RECLAMATION PROJECT ACT OF 1939

An act to provide a feasible and comprehensive plan for the variable payment of construction charges on United States reclamation projects, to protect the investment of the United States in such projects, and for other purposes. (Act of August 4, 1939, ch. 418, 53 Stat. 1187)

[Sec. 1. Repayment problems—Variable payments of construction charges—Revision of obligation to pay construction charges.]—For the purpose of providing for United States reclamation projects a feasible and comprehensive plan for an economical and equitable treatment of repayment problems and for variable payments of construction charges which can be met regularly and fully from year to year during periods of decline in agricultural income and unsatisfactory conditions of agriculture as well as during periods of prosperity and good prices for agricultural products, and which will protect adequately the financial interest of the United States in said projects, obligations to pay construction charges may be revised or undertaken pursuant to the provisions of this Act. (53 Stat. 1187; 43 U.S.C. § 485)

NOTE OF OPINION

1. Purpose

A principal purpose of the Reclamation Project Act of 1939 was to place water users repayment on a basis of payment ability rather than to burden them with all costs. Solicitor Barry Opinion, 68 I.D. 305, 310 (1961), in re Columbia Basin repayment problems.

Sec. 2. [Definitions of terminology employed.]—As used in this Act—

(a) The term "Federal reclamation laws" shall mean the Act of June 17, 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

(b) The term "Secretary" shall mean the Secretary of the Interior.

(c) The term "project" shall mean any reclamation or irrigation project, including incidental features thereof, authorized by the Federal reclamation laws, or constructed by the United States pursuant to said laws, or in connection with which there is a repayment contract executed by the United States, pursuant to said laws, or any project constructed or operated and maintained by the Secretary through the Bureau of Reclamation for the reclamation of arid lands or other purposes.

(d) The term "construction charges" shall mean the amounts of principal obligations payable to the United States under water-right applications, repayment contracts, orders of the Secretary, or other forms of obligation entered into pursuant to the Federal reclamation laws, excepting amounts payable for water rental or power charges, operation and maintenance and other yearly service charges, and excepting also any other operation and maintenance, interest, or other charges which are not covered into the principal sums of the construction accounts of the Bureau of Reclamation.

(e) The term "repayment contract" shall mean any contract providing for payment of construction charges to the United States.

(f) The term "project contract unit" shall mean a project or any substantial area of a project which is covered or is proposed to be covered by a repayment contract. On any project where two or more repayment contracts in part cover the same area and in part different areas, the area covered by each such repayment contract shall be a separate project contract unit. On any project where there are either two or more repayment contracts on a single project contract unit or two or more project contract units, the repayment contract or project contract units may be merged by agreements in form satisfactory to the Secretary.

(g) The term "organization" shall mean any conservancy district, irrigation district, water users' association, or other organization, which is organized under State law and which has capacity to enter into contracts with the United States pursuant to the Federal reclamation laws.

(h) The term "division of a project" shall mean any part of a project designated as a division by order of the Secretary or any phase or feature of project operations given a separate designation as a division by order of the Secretary for the purposes of orderly and efficient administration.

(i) The term "development unit" shall mean a part of a project which, for purposes of orderly engineering or reclamation development, is designated as a development unit by order of the Secretary.

(j) The term "irrigation block" shall mean an area of arid or semiarid lands in a project in which, in the judgment of the Secretary, the irrigable lands should be reclaimed and put under irrigation at substantially the same time, and which is designated as an irrigation block by order of the Secretary. (53 Stat. 1187; Act of August 8, 1958, 72 Stat. 543; 43 U.S.C. § 485a)

EXPLANATORY NOTE

1958 Amendment. Section 3 of the Act of August 8, 1958, repealed subsection (h) of section 2 and relettered the subsections following accordingly. The repealed subsection read as follows: "(h) The term 'annual returns' shall mean the amount of the annual gross crop returns per acre of the area in cultivation within the project contract unit involved; and the term 'normal returns' for any year shall mean the weighted average of the annual returns of those ten years, of the thirteen-year period covering said year and the twelve years preceding it, in which the annual returns are the highest." These definitions relate to the "normal and percentage plan" of repayment which had been authorized by section 4. Inasmuch as the 1958 Act also repealed section 4, the need for these definitions was eliminated. In place of the "normal and percentage plan," the 1958 Act provided for a variable repayment plan.

NOTES OF OPINIONS

Organization 2
Project 1

1. Project

The definition of the term "project" in section 2 of the Reclamation Project Act of 1939 includes projects not under the reclamation laws that are constructed or operated and maintained by the Secretary of the Interior through the Bureau of Reclamation for other agencies, such as the Lower Two Medicine Dam on the Blackfeet Indian Irrigation project. Consequently, the provisions of section 12 of the Act authorize the inclusion of the usual contingency-upon-appropriations clause in the construction contract. Memorandum of Associate Solicitor Hogan, October 6, 1966.

2. Organization

The reasoning of the Solicitor's memorandum opinion, M–28771 (October 10, 1936), in re the Public Irrigation District for the Pine River Project, Colorado, that the term "irrigation district", as used in section 46 of the Omnibus Adjustment Act, means that an organization must have the power of taxation in order to enter into a

repayment contract, is no longer valid, for section 2(g) of the Reclamation Project Act of 1939 defines "organization" in a broader sense; and a still broader definition is given in section 2(c) of the Small Reclamation Projects Act. Memorandum of Associate Solicitor Hogan, August 17, 1964, in re Louden Irrigating Canal and Reservoir Company.

Sec. 3. [Secretary authorized to amend contracts for repayment of construction charges—Period of repayment not to exceed forty years from date when first installment was due.]—In connection with any repayment contract or other form of obligation, existing on the date of this Act, to pay construction charges, providing for repayment on the basis of a definite period, the Secretary is hereby authorized, upon request by the water users involved or their duly authorized representatives for amendment under this section of said contract or other form of obligation, and if in the Secretary's judgment such amendment is both practicable and in keeping with the general purpose of this Act, to amend said contract or other form of obligation so as to provide that the construction charges remaining unaccrued on the date of the amendment, or any later date agreed upon, shall be spread in definite annual installments on the basis of a longer definite period fixed in each case by the Secretary: *Provided,* That for any construction charges said longer period shall not exceed forty years, exclusive of 1931 and subsequent years to the extent of moratoria or deferments of construction charges due and payable for such years effected pursuant to Acts of Congress, from the date when the first installment of said construction charges became due and payable under the original obligation to pay said construction charges and in no event shall the unexpired part of said longer period exceed double the number of remaining years, as of the date of the amendment made pursuant to this Act, in which installments of said construction charges would become due and payable under said existing repayment contract or other form of obligation to pay construction charges. (53 Stat. 1188; 43 U.S.C. § 485b)

EXPLANATORY NOTE

Supplementary Provisions: Extension of Time for Modification of Repayment Contracts—Repeal of Section 4. The Act of March 6, 1952, 66 Stat. 16, provided that the authority vested in the Secretary of the Interior by sections 3, 4 and 7 of this Act be extended through December 31, 1954. The Act of August 31, 1954, 68 Stat. 1044, amended the 1952 Act by inserting "1957" in place of "1954." The 1954 Act was in turn amended by the Act of August 21, 1957, 71 Stat. 390, which replaced "1957" with "1960." The authority vested in the Secretary by sections 3, 4 and 7 of this Act thus being extended through December 31, 1960. The Act of August 8, 1958, 72 Stat. 542, repealed section 4 of this Act and amended the 1952 Act referred to in this note by deleting the reference in it to section 4. Each of these Acts appears herein in chronological order.

Sec. 4. [Normal and percentages plan.]—***Repealed.***

EXPLANATORY NOTE

Section Repealed. The Act of August 8, 1958, which is found herein in chronological order, repealed section 4, as amended. The same Act amended paragraph (3) of section 9, subsection (d), thus authorizing a variable repayment plan in place of the "normal and percentage plan" provided for in section 4. The repealed section read as follows:

Sec. 4(a). In connection with any existing project on which construction charges are payable to the United States, the Secretary is hereby authorized to negotiate and enter into a contract or an amendatory contract, in a form satisfactory to him, with an organization, satisfactory in form and powers to him, representing the water users of the project contract unit involved, which contract shall provide for the payment of construction charges on said project contract unit in the manner hereinafter provided in this section. The negotiation and execution of such a contract shall be undertaken only upon request by duly authorized representatives of the water users involved for such a contract and upon a determination by the Secretary that, in his judgment, such a contract is both practicable and in keeping with the general purpose of this Act.

(b) All of the construction charges for the project contract unit remaining unaccrued on the date of the contract entered into pursuant to this section or on any later date agreed upon shall be merged in a total and general repayment obligation of the organization. Said repayment obligation of said organization shall be scheduled in such annual installments as, in the judgment of the Secretary, constitute an equitable, practicable, and definite consolidated schedule of the existing obligations in said project contract unit to pay construction charges: *Provided,* That said schedule of installments shall be so arranged that in the judgment of the Secretary it does not involve for any of said construction charges merged into said general obligation an extension of the time permitted under the existing obligations for payment of said charges excepting the adjustment of the repayment period permitted for certain charges by the last sentence of this subsection. For the purpose of scheduling said installments of said general obligation in accordance with this subsection, in connection with each project contract unit under an existing contract made pursuant to section 4 of the Act of December 5, 1924 (43 Stat. 672, 701), the Secretary shall fix a weighted average gross crop return per acre, of which 5 per centum shall be the measure for determining the schedule of the unaccrued construction charges in a definite number of annual installments. In the event the said existing obligations to pay construction charges in said project contract unit or units are based in part on section 4 of the Act of December 5, 1924 (43 Stat. 672, 701), and in part on other Acts of the Federal reclamation laws, said charges may be consolidated into two general repayment contract obligations of said organization, each of which shall be scheduled in such installments as, in the judgment of the Secretary, constitute an equitable, practicable, and definite consolidated schedule of all of the respective parts of said existing obligations to pay construction charges. Any of said unaccrued construction charges, which under said existing obligations are payable on the basis of a definite period, first may be adjusted by the Secretary, if in his judgment such adjustment is both practicable and in keeping with the general purpose of this Act, to a repayment basis of a longer definite period fixed in each case by him: *Provided,* That for any such construction charges said longer period shall not exceed the limitations contained in the proviso of section 3 of this Act.

(c) For each project contract unit where a repayment contract is entered into pursuant to this section, a census of annual returns shall be taken each year. The normal returns each year, for each such project contract unit, shall be determined by the Secretary: *Provided,* That in any year, if the Secretary deems it necessary, an estimate of the annual returns of that year, in lieu of a final determination thereof, shall be considered with the annual returns of the preceding twelve years: *Provided further,* That in the event records of annual returns of the lands involved are not available for twelve preceding years, the Secretary, until such records for twelve preceding years have been established, in his discretion may consider established annual returns of other and similar lands in other and similar project contract units for the purpose of determining each year the normal returns. The estimates and final determinations of annual returns and the determinations of normal returns provided for in this Act shall be made by the Secretary with such assistance from the water users and organization involved as he requests, and said estimates and determinations made by him shall be conclusive.

(d) For each project contract unit where a repayment contract is entered into pursuant to this section, each year the percent of the normal returns for said year by which the annual returns of said year exceed or are less than said normal returns shall be determined by the Secretary. For each unit or major fraction of a unit of said percentage of said increase or decrease there shall be an increase or decrease, respectively, of 2 per centum in the amount or amounts of the installment or installments for said year under the organization's obligation or obligations as determined under subsections (b) and (e) of this section. Said latter amount or amounts as thus increased or decreased shall be the payment or payments of construction charges due and payable for said year, except

that in no event shall the amount of the said payment or payments due and payable for any year be less than 15 per centum nor, as determined by the Secretary, more than from 150 to 200 per centum, inclusive, of the amount or amounts of the installment or installments for said year under the organization's obligation or obligations as determined under subsections (b) and (e) of this section. The Secretary is hereby authorized to amend any repayment contracts heretofore or hereafter entered into pursuant to the provisions of this section to conform to the provisions of this amendment.

