 of the Flood Control Act of 1944 to conduct studies on power marketing in those areas respecting which the Army Engineers are concluding surveys looking toward possible reservoir developments. The Secretary also has express authority under section 3 of the Flood Control Act of March 1, 1917, to detail departmental representatives to assist the Army Engineers in the study and examination of watersheds. Solicitor White Opinion, M–36080 (May 16, 1951), in re power study in the New England-New York area.

6. Preference clause

When the Secretary of the Interior has before him two competing proposals to purchase power from a reservoir project under the control of the Department of the Army, one proposal by a preference customer lacking transmission facilities (Georgia Electric Membership Corporation) and one from a non-preference customer possessing such facilities (Georgia Power Company), the Secretary must contract with the preference customer on the condition that such customer will, within a reasonable time to be fixed by the Secretary, obtain the means for taking and delivering the power. If within such period the preference customer does not meet the conditions, the Secretary is authorized to contract with the non-preference customer, with adequate provision, however, enabling the Secretary to deal with the preference customer should it subsequently obtain the means to take and deliver the power. 41 Op. Atty. Gen. 236 (1955), in re disposition of power from Clark Hill reservoir project.

The disposition of electric energy to a private company under an arrangement whereby it agrees to sell an equivalent amount of power to preference customers designated by the Secretary does not constitute the granting of preference in "the sale" of power to public bodies and cooperatives as required by section 5 of the Flood Control Act of 1944. 41 Op. Atty. Gen. 236, 244 (1955), in re disposition of power from Clark Hill reservoir project.

7. Purchases of power

Section 5 of the Flood Control Act of 1944 authorizes the Secretary to construct or acquire steam generating plants where in fact the proper marketing of the surplus

hydroelectric power requires that such power be supplemented by steam facilities. Letter of Solicitor Gardner to Charles D. Curran, Bureau of the Budget, November 16, 1945; reprinted in *Hearings on the Interior Department Appropriation Bill for 1947 Before the House Committee on Appropriations,* 79th Cong., 2d Sess., part 3: Southwestern Power Administration, at 73 (1946).

The Secretary has authority under section 5 of the Flood Control Act of 1944 to purchase supplemental power for resale to firm up Federal hydroelectric power. Memorandum of Chief Counsel Fix to Commissioner, October 15, 1948.

The Southwestern Power Administration is authorized under section 5 of the Flood Control Act of 1944 to rent transmission lines and related facilities and to purchase electric power and energy to the extent necessary to firm up the hydroelectric power distributed by the Administration from Army reservoir projects and thus achieve the statutory objective of the most widespread use of such hydroelectric power. Solicitor White Opinion M–36009 (July 15, 1949).

Both the purchase by the Southwestern Power Administration of thermal energy generated at steam plants owned by electric cooperatives, which purchase is reasonably incidental to the integration of hydroelectric power generated at the Federal projects, and the lease of transmission lines of the cooperatives are within the scope of section 5 of the Flood Control Act of 1944. *Kansas City Power & Light Co. v. McKay,* 115 F. Supp. 402, 417–18 (D.D.C. 1953), *judgment vacated for lack of capacity to sue,* 225 F. 2d 924 (D.C. Cir. 1955), *cert. denied,* 350 U.S. 884 (1955).

8. Transmission lines

The Secretary of the Interior has authority under subsection 2(b), 2(f), 5(a), 5(b) and 9(b) of the Bonneville Project Act; section 5 of the Flood Control Act of 1944; sections 9(c) and 14 of the Reclamation Project Act of 1939; and section 2 of the Act of August 30, 1965, 49 Stat. 1039, reauthorizing the Grand Coulee Dam project, to construct transmission lines between the Pacific Northwest and the Pacific Southwest. Solicitor Barry Opinion, 70 I.D. 237 (1963).

