

Public Law 102-575
102d Congress

An Act

Oct. 30, 1992
[H.R. 429]

To authorize additional appropriations for the construction of the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming.

Reclamation
Projects
Authorization
and Adjustment
Act of 1992.
Conservation.
43 USC 371 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reclamation Projects Authorization and Adjustment Act of 1992".

SEC. 2. DEFINITION AND TABLE OF CONTENTS.

For purposes of this Act, the term "Secretary" means the Secretary of the Interior.

TABLE OF CONTENTS

Sec. 1. Short title.

Sec. 2. Definition and table of contents.

TITLE I—BUFFALO BILL DAM AND RESERVOIR, WYOMING

Sec. 101. Additional authorization of appropriations.

TITLE II—CENTRAL UTAH PROJECT CONSTRUCTION

Sec. 200. Short title and definitions for titles II–VI.

Sec. 201. Authorization of additional amounts for the Colorado River Storage Project.

Sec. 202. Bonneville Unit water development.

Sec. 203. Uinta Basin Replacement Project.

Sec. 204. Non-Federal contribution.

Sec. 205. Definite Plan Report and environmental compliance.

Sec. 206. Local development in lieu of irrigation and drainage.

Sec. 207. Water management improvement.

Sec. 208. Limitation on hydropower operations.

Sec. 209. Operating agreements.

Sec. 210. Jordan Aqueduct prepayment.

Sec. 211. Audit of Central Utah Project cost allocations.

Sec. 212. Surplus crops.

TITLE III—FISH, WILDLIFE, AND RECREATION MITIGATION AND CONSERVATION

Sec. 301. Utah Reclamation Mitigation and Conservation Commission.

Sec. 302. Increased project water capability.

Sec. 303. Stream flows.

Sec. 304. Fish, wildlife, and recreation projects identified or proposed in the 1988 Definite Plan Report for the Central Utah Project.

Sec. 305. Wildlife lands and improvements.

Sec. 306. Wetlands acquisition, rehabilitation, and enhancement.

Sec. 307. Fisheries acquisition, rehabilitation, and enhancement.

Sec. 308. Stabilization of high mountain lakes in the Uinta mountains.

Sec. 309. Stream access and riparian habitat development.

Sec. 310. Section 8 expenses.

Sec. 311. Jordan and Provo River Parkways and natural areas.

Sec. 312. Recreation.

Sec. 313. Fish and wildlife features in the Colorado River Storage Project.

Sec. 314. Concurrent mitigation appropriations.

Sec. 315. Fish, wildlife, and recreation schedule.

**TITLE IV—UTAH RECLAMATION MITIGATION AND CONSERVATION
ACCOUNT**

- Sec. 401. Findings and purpose.
- Sec. 402. Utah Reclamation Mitigation and Conservation Account.

TITLE V—UTE INDIAN RIGHTS SETTLEMENT

- Sec. 501. Findings.
- Sec. 502. Provisions for payment to the Ute Indian Tribe.
- Sec. 503. Tribal use of water.
- Sec. 504. Tribal farming operations.
- Sec. 505. Reservoirs, stream, habitat, and road improvements with respect to the Ute Indian Reservation.
- Sec. 506. Tribal development funds.
- Sec. 507. Waiver of claims.

**TITLE VI—ENDANGERED SPECIES ACT AND NATIONAL ENVIRONMENTAL
POLICY ACT****TITLE VII—LEADVILLE MINE DRAINAGE TUNNEL, COLORADO**

- Sec. 701. Authorization.
- Sec. 702. Costs nonreimbursable.
- Sec. 703. Operation and maintenance.
- Sec. 704. Appropriations authorized.
- Sec. 705. Limitation.
- Sec. 706. Design and operation notification.
- Sec. 707. Fish and wildlife restoration.
- Sec. 708. Water quality restoration.

**TITLE VIII—LAKE MEREDITH SALINITY CONTROL PROJECT, TEXAS AND
NEW MEXICO**

- Sec. 801. Authorization to construct and test.
- Sec. 802. Construction contract with the Canadian River Municipal Water Authority.
- Sec. 803. Project costs.
- Sec. 804. Construction and control.
- Sec. 805. Transfer of title.
- Sec. 806. Authorization.

TITLE IX—CEDAR BLUFF UNIT, KANSAS

- Sec. 901. Authorization.
- Sec. 902. Contract.
- Sec. 903. Contract.
- Sec. 904. Transfer of district headquarters.
- Sec. 905. Liability and indemnification.
- Sec. 906. Additional actions.

TITLE X—SOUTH DAKOTA WATER PLANNING STUDIES

- Sec. 1001. Authorization for South Dakota water planning studies.

TITLE XI—SALTON SEA RESEARCH PROJECT, CALIFORNIA

- Sec. 1101. Research project.

TITLE XII—AMENDMENT TO SABINE RIVER COMPACT

- Sec. 1201. Consent to amendment to Sabine River compact.
- Sec. 1202. Compact described.
- Sec. 1203. Amendment.

TITLE XIII—SALT-GILA AQUEDUCT, ARIZONA

- Sec. 1301. Designation.
- Sec. 1302. References.

TITLE XIV—VERMEJO PROJECT RELIEF, NEW MEXICO**TITLE XV—SAN LUIS VALLEY PROTECTION, COLORADO**

- Sec. 1501. Permit issuance prohibited.
- Sec. 1502. Judicial review.
- Sec. 1503. Costs.
- Sec. 1504. Disclaimers.

TITLE XVI—RECLAMATION WASTEWATER AND GROUND WATER STUDIES

- Sec. 1601. Short title.
- Sec. 1602. General authority.
- Sec. 1603. Appraisal investigations.
- Sec. 1604. Feasibility studies.
- Sec. 1605. Research and demonstration projects.
- Sec. 1606. Southern California comprehensive water reclamation and reuse study.
- Sec. 1607. San Jose area water reclamation and reuse program.
- Sec. 1608. Phoenix metropolitan water reclamation study and program.
- Sec. 1609. Tucson area water reclamation study.
- Sec. 1610. Lake Cheraw water reclamation and reuse study.
- Sec. 1611. San Francisco area water reclamation study.
- Sec. 1612. San Diego area water reclamation program.
- Sec. 1613. Los Angeles area water reclamation and reuse project.
- Sec. 1614. San Gabriel Basin demonstration project.
- Sec. 1615. Authorization of appropriations.
- Sec. 1616. Ground water study.
- Sec. 1617. Authorization of appropriations.

**TITLE XVII—IRRIGATION ON STANDING ROCK INDIAN RESERVATION,
NORTH DAKOTA**

- Sec. 1701. Irrigation on Standing Rock Indian Reservation.

TITLE XVIII—GRAND CANYON PROTECTION

- Sec. 1801. Short title.
- Sec. 1802. Protection of Grand Canyon National Park.
- Sec. 1803. Interim protection of Grand Canyon National Park.
- Sec. 1804. Glen Canyon Dam environmental impact statement; long-term operation of Glen Canyon Dam.
- Sec. 1805. Long-term monitoring.
- Sec. 1806. Rules of construction.
- Sec. 1807. Studies nonreimbursable.
- Sec. 1808. Authorization of appropriations.
- Sec. 1809. Replacement power.

TITLE XIX—MID-DAKOTA RURAL WATER SYSTEM

- Sec. 1901. Short title.
- Sec. 1902. Definitions.
- Sec. 1903. Federal assistance for rural water system.
- Sec. 1904. Federal assistance for wetland development and enhancement.
- Sec. 1905. Water conservation.
- Sec. 1906. Mitigation of fish and wildlife losses.
- Sec. 1907. Use of Pick-Sloan power.
- Sec. 1908. Rule of construction.
- Sec. 1909. Water rights.
- Sec. 1910. Use of government facilities.
- Sec. 1911. Authorization of appropriations.

TITLE XX—LAKE ANDES-WAGNER/MARTY II, SOUTH DAKOTA

- Sec. 2001. Short title.
- Sec. 2002. Demonstration program.
- Sec. 2003. Planning reports—environmental impact statements.
- Sec. 2004. Authorization of the Lake Andes-Wagner Unit and the Marty II Unit, South Dakota.
- Sec. 2005. Conditions.
- Sec. 2006. Indian employment.
- Sec. 2007. Federal reclamation laws govern.
- Sec. 2008. Cost sharing.
- Sec. 2009. Authorization of appropriations.
- Sec. 2010. Indian water rights.

**TITLE XXI—RIO GRANDE FLOODWAY, SAN ACACIA TO BOSQUE DEL
APACHE UNIT, NEW MEXICO**

- Sec. 2101. Clarification of cost-share requirements.

TITLE XXII—SUNNYSIDE VALLEY IRRIGATION DISTRICT, WASHINGTON

- Sec. 2201. Conveyance to Sunnyside Valley Irrigation District.

**TITLE XXIII—PLATORO RESERVOIR AND DAM, SAN LUIS VALLEY PROJECT,
COLORADO**

- Sec. 2301. Findings and declarations.

- Sec. 2302. Transfer of operation and maintenance responsibility of Platoro Reservoir.
 Sec. 2303. Definitions.

TITLE XXIV—REDWOOD COUNTY WATER DISTRICT, CALIFORNIA

- Sec. 2401. Sale of Bureau of Reclamation loans.
 Sec. 2402. Savings provisions.
 Sec. 2403. Fees and expenses of program.
 Sec. 2404. Termination of authority.

TITLE XXV—UNITED WATER CONSERVATION DISTRICT, CALIFORNIA

- Sec. 2501. Sale of the Freeman Diversion Improvement Project loan.
 Sec. 2502. Termination and conveyance of rights.
 Sec. 2503. Termination of authority.

TITLE XXVI—HIGH PLAINS GROUNDWATER PROGRAM

- Sec. 2601. High Plains States Groundwater Demonstration Program Act.