(e) In each contract entered into pursuant to this section, there shall be such provisions as the Secretary deems equitable, necessary, and proper to provide that any part of the amount of any installment of an organization's obligation, as determined under subsection (b) of this section, which, in the year for which said installment is designated under said subsection (b) does not, by reason of the operation of subsection (d) of this section, become due and payable as construction charges for said year, shall be added to an installment or installments of subsequent years for which installments are designated under said subsection (b) or shall be established as an installment or installments or parts thereof of years subsequent to the last year for which an installment is designated under said subsection (b), or both; and there shall be similar provisions respecting any such part of the amount of any installment modified or established under this subsection: *Provided,* That under this subsection no installment may be revised to or established in an amount exceeding the amount of the largest installment as determined under said subsection (b), and there shall be included in the contract such provisions as the Secretary deems proper for offsetting the increases and decreases in annual installments which result from the operation of said subsection (d).

(f) In any contract entered into pursuant to the authority of this section, it shall be provided that from and after the date of the last installment of the organization's repayment contract obligation or obligations as determined under subsection (b) of this section, a charge of 3 per centum per annum shall be payable by the organization on any balance or balances of said organization's obligation or obligations which have not become due and payable by reason of the operation of subsection (d) of this section, until the same have become due and payable as construction charges under said subsection (d), and said charge of 3 per centum shall be payable by the organization to the United States on the same dates as, and in addition to, the annual payments otherwise required under this section.

(g) There may be included in any contract entered into pursuant to the authority of this section provisions requiring the organization to vary its distribution of construction charges in a manner that takes into account the productivity of the various classes of lands and the benefits accruing to the lands by reason of the irrigation thereof: *Provided,* That no distribution of construction charges over the lands included in the organization shall in any manner be deemed to relieve the organization, or any party or any land therein, of the organization's general obligation to repay to the United States in full the total amount of the organization's repayment contract obligation or obligations as determined under subsection (b) of this section.

EXPLANATORY NOTES

1945 Amendment. Section 1 of the Act of April 24, 1945, 59 Stat. 75, amended subsection 4(d) by adding after the words "15 per centum", the phrase "nor, as determined by the Secretary, more than from 150 to 200 per centum, inclusive," and by adding the last sentence in the subsection. The 1954 amendment thus put a ceiling of 150–200 per centum on the increase of the annual installment over the normal installment. The 1945 Act appears herein in chronological order.

Supplementary Provisions: Extension of Time for Modification of Repayment Contracts—Repeal of Section 4. The Act of March 6, 1952, 66 Stat. 16, provided that the authority vested in the Secretary of the Interior by sections 3, 4 and 7 of this Act be extended through December 31, 1954. The Act of August 31, 1954, 68 Stat. 1044, amended the 1952 Act by inserting "1957" in place of "1954." The 1954 Act was in turn amended by the Act of August 21, 1957, 71 Stat. 390, which replaced "1957" with "1960." The authority vested in the Secretary by sections 3, 4 and 7 of this Act thus being extended through December 31, 1960. The Act of August 8, 1958, 72 Stat. 542, repealed section 4 of this Act and amended the 1952 Act referred to in this note by deleting the reference in it to section 4. Each of these Acts appears herein in chronological order.

Reference in the Text. Section 4 of the Act of December 5, 1924 (43 Stat. 672, 701), referred to in the text of subsection 4(b), is the Fact Finders' Act. The Act appears herein in chronological order.

NOTE OF OPINION

1. Contracts

A repayment contract entered into under subsection 9(d) which prescribes a formula pursuant to which the amount of each annual installment is to be determined, which formula has no relationship to the "normal and percentages plan" authorized by Congress in subsection 9(d) and section 4 for variable payments, is not in conformity with the requirements of the Reclamation Project Act of 1939. Solicitor White Opinion, 60 I.D. 150 (1948), in re proposed contract with Savage Irrigation District.

Sec. 5. [**Payments to be due contemporaneous with receipt of crop returns—Assessment to be made prior to dates of payment to United States—Secretary may provide deferments to prevent inequitable pyramiding of charges.**]—The Secretary in his discretion may require, in connection with any contract entered into pursuant to the authority of this Act, that the contract provide (1) that the payments for each year to be made to the United States shall become due and payable on such date or dates, not exceeding two, in each year as the Secretary determines will be substantially contemporaneous with the time or times in each year when water users receive crop returns and (2) if the contract be with an organization, that assessments or levies for the purpose of obtaining moneys sufficient to meet the organization's payments under said contract shall be made and shall become due and payable within a certain period or periods of time prior to the date or dates on which the organization's payments to the United States are due and payable, said period or periods of time to be agreed upon in each said contract.

The Secretary may provide such deferments of construction charges as in his judgment are necessary to prevent said requirements from resulting in inequitable pyramiding of payments of said charges. (53 Stat. 1191; 43 U.S.C. § 485d)

Sec. 6. [**Secretary to require proper accounting, protection of project lands against improper use of water, advance payment operation and maintenance charges, and penalize delinquencies in payment construction or operation and maintenance charges—No water to lands in arrears operation and maintenance or to lands in arrears more than 12 months construction charges.**]—In connection with any contract, relating to construction charges, entered into pursuant to the authority of this Act, the Secretary is hereby authorized to require such provisions as he deems proper to secure the adoption of proper accounting, to protect the condition of project works and to provide for the proper use thereof, and to protect project lands against deterioration due to improper use of water. Any such contract shall require advance payment of adequate operation and maintenance charges. The Secretary is further authorized, in his discretion, to require such provisions as he deems proper to penalize delinquencies in payments of construction charges or operation and maintenance charges: *Provided,* That in any event there shall be penalties imposed on account of delinquencies of not less than one-half of 1 per centum per month of the delinquent charge from and after the date when such charge becomes due and payable: *Provided further,* That any such contract shall require that no water shall be delivered to lands or parties which are in arrears in the advance payment of operation and maintenance or toll charges, or to lands or parties which are in arrears for more than twelve months in the payment of construction charges due from such lands

or parties to the United States or to the organization in which the lands or parties are included, or to any lands or parties included in an organization which is in arrears in the advance payment of operation and maintenance or toll charges or in arrears more than twelve months in the payment of construction charges due from such organization to the United States. (53 Stat. 1191; 43 U.S.C. § 485e)

NOTE OF OPINION

1. Contracts covered

A water supply contract for municipal or miscellaneous purposes under section 9(c)(1) of the Reclamation Project Act of 1939 is a contract "relating to construction charges" within the meaning of section 6, and therefore, it must include payment of operation and maintenance costs as provided in section 6 even though section 9(c)(1) does not mention such costs. Memorandum of Chief Counsel Fix to Commissioner, March 26, 1947.

Sec. 7. (a) **[Investigation of repayment problems where contract not practicable under secs. 3 and 4.]**—The Secretary is hereby authorized and directed to investigate the repayment problems of any existing project contract unit in connection with which, in his judgment, a contract under section 3 or 4 of this Act would not be practicable nor provide an economically sound adjustment, and to negotiate a contract which, in his judgment, both would provide fair and equitable treatment of the repayment problems involved and would be in keeping with the general purpose of this Act.

EXPLANATORY NOTE

Reference in the Text. Section 4, referred to in the text, was repealed by section 3 of the Act of August 8, 1958, 72 Stat. 542. The 1958 Act appears herein in chronological order.

(b) **[Where repayment contract not executed, allocations of costs may be made—Secretary may fix development period for each irrigation block of not to exceed 10 years—Water to be delivered on toll charge basis.]**—For any project, division of a project, development unit of a project, or supplemental works on a project, now under construction or for which appropriations have been made, and in connection with which a repayment contract has not been executed, allocations of costs may be made in accordance with the provisions of section 9 of this Act and a repayment contract may be negotiated, in the discretion of the Secretary, (1) pursuant to the authority of subsection (a) of this section or (2) in accordance, as near as may be, with the provisions in subsection 9(d) or 9(e) of this Act. In connection with any such project, division, or development unit, on which the majority of the lands involved are public lands of the United States, the Secretary, prior to entering into a repayment contract, may fix a development period for each irrigation block, if any, of not to exceed ten years from and including the first year in which water is delivered for the lands in said block: *Provided,* That in the event a development period is fixed prior to execution of a repayment contract, execution thereof shall be a condition precedent to delivery of water after the close of the development period. During any such development period water shall be delivered to the lands in the irrigation block involved only on a toll-charge basis, at a charge per annum per acre-foot to be fixed by the Secretary each year and to be collected in advance of delivery

of water. Pending negotiation and execution of a repayment contract for any other such project, division, or development unit, water may be delivered for a period of not more than five years from the date of this Act on the same toll-charge basis. Any such toll charges collected and which the Secretary determines to be in excess of the cost of operation and maintenance during the toll-charge period shall be credited to the construction cost of the project in the manner determined by the Secretary.

(c) [**Execution of contracts only after approval by Act of Congress—Subsequent amendatory contracts may be executed without approval by Congress.**]—The Secretary from time to time shall report to the Congress on any proposed contracts negotiated pursuant to the authority of subsection (a) or (b)(1) of this section, and he may execute any such contract on behalf of the United States only after approval thereof has been given by Act of Congress. Contracts, so approved, however, may be amended from time to time by mutual agreement and without further approval by Congress if such amendments are within the scope of authority heretofore or hereafter granted to the Secretary under any Act, except that amendments providing for repayment of construction charges in a period of years longer than authorized by this Act, as it may be amended, shall be effective only when approved by Congress. (53 Stat. 1192; Act of April 24, 1945, 59 Stat. 76; 43 U.S.C. § 485f)

EXPLANATORY NOTES

1945 Amendment. The Act of April 24, 1945, 59 Stat. 75, amended subsection 7(c) by adding to it the last sentence of the subsection which authorizes the amendment of certain contracts without further Congressional approval. The 1945 Act appears herein in chronological order.

Supplementary Provisions: Extension of Time for Modification of Repayment Contracts—Repeal of Section 4. The Act of March 6, 1952, 66 Stat. 16, provided that the authority vested in the Secretary of the Interior by sections 3, 4 and 7 of this Act be extended through December 31, 1954. The Act of August 31, 1954, 68 Stat. 1044, amended the 1952 Act by inserting "1957" in place of "1954." The 1954 Act was in turn amended by the Act of August 21, 1957, 71 Stat. 390, which replaced "1957" with "1960." The authority vested in the Secretary by sections 3, 4 and 7 of this Act thus being extended through December 31, 1960. The Act of August 8, 1958, 72 Stat. 542, repealed section 4 of this Act and amended the 1952 Act referred to in this note by deleting the reference in it to section 4. Each of these Acts appears herein in chronological order.

Editor's Note, Contracts Approved by Act of Congress. Numerous Acts of Congress have been passed pursuant to this subsection. References to these statutes are indexed under the names of the individual projects involved.

NOTES OF OPINIONS

Approval by Congress 2
Under construction 1

1. Under construction

The Columbia Basin project was a project under construction but for which no repayment contract had been made at the time of enactment of the Reclamation Project Act of 1939, and therefore it was a project for which, pursuant to section 7(b) of that act, the Secretary was authorized to allocate costs pursuant to section 9(a) and to negotiate repayment contracts pursuant to section 9(d) or 9(e). Solicitor Barry Opinion, 68 I.D. 305, 306 (1961), in re Columbia Basin repayment problems.

2. Approval by Congress

A contract containing a clause terminating excess land limitations upon payment of construction charges is considered not to be affected by the 1961 Solicitor's Opinion holding that payout does not suspend application of excess land laws to pre-existing holdings if such contract has been approved

by Congress, even though it was submitted to Congress for some other reason such as under section 7 of the Reclamation Project Act of 1939. Letter from Secretary Udall to Chairman Wayne Aspinall, House Committee on Interior and Insular Affairs, April 11, 1962, note No. 2.