9. Repayment of costs

Neither the Hayden-O'Mahoney amendment nor the power marketing statutes involved in the power operations of the Bonneville Power Administration (section 7 of the Bonneville Project Act, section 9(c) of the Reclamation Project Act of 1939, and section 5 of the Flood Control Act of 1944) require that the costs of each project to be met from power revenues have to be amortized on the basis of a fixed annual obligation. The legal requirements are satisfied if such costs are returned within a reasonable period of years whatever accounting procedure is applied. Statement furnished by Assistant Secretary Holum in regard to statutory authority for revised procedure for presenting Bonneville Power Administration rate and repayment data on a consolidated system basis, printed in *Hearings on H.R. 2337, To Provide for the Construction of the Lower Teton Division, Teton Basin Federal Reclamation Project, Before the Irrigation and Reclamation Subcommittee of the House Committee on Interior and Insular Affairs,* 88th Cong., 2d Sess. 36–38 (1964).

10. Amendment of contracts

Where rights have been vested in the United States under the terms of a contract, no officer or employee of the Government has authority to modify such terms except in the interest of the Government. Dec. Comp. Gen. B–125127 (February 14, 1956).

Where committee reports and other legislative history show a clear Congressional intent that certain power marketing contracts between the Southwestern Power Administration and several generating and transmission cooperatives should be reactivated but that a provision giving the Administration the option to purchase transmission lines should be deleted, the deletion of the purchase option provision must be considered to be in the interest of the Government and the provision may be deleted without consideration. Dec. Comp. Gen. B–125127 (February 14, 1956).

In view of the Congressional intent expressed in committee and conference reports, there is no objection to the inclusion of a provision for settlement of accounts on a net-balance basis in contracts by the Southwestern Power Administration with generating and transmission cooperatives for the sale, purchase, and transmission of power under section 5 of the Flood Control Act of 1944. Dec. Comp. Gen. B–125127 (February 14, 1956).

11. Missouri River Basin project

It is section 9, not section 5, of the Flood Control Act of 1944 that governs the marketing of power from the Missouri River Basin project, the repayment of project costs from power revenues, and other matters relating to the power aspects of the project. Testimony of Assistant Solicitor

Weinberg, *Missouri Basin Water Problems: Joint Hearings Before the Senate Committees on Interior and Insular Affairs and Public Works*, 85th Cong., 1st Sess., pt. 1, 313–392 *passim* (1957), *reversing* Solicitor White Opinion, M–36022 (January 18, 1950), reprinted *ibid* at 366.

Sec. 6. [Contracts for sale of surplus water at Army projects—Disposition of revenues.]—The Secretary of War is authorized to make contracts with States, municipalities, private concerns, or individuals, at such prices and on such terms as he may deem reasonable, for domestic and industrial uses for surplus water that may be available at any reservoir under the control of the War Department: *Provided,* That no contracts for such water shall adversely affect then existing lawful uses of such water. All moneys received from such contracts shall be deposited in the Treasury of the United States as miscellaneous receipts. (58 Stat. 890; § 1(a), Act of May 23, 1952, 66 Stat. 93; 33 U.S.C. § 708)

EXPLANATORY NOTE

1952 Amendment. The Act of May 23, 1952, 66 Stat. 93, revived and reenacted section 6 which had previously been repealed by paragraph (59) of section 1 of the Act of October 31, 1951, 65 Stat. 703.

Sec. 7. [Regulations for use of storage allocated to flood control or navigation at all reservoirs constructed wholly or in part with Federal funds to be prescribed by Secretary of the Army—TVA exception.]—Hereafter, it shall be the duty of the Secretary of War to prescribe regulations for the use of storage allocated for flood control or navigation at all reservoirs constructed wholly or in part with Federal funds provided on the basis of such purposes, and the operation of any such project shall be in accordance with such regulations: *Provided,* That this section shall not apply to the Tennessee Valley Authority, except that in case of danger from floods on the Lower Ohio and Mississippi Rivers the Tennessee Valley Authority is directed to regulate the release of water from the Tennessee River into the Ohio River in accordance with such instructions as may be issued by the War Department (58 Stat. 890; 33 U.S.C. § 709)

NOTES OF OPINIONS

1. Application

Operation of Caballo Reservoir for flood control is subject to the Agreement of October 9, 1935, between the Departments of State and Interior, irrespective of the authority of the Secretary of War to promulgate flood control regulations pursuant to section 7 of the Flood Control Act of 1944. Memorandum of Chief Counsel Fix, May 2, 1946.