TITLE XXVII—MONTANA IRRIGATION PROJECTS

- Sec. 2701. Pick-Sloan project pumping power.

TITLE XXVIII—RECLAMATION RECREATION MANAGEMENT ACT

- Sec. 2801. Short title.
 Sec. 2802. Findings.
 Sec. 2803. Definitions.
 Sec. 2804. Amendments to the Federal Water Project Recreation Act.
 Sec. 2805. Management of reclamation lands.
 Sec. 2806. Protection of authorized purposes of reclamation projects.

TITLE XXIX—SAN JUAN SUBURBAN WATER DISTRICT, CENTRAL VALLEY PROJECT, CALIFORNIA

- Sec. 2901. Repayment of water pumps, San Juan Suburban Water District, Central Valley Project, California.

TITLE XXX—WESTERN WATER POLICY REVIEW

- Sec. 3001. Short title.
 Sec. 3002. Congressional findings.
 Sec. 3003. Presidential review.
 Sec. 3004. The Advisory Commission.
 Sec. 3005. Duties of the Commission.
 Sec. 3006. Representatives.
 Sec. 3007. Powers of the Commission.
 Sec. 3008. Powers and duties of the Chairman.
 Sec. 3009. Other Federal agencies.
 Sec. 3010. Appropriations.

TITLE XXXI—MOUNTAIN PARK MASTER CONSERVANCY DISTRICT, OKLAHOMA

- Sec. 3101. Payment by Mountain Park Master Conservancy District.
 Sec. 3102. Reschedule of repayment obligation.

**TITLE XXXII—SOUTH DAKOTA PRESERVATION AND RESTORATION TRUST
 Subpart A—Biological Diversity Trust**

- Sec. 3201. South Dakota biological diversity trust.

Subpart B—Wetland Habitat Restoration Program

- Sec. 3202. Definitions.
 Sec. 3203. Wetland trust.
 Sec. 3204. Authorization of appropriations.

TITLE XXXIII—ELEPHANT BUTTE IRRIGATION DISTRICT, NEW MEXICO

- Sec. 3301. Transfer.
 Sec. 3302. Limitation.
 Sec. 3303. Effect of Act on other laws.

TITLE XXXIV—CENTRAL VALLEY PROJECT IMPROVEMENT ACT

- Sec. 3401. Short title.
 Sec. 3402. Purposes.

- Sec. 3403. Definitions.
- Sec. 3404. Limitation on contracting and contract reform.
- Sec. 3405. Water transfers, improved water management and conservation.
- Sec. 3406. Fish, wildlife and habitat restoration.
- Sec. 3407. Restoration fund.
- Sec. 3408. Additional authorities.
- Sec. 3409. Environmental review.
- Sec. 3410. Authorization of appropriations.
- Sec. 3411. Compliance with State water law and coordinated operations agreement.
- Sec. 3412. Extension of the Tehama-Colusa Canal service area.

**TITLE XXXV—THREE AFFILIATED TRIBES AND STANDING ROCK SIOUX
TRIBE EQUITABLE COMPENSATION PROGRAM, NORTH DAKOTA**

- Sec. 3501. Short title.
- Sec. 3502. Definitions.
- Sec. 3503. Findings; Declarations.
- Sec. 3504. Funds.
- Sec. 3505. Eligibility for other services not affected.
- Sec. 3506. Per capita payments prohibited.
- Sec. 3507. Standing Rock Sioux Indian Reservation.
- Sec. 3508. Transfer of lands.
- Sec. 3509. Transfer of lands at the Ohae Dam and Lake project.
- Sec. 3510. Conforming amendment.
- Sec. 3511. Authorization.

**TITLE XXXVI—SONOMA BAYLANDS WETLAND DEMONSTRATION PROJECT,
CALIFORNIA**

- Sec. 3601. Sonoma Baylands wetland demonstration project.

**TITLE XXXVII—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT,
ARIZONA**

- Sec. 3701. Short title.
- Sec. 3702. Congressional findings.
- Sec. 3703. Definitions.
- Sec. 3704. Water.
- Sec. 3705. Ratification and confirmation of contracts.
- Sec. 3706. Water delivery contract amendments; water lease, water withdrawal.
- Sec. 3707. Construction and rehabilitation; trust fund.
- Sec. 3708. Satisfaction of claims.
- Sec. 3709. Environmental compliance.
- Sec. 3710. Miscellaneous provisions.
- Sec. 3711. Effective date.

**TITLE XXXVIII—SAN FRANCISCO WATER RECLAMATION AND REUSE
DEMONSTRATION PROJECT ACT**

TITLE XXXIX—SIPHON REPAIR AND REPLACEMENT

TITLE XL—NATIONAL HISTORIC PRESERVATION ACT AMENDMENTS

- Sec. 4001. Short title.
- Sec. 4002. Policy.
- Sec. 4003. Review of threats to properties.
- Sec. 4004. State historic preservation programs.
- Sec. 4005. Certification of local governments.
- Sec. 4006. Tribal historic preservation programs.
- Sec. 4007. Matching grants.
- Sec. 4008. Education and training.
- Sec. 4009. Requirements for awarding of grants.
- Sec. 4010. Apportionment of grant funds.
- Sec. 4011. Extension of authorization for historic preservation fund.
- Sec. 4012. Federal agency historic preservation programs.
- Sec. 4013. Lease or exchange of Federal housing properties.
- Sec. 4014. Professional standards.
- Sec. 4015. Interstate and international traffic in antiquities.
- Sec. 4016. Membership of advisory council on historic preservation.
- Sec. 4017. Authorization of appropriations for advisory council on historic preservation.
- Sec. 4018. Advisory council regulations.
- Sec. 4019. Definitions.
- Sec. 4020. Access to information.

Sec. 4021. Recommendations.

Sec. 4022. National center for preservation technology and training.

Sec. 4023. Requirement for specific authorization for projects under the Historic Sites, Buildings, and Antiquities Act.

TITLE I—BUFFALO BILL DAM AND RESERVOIR, WYOMING

SEC. 101. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

Title I of Public Law 97-293 (96 Stat. 1261) is amended as follows:

(a) In the second sentence of section 101, by striking “replacing the existing Shoshone Powerplant,” and inserting “constructing power generating facilities with a total installed capacity of 25.5 megawatts,”.

(b) In section 102, amend the heading to read “recreational facilities, conservation, and fish and wildlife”, and add at the end “The construction of recreational facilities in excess of the amount required to replace or relocate existing facilities is authorized, and the costs of such construction shall be borne equally by the United States and the State of Wyoming pursuant to the Federal Water Project Recreation Act.”.

(c) In section 106(a), strike “for construction of the Buffalo Bill Dam and Reservoir modifications the sum of \$106,700,000 (October 1982 price levels)” and insert “for the Federal share of the construction of the Buffalo Bill Dam and Reservoir modifications and recreational facilities the sum of \$80,000,000 (October 1988 price levels)”, and strike “modifications” and all that follows and insert “modifications.” in lieu thereof.

(d) There are authorized to be appropriated such sums as may be required due to increased costs of construction attributable to delays in enactment of any additional authorization of appropriations for the construction of the Buffalo Bill Dam and Reservoir modifications and recreational facilities: *Provided*, That such additional sums shall be nonreimbursable and nonreturnable under the Federal reclamation laws.

TITLE II—CENTRAL UTAH PROJECT CONSTRUCTION

SEC. 200. SHORT TITLE AND DEFINITIONS FOR TITLES II-VI.

(a) **SHORT TITLE.**—Titles II through VI of this Act may be cited as the “Central Utah Project Completion Act”.

(b) **DEFINITIONS.**—For the purposes of titles II-VI of this Act:

(1) The term “Bureau” means the Bureau of Reclamation of the Department of the Interior.

(2) The term “Commission” means the Utah Reclamation Mitigation and Conservation Commission established by section 301 of this Act.

(3) The term “conservation measure(s)” means actions taken to improve the efficiency of the storage, conveyance, distribution, or use of water, exclusive of dams, reservoirs, or wells.

(4) The term “1988 Definite Plan Report” means the May 1988 Draft Supplement to the Definite Plan Report for the Bonneville Unit of the Central Utah Project.

(5) The term “District” means the Central Utah Water Conservancy District.

Central
Utah Project
Completion Act.

(6) The term "fish and wildlife resources" means all birds, fishes, mammals, and all other classes of wild animals and all types of habitat upon which such fish and wildlife depend.

(7) The term "Interagency Biological Assessment Team" means the team comprised of representatives from the United States Fish and Wildlife Service, the United States Forest Service, the Bureau of Reclamation, the Utah Division of Wildlife Resources, and the District.

(8) The term "administrative expenses", as used in section 301(i) of this Act, means all expenses necessary for the Commission to administer its duties other than the cost of the contracts or other transactions provided for in section 301(f)(3) for the implementation by public natural resource management agencies of the mitigation and conservation projects and features authorized in this Act. Such administrative expenses include but are not limited to the costs associated with the Commission's planning, reporting, and public involvement activities, as well as the salaries, travel expenses, office equipment, and other such general administrative expenses authorized in this Act.

(9) The term "petitioner(s)" means any person or entity that petitions the District for an allotment of water pursuant to the Utah Water Conservancy Act, Utah Code Ann. Sec. 17A-2-1401 et. seq.

(10) The term "project" means the Central Utah Project.

(11) The term "public involvement" means to request comment on the scope of and, subsequently, on drafts of proposed actions or plans, affirmatively soliciting comments, in writing or at public hearings, from those persons, agencies, or organizations who may be interested or affected.

(12) The term "Secretary" means the Secretary of the Interior.

(13) The term "section 8" means section 8 of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. 620g).

(14) The term "State" means the State of Utah, its political subdivisions, or its designee.