Sec. 8. (a) [**Classification or reclassification of lands at 5-year intervals.**]—The Secretary is hereby authorized and directed in the manner hereinafter provided to classify or to reclassify, from time to time but not more often than at five-year intervals, as to irrigability and productivity those lands which have been, are, or may be included within any project.

(b) [**No classification unless requested by organization of water users.**]—No classification or reclassification pursuant to the authority of this Act shall be undertaken unless a request therefor, by an organization or duly authorized representatives of the water users, in the form required by subsection (c) of this section has been made of the Secretary. The Secretary shall plan the classification work, undertaken pursuant to the authority of this section, in such manner as in his judgment will result in the most expeditious completion of the work.

(c) [**Water users organization to furnish list of lands considered nonproductive.**]—In any request made to the Secretary for a land classification or reclassification under this section, the organization or representatives of the water users shall furnish a list of those lands which are considered to be of comparatively low productivity or to be nonproductive, and of those lands which are considered to be of greater or lesser productivity than indicated by existing classifications, if any, made pursuant to the Federal reclamation laws, and shall furnish also such data relating thereto as the Secretary by regulation may require.

(d) [**Secretary to determine if classification justified.**]—Upon receipt of any such request the Secretary shall make a preliminary determination whether the requested land classification or reclassification probably is justified by reason of the conditions of the lands involved and other pertinent conditions of the project, including its contractual relations with the United States.

(e) [**Classification to be undertaken if justified.**]—If the Secretary finds probable justification and if the advance to the United States hereinafter required is made, he shall undertake as soon as practicable the classification or reclassification of the lands listed in the request, and of any other lands which have been, are, or may be included within the project involved and which in his judgment should be classified or reclassified.

(f) [**Classification to be reported to Congress with recommendations for remedial legislation.**]—As soon as practicable after completion of the classification work undertaken pursuant to this section or from time to time, the Secretary shall report to Congress on the classifications and reclassifications made and shall include in his report, as to each project involved, his recommendations, if any, for remedial legislation.

(g) [**One-half expense classification to be charged operation and maintenance nonreimbursable—one-half to be paid in advance by water users.**]—One-half of the expense involved in any classification work undertaken pursuant to this section shall be charged to operation and maintenance administration nonreimbursable; and one-half shall be paid in advance by the organization involved. On determining probable justification for the requested classification or

reclassification as provided in this section, the Secretary shall estimate the cost of the work involved and shall submit a statement of the estimated cost to said organization. Said organization, before commencement of the work, shall advance to the United States one-half of the amount set forth in said statement and also shall advance one-half of the amount of supplementary estimates of costs which the Secretary may find it necessary to make from time to time during the progress of the work; and said amounts shall be and remain available for expenditure by the Secretary for the purposes for which they are advanced, until the work is completed or abandoned. After completion or abandonment of the work, the Secretary shall determine the actual cost thereof; and said organization shall pay any additional amount required to make its total payments hereunder equal to one-half of the actual cost or shall be credited with any amount by which advances made by it exceed one-half of said actual cost, as the case may be.

(h) **[If classification necessary preliminary to contract under secs. 3 or 4, Secretary may require classification.]**—If in the judgment of the Secretary a classification or reclassification pursuant to the provisions of this section is a necessary preliminary to entering into a contract under section 3 or 4 of this Act, he may require the same as a condition precedent to entering into such a contract.

EXPLANATORY NOTE

Reference in the Text. Section 4, referred to in the text, was repealed by section 3 of the Act of August 8, 1958, 72 Stat. 542. The 1958 Act appears herein in chronological order.

(i) **[No modification of obligation without express authority of Congress.]**—No modification of any existing obligation to pay construction charges on any project shall be made by reason of any classification or reclassification undertaken pursuant to this section without express authority therefor granted by Congress upon recommendations of the Secretary made in a report under subsection (f) of this section. (53 Stat. 1192; 43 U.S.C. § 485g)

NOTE OF OPINION

1. Reclassification authority

If lands, being classified or reclassified in accordance with the procedure prescribed in section 8(i) of the Reclamation Project Act of 1939 (53 Stat. 1187), are proposed to be classed as temporarily unproductive with the object of suspending the payment of construction charges to the United States as to such lands while in that class, authority to make the adjustment of the repayment contract with the United States necessary to reflect such suspension must be granted by Congress. Memorandum of Acting Chief Counsel Fix, August 21, 1944.

Sec. 9. (a) **[No expenditures for construction until after investigation and report to President and Congress—If proposed construction found feasible by Secretary and repayable allocations equal estimated cost, construction may be authorized—If allocations do not equal cost construction may only be undertaken after provision by Congress.]**—No expenditures for the construction of any new project, new division of a project, or new supplemental works on a project shall be made, nor shall estimates be submitted therefor, by the Secretary until after he has made an investigation thereof and has submitted to the President and to the Congress his report and findings on—

(1) The engineering feasibility of the proposed construction;

(2) The estimated cost of the proposed construction;

(3) The part of the estimated cost which can properly be allocated to irrigation and probably be repaid by the water users;

(4) The part of the estimated cost which can properly be allocated to power and probably be returned to the United States in net power revenues;

(5) The part of the estimated cost which can properly be allocated to municipal water supply or other miscellaneous purposes and probably be returned to United States.

If the proposed construction is found by the Secretary to have engineering feasibility and if the repayable and returnable allocations to irrigation, power, and municipal water supply or other miscellaneous purposes found by the Secretary to be proper, together with any allocation to flood control or navigation made under subsection (b) of this section, equal the total estimated costs of construction as determined by the Secretary, then the new project, new division of a project, or supplemental works on a project, covered by his findings, shall be deemed authorized and may be undertaken by the Secretary. If all such allocations do not equal said total estimated cost, then said new project, new division, or new supplemental works may be undertaken by the Secretary only after provision therefore has been made by Act of Congress enacted after the Secretary has submitted to the President and the Congress the report and findings involved. (53 Stat. 1193; 43 U.S.C. § 485h(a))

EXPLANATORY NOTE

1944 Supplementary Provision: Federal and State Review; Congressional Authorization. Section 1(c) of the Flood Control Act of December 22, 1944, requires that project reports shall be reviewed by the Secretary of the Army and by the affected States, and provides that if objections are set forth, the proposed works shall not be deemed authorized except by Act of Congress. The 1944 Act appears herein in chronological order.

NOTES OF OPINIONS

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1. Purpose

Subsections 9(a) and 9(c) of the Reclamation Project Act of 1939, although related, serve two different purposes: Subsection 9(a) embodies the test for feasibility, while subsection 9(c) contains the criteria for rates to be charged by the Secretary for the sale of power. Solicitor Harper Opinion, M–33473 (September 29, 1944).

A principal purpose of the Reclamation Project Act of 1939 was to place water users' repayment on a basis of payment ability rather than to burden them with all costs. Solicitor Barry Opinion, 68 I.D. 305, 310 (1961), in re Columbia Basin repayment problems.

2. Construction with other laws

Allocations of cost of the Columbia Basin (Grand Coulee) Project and the establishment of the rate schedule for the sale of power therefrom are governed by the provisions of section 9 of the Reclamation Project Act of 1939 (53 Stat. 1193), notwithstanding the broad power vested in the President "to make and enter into any and all necessary contracts" in connection with the project, by section 2 of the Act of August 30, 1935 (49 Stat. 1039), since section 1 of the Columbia Basin Project Act, approved March 10, 1943 (Public Law 8, 78th Cong.), "authorized and reauthorized" the

project as one "subject to the Reclamation Project Act of 1939." Solicitor Harper Opinion, M–33473 (September 29, 1944).

3. Finding of feasibility

A finding of feasibility prepared pursuant to section 9(a) of the Reclamation Project Act of 1939 does not itself commit the United States to complete the project regardless of cost and to apply power revenues to repay all costs above the estimates made in the finding. Solicitor Barry Opinion, 68 I.D. 305, 312 (1961), in re Columbia Basin repayment problems.

Section 9(a) of the Reclamation Act of 1939 authorizes the Secretary to make a finding of feasibility on a single-purpose power project. Memorandum of Chief Counsel Fix, February 15, 1950, in re Alcova power plant.

The provision in the Interior Appropriation Act for 1950 making $100,000 available for the emergency reconstruction of the northwest unit pipeline of the Grants Pass irrigation district was intended as an authorization for the work as well as an appropriation, as shown by the legislative history and the inclusion of the word "emergency". Consequently the requirement of section 9(a) of the Reclamation Project Act of 1939 for a finding of feasibility does not apply as a condition precedent to the expenditure of funds. Memorandum of Chief Counsel Fix, September 21, 1949.

4. Costs, what constitutes

Section 9(a) of the Reclamation Project Act of 1939 provides for estimates of costs and estimates of repayments, while the requirements of repayment and return are dealt with in subsections 9(c), 9(d), and 9(e) in terms of actual costs. Solicitor Barry Opinion, 68 I.D. 305, 310 (1961), in re Columbia Basin repayment problems.

The provision of section 208 of the Flood Control Act of 1962, relating to the nonreimbursability of Federal costs of relocating roads to current standards, must be construed *in pari materia* with section 9 and section 14 of the Reclamation Project Act of 1939. This means that (1) the cost of relocating a road in kind is included as a part of total project cost to be allocated as provided in section 9 of the 1939 Act; (2) the additional cost of constructing the substitute road to current standards under section 208 is a non-reimbursable federal cost; and (3) the further cost of constructing the road to a still higher standard requested by the State must be paid by the State. Memorandum of Associate Solicitor Weinberg, December 6, 1962.

If an upstream project, such as the proposed Central Arizona project and Bridge Canyon project in the Lower Colorado River Basin, interferes with the statutory responsibility of the Secretary to recover the costs of Hoover Dam by June 1, 1987, or to recover the costs of Davis and Parker Dams within a reasonable period of time, then the cost of such interference should be included as one of the "costs" of the new upstream development under section 9(a) of the Reclamation Project Act of 1939. Memorandum of Chief Counsel Fix, October 9, 1947.

5. Allocation of costs

Subsection 9(a) speaks of two kinds of allocations of estimated costs with respect to irrigation, power, municipal water supply, and other miscellaneous purposes. One is an allocation in an accounting or engineering sense, and the other is an allocation only in the sense of an assignment of amounts to be returned from the sources named. In some cases the amount that can be returned will be less than the amount properly allocable, and in other cases it will be more. Memorandum of Chief Counsel Fisher, September 12, 1952, in re procedure on use of surplus power revenues for assistance in financing irrigation distribution systems.

6. Repayment

The availability of power revenues to aid irrigation has, in one form or another, been a part of general reclamation law almost since its beginning. This is evident from section 5 of the Act of April 16, 1906, 34 Stat. 116, 117, 43 U.S.C. § 522; the Act of February 24, 1911, 36 Stat. 930, 43 U.S.C. § 522; and subsection I, section 4, of the Act of December 5, 1924, 43 Stat. 703, 43 U.S.C. § 501. This general trend has been reinforced by the Hayden-O'Mahoney amendment to the Interior Department Appropriation Act, 1939, the Act of May 9, 1938, 52 Stat. 322, 43 U.S.C. § 392a, and a provision in the Interior Department Appropriation Act, 1947, Act of July 1, 1946, 60 Stat. 366, as well as section 9 of the Reclamation Project Act of 1939, Act of August 4, 1939, 53 Stat. 1193, 43 U.S.C. § 485h. Memorandum of Chief Counsel Fisher, September 12, 1952, in re procedure on use of surplus power revenues for assistance in financing irrigation distribution systems.