Section 7 of the Flood Control Act of 1944 applies retrospectively as well as prospectively. Memorandum of Chief Counsel Fix, May 2, 1946.

Section 7 of the Flood Control Act of 1944, which requires the operation of Federal reservoirs for flood control or navigation under regulations issued by the Secretary of the Army, applies only to reservoirs in which storage has been allocated to flood control or navigation, and does not apply to reservoirs for which only costs, not storage, have been allocated to either purpose. In the latter case, the Secretary of the Interior is charged by section 9(b) of the Reclamation Project Act of 1939 with the responsibility for operating the project for such purposes. Memorandum of Chief Counsel Fisher, April 30, 1952, in re operation of Shasta Dam, Central Valley project, for navigation. *Accord:* Memorandum of Chief Counsel Fix, May 2, 1946, in re application of section 7 of the Flood Control Act of 1944.

If it has been decided not to allocate storage space in Shasta Reservoir to navigation, section 7 of the Flood Control Act of 1944 will not apply to navigation features. Letter of Secretary of the Army Pace to Secretary of the Interior, September 29, 1952.

Sec. 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. (58 Stat. 891; 43 U.S.C. § 390)

NOTES OF OPINIONS

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Judicial proceedings 2
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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 if in fact the actions of the officials sought to be enjoined are prohibited by statute or by the Constitution. *Turner v. Kings River Conservation Dist.,* 360 F. 2d 184, 190 (9th Cir. 1966).

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

3. Reclamation laws

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

The Secretary of the Interior is charged with the responsibility, under section 8 of the Flood Control Act of 1944, for the

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

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

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

4. Studies

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

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

5. Revenues

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

Sec. 9. [Comprehensive development of Missouri River Basin.]—(a) The general comprehensive plans set forth in House Document 475 and Senate Document 191, Seventy-eighth Congress, second session, as revised and coordinated by Senate Document 247, Seventy-eighth Congress, second session, are hereby approved and the initial stages recommended are hereby authorized and shall be prosecuted by the War Department and the Department of the Interior as speedily as may be consistent with budgetary requirements.

(b) The general comprehensive plan for flood control and other purposes in the Missouri River Basin approved by the Act of June 28, 1938, as modified by subsequent Acts, is hereby expanded to include the works referred to in paragraph (a) to be undertaken by the War Department; and said expanded plan shall be prosecuted under the direction of the Secretary of War and supervision of the Chief of Engineers.

(c) Subject to the basin-wide findings and recommendations regarding the benefits, the allocations of costs and the repayments by water users, made in said House and Senate documents, the reclamation and power developments to be undertaken by the Secretary of the Interior under said plans shall be governed by the Federal Reclamation Laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), except that irrigation of Indian trust and tribal lands, and repayment therefor, shall be in accordance with the laws relating to Indian lands.

(d) In addition to previous authorizations there is hereby authorized to be appropriated the sum of $200,000,000 for the partial accomplishment of the works to be undertaken under said expanded plans by the Corps of Engineers.

(e) The sum of $200,000,000 is hereby authorized to be appropriated for the partial accomplishment of the works to be undertaken under said plans by the Secretary of the Interior. (58 Stat. 891)

EXPLANATORY NOTES

Supplementary Provisions: Additional Authorizations. In addition to the $200,000,000 authorized to be appropriated by this Act, appropriations authorized through calendar year 1966 for works undertaken or planned in the Missouri River Basin by the Secretary of the Interior are as follows: (1) Flood Control Act, July 24, 1946 (60 Stat. 641), $150,000,000; (2) Flood Control Act, May 17, 1950 (64 Stat. 170), $200,000,000; (3) Flood Control Act, July 3, 1958 (72 Stat. 297), $200,000,000; (4) Flood Control Act, July 14, 1960 (74 Stat. 480), $60,000,000; (5) Act of December 30, 1963 (77 Stat. 842), $16,000,000; (6) Act of August 14, 1964 (78 Stat. 446) (for fiscal years 1965 and 1966), $120,000,000; and (7) Act of July 19, 1966 (80 Stat. 322) (for fiscal years 1967 and 1968), $60,000,000. Each of these Acts, or extracts therefrom, appear herein in chronological order.