(15) The term "Stream Flow Agreement" means the agreement entered into by the United States through the Secretary of the Interior, the State of Utah, and the Central Utah Water Conservancy District, dated February 27, 1980, as modified by the amendment to such agreement, dated September 13, 1990.

SEC. 201. AUTHORIZATION OF ADDITIONAL AMOUNTS FOR THE COLORADO RIVER STORAGE PROJECT.

(a)(1) INCREASE IN CRSP AUTHORIZATION.—In order to provide for the completion of the Central Utah Project and other features described in this Act, the amount which section 12 of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. 620k), authorizes to be appropriated, which was increased by the Act of August 10, 1972 (86 Stat. 525; 43 U.S.C. 620k note) and the Act of October 31, 1988 (102 Stat. 2826), is hereby further increased by \$924,206,000 (January 1991) plus or minus such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indexes applicable to the type of construction involved: *Provided, however,* That of the amounts authorized to be appropriated by this section, the Secretary

is not authorized to obligate or expend amounts in excess of \$214,352,000 for the features identified in the Report of the Senate Committee on Energy and Natural Resources accompanying the bill H.R. 429. This additional sum shall be available solely for design, engineering, and construction of the facilities identified in title II of this Act and for the planning and implementation of the fish and wildlife and recreation mitigation and conservation projects and studies authorized in titles III and IV of this Act, and for the Ute Indian Settlement authorized in title V of this Act.

(2) APPLICATION OF INSPECTOR GENERAL RECOMMENDATIONS.—Notwithstanding any other provision of law to the contrary, the Secretary shall implement all the recommendations contained in the report entitled “Review of the Financial Management of the Colorado River Storage Project, Bureau of Reclamation (Report No. 88-45, February 1988)”, prepared by the Inspector General of the Department of the Interior, with respect to the funds authorized to be appropriated in this section.

(b) UTAH RECLAMATION PROJECTS AND FEATURES NOT TO BE FUNDED.—Notwithstanding the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. 105), the Act of August 10, 1972 (86 Stat. 525; 43 U.S.C. 620k note), the Act of October 19, 1980 (94 Stat. 2239; 43 U.S.C. 620), and the Act of October 31, 1988 (102 Stat. 2826), funds may not be made available, obligated, or expended for the following Utah reclamation projects and features:

(1) Fish and wildlife features:

- (A) The dam in Bjorkman Hollow.
- (B) The Deep Creek pumping plant.
- (C) The North Fork pumping plant.

(2) Water development projects and features:

- (A) Mosida pumping plant, canals, and laterals.
- (B) Draining of Benjamin Slough.
- (C) Diking of Goshen or Provo Bays in Utah Lake.
- (D) Ute Indian Unit.
- (E) Leland Bench development.
- (F) All features of the Bonneville Unit, Central Utah

Project not proposed and described in the 1988 Definite Plan Report.

Counties in which the projects and features described in this subsection were proposed to be located may participate in the local development projects provided for in section 206.

(c) TERMINATION OF AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding any provision of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. 620k), the Act of September 2, 1964 (78 Stat. 852), the Act of September 30, 1968 (82 Stat. 885), the Act of August 10, 1972 (86 Stat. 525; 43 U.S.C. 620k note), and the Act of October 31, 1988 (102 Stat. 2826) to the contrary, the authorization of appropriations for construction of any Colorado River Storage Project participating project located in the State of Utah shall terminate five years after the date of enactment of this Act unless: (1) the Secretary executes a cost-sharing agreement with the District for construction of such project, and (2) the Secretary has requested, or the Congress has appropriated, construction funds for such project.

(d) USE OF APPROPRIATED FUNDS.—Funds authorized pursuant to this Act shall be appropriated to the Secretary and such appropriations shall be made immediately available in their entirety

43 USC 620k
note.

to the District and the Commission as provided for pursuant to the provisions of this Act.

(e) **SECRETARIAL RESPONSIBILITY.**—The Secretary is responsible for carrying out the responsibilities as specifically identified in this Act and may not delegate his responsibilities under this Act to the Bureau of Reclamation. The District at its sole option may use the services of the Bureau of Reclamation on any project features.

SEC. 202. BONNEVILLE UNIT WATER DEVELOPMENT.

(a) Of the amounts authorized to be appropriated in section 201, the following amounts shall be available only for the following features of the Bonneville Unit of the Central Utah Project:

(1) **IRRIGATION AND DRAINAGE SYSTEM.**—(A) \$150,000,000 for the construction of an enclosed pipeline primary water conveyance system from Spanish Fork Canyon to Sevier Bridge Reservoir for the purpose of supplying new and supplemental irrigation water supplies to Utah, Juab, Millard, Sanpete, Sevier, Garfield, and Piute Counties. Construction of the facilities specified in the previous sentence shall be undertaken by the District as specified in subparagraph (D) of this paragraph. No funds are authorized to be appropriated for construction of the facilities identified in this paragraph, except as provided for in subparagraph (D) of this paragraph.

(B) The authorization to construct the features provided for in subparagraph (A) shall expire if no federally appropriated funds to construct such features have been obligated or expended by the District in accordance with this Act, unless the Secretary determines the District has complied with sections 202, 204, and 205, within five years from the date of its enactment, or such longer time as necessitated for—

(i) completion, after the exercise of due diligence, of compliance measures outlined in a biological opinion issued pursuant to the Endangered Species Act (16 U.S.C. 1533 et seq.) for any species that is or may be listed as threatened or endangered under such Act: *Provided, however,* That such extension of time for the expiration of authorization shall not exceed twelve months beyond the five-year period provided in subparagraph (B) of this paragraph;

(ii) judicial review of a completed final environmental impact statement for such features if such review is initiated by parties other than the District, the State, or petitioners of project water; or

(iii) a judicial challenge of the Secretary's failure to make a determination of compliance under this subparagraph.

Provided, however, That in the event that construction is not initiated on the features provided for in subparagraph (A), \$125,000,000 shall remain authorized pursuant to the provisions of this Act applicable to subparagraph (A) for the construction of alternate features to deliver irrigation water to lands in the Utah Lake drainage basin, exclusive of the features identified in section 201(b).

(C) **REQUIREMENT FOR BINDING CONTRACTS.**—Amounts authorized to carry out subparagraph (A) may not be obligated or expended, and may not be borrowed against, until binding contracts for the purchase for the purpose of agricultural irrigation of at least 90 percent of the irrigation water to be delivered

from the features of the Central Utah Project described in subparagraph (A) have been executed.

(D) In lieu of construction by the Secretary, the Central Utah Project and features specified in section 202(a)(1) shall be constructed by the District under the program guidelines authorized by Drainage Facilities and Minor Construction Act (Act of June 13, 1956, 70 Stat. 274, 43 U.S.C. 505). The sixty-day congressional notification of the Secretary's intent to use the Drainage Facilities and Minor Construction Act program is hereby waived with respect to construction of the features authorized in section 202(a)(1). Any such feature shall be operated, maintained, and repaired by the District in accordance with repayment contracts and operation and maintenance agreements previously entered into between the Secretary and the District. The United States shall not be liable for damages resulting from the design, construction, operation, maintenance, and replacement by the District of the features specified in section 202(a)(1).

(2) CONJUNCTIVE USE OF SURFACE AND GROUND WATER.—\$10,000,000 for a feasibility study and development, with public involvement, by the Utah Division of Water Resources of systems to allow ground water recharge, management, and the conjunctive use of surface water resources with ground water resources in Salt Lake, Utah, Davis, Wasatch, and Weber Counties, Utah.

(3) WASATCH COUNTY WATER EFFICIENCY PROJECT.—(A) \$500,000 for the District to conduct, within two years from the date of enactment of this Act, a feasibility study with public involvement, of efficiency improvements in the management, delivery and treatment of water in Wasatch County, without interference with downstream water rights. Such feasibility study shall be developed after consultation with Wasatch County and the Commission, or the Utah State Division of Wildlife Resources if the Commission has not been established, and shall identify the features of the Wasatch County Water Efficiency Project.

(B) \$10,000,000 for construction of the Wasatch County Water Efficiency Project, in addition to funds authorized in section 207(e)(2) for related purposes.

(C) The feasibility study and the Project construction authorization shall be subject to the non-Federal contribution requirements of section 204.

(D) The project construction authorization provided in subparagraph (B) shall expire if no federally appropriated funds to construct such features have been obligated or expended by the District in accordance with this Act within five years from the date of completion of feasibility studies, or such longer times as necessitated for—

(i) completion, after the exercise of due diligence, of compliance measures outlined in a biological opinion issued pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) for any species that is or may be listed as threatened or endangered under such Act, except that such extension of time for the expiration of authorization shall not exceed twelve months beyond the five-year period provided in this subparagraph; or

(ii) judicial review of environmental studies prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if such review was initiated by parties other than the District, the State, or petitioners of project water.

(E) Amounts authorized to carry out subparagraph (B) may not be obligated or expended, and may not be borrowed against, until binding contracts for the purchase of at least 90 percent of the supplemental irrigation project water to be delivered from the features constructed under subparagraph (B) have been executed.

(F) In lieu of construction by the Secretary, the Central Utah Project and features specified in section 202(a)(3) shall be constructed by the District under the program guidelines authorized by the Drainage Facilities and Minor Construction Act (Act of June 13, 1956, 70 Stat. 274; 43 U.S.C. 505). The sixty-day congressional notification of the Secretary's intent to use the Drainage Facilities and Minor Construction Act program is hereby waived with respect to construction of the features authorized in section 202(a)(3). Any such feature may be operated, maintained, and repaired by the District in accordance with repayment contracts and operation and maintenance agreements previously entered into between the Secretary and the District. The United States shall not be liable for damages resulting from the design, construction, operation, maintenance, and replacement by the District of the features specified in section 202(a)(3).