The practice of using power revenues to assist in the payment of irrigation costs and in determining whether a project will probably return its cost to the United States originated with section 5 of the Act of April 16, 1906, 34 Stat. 116, 117, 43 U.S.C. § 522; was followed in a number of subse-

quent enactments, including section 9 of the Reclamation Project Act of 1939, Act of August 4, 1939, 53 Stat. 1187, 1193, 43 U.S.C. § 485h; and has repeatedly been recognized and accepted by Congress. Letter from Acting Commissioner Markwell to Rep. Leroy Johnson, April 2, 1948.

Subsections (c), (d), and (e) require repayment or return of all actual costs, not estimated costs, allocated to irrigation. The requirement for full return of such costs can be met by assigning for return from power revenues, where such revenues are available, all increased costs properly allocable to irrigation but which are beyond the water users' ability to pay. Memorandum of Chief Counsel Fix to Commissioner, April 20, 1948, at 26, in re questions of law raised by House Appropriations Subcommittee; reprinted in *Hearings on Interior Department Appropriation Bill for 1949 Before a House Appropriations Subcommittee,* 80th Cong., 2d Sess., pt. 3, at 885 (1948).

The Reclamation Project Act (53 Stat. 1193), specifies no period within which there must be repaid that portion of the costs "properly chargeable to irrigation but which are beyond the ability of the water users to repay" (the irrigation subsidy). The repayment period accordingly may be such as the Secretary of the Interior in his discretion shall determine to be proper for each project, within the useful life of that project. Solicitor Harper Opinion, M–33473 (Supplemental) (September 10, 1945).

Except for contracts under subsections 9(c)(1) and 9(d), which are governed by a 40-year maximum limit, there is no legal objection under general reclamation law to utilizing a depreciation method for repayment of Federal investment, that is, repayment within the useful life of the property. Memorandum of Chief Counsel Fisher to Commissioner, April 10, 1952.

7. Authorization

A project is an authorized project when a report thereon under section 9(a) has been submitted as provided in that section, and therefore the initial appropriation for such project is not subject to a point of order. Ruling of Chairman of the Committee of the Whole House on the State of the Union, May 14, 1941, Cong. Rec. p. 4138.

Section 9(a) of the Reclamation Project Act of 1939, as amended, makes provision for the administrative authorization (without further Congressional action) of projects, parts of projects, and individual units embracing one or more of the purposes of irrigation, flood control, navigation, power, fish and wildlife, and municipal water supply or other miscellaneous purposes. These purposes stand on a par with each other, and there can be no question that the language covers construction of single-purpose or multiple-purpose projects that do not include the function of irrigation. Solicitor Bennett Opinion, 65 I.D. 129 (1958), in re authority to investigate Pleasant Valley Development.

(b) [Secretary may allocate part of cost to flood control or navigation—Consult with Chief of Engineers—Perform investigations under cooperative agreement with Secretary of War.]—In connection with any new project, new division of a project, or supplemental works on a project there may be allocated to flood control or navigation the part of said total estimated cost which the Secretary may find to be proper. Items for any such allocations made in connection with projects which may be undertaken pursuant to subsection (a) of this section shall be included in the estimates of appropriations submitted by the Secretary for said projects, and funds for such portions of the projects shall not become available except as directly appropriated or allotted to the Department of the Interior. In connection with the making of such an allocation, the Secretary shall consult with the Chief of Engineers and the Secretary of War, and may perform any of the necessary investigations or studies under a cooperative agreement with the Secretary of War. In the event of such an allocation the Secretary of the Interior shall operate the project for purposes of flood control or navigation, to the extent justified by said allocation thereof. (53 Stat. 1194; 43 U.S.C. § 485h(b))

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1. Supplemental works

The distribution system for Coachella Valley, with respect to which an appropriation had been made prior to the enactment of the Reclamation Project Act of 1939 but a repayment contract had not been executed, is a "supplemental work" within the meaning of section 9 of the Act with respect to which costs may be allocated to flood control on a nonreimbursable basis. Solicitor White Opinion, M–34900 (March 27, 1947), in re flood protection works in Coachella Valley.

2. Effect of allocation

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

3. Report

The Secretary is required by section 9(b) of the Reclamation Project Act of 1939 to consult with the Chief of Engineers and the Secretary of the Army with regard to the allocation of costs of the emergency reconstruction of Ochoco Dam to flood control; but because this work was authorized by the Interior Appropriation Act for 1949, it is not legally necessary to submit a report on such allocation to Congress. Memorandum of Acting Chief Counsel Devries, August 4, 1949.

(c) [**Sales or leases of water or power—Appropriate share of cost to be repaid in not to exceed 40 years—Preference to municipalities and other public corporations and agencies.**]—The Secretary is authorized to enter into contracts to furnish water for municipal water supply or miscellaneous purposes: *Provided,* That any such contract either (1) shall require repayment to the United States, over a period of not to exceed forty years from the year in which water is first delivered for use of the contracting party, with interest not exceeding the rate of 3½ per centum per annum if the Secretary determines an interest charge to be proper, of an appropriate share as determined by the Secretary of that part of the construction costs allocated by him to municipal water supply or other miscellaneous purposes; or (2) shall be for such periods, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year. Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary deems proper: *Provided further,* That in said sales or leases preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to

the Rural Electrification Act of 1936 and any amendments thereof. Nothing in this subsection shall be applicable to provisions in existing contracts, made pursuant to law, for the use of power and miscellaneous revenues of a project for the benefit of users of water from such project. The provisions of this subsection respecting the terms of sales of electric power and leases of power privileges shall be in addition and alternative to any authority in existing laws relating to particular projects. No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes. (53 Stat. 1194; 43 U.S.C. § 485h(c))

EXPLANATORY NOTES

Supplementary Provision: Right of Renewal; First Right to Share of Water Supply. The Act of June 21, 1963, directs the Secretary of the Interior, upon request, to provide for renewal of water supply contracts under clause (2), and to grant parties to water supply contracts under clauses (1) or (2) a stated share of project water supply available for municipal, domestic or industrial use. The Act appears herein in chronological order.

Reference in the Text. The Rural Electrification Act of 1936, referred to in the text, was enacted May 20, 1936, 49 Stat. 1363, and has been amended at intervals since its enactment. The Act as amended is found in title 7, United States Code, section 901, *et seq.*

Administrative Practice: Charging of Interest. Since 1949 it has been the policy of the Department, as a general rule, that costs allocated to municipal water supply should be repaid with interest on the unpaid balance. See Memorandum of Secretary Krug to Commissioner, October 12, 1949.

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1. Generally

Subsections 9(a) and 9(c) of the Reclamation Project Act of 1939, although related, serve two different purposes: Subsection 9(a) embodies the test for feasibility, while subsection 9(c) contains the criteria for rates to be charged by the Secretary for the sale of power. Solicitor Harper Opinion, M–33473 (September 29, 1944).

The Hayden-O'Mahoney amendment deals with the cash distribution of revenues in the Treasury as between the reclamation fund and the general fund. Its purpose was to assure that the reclamation fund would receive as to each reclamation project an amount of dollars equal to that required to amortize the power investment plus the irrigation assistance. It does not, however, purport to deal with payout requirements of reclamation projects. These, except for special requirements applicable to given projects, are governed by Section 9(c) of the Reclamation Project Act of 1939. Statement furnished by Asst. Secretary Holum for *Hearings on H.R. 2337, to Provide for the Construction of the Lower Teton Division, Teton Basin Federal Reclamation Project, Before the Irrigation and Reclamation Subcommittee of the House Committee on Interior and Insular Affairs,* 88th Cong., 2d Sess. 38 (1964).

5. Power—Exceptions

On July 1, 1941, the Secretary approved a rate schedule for the sale of commercial electrical energy from the Minidoka project. The approval was based on a financial study which assumed and expressly stated that contracts with water users organizations for the furnishing of power for pumping, as a part of the project irrigation operations, are not sales of electric power within the meaning of Section 9(c) of the Reclamation Project Act of 1939.

6.—Falling water

The reference in section 9(c) to the "lease of power privileges," as distinguished from the "sale of electric power" is suffi-

ciently broad to comprehend a so-called sale of falling water or other contractual arrangements to utilize power head and storage at, or operationally in conjunction with, Federal reclamation dams. Memorandum of Solicitor Armstrong to Commissioner of Reclamation, April 12, 1955.

7.—Contracts

In view of the Secretary's authority under section 2 of the Act of August 26, 1937, 50 Stat. 850, to acquire property for the Central Valley project by any means he deems necessary, including donation, and the broad authority of section 9(c) of the Reclamation Project Act of 1939 to fix rates, the Secretary may grant rate discounts to power customers that reflect the amortization of construction costs of transmission facilities built by the customer and conveyed to the Government or that reflect the operation and maintenance costs of facilities built and retained by the customer. (Dec. Comp. Gen. B–62789, letter of Assistant Comptroller General Weitzel to Chairman John E. Moss, Special Subcommittee on Assigned Power and Land Problems, House Committee on Government Operations, June 28, 1960).

Under the authority of the Act of March 4, 1921, 41 Stat. 1404, to accept and expend advances as if appropriated, and the broad authority of section 9(c) of the Reclamation Project Act of 1939 to fix the rates at which electric power is sold, the Secretary is authorized to enter into a contract with a commercial customer of the Kendrick project whereby the customer advances the cost of constructing the necessary feeder transmission facilities, the Bureau constructs the facilities, and power is sold to the customer at a discount rate until the customer has paid the United States, in the form of the reduced rate plus the advanced funds, the same amount for the power received as it would have paid at standard rates if the Bureau had constructed the facilities with appropriated funds. Dec. Comp. Gen. B–62789 (January 9, 1947).

In an appropriate case the Commissioner of Reclamation may condition the sale of temporary, withdrawable Central Valley project power to a potential municipal customer on the customer's demonstrating, by some appropriate means, that it has an ability to obtain a source of power to meet its requirements upon the withdrawal of the Bureau's supply. Memorandum of Associate Solicitor Fisher to the Commissioner of Reclamation, May 6, 1960.

8.—Rates

Although the principles stated in section 9(c) of the Reclamation Project Act of 1939 pertaining to power rates are stated in terms of the minimum charge for power, they are also clearly intended to set the maximum charge. The Government of the United States markets power to serve the public interest, not to make a profit. We believe that the public interest is best served by marketing power at the lowest rate consistent with orderly repayment of all proper costs, and we believe that is what Congress intended. Letter of Secretary Udall to Representative Aspinall, May 15, 1965, in re basis for establishing power rates for the Colorado River Storage project.

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

Under section 9(c) of the Reclamation Project Act of 1939, as construed consistently with the Hayden-O'Mahoney amendment to the Interior Department Appropriation Act, 1939, the minimum rates for the sale of power must be such as will cover (1) an appropriate share of annual operation and maintenance costs and (2) an amount equal to 3 percent per annum of the original power construction costs; however, if the 3 percent factor is not enough to return power construction costs plus the irrigation subsidy (the amount of irrigation construction costs beyond the ability of the water users to repay) within a reasonable period of time, then the rates must be increased accordingly. There is no statutory obligation for the Government to recover a profit (in the form of interest) on the investment in power construction costs, and therefore all of the power revenues are available to return power construction costs and the irrigation subsidy. Three percent per

annum is a minimum rate of return which continues without regard to pay-out. Solicitor Harper Opinion, M–33473 (September 29, 1944) and M–33473 (Supplemental) (September 10, 1945). [Editor's Note: Although this opinion has not specifically been overruled, it is not followed in two respects. First, the 3 percent factor used in section 9(c) is regarded as annual interest on the unamortized balance of power construction costs, rather than as a constant annual percentage of the original power costs. Second, the revenues represented by the interest component (that part of power revenues attributable to a recovery of interest on the power construction costs) are not considered to be available to return irrigation costs. This latter policy was adopted following a period of controversy culminated by the recommendation of the House Appropriations Committee against use of the interest component to return irrigation costs. H.R. Rept. No. 314, 83rd Congress, 1st Sess. 12 (1953).]