Reference in the Text. The Act of June 28, 1938, authorizing a general comprehensive plan for flood control and other purposes in the Missouri River Basin referred to in the text, is the Flood Control Act of 1938, 52 Stat. 1215. Extracts of the Act appear herein in chronological order, but do not include the Missouri River Basin item.

NOTES OF OPINIONS

Fort Peck project 4
Indian lands 5
Power operations 3
Repayment of costs 2
Revenues 1

1. Revenues

Inasmuch as the Hayden-O'Mahoney amendment does not apply to facilities constructed by the Department of the Army, an appropriate allocation of revenues should be made to the Department of the Army powerplants in the Missouri River Basin project, and as required by general provisions of law, the sum represented thereby must be deposited in the general fund of the Treasury. Testimony of Assistant Solicitor Weinberg, *Missouri Basin Water Problems: Joint Hearings Before the Senate Committees on Interior and Insular Affairs and Public Works*, 85th Cong., 1st Sess., pt. 1, 341–42 (1957). *Accord:* Letter of Administrative Assistant Secretary Beasley to Mr. A. T. Samuelson, General Accounting Office, April 22, 1957; reprinted in *Joint Hearings, id.* at 364.

2. Repayment of costs

There is no limitation in reclamation law on the number of years in which power costs have to be paid out. The 40-year limit specified in section 9(c) of the Reclamation Project Act of 1939 is a limit on the length of a contract for the sale of power, but not a limit on payout. Fifty years has been selected as a matter of policy but not of law Testimony of Assistant Solicitor Weinberg, *Missouri Basin Water Problems: Joint Hearings Before the Senate Committees on Interior and Insular Affairs and Public Works*, 85th Cong., 1st Sess. 334 (1957).

3. Power operations

It is section 9, not section 5, of the Flood Control Act of 1944 that governs the marketing of power from the Missouri River Basin project, the repayment of project costs from power revenues, and other mat-

ters relating to the power aspects of the project. Testimony of Assistant Solicitor Weinberg, *Missouri Basin Water Problems: Joint Hearings Before the Senate Committees on Interior and Insular Affairs and Public Works,* 85th Cong., 1st Sess., pt. 1, 313–392 *passim* (1957), *reversing* Solicitor White Opinion, M–36022 (January 18, 1950), reprinted *ibid.* at 366.

Inasmuch as the proposed intertie between the Missouri River Basin project and the Southwestern Power Administration will enable the project to take advantage of hydraulic diversity between the two areas and, thereby, increase the amount of dependable capacity available to the project, authority for construction of the intertie by the Bureau of Reclamation is included in the broad authorization under section 9 of the Flood Control Act of 1944 and recommendation (c), page 16, of Senate Document 191 to construct transmission lines the Bureau finds necessary or desirable in connection with the project. Memorandum of Associate Solicitor Weinberg to Commissioner of Reclamation, April 12, 1962.

Power marketing and transmission operations of the Bureau of Reclamation under the reclamation laws have not been considered to be restricted to the reclamation states, and this administrative construction of the law has been concurred in by action of the Congress in appropriating funds for transmission lines in states such as Iowa and Minnesota. Memorandum of Associate Solicitor Weinberg to Director, Division of Budget and Finance, July 23, 1962, in re authority to construct the Creston-Fairport intertie.

The Missouri River Basin project must be considered to extend at least to all areas of the Missouri River Basin, and therefore the construction of a transmission line within the Basin would be authorized even if the fact that the line is outside of the 17 reclamation western states were grounds for questioning the authority, which it is not. Memorandum of Associate Solicitor Weinberg to Director, Division of Budget and Finance, July 23, 1962, in re authority for construction of Creston-Fairport intertie.