(4) UTAH LAKE SALINITY CONTROL.—\$1,000,000 for the District to conduct, with public involvement, a feasibility study to reduce the salinity of Utah Lake.

(5) PROVO RIVER STUDIES.—(A) \$2,000,000 for the District to conduct, with public involvement:

(i) a hydrologic study that includes a hydrologic model analysis of the Provo River Basin with all tributaries, water imports and exports, and diversions, an analysis of expected flows and storage under varying water conditions, and a comparison of steady State conditions with proposed demands being placed on the river and affected water resources, including historical diversions, decrees, and water rights, and

(ii) a feasibility study of direct delivery of Colorado River Basin water from the Strawberry Reservoir or elsewhere in the Strawberry Collection System to the Provo River Basin, including the Wallsburg Tunnel and other possible importation or exchange options. The studies shall also evaluate the potential for changes in existing importation patterns and quantities of water from the Weber and Duchesne River Basins, and shall describe the economic and environmental consequences of each alternative identified. In addition to funds appropriated after the enactment of this Act, the Secretary is authorized to utilize section 8 funds which may be available from fiscal year 1993 appropriations for the Central Utah Project for the purposes of carrying out the studies described in this paragraph.

(A) (B) The cost of the studies provided for in subparagraph shall be treated as an expense under section 8: *Provided,*

however, That the cost of such study shall be reallocated proportionate with project purposes in the event any conveyance alternative is subsequently authorized and constructed. Within its available funds, the United States Geological Survey is directed to consult with the District in the preparation of the study identified in paragraph (5)(A)(i).

(6) COMPLETION OF DIAMOND FORK SYSTEM.—(A) Of the amounts authorized to be appropriated under section 201, \$69,000,000 shall be available to complete construction of the Diamond Fork System.

(B) In lieu of construction by the Secretary, the facilities specified in paragraph (A) shall be constructed by the District under the program guidelines authorized by Drainage Facilities and Minor Construction Act (Act of June 13, 1956, 70 Stat. 274, 43 U.S.C. 505). The sixty-day congressional notification of the Secretary's intent to use the Drainage Facilities and Minor Construction Act program is hereby waived with respect to construction of the features authorized in section 202(a)(6). Any such feature may be operated, maintained, and repaired by the District in accordance with repayment contracts and operation and maintenance agreements previously entered into between the Secretary and the District. The United States shall not be liable for damages resulting from the design, construction, operation, maintenance, and replacement by the District of the features specified in subparagraph (A) of this paragraph.

(b) STRAWBERRY WATER USERS ASSOCIATION.—(1) In exchange for, and as a precondition to approval of the Strawberry Water Users Association's petition for Bonneville Unit water, the Secretary, after consultation with the Secretary of Agriculture, shall impose conditions on such approval so as to ensure that the Strawberry Water Users Association shall manage and develop the lands referred to in subparagraph 4(e)(1)(A) of the Act of October 31, 1988 (102 Stat. 2826, 2828) in a manner compatible with the management and improvement of adjacent Federal lands for wildlife purposes, natural values, and recreation.

(2) The Secretary of Agriculture and the Secretary shall not permit commercial or other development of Federal lands within sections 2 and 13, T. 3 S., R. 12 W., and sections 7 and 8, T. 3 S., R. 11 W., Uintah Special Meridian. Such Federal lands shall be rehabilitated pursuant to subsection 4(f) of the Act of October 31, 1988 (102 Stat. 2826, 2828) and hereafter managed and improved for wildlife purposes, natural values, and recreation consistent with the Uinta National Forest Land and Natural Resource Management Plan. This restriction shall not apply to the 95 acres referred to in the first sentence of subparagraph 4(e)(1)(A) of the Act of October 31, 1988 (102 Stat. 2826, 2828), valid existing rights, or to uses of such Federal lands by the Secretary of Agriculture or the Secretary for public purposes.

(c) The Secretary is authorized to utilize any unexpended budget authority provided in title II and such funds as may be provided by the Commission for fish and wildlife purposes, to provide 65 percent Federal share pursuant to section 204, of engineering, design, and construction of Hatchtown dam in Garfield County and associated facilities to deliver supplemental project water from Hatchtown dam. The District shall establish a viable minimum conservation pool in Hatchtown dam and shall ensure maintenance

of viable instream flows in the Sevier River between Hatchtown dam and the Piute dam with the concurrence of the Commission and in consultation with the Division of Wildlife Resources of the State of Utah. The District shall comply with the provisions of section 202(a)(1) with respect to the features to be provided for in this subsection.

SEC. 203. UINTA BASIN REPLACEMENT PROJECT.

(a) **IN GENERAL.**—Of the amounts authorized to be appropriated by section 201, \$30,538,000 shall be available only to increase efficiency, enhance beneficial uses, and achieve greater water conservation within the Uinta Basin, as follows:

(1) \$13,582,000 for the construction of the Pigeon Water Reservoir, together with an enclosed pipeline conveyance system to divert water from Lake Fork River to Pigeon Water Reservoir and Sandwash Reservoir.

(2) \$2,987,000 for the construction of McGuire Draw Reservoir.

(3) \$7,669,000 for the construction of Clay Basin Reservoir.

(4) \$4,000,000 for the rehabilitation of Farnsworth Canal.

(5) \$2,300,000 for the construction of permanent diversion facilities identified by the Commission on the Duchesne and Strawberry Rivers, the designs of which shall be approved by the Federal and State fish and wildlife agencies. The amount identified in paragraph (5) shall be treated as an expense under section 8.

(b) **EXPIRATION OF AUTHORIZATION.**—The authorization to construct any of the features provided for in paragraphs (1) through (5) of subsection (a)—

(1) shall expire if no federally appropriated funds for such features have been obligated or expended by the District in accordance with this Act within five years from the date of completion of feasibility studies, or such longer time as necessitated for—

(A) completion, after the exercise of due diligence, of compliance measures outlined in a biological opinion issued pursuant to the Endangered Species Act (16 U.S.C. 1533 et seq.) for any species that is or may be listed as threatened or endangered under such Act: *Provided, however,* That such extension of time for the expiration of authorization shall not exceed 12 months beyond the five-year period provided in this paragraph; or

(B) judicial review of environmental studies prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if such review was initiated by parties other than the District, the State, or petitioners of project water; and

(2) shall expire if the Secretary determines that such feature is not feasible.

(c) **REQUIREMENT FOR BINDING CONTRACTS.**—Amounts authorized to carry out subsection (a), paragraphs (1) through (4) may not be obligated or expended, and may not be borrowed against, until binding contracts for the purchase of at least 90 percent of the supplemental irrigation water to be delivered from the features of the Central Utah Project described in subsection (a), paragraphs (1) through (4) have been executed.

(d) **NON-FEDERAL OPTION.**—In lieu of construction by the Secretary, the features described in subsection (a), paragraphs (1) through (5) shall be constructed by the District under the program guidelines authorized by the Drainage Facilities and Minor Construction Act (Act of June 13, 1956, 70 Stat. 274, 43 U.S.C. 505). The sixty-day congressional notification of the Secretary's intent to use the Drainage Facilities and Minor Construction Act program is hereby waived with respect to construction of the features authorized in section 203(a). Any such feature may be operated, maintained, and repaired by the District in accordance with repayment contracts and operation and maintenance agreements previously entered into between the Secretary and the District. The United States shall not be liable for damages resulting from the design, construction, operation, maintenance, and replacement by the District of the features specified in subsection (a) of this section.

(e) **WATER RIGHTS.**—To make water rights available for any of the features constructed as authorized in this section, the Bureau shall convey to the District in accordance with State law the water rights evidenced by Water Right No. 43-3825 (Application No. A36642) and Water Right No. 43-3827 (Application No. A36644).

(f) **UINTAH INDIAN IRRIGATION PROJECT.**—(1) Notwithstanding any other provision of law, the Secretary is authorized and directed to enter into a contract or cooperative agreement with, or make a grant to the Uintah Indian Irrigation Project Operation and Maintenance Company, or any other organization representing the water users within the Uintah Indian Irrigation Project area, to enable such organization to—

Contracts.

(A) administer the Uintah Indian Irrigation Project, or part thereof, and

(B) operate, maintain, rehabilitate, and construct all or some of the irrigation project facilities using the same administrative authority and management procedures as used by water user organizations formed under State laws who administer, operate, and maintain irrigation projects.

(2) Title to Uintah Indian Irrigation Project rights-of-way and facilities shall remain in the United States. The Secretary shall retain any trust responsibilities to the Uintah Indian Irrigation Project.

(3) Notwithstanding any other provision of law, the Secretary shall use funds received from assessments, carriage agreements, leases, and all other additional sources related to the Uintah Indian Irrigation Project exclusively for Uintah Indian Irrigation Project administration, operation, maintenance, rehabilitation, and construction where appropriate. Upon receipt, the Secretary shall deposit such funds in an account in the Treasury of the United States. Amounts in the account not currently needed shall earn interest at the rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding obligations of the United States with remaining periods to maturity comparable to the period for which such funds are not currently needed. Amounts in the account shall be available without further authorization or appropriation by Congress. Such amounts shall be treated as private funds to be held in trust for landowners of the irrigation project and shall not be treated as public or appropriated funds.

(4) All noncontract costs, direct and indirect, required to administer the Uintah Indian Irrigation Project shall be nonreimbursable and paid for by the Secretary as part of his trust responsibilities, beginning on the date of enactment of this Act. Such costs shall include (but not be limited to) the noncontract cost positions of project manager or engineer and two support staff. Such costs shall be added to the funding of the Uintah and Ouray Agency of the Bureau of Indian Affairs as a line item.

(5) The Secretary is authorized to sell, lease, or otherwise make available the use of irrigation project equipment to a water user organization which is under obligation to the Secretary to administer, operate, and maintain the Uintah Indian Irrigation Project or part thereof.