9.—Repayment

Subsections (c), (d), and (e) require repayment or return of all actual costs, not estimated costs, allocated to irrigation. The requirement for full return of such costs can be met by assigning for return from power revenues, where such revenues are available, all increased costs properly allocable to irrigation but which are beyond the water users' ability to pay. Memorandum of Chief Counsel Fix to Commissioner, April 20, 1948, at 26, in re questions of law raised by House Appropriations Subcommittee; reprinted in *Hearings on Interior Department Appropriation Bill for 1949 Before a House Appropriations Subcommittee,* 80th Cong., 2d Sess., pt. 3, at 885 (1948).

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

There is no specific statutory period under the Reclamation Project Act of 1939 (53 Stat. 1193), within which the costs allocated to be repaid from net power revenues thereunder must be repaid. The repayment period accordingly may be such as the Secretary of the Interior in his discretion shall determine to be proper for each project, within the useful life of that project. Solicitor Harper Opinion, M–33473 (Supplemental) (September 10, 1945).

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

Except for contracts under subsections 9(c)(1) and 9(d), which are governed by a 40-year maximum limit, there is no legal objection under general reclamation law to utilizing a depreciation method for repayment of Federal investment, that is, repayment within the useful life of the property. Memorandum of Chief Counsel Fisher to Commissioner, April 10, 1952.

10.—Preference customers

The Bureau of Reclamation has authority to contract with the Arizona Power Pooling Association—a proposed nonprofit corporation formed by Arizona preference customers for the purpose of representing them collectively as a purchasing agent under their Colorado River Storage project allotments to obtain the maximum benefits of their respective diversities—as a preference customer. Memorandum of Acting Associate Solicitor Coulter to Commissioner of Reclamation, February 25, 1965.

The Navajo Indian Tribe qualifies as a preference customer for the purchase of power marketed by the Bureau of Reclamation under section 9(c) of the Reclamation Project Act of 1939. Memorandum of Associate Solicitor Weinberg, April 14, 1961.

12.—Transmission lines

The Secretary of the Interior has authority under subsection 2(b), 2(f), 5(a), 5(b) and 9(b) of the Bonneville Project Act; section 5 of the Flood Control Act of 1944; sections 9(c) and 14 of the Reclama-

tion Project Act of 1939; and section 2 of the Act of August 30, 1935, 49 Stat. 1039, reauthorizing the Grand Coulee Dam project, to construct transmission lines between the Pacific Northwest and the Pacific Southwest. Solicitor Barry Opinion, 70 I.D. 237 (1963).

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

15. Water—Municipal water supply

Section 4 of the Act of April 16, 1906, authorizes the furnishing of project water to a town in the immediate vicinity of the project which has a pre-existing water right in the same source of water as the project source. The authority to furnish water in such a case under the 1906 Act is neither repealed by, nor subject to the conditions of, the Act of February 25, 1920, 41 Stat. 451, or section 9(c) of the Reclamation Project Act of 1939. Memorandum of Acting Commissioner Lineweaver to Regional Director, Boise, September 26, 1950, in re contracts with cities of Culver and Metolius, Deschutes Project, Oregon.

16.—Miscellaneous purposes

A contract to permit the Public Service Company of Colorado to divert water from a canal of the Grand Valley project for cooling purposes may be entered into pursuant to the Act of February 25, 1920, or under section 9(c) or section 10 of the Reclamation Project Act of 1939. Revenues arising from the furnishing of water for this purpose should be credited as a tail end reduction of the water users organizations repayment obligation for construction and rehabilitation and betterment costs. Memorandum of Associate Solicitor Fisher, October 26, 1956.

17.—Contracts

Although section 5(d) of the Colorado River Storage Project Act fixed an over-all period of 50-years for return with interest of costs allocated to municipal water, the Act permits no other payment arrangements than those provided by section 9(c)(1) and 9(c)(2) of the Reclamation Project Act of 1939. Thus, although more than one contract covering such costs may be signed, none can have a term greater than 40 years. A 9(c)(2) contract may be entered into for the maximum 40-year period, followed by either a 9(c)(1) or 9(c)(2) contract for 10 years. If the first contract is written under 9(c)(1), however, it would require that full repayment be accomplished in the permissible 40-year period. Memorandum of Associate Solicitor Fisher, March 5, 1958, and Memorandum of Acting Associate Solicitor Weinberg, September 20, 1957, in re contract negotiations for Vernal Unit.

A water supply contract for municipal or miscellaneous purposes under section 9(c)(1) of the Reclamation Project Act of 1939 is a contract "relating to construction charges" within the meaning of section 6, and therefore, it must include payment of operation and maintenance costs as provided in section 6 even though section 9(c)(1) does not mention such costs. Memorandum of Chief Counsel Fix to Commissioner, March 26, 1947.

18.—Rates

It is clearly within the authority of the Secretary under section 9(c) of the Reclamation Project Act of 1939 to charge different rates for water from the Central Valley project delivered for municipal water supply than for water delivered for irrigation purposes. *City of Fresno* v. *California*, 372 U.S. 627 (1963).

The Secretary has discretion to charge interest in a water supply contract for municipal or miscellaneous purposes under section 9(c)(2) of the Reclamation Project Act of 1939. Although interest is not specifically mentioned, it is one of the items which properly can be included within the classification of "fixed charges." Memorandum of Chief Counsel Fix to Commissioner, March 26, 1947.

(d) [**No water delivered until repayment contract executed providing (1) development period for each irrigation block, (2) construction cost allocable to irrigation to be included in general repayment obligation—Distribution of construction charges on account productivity of land and benefits accruing, (3) repayment in annual installments over period not exceeding 40 years, (4) first annual installment on date fixed by Secretary.**]—No water may be delivered for irrigation of lands in connection with any new project, new division of a

project, or supplemental works on a project until an organization, satisfactory in form and powers to the Secretary, has entered into a repayment contract with the United States, in a form satisfactory to the Secretary, providing among other things—

(1) That the Secretary may fix a development period for each irrigation block, if any, of not to exceed ten years from and including the first calendar year in which water is delivered for the lands in said block; and that during the development period water shall be delivered to the lands in the irrigation block involved at a charge per annum per acre-foot, or other charge, to be fixed by the Secretary each year and to be paid in advance of delivery of water: *Provided,* That where the lands included in an irrigation block are for the most part lands owned by the United States, the Secretary, prior to execution of a repayment contract, may fix a development period, but in such case execution of such a contract shall be a condition precedent to delivery of water after the close of the development period: *Provided further,* That when the Secretary, by contract or by notice given thereunder, shall have fixed a development period of less than ten years, and at any time thereafter but before commencement of the repayment period conditions arise which in the judgment of the Secretary would have justified the fixing of a longer period, he may amend such contract or notice to extend such development period to a date not to exceed ten years from its commencement, and in a case where no development period was provided, he may amend such contract within the same limits: *Provided further,* That when the Secretary shall have deferred the payment of all or any part of any installments of construction charges under any repayment contract pursuant to the authority of the Act of September 21, 1959 (73 Stat. 584), he may, at any time prior to the due date prescribed for the first installment not reduced by such deferment, and by agreement with the contracting organization, terminate the supplemental contract by which such deferment was effected, credit the construction payments made, and exercise the authority granted in this section. After the close of the development period, any such charges collected and which the Secretary determines to be in excess of the cost of the operation and maintenance during the development period shall be credited to the construction cost of the project in the manner determined by the Secretary.

(2) That the part of the construction costs allocated by the Secretary to irrigation shall be included in a general repayment obligation of the organization; and that the organization may vary its distribution of construction charges in a manner that takes into account the productivity of the various classes of lands and the benefits accruing to the lands by reason of the construction: *Provided,* That no distribution of construction charges over the lands included in the organization shall in any manner be deemed to relieve the organization or any party or any land therein of the organization's general obligation to the United States.

(3) That the general repayment obligation of the organization shall be spread in annual installments, of the number and amounts fixed by the Secretary, over a period of not more than 40 years, exclusive of any development period fixed under paragraph (1) of this subsection, for any project contract unit or, if the

project contract unit be divided into two or more irrigation blocks, for any such block, or as near to said period of not more than forty years as is consistent with the adoption and operation of a variable payment formula which, being based on full repayment within such period under average conditions, permits variance in the required annual payments in the light of economic factors pertinent to the ability of the organization to pay.

(4) That the first annual installment for any project contract unit, or for any irrigation block, as the case may be, shall accrue, on the date fixed by the Secretary, in the year after the last year of the development period or, if there be no development period, in the calendar year after the Secretary announces that the construction contemplated in the repayment contract is substantially completed or is advanced to a point where delivery of water can be made to substantially all of the lands in said unit or block to be irrigated; and if there be no development period fixed, that prior to and including the year in which the Secretary makes said announcement water shall be delivered only on the toll charge basis hereinbefore provided for development periods.

(5) *Repealed.*

(53 Stat. 1195; Act of August 8, 1958, 72 Stat. 542; Act of August 28, 1962, 76 Stat. 407; 43 U.S.C. § 485h(d))

EXPLANATORY NOTES

1962 Amendments. Section 1 of the Act of August 28, 1962, authorizes the Secretary of the Interior, prior to the commencement of the development period authorized by subsection 9(d)(1), to amend repayment contracts to provide for irrigation blocks, or add to or modify existing blocks. Section 2 of the Act added the second and third provisos in subsection 9(d)(1). The Act appears herein in chronological order.

1962 Amendment. Section 3 of the Act of August 28, 1962, authorizes the annual installment provided for in subsection 9(d)(3) to be paid in two parts. The Act appears herein in chronological order.

1958 Amendment. Section 1 of the Act of August 8, 1958, amended paragraph (3), subsection (d) of section 9 to read as it appears above, thereby authorizing a variable repayment plan in place of the "normal and percentage plan" of repayment formerly authorized by section 4, which was repealed by the 1958 act. The original language read as follows: "The general repayment obligation of the organization shall be spread in annual installments, of the number and amounts fixed by the Secretary, over a period not exceeding forty years, exclusive of any development period fixed under subsection (d)(1) of this section, for any project contract unit, or for any irrigation block, if the project contract unit be divided into two or more irrigation blocks." The 1958 Act appears herein in chronological order.

Provision Repealed. Section 3 of the Act of August 8, 1958, repealed paragraph (5), subsection (d) of section 9, the text of which appears below. It also repealed section 4, which authorized the "normal and percentage plan" referred to below. In place of that plan, the same Act amended paragraph (3) of section 9, subsection (d), to provide for a variable plan of repayment.

"(5) Either (A) that each year the installment of the organization's repayment obligation scheduled for such year shall be the construction charges due and payable by the organization for such year; or (B) that each year the installment for such year of the organization's repayment obligation shall be increased or decreased on the basis of the normal and percentages plan provided in section 4 of this Act for modification of existing obligations to pay construction charges, and the amount of the annual installment of the organization's obligation, as thus increased or decreased, shall be the construction charges due and payable for such year. Under (B) of this subsection the provisions of section 4 of this Act shall be applicable, as near as may be, to the repayment contract made in connection with the new project, new division of a project or supplemental works on a project; and the organization shall make payments on the basis therein provided until its general repayment obligation has become due and payable to the United States in full."

The 1958 Act appears herein in chronological order.

Supplementary Provision: Variable Payment Plan. Section 2 of the Act of August 8, 1958, provides as follows: "The benefits of a variable payment plan as provided in the amendment to paragraph (3) of section 9, subsection (d), of the Reclamation Project Act of 1939 contained in section 1 of this Act may be extended by the Secretary to any organization with which he contracts or has contracted for the repayment of construction costs allocated to irrigation on any project undertaken by the United States, including contracts under the Act of August 11, 1939 (53 Stat. 1418), as amended, and contracts for the storage of water or for the use of stored water under section 8 of the Act of December 22, 1944 (58 Stat. 887, 891). In the case of any project for which a maximum repayment period longer than that prescribed in said paragraph (3) has been or is allowed by Act of Congress, the period so allowed may be used by the Secretary in lieu of the forty-year period provided in said amendment to paragraph (3)."