The Secretary of the Interior is authorized to construct transmission lines, such as the Creston-Fairport intertie between the Missouri River Basin project and the Southwestern Power Administration, which are necessary to effectuate an exchange of power for the purpose of orderly and economical construction or operation and maintenance of any reclamation project, as provided in section 14 of the Reclamation Project Act of 1939. Memorandum of Associate Solicitor Weinberg to Director, Division of Budget and Finance, July 23, 1962.

4. Fort Peck project

The Fort Peck project, including the reservoir as well as the power plant, was incorporated as an integral part of the Missouri River Basin project authorized by Section 9 of the Flood Control Act of 1944 for purposes of determining project feasibility and repayment, establishing power rates, water regulation, and so forth. Memorandum of comments transmitted with letter from Administrative Assistant Secretary Beasley to Mr. Adolph T. Samuelson, General Accounting Office, November 26, 1956; reprinted in *Missouri Basin Water Problems: Joint Hearings Before the Senate Committees on Interior and Insular Affairs and Public Works,* 85th Cong., 1st Sess., pt. 1, at 358 (1957).

5. Indian lands

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

The United States, by its treaties and through a course of dealing with the Crow Tribe, has recognized an aboriginal Indian title in the Crow Tribe in its tribal lands and the tribe's right of occupancy, possession, and use of the territory, including the development of water power. Consequently, the United States must compensate the Crow Tribe for the water-power value of tribal lands sought to be condemned for Yellowtail Dam and Reservoir. *United States v. 5,677.94 Acres of Land,* 162 F. Supp. 108 (D. Mont. 1958).

The provision in subsection 9(c) of the Flood Control Act of 1944 that "irrigation of Indian trust and tribal lands, and repayment therefor, shall be in accordance with the laws relating to Indian lands," extends the Leavitt Act to all such Indian lands irrigated under the Missouri River Basin project. Memorandum of Associate Solicitor Hogan, June 26, 1964, in re definite plan report for Tower, Greenwood, and Yankton units.

Sec. 10. [Authorization of projects.]—

* * * * *

SACRAMENTO-SAN JOAQUIN RIVER BASIN

SACRAMENTO RIVER

The projects for the control of floods and other purposes on the Sacramento River, California, adopted by the Acts approved March 1, 1917, May 15, 1928, August 26, 1937, and August 18, 1941, are hereby modified substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 649, Seventy-eighth Congress, second session, at an estimated cost of $50,100,000; and in addition to previous authorizations there is hereby authorized to be appropriated the sum of $15,000,000 for the prosecution of the modified projects: *Provided*, That this modification of the project shall not be construed to authorize the construction of a high dam at the Table Mountain site but shall authorize only the low-level project to approximately the elevation of four hundred feet above mean sea level, said low-level dam to be built on a foundation sufficient for such dam and not on a foundation for future construction of a higher dam.

[Folsom Reservoir.]—The project for the Folsom Reservoir on the American River, California, is hereby authorized substantially in accordance with the plans contained in House Document Numbered 649, Seventy-eighth Congress, second session, with such modifications thereof as in the discretion of the Secretary of War and the Chief of Engineers may be advisable, at an estimated cost of $18,474,000. (58 Stat. 900)

EXPLANATORY NOTE

Black Butte Reservoir. The first paragraph above includes authorization for the Black Butte Reservoir.

SAN JOAQUIN RIVER

[Isabella Reservoir.]—The project for the Isabella Reservoir on the Kern River for flood control and other purposes in the San Joaquin Valley, California, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated January 26, 1944, contained in House Document Numbered 513, Seventy-eighth Congress, second session, at an estimated cost of $6,800,000. (58 Stat. 901)

[Terminus and Success Reservoirs.]—The plan for the Terminus and Success Reservoirs on the Kaweah and Tule Rivers for flood control and other purposes in the San Joaquin Valley, California, in accordance with the recommendations of the Chief of Engineers in Flood Control Committee Document Numbered 1, Seventy-eighth Congress, second session, is approved, and there is hereby authorized $4,600,000 for initiation and partial accomplishment of the plan. (58 Stat. 901)