(6) The Secretary is authorized to lease or otherwise make available the use of irrigation project facilities to a water user organization which is under obligation to the Secretary to administer, operate, and maintain the Uintah Indian Irrigation Project or part thereof.

(g) BRUSH CREEK AND JENSEN UNIT.—(1) The Secretary is authorized to enter into Amendatory Contract Number 6-05-01-00143, as last revised on September 19, 1988, between the United States and the Uintah Water Conservancy District, which provides, among other things, for part of the municipal and industrial water obligation now the responsibility of the Uintah Water Conservancy District to be retained by the United States with a corresponding part of the water supply to be controlled and marketed by the United States. Such water shall be marketed and used in conformance with State law.

(2) The Secretary, through the Bureau, shall—

(A) establish a conservation pool of 4,000 acre-feet in Red Fleet Reservoir for the purpose of enhancing associated fishery and recreational opportunities and for such other purposes as may be recommended by the Commission in consultation with the Utah Division of Wildlife Resources, United States Fish and Wildlife Service, and the Utah Division of Parks and Recreation; and

(B) enter into an agreement with the Utah Division of Parks and Recreation for the management and operation of Red Fleet recreational facilities.

Contracts.

SEC. 204. NON-FEDERAL CONTRIBUTION.

The non-Federal share of the cost for the design, engineering, and construction of the Central Utah Project features authorized by sections 202 and 203 shall be 35 percent of the total reimbursable costs and shall be paid concurrently with the Federal share, except that for the facilities specified in 202(a)(6), the cost-share shall be 35 percent of the costs allocated to irrigation beyond the ability of irrigators to repay. The non-Federal share of the cost for studies required by sections 202 and 203, other than the study required by section 202(a)(5), shall be 50 percent and shall be paid concurrently with the Federal share. Within one hundred and twenty days of enactment of this Act, the Secretary shall execute a cost sharing agreement which binds the District to provide annually such sums as may be required to satisfy the non-Federal share of the separate features authorized and approved for construction pursuant to this Act. The Secretary is not authorized to broaden the scope of the cost sharing agreement beyond assuring that the

non-Federal interests will satisfy the cost sharing provisions as set forth in this section. Any feature to which this section applies shall not be initiated until after the non-Federal interests enter into a cost sharing agreement with the Secretary to provide the share required by this section. The District may commence any study authorized herein prior to entering into a cost sharing agreement, and upon execution of a cost sharing agreement the Secretary shall reimburse the District an amount equal to the Federal share of the funds expended by the District.

SEC. 205. DEFINITE PLAN REPORT AND ENVIRONMENTAL COMPLIANCE.

(a) **DEFINITE PLAN REPORT AND FEASIBILITY STUDIES.**—Except for amounts required for compliance with applicable environmental laws and the purposes of this subsection, federally appropriated funds may not be obligated or expended by the District for construction of the features authorized in section 202(a)(1) or 203 until—

(1) the District completes—

(A) a Definite Plan Report for the system authorized in section 202(a)(1), or

(B) an analysis to determine the feasibility of the separate features described in section 203(a), paragraphs (1) through (4), or subsection (f);

(2) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) have been satisfied with respect to the particular system; and

(3) a plan has been developed with and approved by the United States Fish and Wildlife Service to prevent any harmful contamination of waters due to concentrations of selenium or other such toxicants, if the Service determines that development of the particular system may result in such contamination.

(b) **COMPLIANCE WITH ENVIRONMENTAL LAWS AND THE TERMS OF THIS ACT.**—Notwithstanding any other provision of this Act, Federal funds authorized under this title may not be provided to the District until the District enters into a binding agreement with the Secretary to be considered a “Federal Agency” for purposes of compliance with all Federal fish, wildlife, recreation, and environmental laws with respect to the use of such funds, and to comply with this Act. The Secretary shall execute such binding agreement within one hundred and twenty days of enactment of this Act.

Contracts.

(c) **INITIATION OF REPAYMENT.**—For purposes of repayment of costs obligated and expended prior to the date of enactment of this Act, the Definite Plan Report shall be considered as being filed and approved by the Secretary, and repayment of such costs shall be initiated by the Secretary of Energy at the earliest possible date. All the costs allocated to irrigation and associated with construction of the Strawberry Collection System, a component of the Bonneville Unit, obligated prior to the date of enactment of this Act shall be included by the Secretary of Energy in the costs specified in this subsection.

(d) Of the amounts authorized in section 201, the Secretary is directed to make sums available to the District as required by the District, for the completion of the plans, studies, and analyses required by this section pursuant to the cost sharing provisions of section 204.

(e) **CONTENT AND APPROVAL OF THE DEFINITE PLAN REPORT.**—The Definite Plan Report required under this section shall include

economic analyses consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (March 10, 1983). The Secretary may withhold approval of the Definite Plan Report only on the basis of the inadequacy of the document, and specifically not on the basis of the findings of its economic analyses.

SEC. 206. LOCAL DEVELOPMENT IN LIEU OF IRRIGATION AND DRAINAGE.

(a) **OPTIONAL REBATE TO COUNTIES.**—(1) After two years from the date of enactment of this Act, the District shall, at the option of an eligible county as provided in paragraph (2), rebate to such county all of the ad valorem tax contributions paid by such county to the District, with interest but less the value of any benefits received by such county and less the administrative expenses incurred by the District to that date.

(2) Counties eligible to receive the rebate provided for in paragraph (1) include any county within the District, except for Salt Lake County and Utah County, in which the construction of Central Utah Project water storage or delivery features authorized in this Act has not commenced and—

(A) in which there are no binding contracts as required under section 202(1)(C); or

(B) in which the authorization for the project or feature was repealed pursuant to section 201(b) or expired pursuant to section 202(1)(B) of this Act.

Grants.

(b) **LOCAL DEVELOPMENT OPTION.**—(1) Upon the request of any eligible county that elects not to participate in the project as provided in subsection (a), the Secretary shall provide as a grant to such county an amount that, when matched with the rebate received by such county, shall constitute 65 percent of the cost of implementation of measures identified in paragraph (2).

(2)(A) The grant provided for in this subsection shall be available for the following purposes:

(i) Potable water distribution and treatment.

(ii) Wastewater collection and treatment.

(iii) Agricultural water management.

(iv) Other public infrastructure improvements as may be approved by the Secretary.

(B) Funds made available under this subsection may not be used for—

(i) draining of wetlands;

(ii) dredging of natural water courses; and

(iii) planning or constructing water impoundments of greater than five thousand acre-feet, except for the proposed Hatch Town Dam on the Sevier River in southern Garfield County, Utah.

(C) All Federal environmental laws shall be applicable to any projects or features developed pursuant to this section.

(3) Of the amounts authorized to be appropriated by section 201, not more than \$40,000,000 may be available for the purposes of this subsection.

SEC. 207. WATER MANAGEMENT IMPROVEMENT.

(a) **PURPOSES.**—The purposes of this section are, through such means as are cost-effective and environmentally sound, to—

(1) encourage the conservation and wise use of water;

(2) reduce the probability and duration of periods necessitating extraordinary curtailment of water use;

(3) achieve beneficial reductions in water use and system costs;

(4) prevent or eliminate unnecessary depletion of waters in order to assist in the improvement and maintenance of water quantity, quality, and streamflow conditions necessary to augment water supplies and support fish, wildlife, recreation, and other public benefits;

(5) make prudent and efficient use of currently available water prior to any importation of Bear River water into Salt Lake County, Utah; and

(6) provide a systematic approach to the accomplishment of these purposes and an objective basis for measuring their achievement.

(b) **WATER MANAGEMENT IMPROVEMENT PLAN.**—The District, after consultation with the State and with each petitioner of project water, shall prepare and maintain a water management improvement plan. The first plan shall be submitted to the Secretary by January 1, 1995. Every three years thereafter the District shall prepare and submit a supplement to this plan. The Secretary shall either approve or disapprove such plan or supplement thereto within six months of its submission.

(1) **ELEMENTS.**—The plan shall include the following elements:

(A) A water conservation goal, consisting of the greater of the following two amounts for each petitioner of project water:

(i) 25 percent of each petitioner's projected increase in annual water deliveries between the years 1990 and 2000, or such later ten-year period as the District may find useful for planning purposes; or

(ii) the amount by which unaccounted for water or, in the case of irrigation entities, transport losses, exceeds 10 percent of recorded annual water deliveries.

The minimum goal for the District shall be thirty thousand acre-feet per year. In the event that the pipeline conveyance system described in section 202(a)(1)(A) is not constructed due to expiration of the authorization pursuant to section 202(a)(1)(B), the minimum goal for the District shall be reduced by five thousand acre-feet per year. In the event that the Wasatch County Water Efficiency Project authorized in section 202(a)(3)(B) is not constructed due to expiration of the authorization pursuant to section 202(a)(3)(D), the minimum goal for the District shall be reduced by five thousand acre-feet per year. In the event the water supply which would have been supplied by the pipeline conveyance system described in section 202(a)(1)(A) is made available and delivered to municipal and industrial or agricultural petitioners in Salt Lake, Utah or Juab counties subsequent to the expiration of the authorization pursuant to section 202(a)(1)(B), the minimum goal for the District shall increase five thousand acre-feet per year. In no event shall the minimum goal for the District be less than twenty thousand acre-feet per year.

(B) A water management improvement inventory, containing—

(i) conservation measures to improve the efficiency of the storage, conveyance, distribution, and use of water in a manner that contributes to the accomplishment of the purposes of this section, exclusive of any measures promulgated pursuant to subsection (f)(2) (A) through (D);

(ii) the estimated economic and financial costs of each such measure;

(iii) the estimated water yield of each such measure; and

(iv) the socioeconomic and environmental effects of each such measure.

(C) A comparative analysis of each cost-effective and environmentally acceptable measure.