The 1958 Act appears herein in chronological order. The Act of August 11, 1939 (53 Stat. 1418), as amended, which is the Water Conservation and Utilization Act, and extracts (including section 8) from the Act of December 22, 1944 (58 Stat. 887, 891), which is the Flood Control Act of 1944, both referred to in this note, are found herein in chronological order.

Supplementary Provisions: Administration of Contracts. The Act of July 2, 1956, 70 Stat. 483, is an act relating to the administration of contracts under this subsection and subsection (e). The 1956 Act appears herein in chronological order.

Reference in the Text. The Act of September 21, 1959 (73 Stat. 584), referred to in the text, amended subsection 17(b) of this Act. The amended subsection authorizes the Secretary to defer the payment on installments of construction charges under any repayment contract or other form of obligation as he deems necessary to adjust such installments to amounts within the probable ability of the water users to pay. The 1959 Act appears herein in chronological order.

NOTES OF OPINIONS

Additional costs 2
Costs, what constitutes 1
Repayment 3–8
Generally 3
Installments 4
Ownership of facilities 9
Water rights 10

1. Costs, what constitutes

The reference in subsection 9(d)(2) to "the part of the construction costs allocated by the Secretary to irrigation" is to the amount assigned by the Secretary to be repaid by the irrigators and not to the total costs allocated to irrigation in the accounting or engineering sense. Memorandum of Chief Counsel Fisher, September 12, 1952, in re procedure on use of surplus power revenues for assistance in financing irrigation distribution systems.

2. Additional costs

Where a repayment contract is entered into with the water users, based on estimates of costs at that time, and provides for a determination by the Secretary as to continuation of work when increased costs reach a ceiling fixed in the contract, the Secretary may require an additional obligation to be assumed by water users as a condition to continuation of construction when that ceiling is reached. In reaching a decision the Secretary must consider the ability of water users to bear increased costs as well as the ability of purchasers of power to absorb them. Solicitor Barry Opinion, 68 I.D. 305 (1961), in re Columbia Basin repayment problems.

The Coachella Valley County Water District is not required to pay for the additional costs—i.e., those in excess of the $13,500,000 fixed in the repayment contract of December 22, 1947—incurred by the United States in completing the distribution system pursuant to the provision in the Interior Department Appropriation Act, 1952, and subsequent appropriations. *United States* v. *Coachella Valley County Water District,* 111 F. Supp. 172 (S.D. Cal. 1953).

3. Repayment—Generally

Subsections (c), (d), and (e) require repayment or return of all actual costs, not estimated costs, allocated to irrigation. The requirement for full return of such costs can be met by assigning for return from power revenues, where such revenues are available, all increased costs properly allocable to irrigation but which are beyond the water users' ability to pay. Memorandum of Chief Counsel Fix to Commissioner, April 20, 1948, at 26, in re questions of law raised by House Appropriations Subcommittee; reprinted in *Hearings on Interior Department Appropriation Bill for 1949 Before a House Appropriations Subcommittee,* 80th Cong., 2d Sess., pt. 3, at 885 (1948).

The last sentence of section 9(e) does

not require that the entire cost of a distribution system must be covered by a repayment contract under section 9(d), and therefore, surplus power and municipal and industrial water supply revenues may be applied to assist in payout of part of the distribution system costs. Memorandum of Chief Counsel Fisher, September 12, 1952, in re procedure on use of surplus power revenues for assistance in financing irrigation distribution systems.

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

Except for contracts under subsections 9(c)(1) and 9(d), which are governed by a 40-year maximum limit, there is no legal objection under general reclamation law to utilizing a depreciation method for repayment of Federal investment, that is, repayment within the useful life of the property. Memorandum of Chief Counsel Fisher to Commissioner, April 10, 1952.

The estimated accumulated revenues representing the interest component on the sale of power from the Columbia Basin project are not available to reduce the average amount per acre of construction cost contracted to be repaid by the project water users. Solicitor Barry Opinion, 68 I.D. 305, 306–09 (1961).

4.—Installments

The verb "to fix", as used in that part of subsection (d), section 9, Reclamation Project Act of 1939, stating that the general repayment obligation of a contracting organization "shall be spread in annual installments, of the number and amounts fixed by the Secretary," means to establish definitely, so that the contracting parties know how many installments are contemplated by the contract and how much money is involved in each installment. Solicitor White Opinion, 60 I.D. 150 (1948), in re proposed contract with Savage Irrigation District.

A repayment contract entered into under subsection 9(d) which prescribes a formula pursuant to which the amount of each annual installment is to be determined, which formula has no relationship to the "normal and percentages plan" authorized by Congress in subsection 9(d) and section 4 for variable payments, is not in conformity with the requirements of the Reclamation Project Act of 1939. Solicitor White Opinion, 60 I.D. 150 (1948), in re proposed contract with Savage Irrigation District.

9. Ownership of facilities

A repayment contract is not invalid because of absence of provision that the district will obtain title to the distribution system when its obligation therefor has been totally discharged. *Ivanhoe Irr. Dist.* v. *McCracken*, 357 U.S. 275, 289–9(1958).

While water users under section 9 contracts acquire a water right, they acquire no equity in the physical assets of the project which would be required to be reflected as such in the balance sheets of the Bureau of Reclamation. No legal objection is perceived, therefore, to considering receipts from both section 9(d) and section 9(e) contracts as income. Dec. Comp. Gen. B–91527–O.M. (January 18, 1950).

10. Water rights

Objections of appellees that contracts executed under section 9 of the Reclamation Project Act of 1939 are invalid because they imply that water users are not entitled to water rights beyond the 40-year terms of the contracts and because they do not make clear that the districts and landowners become free of indebtedness upon repayment, are answered by the Act of July 2, 1956, 70 Stat. 483. *Ivanhoe Irr. Dist.* v. *McCracken*, 357 U.S. 275, 297–8 (1958).

(e) **[Short- or long-term contracts to furnish water for irrigation—Payment in advance of delivery of water—Cost of works to be covered by repayment contract under subsec. (d).]**—In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short- or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and

allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d). (53 Stat. 1196; 43 U.S.C. § 485h(e))

EXPLANATORY NOTE

Supplementary Provisions: Administration of Contracts. The Act of July 2, 1956, 70 Stat. 483, is an act relating to the administration of contracts under this subsection and subsection (d). The 1956 Act appears herein in chronogical order.

NOTES OF OPINIONS

Contracts 1
Repayment 2
Water rights 3

1. Contracts

Contracts executed under section 9(e) of the Reclamation Project Act of 1939 are not invalid because of failure to recite a definite sum as being the total amount due for water supply facilities. *Ivanhoe Irr. Dist.* v. *McCracken,* 357 U.S. 275, 298 (1958).

Objections of appellees that contracts executed under section 9(e) of the Reclamation Project Act of 1939 are invalid because they imply that water users are not entitled to water rights beyond the 40-year terms of the contracts and because they do not make clear that the districts and landowners become free of indebtedness upon repayment, are answered by the Act of July 2, 1956, 70 Stat. 483. *Ivanhoe Irr. Dist.* v. *McCracken,* 357 U.S. 275, 297–8 (1958).

2. Repayment

There is no legal requirement that contracts entered into under subsection 9(e) must provide for recovery within 40 years of the construction costs connected with water supply and allocated to irrigation. Solicitor White Opinion, 60 I.D. 180 (1948).

Subsections (c), (d), and (e) require repayment or return of all actual costs, not estimated costs, allocated to irrigation. The requirement for full return of such costs can be met by assigning for return from power revenues, where such revenues are available, all increased costs properly allocable to irrigation but which are beyond the water users' ability to pay. Memorandum of Chief Counsel Fix to Commissioner, April 20, 1948, at 26, in re questions of law raised by House Appropriations Subcommitte; reprinted in *Hearings on Interior Department Appropriation Bill for 1949 Before a House Appropriations Subcommittee,* 80th Cong., 2d Sess., pt. 3 at 885 (1948).

3. Water rights

While water users under section 9 contracts acquire a water right, they acquire no equity in the physical assets of the project which would be required to be reflected as such in the balance sheets of the Bureau of Reclamation. No legal objection is perceived, therefore, to considering receipts from both section 9(d) and section 9(e) contracts as income. Dec. Comp. Gen. B–91527–O.M. (January 18, 1950).

Sec. 10. [Removal of sand, gravel, and other minerals from withdrawn lands without competitive bidding—Authority to grant leases, licenses, easements, and rights-of-way.]—The Secretary, in his discretion, may (a) permit the removal, from lands or interest in lands withdrawn or acquired and being administered under the Federal reclamation laws in connection with the construction or operation and maintenance of any project, of sand, gravel, and other minerals and building materials with or without competitive bidding: *Provided,* That removals may be permitted without charge if for use by a public agency in the construction of public roads or streets within any project or in its immediate vicinity; and (b) grant leases and licenses for periods not to exceed fifty

years, and easements or rights-of-way with or without limitation as to period of time affecting lands or interest in lands withdrawn or acquired and being administered under the Federal reclamation laws in connection with the construction or operation and maintenance of any project: *Provided,* That, if a water users' organization is under contract obligation for repayment on account of the project or division involved, easements or rights-of-way for periods in excess of twenty-five years shall be granted only upon prior written approval of the governing board of such organization. Such permits or grants shall be made only when, in the judgment of the Secretary, their exercise will not be incompatible with the purposes for which the lands or interests in lands are being administered, and shall be on such terms and conditions as in his judgment will adequately protect the interests of the United States and the project for which said lands or interests in lands are being administered. (53 Stat. 1196; Act of August 18, 1950, 64 Stat. 463; 43 U.S.C. § 387)

EXPLANATORY NOTES

1950 Amendment. The Act of August 18, 1950, 64 Stat. 463, amended clause (b) by removing the 50-year limitation on easements and rights-of-way and adding the proviso requiring consent of the water users' organization for easements or rights-of-way for periods in excess of 25 years. As originally enacted in 1939, clause (b) of section 10 read as follows:

"(b) grant leases, licenses, easements, or rights-of-way, for periods not to exceed fifty years, affecting lands or interests in lands withdrawn or acquired and being administered under the Federal reclamation laws in connection with the construction or operation and maintenance of any project."

Codification. The second sentence of the original section was omitted from the section as codified at 43 U.S.C. § 387. This omission is believed to be erroneous, however, particularly in view of the statement in the letters of the Secretary of the Interior transmitting to the House and Senate the draft of bill which became the basis for the 1950 amendment, that the legislation "will in no way affect" the second sentence. H.R. Rept. No. 450 (1949). S. Rept. No. 1942 (1950), 81st Congress. The sentence has been reinstated in the supplement to the 1964 edition of the U.S. Code.

Prior Act: Sale of Railroad. The Act of August 11, 1916, 39 Stat. 506, authorized the Secretary of the Interior to appraise and sell the Boise and Arrowrock Railroad. which was constructed by the Reclamation Service in connection with the construction of the Arrowrock Dam, Boise project, and was no longer needed for that purpose. The railroad was 17 miles in length and connected the Oregon Short Line Railway and the site of the Arrowrock Dam. After an attempt to lease the railway failed, the Department requested legislative authority to sell it.

Prior Acts: Sale of Lands to Railroad Companies. The Act of February 26, 1917, 39 Stat. 940, authorized the sale and conveyance of certain lands of the Milk River project, Montana, to the Great Northern Railway Company for division terminal yards and other railway purposes. The Act of December 17, 1919, 41 Stat. 1453, authorized the sale and conveyance of certain lands of the Minidoka project, Idaho, to the Oregon Short Line Railroad Company for railroad purposes "at a price to be fixed by the Secretary of the Interior in order to return the expenditure heretofore made or proposed for the irrigation of the lands at not less than $50 per acre . . .".