[Kings River and Tulare Lake Basin.]—The project for flood control and other purposes for the Kings River and Tulare Lake Basin, California, is hereby

authorized substantially in accordance with the plans contained in House Document Numbered 630, Seventy-sixth Congress, third session, with such modifications thereof as in the discretion of the Secretary of War and the Chief of Engineers may be advisable at an estimated cost of $19,700,000: *Provided,* That the conditions of local cooperation specified in said document shall not apply: *Provided further,* That the Secretary of War shall make arrangements for payment to the United States by the State or other responsible agency, either in lump sum or annual installments, for conservation storage when used: *Provided further,* That the division of costs between flood control, and irrigation and other water uses shall be determined by the Secretary of War on the basis of continuing studies by the Bureau of Reclamation, the War Department, and the local organizations. (58 Stat. 901)

EXPLANATORY NOTES

Pine Flat Reservoir. This includes authorization of Pine Flat Reservoir and supersedes a finding of feasibility by the Secretary of the Interior dated January 24, 1940, submitted to Congress February 10, 1940, which authorized the Kings River Project as a Reclamation project.

Supplementary Provision: Division of Costs. A provision in the Civil Functions Appropriation Act, 1947, approved May 2, 1946, states that none of the appropriations for the Kings River and Tulare Lake project shall be used for the construction of the dam until the Secretary of War, with the concurrence of the Secretary of the Interior, has determined the division of costs among project purposes. The Act appears herein in chronological order.

* * * * *

[New Hogan Reservoir.]—The plan of improvement for flood control and other purposes on the Calaveras River and Littlejohn Creek and tributaries, California, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 545, Seventy-eighth Congress, second session, at an estimated cost of $3,868,200. (58 Stat. 902)

EXPLANATORY NOTE

New Hogan Reservoir. The paragraph above includes authorization for the New Hogan Reservoir.

NOTES OF OPINIONS

Judicial proceedings 1
Local cooperation 3
Reclamation laws 2

1. Judicial proceedings

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).

2. Reclamation laws

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

Excess land provisions are a part of reclamation laws applicable to the repayment contracts for the Kings and Kern River

projects. Solicitor Barry Opinion, 68 I.D. 372 (1961).

3. Local cooperation

The proviso in the authorization of the project for the Kings River and Tulare Lake Basin that "the conditions of local cooperation specified in said document shall not apply" refers only to obtaining assurances from state or local agencies for initial financing of the project and for maintenance and operation of the facility after completion as a condition precedent to the commencement of construction, and does not apply to contractual arrangements authorized by the Federal Reclamation Laws. *Turner v. Kings River Conservation District,* 360 F. 2d. 184, 199 (9th Cir. 1966).

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EXPLANATORY NOTES

Not Codified. Section 9 and the extracts herein of section 10 of this Act are not codified in the U.S. Code.

Presidential Statement. The following statement was issued by the President on December 23, 1944:

"I have signed, on December 22, 1944, the Flood Control Bill, *H. R. 4485.* It appears to me that, in general, this legislation is a step forward in the development of our national water resources and power policies. The plan of calling upon states affected by proposed projects for their views is a desirable one, but, of course, the establishment of such a procedure should not be interpreted by anyone as an abrogation by the Federal Government of any part of its powers over navigable waters. Authorization of the projects listed in the bill will augment the backlog of public works available for prompt initiation, if necessary, in the post-war period.

"I note, however, that the bill authorizes for construction by the Corps of Engineers and the Bureau of Reclamation those improvements in the Missouri River Basin which, on November 27, 1944, I recommended be developed and administered by a Missouri Valley Authority. My approval of this bill is given with the distinct understanding that it is not to be interpreted as jeopardizing in any way the creation of a Missouri Valley Authority, the establishment of which should receive the early consideration of the next Congress.

"I consider the projects authorized by the bill to be primarily for post-war construction, and, until the current wars are terminated, I do not intend to submit estimates of appropriation or approve allocations of funds for any project that does not have an important and direct value to the winning of the war."

Legislative History. H.R. 4485, Public Law 534 in the 78th Congress. H.R. Rept. No. 1309. S. Rept. No. 1030. H.R. Rept. No. 205 (conference report).