(D) A schedule of implementation for the following five years.

(E) An assessment of the performance of previously implemented conservation measures, if any. Each plan or plan supplement shall be technically sound, internally consistent and supported by objective analysis.

Not less than ninety days prior to its transmittal to the Secretary, the plan, or plan supplement, together with all supporting documentation demonstrating compliance with this section, shall be made available by the District for public review, hearing, and comment. All significant comments, and the District's response thereto, shall accompany the plan transmitted to the Secretary.

(2) EVALUATION OF CONSERVATION MEASURES.—

(A) Any conservation measure proposed to the District by the Executive Director of the Utah Department of Natural Resources shall be added to the water management improvement inventory and evaluated by the District. Any conservation measure, up to a cumulative five in number within any three-year period, submitted by nonprofit sportsmen or environmental organizations shall be added to the water management improvement inventory and evaluated by the District.

(B) Each conservation measure that is found to be cost-effective, without significant adverse impact to the financial integrity of the District or a petitioner of project water, environmentally acceptable and for which the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) have been satisfied, and in the public interest shall be deemed to constitute the "active inventory". For purposes of this section, the determination of benefits shall take into account:

(i) the value of saved water, to be determined, in the case of municipal water, on the basis of the project municipal and industrial repayment obligation of the District, but in no case less than \$200 per acre-foot, and, in the case of irrigation water, on the basis of operation, maintenance, and replacement costs plus the "full cost" rate for irrigation computed in accordance with section 302(3) of the Reclamation Reform Act of 1982 (96 Stat. 1263; 43 U.S.C. 390bb), but in no case less than \$50 per acre-foot;

- (ii) the reduced cost of wastewater treatment, if any;
- (iii) net additional hydroelectric power generation, if any, valued at avoided cost;
- (iv) net savings in operation, maintenance, and replacement costs; and
- (v) net savings in on-farm costs.

(3) **IMPLEMENTATION.**—The District, and each petitioner of project water, as appropriate, shall implement and maintain, consistent with State law, conservation measures placed in the active inventory to the maximum practical extent necessary to achieve 50 percent of the water conservation goal within seven years after submission of the initial plan and 100 percent of the water conservation goal within fifteen years after submission of the initial plan. Priority shall be given to implementation of the most cost-effective measures that are—

(A) found to reduce consumptive use of water without significant adverse impact to the financial integrity of the District or the petitioner of project water;

(B) environmentally acceptable and for which the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been satisfied; and

(C) found to be in the public interest.

(4) **USE OF SAVED WATER.**—All water saved by any conservation measure implemented by the District or a petitioner of project water under subsection (b)(3) may be retained by the District or the petitioner of project water which saved such water for its own use or disposition. The specific amounts of water saved by any conservation measure implemented under subsection (b)(3) shall be based upon the determination of yield under paragraph (b)(1)(B)(iii), and as may be confirmed or modified by assessment pursuant to paragraph (b)(1)(E). Each petitioner of project water may make available to the District water in an amount equivalent to the water saved, which the District may make available to the Secretary for instream flows in addition to the stream flow requirements established by section 303. Such instream flows shall be released from project facilities, subject to space available in project conveyance systems, to at least one watercourse in the Bonneville and Uinta River Basins, respectively, to be designated by the United States Fish and Wildlife Service as recommended by the Interagency Biological Assessment Team. Such flows shall be protected against appropriation in the same manner as the minimum streamflow requirements established by section 303. The Secretary shall reduce the annual contractual repayment obligation of the District equal to the project rate for delivered water, including operation and maintenance expenses, for water saved for instream flows pursuant to this subsection. The District shall credit or rebate to each petitioner of project water its proportionate share of the District's repayment savings for reductions in deliveries of project water as a result of this subsection.

(5) **STATUS REPORT ON THE PLANNING PROCESS.**—Prior to January 1, 1994, the District shall establish a continuous process for the identification, evaluation, and implementation of water conservation measures to achieve the purposes of this section, and submit a report thereon to the Secretary. The

report shall include a description of this process, including its financial resources, technical support, public involvement, and identification of staff responsible for its development and implementation.

(c) WATER CONSERVATION PRICING STUDY.—

(1) Within three years from the date of enactment of this Act, the District, after consultation with the State and each petitioner of project water, shall prepare and transmit to the Secretary a study of wholesale and retail pricing to encourage water conservation as described in this subsection, together with its conclusions and recommendations.

(2) The purposes of this study are—

(A) to design and evaluate potential rate designs and pricing policies for water supply and wastewater treatment within the District boundary;

(B) to estimate demand elasticity for each of the principal categories of end use of water within the District boundary;

(C) to quantify monthly water savings estimated to result from the various designs and policies to be evaluated; and

(D) to identify a water pricing system that reflects the incremental scarcity value of water and rewards effective water conservation programs.

(3) Pricing policies to be evaluated in the study shall include but not be limited to the following, alone and in combination:

(A) recovery of all costs, including a reasonable return on investment, through water and wastewater service charges;

(B) seasonal rate differentials;

(C) drought year surcharges;

(D) increasing block rate schedules;

(E) marginal cost pricing;

(F) rates accounting for differences in costs based upon point of delivery; and

(G) rates based on the effect of phasing out the collection of ad valorem property taxes by the District and the petitioners of project water over a five-year and ten-year period.

The District may incorporate policies developed by the study in the Water Management Improvement Plan prepared under subsection (b).

(4) Not less than ninety days prior to its transmittal to the Secretary, the study, together with the District's preliminary conclusions and recommendations and all supporting documentation, shall be available for public review and comment, including public hearings. All significant comments, and the District's response thereto, shall accompany the study transmitted to the Secretary.

(5) Nothing in this subsection shall be deemed to authorize the Secretary, or grant new authority to the District or petitioners of project water, to require the implementation of any policies or recommendations contained in the study.

(d) STUDY OF COORDINATED OPERATIONS.—

(1) Within three years from the date of enactment of this Act, the District, after consultation with the State and each

petitioner of project water, shall prepare and transmit to the Secretary a study of the coordinated operation of independent municipal and industrial and irrigation water systems, together with its conclusions and recommendations. The District shall evaluate cost-effective flexible operating procedures that will—

(A) improve the availability and reliability of water supply;

(B) coordinate the timing of reservoir releases under existing water rights to improve instream flows for fisheries, wildlife, recreation, and other environmental values, if possible;

(C) assist in managing drought emergencies by making more efficient use of facilities;

(D) encourage the maintenance of existing wells and other facilities which may be placed on stand-by status when water deliveries from the project become available;

(E) allow for the development, protection, and sustainable use of ground-water resources in the District boundary;

(F) not reduce the benefits that would be generated in the absence of the joint operating procedures; and

(G) integrate management of surface and ground-water supplies and storage capability.

The District may incorporate measures developed by the study in the Water Management Improvement Plan prepared under subsection (b).

(2) Not less than ninety days prior to its transmittal to the Secretary, the study, together with the District's preliminary conclusions and recommendations and all supporting documentation, shall be available for public review and comment, including public hearings. All significant comments, and the District's response thereto, shall accompany the study transmitted to the Secretary.

Public
information.

(3) Nothing in this subsection shall be deemed to authorize the Secretary, or grant new authority to the District or petitioners of project water, to require the implementation of any operating procedures, conclusions, or recommendations contained in the study.

(e) AUTHORIZATION OF APPROPRIATIONS.—(1) For an amount not to exceed 50 percent of the cost of conducting the studies identified in subsections (c) and (d) and developing the plan identified in subsection (b), \$3,000,000 shall be available from the amount authorized to be appropriated by section 201, and shall remain available until expended. The Federal share shall be allocated among project purposes in the same proportions as the joint costs of the Strawberry Collection System, and shall be repaid in the manner of repayment for each such purpose.

(2) For an amount not to exceed 65 percent of the cost of implementation of the conservation measures in accordance with subsection (b), \$50,000,000 shall be available from the amount authorized to be appropriated in section 201, and shall remain available until expended. \$10,000,000 authorized by this paragraph shall be made available for conservation measures in Wasatch County identified in the study pursuant to section 202(a)(3)(A) which measures satisfy the requirements of subsection (b)(2)(B) and shall thereafter be available for the purposes of this paragraph. The Federal share shall be allocated between the purposes of municipal and industrial water supply and irrigation, as appro-

appropriate, and shall be repaid in the manner of repayment for each such purpose.

Establishment.

(f) **UTAH WATER CONSERVATION ADVISORY BOARD.**—(1) Within two years of the date of enactment of this Act, the Governor of the State may establish a board consisting of nine members to be known as the Utah Water Conservation Advisory Board, with the duties described in this subsection. In the event that the Governor does not establish said board by such date, the Secretary shall establish a Utah Water Conservation Advisory Board consisting of nine members appointed by the Secretary from a list of names supplied by the Governor.

(2) The Board shall recommend water conservation standards and regulations for promulgation by State or local authorities in the service area of each petitioner of project water, including but not limited to the following:

(A) metering or measuring of water to all customers, to be accomplished within five years. (For purposes of this paragraph, residential buildings of more than four units may be considered as single customers.);

(B) elimination of declining block rate schedules from any system of water or wastewater treatment charges;

(C) a program of leak detection and repair that provides for the inspection of all conveyance and distribution mains, and the performance of repairs, at intervals of three years or less;

(D) low consumption performance standards applicable to the sale and installation of plumbing fixtures and fittings in new construction;

(E) requirements for the recycling and reuse of water by all newly constructed commercial laundries and vehicle wash facilities;

(F) requirements for soil preparation prior to the installation or seeding of turf grass in new residential and commercial construction;

(G) requirements for the insulation of hot water pipes in all new construction;

(H) requirements for the installation of water recycling or reuse systems on any newly installed commercial and industrial water-operative air conditioning and refrigeration systems;

(I) standards governing the sale, installation, and removal of self-regenerating water softeners, including the identification of public water supply system service areas where such devices are prohibited, and the establishment of standards for the control of regeneration in all newly installed devices; and

(J) elimination of evaporation as a principal method of wastewater treatment.