NOTES OF OPINIONS

Easements and rights-of-way 3
Leases and licenses 2
Removal of materials 1

1. Removal of materials

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

A private person may not be permitted under this section to remove sand, gravel and other materials without charge. *Shotwell* v. *United States,* 163 F. Supp. 907 (E.D. Wash. 1958).

Where authority to grant permits for removal of sand and gravel had been delegated and redelegated to district manager, other personnel of the Bureau of Reclamation were without authority to grant permission for such removal. *Shotwell* v. *United States,* 163 F. Supp. 907(E.D. Wash. 1958).

2. Leases and licenses

Under section 10 of the Reclamation Project Act of 1939 there is authority to lease reclamation withdrawn or acquired lands for 50 years for recreation purposes without monetary consideration. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, January 24, 1964, in re Park Moabi lease along the Lower Colorado River.

Under the authority of section 10 of the Reclamation Project Act of 1939, the Secretary is empowered to offer trespassers on reclamation withdrawn land along the Lower Colorado River an opportunity to enter into agreements under which they would pay a reasonable charge for past occupancy and receive permits for continued occupancy under reasonable terms while the lands involved are being placed under a permanent land-use program. Letter of Secretary Udall to the Comptroller General, April 20, 1961.

A permit to search for hidden treasures on reclamation withdrawn lands may be issued under section 10 of the Reclamation Project Act of 1939. The permit should provide for a minimum charge and a sufficient return if treasure is located, and no reservation should be contained recognizing any claim of the State of California to any treasure discovered. Memorandum of Acting Associate Solicitor Weinberg, September 10, 1959.

Under section 10 of the Reclamation Project Act of 1939 the United States may issue a permit or license to School District No. 7 of Natrona County, Wyoming, to connect its water and sewer lines to Reclamation systems. Memorandum of Associate Solicitor Fisher, August 7, 1958, in re use of service facilities, Alcova Dam and Reservoir.

A contract to permit the Public Service Company of Colorado to divert water from a canal of the Grand Valley project for cooling purposes may be entered into pursuant to the Act of February 25, 1920, or under section 9(c) or section 10 of the Reclamation Project Act of 1939. Revenues arising from the furnishing of water for this purpose should be credited as a tail end reduction of the water users organizations repayment obligation for construction and rehabilitation and betterment costs. Memorandum of Associate Solicitor Fisher, October 26, 1956.

3. Easements and rights-of-way

The Secretary is authorized under section 10 of the Reclamation Project Act of 1939 to grant to a county, with the consent of the water users, a permanent easement in an access road constructed as a part of a project, and under section 14 of the 1939 Act, to make an advance payment to the county in recognition of the saving to the government of costs of maintenance and repair of the road. Dec. Comp. Gen. B–109485 (July 22, 1952), in re contract with Shasta County.

Section 10 gives the Secretary of the Interior authority to grant, or to deny a request for, a right-of-way for a railroad company across lands within a reclamation withdrawal. Moreover, the act specifically authorizes the Secretary to impose terms and conditions upon the rights granted by him "as in his judgment will adequately protect the interests of the United States," and a requirement for a stipulation on fair employment practices would be within this authority. *Southern Pacific Railroad Company,* A–26143 (August 20, 1951).

Sec. 11. [Sale of property, appraised not to exceed $300, under Acts of February 2, 1911, and May 20, 1920.]—The Secretary in his discretion, in any instances where property to be sold under the Act of February 2, 1911 (36 Stat. 895), or the Act of May 20, 1920 (41 Stat. 605), is appraised at not to exceed $300, may sell said property at public or private sale without complying with the provisions of said Acts as to notice, publication, and mode of sale. (53 Stat. 1197; 43 U.S.C. § 375a)

EXPLANATORY NOTE

References in the Text. The Act of February 2, 1911 (36 Stat. 895), referred to in the text, authorizes the sale of lands acquired for reclamation purposes and not needed for such purposes. The Act of May 20, 1920 (41 Stat. 605), also referred to in

the text, authorizes the sale of withdrawn lands, not otherwise reserved, that have been improved at the expense of the reclamation fund, but are no longer needed for the purpose for which they were withdrawn. Both acts appear herein in chronological order.

Sec. 12. [Liability of United States on contracts for services, supplies, etc., contingent upon appropriations.]—When appropriations have been made for the commencement or continuation of construction or operation and maintenance of any project, the Secretary may, in connection with such construction or operation and maintenance, enter into contracts for miscellaneous services, for materials and supplies, as well as for construction, which may cover such periods of time as the Secretary may consider necessary but in which the liability of the United States shall be contingent upon appropriations being made therefor. (53 Stat. 1197; 43 U.S.C. § 388)

EXPLANATORY NOTES

Cross Reference, Loans for Local Distribution Systems. Provisos in each annual Public Works Appropriation Act beginning with the Act of September 10, 1959, 73 Stat. 495, provide that loans beyond the current fiscal year for the construction of local distribution systems under the Act of July 4, 1955, 69 Stat. 244, are subject to the same conditions as stated in section 12 of the Reclamation Project Act of 1939, that is that they shall be contingent upon appropriations being made therefor. The 1955 Act and the relevant extract from the 1959 Act appear herein in chronological order.

Cross Reference, Prior Law. Section 16 of the Reclamation Extension Act of August 13, 1914, which appears herein in chronological order, was interpreted generally as limiting the contracting authority of the Bureau of Reclamation to an annual basis and within current annual appropriations.

NOTES OF OPINIONS

Application 1
Construction with other laws 2

1. Application

The definition of the term "project" in section 2 of the Reclamation Project Act of 1939 includes projects not under the reclamation laws that are constructed or operated and maintained by the Secretary of the Interior through the Bureau of Reclamation for other agencies, such as the Lower Two Medicine Dam on the Blackfeet Indian Irrigation project. Consequently, the provisions of section 12 of the Act authorize the inclusion of the usual contingency-upon-appropriations clause in the construction contract. Memorandum of Associate Solicitor Hogan, October 6, 1966.

2. Construction with other laws

Provisions in the Interior Department Appropriation Act, 1949, authorizing the Commissioner of Reclamation to enter into contracts with respect to construction of the Cachuma Unit, Santa Barbara project, and the Palisades project, up to certain amounts over and above the amount of the appropriations for the projects, fully obligate the United States to pay the contractors up to the stated amounts and are additional to the authority in section 12 of the Reclamation Project Act of 1939 to this extent. Dec. Comp. Gen., B–79145 (September 10, 1948).

Sec. 13. [Supplies, equipment, services, not in excess of $300, may be procured in open market.]—The purchase of supplies and equipment or the procurement of services for the Bureau of Reclamation at the seat of government and elsewhere may be made in the open market without compliance with section 3709 or section 3744 of the Revised Statutes of the United States, in the manner common among businessmen, when the aggregate payment for the purchase or the services does not exceed $300 in any instance. (53 Stat. 1197; 41 U.S.C. § 16d note)

EXPLANATORY NOTE

References in the Text. Section 3709 of the Revised Statutes (41 U.S.C. § 5), referred to in the text, deals with competitive bidding. The section is found herein in the Appendix. Section 3744 of the Revised Statutes required that contracts made by the Secretaries of War, Navy and Interior be in writing, and that copies of these contracts be filed in the returns office of the Department of the Interior. Section 3744 of the Revised Statutes was repealed by the Act of October 21, 1941, 55 Stat. 743.

Sec. 14. [Authority to purchase or condemn lands for relocating highways, roadways, railroads, telegraph, telephone, and electric transmission lines—Exchange Government properties—Grant perpetual easements—Exchange or replacement of water, water rights, or electric energy.]—The Secretary is hereby authorized, in connection with the construction or operation and maintenance of any project, (a) to purchase or condemn suitable lands or interests in lands for relocation of highways, roadways, railroads, telegraph, telephone, or electric transmission lines, or any other properties whatsoever, the relocation of which in the judgment of the Secretary is necessitated by said construction or operation and maintenance, and to perform any or all work involved in said relocations on said lands or interests in lands, other lands or interests in lands owned and held by the United States in connection with the construction or operation and maintenance of said project, or properties not owned by the United States; (b) to enter into contracts with the owners of said properties whereby they undertake to acquire any or all property needed for said relocation, or to perform any or all work involved in said relocations; and (c) for the purpose of effecting completely said relocations, to convey or exchange Government properties acquired or improved under (a) above, with or without improvements, or other properties owned and held by the United States in connection with the construction or operation and maintenance of said project, or to grant perpetual easements therein or thereover. Grants or conveyances hereunder shall be by instruments executed by the Secretary without regard to provisions of law governing the patenting of public lands.

The Secretary is further authorized, for the purpose of orderly and economical construction or operation and maintenance of any project, to enter into such contracts for exchange or replacement of water, water rights, or electric energy, or for the adjustment of water rights, as in his judgment are necessary and in the interests of the United States and the project. (53 Stat. 1197; 43 U.S.C. § 389)

EXPLANATORY NOTE

Prior Acts: Exchanges of Lands. The Act of August 9, 1921, 42 Stat. 147, authorized an exchange of lands between the United States and the Swan Land and Cattle Company, Limited. The Act of February 25, 1925, 43 Stat. 970, authorized an exchange of lands between the United States and Anton Hiersche. Both exchanges were for the purpose of acquiring lands needed by the United States for construction, operation and maintenance of the North Platte project, Nebraska-Wyoming.

NOTES OF OPINIONS

Exchanges 10–19
Power 11
Water and water rights 10
Relocations 1–9
Generally 1
Other properties 3
Roads 2

1. Relocations—Generally

The Secretary of the Interior is without authority to compensate a church under

section 14 of the Reclamation Project Act of 1939 for the cost of relocating church buildings that were constructed pursuant to a special use permit issued by the Forest Service, which is revocable at will, on lands covered by a reclamation withdrawal. Memorandum of Associate Solicitor Fritz to Field Solicitor, Billings, January 7, 1955, in re parcel number 10, Pactola Dam and Reservoir.

Section 14 authorizes negotiation for relocation of a facility by its owner, as well as relocation by the Bureau; and a contract may be entered into to pay the owner a fixed sum for this work, rather than a sum based on actual cost, where analysis shows this to be in the best interests of the government. Memorandum of Assistant Commissioner Markwell to Regional Director, Denver, November 28, 1951.

2.—Roads

The provision of section 208 of the Flood Control Act of 1962, relating to the nonreimbursability of Federal costs of relocating roads to current standards, must be construed *in pari materia* with section 9 and and section 14 of the Reclamation Project Act of 1939. This means that (1) the cost of relocating a road in kind is included as a part of total project cost to be allocated as provided in section 9 of the 1939 Act; (2) the additional cost of constructing the substitute road to current standards under section 208 is a non-reimbursable federal cost; and (3) the further cost of constructing the road to a still higher standard requested by the State must be paid by the State. Memorandum of Associate Solicitor Weinberg, December 6, 1962.

In highway relocations the obligation of the United States is to be measured by the costs of a necessary substitute highway which will provide equivalent service and equivalent standards to the highway being taken. That is, the obligation of the United States is measured by the cost of such highway as is required to be constructed as a result of the taking, and where the remaining highway system is adequate or where the taking eliminates the source of traffic, and hence the need for the road, only nominal compensation is required. *California* v. *United States,* 169 F. 2d. 914 (1948), *Fort Worth* v. *U.S.,* 188 F. 2d. 217, 221–222 (1951). While the question of necessity for substitute highways is not necessarily controlled by whether or not an express legal duty is imposed upon the State or other public entity involved, *U.S.* v. *Des Moines County,* 148 F. 2d. 448 (1945), it is clear that the test is one of adequacy, not one merely of convenience or the fulfillment of a desire. *Washington* v. *U.S.,* 214 F. 2d. 33, 40 (1954). ". . . the test . . . is not what the state . . . would like to get or even what might be more desirable, but rather what is reasonable and fair under all the circumstances." *U.S.* v. *0.886 of an acre,* 65 F. Supp. 827, 828 (1946). See also *U.S.* v. *Alderson,* 53 F. Supp. 528 (1944). Memorandum of Assistant Commissioner Golze to Regional Director, Billings, November 7, 1958, in re relocation of State secondary road at Clark Canyon Reservoir.

The Secretary is authorized under section 10 of the Reclamation Project Act of 1939 to grant to a county, with the consent of the water users, a permanent easement in an access road constructed as a part of a project, and under section 14 of the 1939 Act, to make an advance payment to the county in recognition of the saving to the government of costs of maintenance and repair of the road. Dec. Comp. Gen. B–109485 (July 22, 1952), in re contract with Shasta County.

Although it is the general rule that personal services necessary in connection with governmental activities are for performance by regular employees of the government who are responsible to the government and subject to government supervision, it is permissible, under the broad authority of section 14, to reimburse a State for the services of a State highway engineer in connection with the relocation of a State highway, where the services of the State engineer facilitate the work of relocation and the Bureau is unable to locate a qualified engineer to perform this work. Dec. Comp. Gen. B–60222 (September 17, 1946).

3.—Other properties

The terms "relocation" and "any other properties whatsoever", taken together, are broad enough to include transfer of a business or an operation or a function from a site needed for a project to other land. It is not necessary that the transfer involve a physical transfer or relocation of physical property affixed to the old site. Memorandum of Acting Chief Counsel Stinson, May 3, 1941, in re Provo River Project, Utah.

10. Exchanges—Water and water rights

In the event Congress enacts a provision of law, as proposed in an amendment to H.R. 4671 pending before the 89th Congress, directing the Secretary of the Interior, first, to enter into contracts exchanging Colorado River mainstream water for Gila River System water presently used by Arizona users, and second, to offer to enter into contracts making available to New Mexico users the Gila River System water which he had so acquired, no amendment to the

Supreme Court decree in *Arizona* v. *California,* 376 U.S. 340 (1964) would be required to implement the Congressional enactment. Solicitor Barry Opinion, 73 I.D. 252 (1966).

In view of the long history of attempts to resolve disputes with water users diverting water from the Sacramento River, some part of which is attributable to the operation of Shasta Reservoir of the Central Valley Project, and in view of the costs and uncertainties of litigation, it is appropriately within the judgment of the Secretary under the authority of section 14 of the Reclamation Project Act of 1939 to waive payment for past diversions as a part of agreements with the diverters requiring payments for future diversions. Dec. Comp. Gen., B–152983 (January 21, 1964).

In view of the provision in section 14 of the Reclamation Project Act of 1939 authorizing contracts for exchange or replacement of water or water rights, water delivered to the Feather Water District in the Sacramento River at the mouth of the Feather River as replacement for water diverted by the District from the Feather River can be considered as "stored water" of the Central Valley project delivered "for" the lands of the District within the meaning of section 2 of the Act of August 26, 1937, as amended. Memorandum of Associate Solicitor Fisher, July 27, 1959.

The authority of the Secretary under section 14 to enter contracts not only for the exchange or replacement of water but also for the "adjustment of water rights," may reasonably be construed to authorize a contract for a cash payment to a town for the loss of use of its water supply system occasioned by construction and operation of the Colorado-Big Thompson project, in lieu of a contract for replacement of the water system. Dec. Comp. Gen. B–84264 (May 10, 1949), in re contract with Town of Hot Sulphur Springs, Colorado.

11.—Power

The advantages at federal hydroelectric projects to be realized from implementing the "Treaty between Canada and the United States of America Relating to Cooperative Development of the Water Resources of the Columbia River Basin" through the execution of exchange agreements, support, as a matter of law, the Bonneville Power Administrator's determination of "economical operation" as required by section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197; 43 U.S.C. § 389) and section 5(b) of the Bonneville Project Act (50 Stat. 734, 16 U.S.C. § 832d(b)). Solicitor Barry Opinion, 71 I.D. 315, 326-28 (1964).

Agreements providing for the delivery to the Bonneville Power Administrator of a quantity of power which cannot, with certainty, be determined but which constitutes a valuable power resource, in return for the delivery by the Administrator of stated amounts of power over the same period, constitute power-for-power exchange agreements which the Administrator is authorized to enter into under section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197, 43 U.S.C. §389) and section 5(b) of the Bonneville Project Act (50 Stat. 734, 16 U.S.C. §832d(b)). Solicitor Barry Opinion, 71 I.D. 315 (1964), in re Canadian Entitlement Exchange agreements.

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

As a prerequisite to the execution of a proposed agreement with the Washington Public Power Supply System to furnish firm power in exchange for the total electric power generated at the Atomic Energy Commission's New Production Reactor at Hanford, Washington, the Bonneville Power Administration must make a determination that the agreement is in the interest of economical operation, as required by section 14 of the Reclamation Project Act of 1939 and section 5(b) of the Bonneville Project Act. Dec. Comp. Gen. B–149016, B–149083 (letter to Chairman Holifield, July 16, 1962).

A proposed agreement whereby the Washington Public Power Supply System would furnish to the Bonneville Power Administration the total electric power generated from steam to be purchased from the Atomic Energy Commission's New Production Reactor at Hanford, Washington, and would receive in exchange therefor firm power from BPA, is clearly a contract for the exchange of power and comes within the general authority granted by section 5(b) of the Bonneville Project Act and section 14 of the Reclamation Project Act of 1939, which governs the operation of the Columbia Basin project as provided by section 1 of the Columbia Basin Project Act. Dec. Comp. Gen. B–149016, B–149083 (letter to Chairman Holifield, Joint Committee on Atomic Energy, July 16, 1962).

Sec. 15. [**Authority of the Secretary.**]—The Secretary is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect. (53 Stat. 1198; 43 U.S.C. § 485i)

NOTE OF OPINION

1. Necessary and proper

In cases where, because of administrative laxity in enforcing the excess land limitations of reclamation law, or because projects were initiated prior to the enactment of section 46 of the 1926 Act, owners of excess lands have been receiving water therefor without having executed recordable contracts, the Secretary, in the exercise of his authority to perform all acts necessary and proper to carry the reclamation laws into full force and effect (sec. 10 of the Reclamation Act of 1902; sec. 15 of the Reclamation Project Act of 1939), may permit the continued delivery of water to such excess lands on condition that the owner, by the execution of a recordable contract, agrees to dispose of such lands within a reasonable time on reasonable conditions. Associate Solicitor Cohen Opinion, M–34999 (October 22, 1947).

Sec. 16. [**Effect on existing laws.**]—The provisions of previous Acts of Congress not inconsistent with the provisions of this Act shall remain in full force and effect. (53 Stat. 1198; 43 U.S.C. § 485j)

Sec. 17. (a) [**Extension of time for modification of existing repayment contracts.**—The authority granted in section 3 of this Act for modification of existing repayment contracts or other forms of obligations to pay construction charges shall continue through December 31, 1960.

(b) [**Deferment of construction charges.**]—The Secretary is hereby authorized, subject to the provisions of this subsection, to defer the time for the payment of such part of any installments of construction charges under any repayment contract or other form of obligation as he deems necessary to adjust such installments to amounts within the probable ability of the water users to pay. Any such deferment shall be effected only after findings by the Secretary that the installments under consideration probably cannot be paid on their due date without undue burden on the water users, considering the various factors which in the Secretary's judgment bear on the ability of the water users so to pay.

The Secretary may effect the deferments hereunder subject to such conditions and provisions relating to the operation and maintenance of the project involved as he deems to be in the interest of the United States. If, however, any deferments would affect installments to accrue more than twelve months after the action of deferment, they shall be effected only by a formal supplemental contract. Such a contract shall provide by its terms that, it being only an interim solution of the repayment problems dealt with therein, its terms are not, in themselves, to be construed as a criterion of the terms of any amendatory contract that may be negotiated and that any such amendatory contract must be approved by the Congress unless it does not lengthen the repayment period for the project in question beyond that permitted by the laws applicable to that project, involves no reduction in the total amount payable by the water users, and is not in other respects less advantageous to the Government than the existing contract arrangements. The Secretary shall report to the Congress all deferments granted under this subsection. (53 Stat. 1198; Act of April 24, 1945, 59 Stat. 76; Act of

August 8, 1958, 72 Stat. 543; Act of September 21, 1959, 73 Stat. 584; 43 U.S.C. § 485b–1)

EXPLANATORY NOTES

1959 Amendment. The Act of September 21, 1959, amended section 17, subsection (b) to read as it appears above. The 1939 language of the subsection read: "The authority of the Secretary under the Act entitled 'An act to authorize further relief to water users on United States and on Indian reclamation projects,' approved May 31, 1939 (Public, Numbered 97, Seventy-sixth Congress, first session), is hereby extended in connection with the construction charges due and payable, under any existing obligation to pay construction charges, for each of the years 1939 to 1943, inclusive, to the extent such charges are not covered by modification of said obligation under section 3 or 4 of this Act." The 1959 Act appears herein in chronological order.

1958 Amendment. Section 3 of the Act of August 8, 1958, amended section 17, as amended, by substituting the expression "Section 3" for the expression "Sections 3 and 4", where the latter occurred in the section—section 4 having been repealed by the same 1958 Act. The repealed section 4 authorized the "normal and percentages plan" of repayment which was superseded in the 1958 Act by a variable repayment plan. The 1958 Act appears herein in chronological order.

1945 Amendment. Section 3 of the Act of April 24, 1945, 59 Stat. 75, amended section 17 by extending the time in which payment contracts may be modified and by broadening the authority of the Secretary to grant deferments. The 1945 Act appears herein in chronological order.

Supplementary Provision: Application of Subsection "(b)" Provisions. Section 3 of the Act of September 21, 1959, the act which amended subsection 17(b), provides that the amended subsection "shall apply to any project within the administrative jurisdiction of the Bureau of Reclamation to which, if it had been constructed as a project under the Federal reclamation laws . . . these provisions would be applicable." The 1959 Act appears herein in chronological order.

Supplementary Provisions: Extension of Time for Modification of Repayment Contracts—Repeal of Section 4. The Act of March 6, 1952, 66 Stat. 16, provided that the authority vested in the Secretary of the Interior by sections 3, 4 and 7 of this Act be extended through December 31, 1954. The Act of August 31, 1954, 68 Stat. 1044, amended the 1952 Act by inserting "1957" in place of "1954." The 1954 Act was in turn amended by the Act of August 21, 1957, 71 Stat. 390, which replaced "1957" with "1960." The authority vested in the Secretary by sections 3, 4 and 7 of this Act was thus extended through December 31, 1960. The Act of August 8, 1958, 72 Stat. 542, repealed section 4 of this Act and amended the 1952 Act referred to in this note by deleting the reference in it to section 4. Each of these Acts appears herein in chronological order.

Sec. 18. [Act not to amend Boulder Canyon Project Act.]—Nothing in this Act shall be construed to amend the Boulder Canyon Project Act (45 Stat. 1057), as amended. (53 Stat. 1198; 43 U.S.C. § 485j, note)

Sec. 19. [Short title.]—This Act may be cited as the "Reclamation Project Act of 1939." (53 Stat. 1198; 43 U.S.C. § 485k)

EXPLANATORY NOTE

Legislative History. H.R. 6984, Public Law 260 in the 76th Congress. H.R. Rept. No. 995. S. Rept. No. 758. H.R. Rept. No. 1027 (on H. Res. 242). H.R. Rept. No. 1252 (conference report).