(3) Any water conserved by implementation of subparagraphs (A), (B), (C), (D), or (F) of paragraph (2) shall not be credited to the conservation goal specified under subparagraph (b)(1)(A). All other water conserved after January 1, 1992, by a conservation measure which is placed on the active inventory shall be credited to the conservation goal specified under subparagraph (b)(1)(A).

(4) The Governor may waive the applicability of paragraphs (2)(D) through (2)(H) above to any petitioner of project water that provides water entirely for irrigation use.

Regulations.

(5) Within three years of the date of enactment of this Act, the board shall transmit to the Governor and the Secretary the

recommended standards and regulations referred to in subparagraph (f)(2) in such form as, in the judgment of the board, will be most likely to be promulgated within four years of the date of enactment of this Act, and the failure of the board to do so shall be deemed substantial noncompliance.

(6) Nothing in this subsection shall be deemed to authorize the Secretary, or grant new authority to the District or petitioners of project water, to require the implementation of any standards or regulations recommended by the Utah Water Conservation Advisory Board.

(g) COMPLIANCE.—(1) Notwithstanding subsections (c)(5), (d)(3) or (f)(6), if the Secretary after ninety days written notice to the District, determines that the plan referred to in subsection (b) has not been developed and implemented or the studies referred to in subsections (c) and (d) have not been completed or transmitted as provided for in this section, the District shall pay a surcharge for each year of substantial noncompliance as determined by the Secretary. The amount of the surcharge shall be—

(A) for the first year of substantial noncompliance, five percent of the District's annual Bonneville Unit repayment obligation to the Secretary;

(B) for the second year of substantial noncompliance, ten percent of the District's annual Bonneville Unit repayment obligation to the Secretary; and

(C) for the third year of substantial noncompliance and any succeeding year of substantial noncompliance, fifteen percent of the District's annual Bonneville Unit repayment obligation to the Secretary.

(2) If the Secretary determines that compliance has been accomplished within twelve months after the first determination of substantial noncompliance, the Secretary shall refund 100 percent of the surcharge levied.

(h) RECLAMATION REFORM ACT OF 1982.—Compliance with this section shall be deemed as compliance with section 210 of the Reclamation Reform Act of 1982 (96 Stat. 1268; 43 U.S.C. 390jj) by the District and each petitioner of project water.

(i) JUDICIAL REVIEW.—(1) For the purposes of sections 701 through 706 of title 5 (U.S.C.), the determinations made by the Secretary under subsections (b), (f)(1) or (g) shall be final actions subject to judicial review.

(2) The record upon review of such final actions shall be limited to the administrative record compiled in accordance with sections 701 through 706 of title 5 (U.S.C.). Nothing in this subsection shall be construed to require a hearing pursuant to sections 554, 556, or 557 of title 5 (U.S.C.).

(3) Nothing in this subsection shall be construed to preclude judicial review of other final actions and decisions by the Secretary.

(j) CITIZEN SUITS.—(1) IN GENERAL.—Any person may commence a civil suit on their own behalf against only the Secretary for any determination made by the Secretary under this section which is alleged to have violated, is violating, or is about to violate any provision of this section or determination made under this section.

(2) JURISDICTION AND VENUE.—The district courts shall have jurisdiction to prohibit any violation by the Secretary of this section, to compel any action required by this section, and to issue any other order to further the purposes of this section. An action under

this subsection may be brought in the judicial district where the alleged violation occurred or is about to occur, where fish, wildlife, or recreation resources are located, or in the District of Columbia.

(3) **LIMITATIONS.**—(A) No action may be commenced under paragraph (1) before sixty days after written notice of the violation has been given to the Secretary.

(B) Notwithstanding subparagraph (A), an action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife.

(C) Subparagraph (A) is intended to provide reasonable notice where possible and not to affect the jurisdiction of the courts.

(4) **COSTS AWARDED BY THE COURT.**—The court may award costs of litigation (including reasonable attorney and expert witness fees and expenses) to any party, other than the United States, whenever the court determines such award is appropriate.

(5) **DISCLAIMER.**—The relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief.

(k) **PRESERVATION OF STATE LAW.**—Nothing in this section shall be deemed to preempt or supersede State law.

SEC. 208. LIMITATION ON HYDROPOWER OPERATIONS.

(a) **LIMITATION.**—Power generation facilities associated with the Central Utah Project and other features specified in titles II through V of this Act shall be operated and developed in accordance with the Act of April 11, 1956 (70 Stat. 109; 43 U.S.C. 620f).

(b) **COLORADO RIVER BASIN WATERS.**—Use of Central Utah Project water diverted out of the Colorado River Basin for power purposes shall only be incidental to the delivery of water for other authorized project purposes. Diversion of such waters out of the Colorado River Basin exclusively for power purposes is prohibited.

SEC. 209. OPERATING AGREEMENTS.

The District, in consultation with the Commission and the Utah Division of Water Rights, shall apply its best efforts to achieve operating agreements for the Jordanelle Reservoir, Deer Creek Reservoir, Utah Lake and Strawberry Reservoir within two years of the date of enactment of this Act.

SEC. 210. JORDAN AQUEDUCT PREPAYMENT.

Under such terms as the Secretary may prescribe, and within one year of the date of enactment of this Act, the Secretary shall allow for the prepayment, or shall otherwise dispose of, repayment contracts entered into among the United States, the District, the Metropolitan Water District of Salt Lake City, and the Salt Lake County Water Conservancy District, dated May 16, 1986, providing for repayment of the Jordan Aqueduct System. In carrying out this section, the Secretary shall take such actions as he deems appropriate to accommodate, effectuate, and otherwise protect the rights and obligations of the United States and the obligors under the contracts executed to provide for payment of such repayment contracts.

SEC. 211. AUDIT OF CENTRAL UTAH PROJECT COST ALLOCATIONS.

Not later than one year after the date on which the Secretary declares the Central Utah Project to be substantially complete,

the Comptroller General of the United States shall conduct an audit of the allocation of costs of the Central Utah Project to irrigation, municipal and industrial, and other project purposes and submit a report of such audit to the Secretary and to the Congress. The audit shall be conducted in accordance with regulations which the Comptroller General shall prescribe not later than one year after the date of enactment of this Act. Upon a review of such report, the Secretary shall reallocate such costs as may be necessary. Any amount allocated to municipal and industrial water in excess of the total maximum repayment obligation contained in repayment contracts dated December 28, 1965, and November 26, 1985, shall be deferred for as long as the District is not found to be in substantial noncompliance with the water management improvement program provided in section 207 and the stream flows provided in title III are maintained. If at any time the Secretary finds that such program is in substantial non-compliance or that such stream flows are not being maintained, the Secretary shall, within six months of such finding and after public notice, take action to initiate repayment of all such reimbursable costs.

SEC. 212. SURPLUS CROPS.

Notwithstanding any other provision of law relating to a charge for irrigation water supplied to surplus crops, until the construction costs of the facilities authorized by this title are repaid, the Secretary is directed to charge a surplus crop production charge equal to 10 percent of full cost, as defined in section 202 of the Reclamation Reform Act of 1982 (43 U.S.C. 390bb), for the delivery of project water used in the production of any crop of an agricultural commodity for which an acreage reduction program is in effect under the provision of the Agricultural Act of 1949, as amended, if the total supply of such commodity for the marketing years in which the bulk of the crop would normally be marketed is in excess of the normal supply as determined by the Secretary of Agriculture. The Secretary of the Interior shall announce the amount of the surplus crop production charge for the succeeding year on or before July 1 of each year.

TITLE III—FISH, WILDLIFE, AND RECREATION MITIGATION AND CONSERVATION

SEC. 301. UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION.

(a) **PURPOSE.**—(1) The purpose of this section is to provide for the prompt establishment of the Utah Reclamation Mitigation and Conservation Commission in order to coordinate the implementation of the mitigation and conservation provisions of this Act among the Federal and State fish, wildlife, and recreation agencies.

(2) This section, together with applicable environmental laws and the provisions of other laws applicable to mitigation, conservation and enhancement of fish, wildlife, and recreation resources within the State, are all intended to be construed in a consistent manner. Nothing herein is intended to limit or restrict the authorities or opportunities of Federal, State, or local governments, or political subdivisions thereof, to plan, develop, or implement mitigation, conservation, or enhancement of fish, wildlife, and recreation

resources in the State in accordance with other applicable provisions of Federal or State law.

(b) **ESTABLISHMENT.**—(1) There is established a commission to be known as the Utah Reclamation Mitigation and Conservation Commission.

(2) The Commission shall expire twenty years from the end of the fiscal year during which the Secretary declares the Central Utah Project to be substantially complete. The Secretary shall not declare the project to be substantially complete at least until such time as the mitigation and conservation projects and features provided for in section 315 have been completed in accordance with the fish, wildlife, and recreation mitigation and conservation schedule specified therein.

(c) **DUTIES.**—The Commission shall—

(1) formulate the policies and objectives for the implementation of the fish, wildlife, and recreation mitigation and conservation projects and features authorized in this Act;

(2) administer in accordance with subsection (f) the expenditure of funds for the implementation of the fish, wildlife, and recreation mitigation and conservation projects and features authorized in this Act;

(3) be considered a Federal agency for purposes of compliance with the requirements of all Federal fish, wildlife, recreation, and environmental laws, including (but not limited to) the Fish and Wildlife Coordination Act, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(4) develop, adopt, and submit plans and reports of its activities in accordance with subsection (g).

(d) **MEMBERSHIP.**—(1) The Commission shall be composed of 5 members appointed by the President within six months of the date of enactment of this Act, as follows:

(A) 1 from a list of residents of the State, who are qualified to serve on the Commission by virtue of their training or experience in fish or wildlife matters or environmental conservation matters, submitted by the Speaker of the House of Representatives upon the recommendation of the members of the House of Representatives representing the State.

(B) 1 from a list of residents of the State, who are qualified to serve on the Commission by virtue of their training or experience in fish or wildlife matters or environmental conservation matters, submitted by the Majority Leader of the Senate upon the recommendation of the members of the Senate representing the State.

(C) 1 from a list of residents of the State submitted by the Governor of the State composed of State wildlife resource agency personnel.

(D) 1 from a list of residents of the State submitted by the District.

(E) 1 from a list of residents of the State, who are qualified to serve on the Commission by virtue of their training or experience in fish and wildlife matters or environmental conservation matters and have been recommended by Utah non-profit sportsmen's or environmental organizations, submitted by the Governor of the State.

(2)(A) Except as provided in subparagraph (B), members shall be appointed for terms of four years.

(B) Of the members first appointed—

(i) the member appointed under paragraph (1)(C) shall be appointed for a term of three years; and

(ii) the member appointed under paragraph (1)(D) shall be appointed for a term of two years.

(3) A vacancy in the Commission shall be filled within ninety days and in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(4)(A) Except as provided in subparagraph (B), members of the Commission shall each be paid at a rate equal to the daily equivalent of the maximum of the annual rate of basic pay in effect for grade GS-15 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

(B) Members of the Commission who are full-time officers or employees of the United States or the State of Utah shall receive no additional pay by reason of their service on the Commission.

(5) Three members of the Commission shall constitute a quorum but a lesser number may hold public meetings authorized by the Commission.

(6) The Chairman of the Commission shall be elected by the members of the Commission. The term of office of the Chairman shall be one year.

(7) The Commission shall meet at least quarterly and may meet at the call of the Chairman or a majority of its members.

(e) DIRECTOR AND STAFF OF COMMISSION; USE OF CONSULTANTS.—(1) The Commission shall have a Director who shall be appointed by the Commission and who shall be paid at a rate not to exceed the maximum rate of basic pay payable for GS-15 of the General Schedule.

(2) With the approval of the Commission, the Director may appoint and fix the pay of such personnel as the Director considers appropriate. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(3) With the approval of the Commission, the Director may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-15 of the General Schedule.

(4) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act.

(5) Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(6) In times of emergency, as defined by rule by the Commission, the Director may exercise the full powers of the Commission

until such times as the emergency ends or the Commission meets in formal session.

(f) IMPLEMENTATION OF MITIGATION AND CONSERVATION MEASURES.—(1) The Commission shall administer the mitigation and conservation funds available under this Act to conserve, mitigate, and enhance fish, wildlife, and recreation resources affected by the development and operation of Federal reclamation projects in the State of Utah. Such funds shall be administered in accordance with this section, the mitigation and conservation schedule in section 315 of this Act, and, if in existence, the applicable five-year plan adopted pursuant to subsection (g). Expenditures of the Commission pursuant to this section shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.

(2) REALLOCATION OF SECTION 8 FUNDS.—Notwithstanding any provision of this act which provides that a specified amount of section 8 funds available under this Act shall be available only for a certain purpose, if the Commission determines, after public involvement and agency consultation as provided in subsection (g)(3), that the benefits to fish, wildlife, or recreation will be better served by allocating such funds in a different manner, then the Commission may reallocate any amount so specified to achieve such benefits: *Provided, however,* That the Commission shall obtain the prior approval of the United States Fish and Wildlife Service for any reallocation from fish or wildlife purposes to recreation purposes of any of the funds authorized in the schedule in section 315.

(3) FUNDING FOR NEPA COMPLIANCE.—The Commission shall annually provide funding on a priority basis for environmental mitigation measures adopted as a result of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for project features constructed pursuant to titles II and III of this Act.

(4) CONTRACTING AUTHORITY.—The Commission shall, for the purpose of carrying out this Act, enter into and perform such contracts, leases, grants, cooperative agreements, or other similar transactions, including the amendment, modification, or cancellation thereof and make the compromise or final settlement of any claim arising thereunder, with universities, non-profit organizations, and the appropriate public natural resource management agency or agencies, upon such terms and conditions and in such manner as the Commission may deem to be necessary or appropriate, for the implementation of the mitigation and conservation projects and features authorized in this Act, including actions necessary for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(g) PLANNING AND REPORTING.—(1) Beginning with the first fiscal year after all members of the Commission are appointed initially, and every five years thereafter, the Commission shall develop and adopt by March 31 a plan for carrying out its duties during each succeeding five-year period. Each such plan shall consist of the specific objectives and measures the Commission intends to administer under subsection (f) during the plan period to implement the mitigation and conservation projects and features authorized in this Act.

(2) **FINAL PLAN.**—Within six months prior to the expiration of the Commission pursuant to this Act, the Commission shall develop and adopt a plan which shall—

(A) establish goals and measurable objectives for the mitigation and conservation of fish, wildlife, and recreation resources during the five-year period following such expiration; and

(B) recommend specific measures for the expenditure of funds from the Account established under section 402 of this Act.

(3) **PUBLIC INVOLVEMENT AND AGENCY CONSULTATION.**—(A) Promptly after the Commission is established under this section, and in each succeeding fiscal year, the Commission shall request in writing from the Federal and State fish, wildlife, recreation, and water management agencies, the appropriate Indian tribes, and county and municipal entities, and the public, recommendations for objectives and measures to implement the mitigation and conservation projects and features authorized in this Act or amendments thereto. The Commission shall establish by rule a period of time not less than ninety days in length within which to receive such recommendations, as well as the format for and the information and supporting data that is to accompany such recommendations.

Regulations.

(B) The Commission shall give notice of all recommendations and shall make the recommendations and supporting documents available to the Federal and State fish, wildlife, recreation, and water management agencies, the appropriate Indian tribes, and the public. Copies of such recommendations and supporting documents shall be made available for review at the offices of the Commission and shall be available for reproduction at reasonable cost.

Public information.

(C) The Commission shall provide for public involvement regarding the recommendations and supporting documents within such reasonable time as the Commission by rule deems appropriate.

(4) The Commission shall develop and amend the plans on the basis of such recommendations, supporting documents, and views and information obtained through public involvement and agency consultation. The Commission shall include in the plans measures which it determines, on the basis set forth in paragraph (f)(1), will—

(A) restore, maintain, or enhance the biological productivity and diversity of natural ecosystems within the State and have substantial potential for providing fish, wildlife, and recreation mitigation and conservation opportunities;

(B) be based on, and supported by, the best available scientific knowledge;

(C) utilize, where equally effective alternative means of achieving the same sound biological or recreational objectives exist, the alternative that will also provide public benefits through multiple resource uses;

(D) complement the existing and future activities of the Federal and State fish, wildlife, and recreation agencies and appropriate Indian tribes;

(E) utilize, when available, cooperative agreements and partnerships with private landowners and nonprofit conservation organizations; and

(F) be consistent with the legal rights of appropriate Indian tribes.

Enhancement measures may be included in the plans to the extent such measures are designed to achieve improved conservation or mitigation of resources.

(5) **AGENCY CONSULTATION.**—Commission plans developed in accordance with this subsection, or implemented under subsection (f), that affect National Forest System lands shall be developed and implemented in consultation with the Secretary of Agriculture.

(6) **REPORTING.**—(A) Beginning on December 1 of the first fiscal year in which all members of the Commission are appointed initially, the Commission shall submit annually a detailed report to the Committee on Energy and Natural Resources of the Senate, to the Committees on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives, to the Secretary, and to the Governor of the State. The report shall describe the actions taken and to be taken by the Commission under this section, the effectiveness of the mitigation and conservation measures implemented to date, and potential revisions or modifications to the applicable mitigation and conservation plan.

(B) At least sixty days prior to its submission of such report, the Commission shall make a draft of such report available to the Federal and State fish, wildlife, recreation, and water management agencies, the appropriate Indian tribes, and the public, and establish procedures for timely comments thereon. The Commission shall include a summary of such comments as an appendix to such report.

(h) **DISCRETIONARY DUTIES AND POWERS.**—In addition to any other duties and powers provided by law—

(1) The Commission may depart from the fish, wildlife, and recreation mitigation and conservation schedule specified in section 315 whenever the Commission determines, after public involvement and agency consultation as provided for in this Act, that such departure would be of greater benefit to fish, wildlife, or recreation: *Provided, however,* That the Commission shall obtain the prior approval of the United States Fish and Wildlife Service for any reallocation from fish or wildlife purposes to recreation purposes of any of the funds authorized in the schedule in section 315.

(2) The Commission may, for the purpose of carrying out this Act—

(A) hold such public meetings, sit and act at such times and places, take such testimony, and receive such evidence, as a majority of the Commission considers appropriate; and

(B) meet jointly with other Federal or State authorities to consider matters of mutual interest.

(3) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Director of the Commission, the head of such department or agency shall furnish such information to the Commission. At the discretion of the department or agency, such information may be provided on a reimbursable basis.

(4) The Commission may accept, use, and dispose of appropriations, gifts or grants of money or other property, or dona-

tions of services, from whatever source, only to carry out the purposes of this Act.

(5) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(6) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(7) The Commission may acquire and dispose of personal and real property and water rights, and interests therein, through donation, purchase on a willing seller basis, sale, or lease, but not through direct exercise of the power of eminent domain, in order to carry out the purposes of this Act. This provision shall not affect any existing authorities of other agencies to carry out the purposes of this Act.

(8) The Commission may make such expenditures for offices, vehicles, furnishings, equipment, supplies, and books; for travel, training, and attendance at meetings; and for such other facilities and services as may be necessary for the administration of this Act.

(9) The Commission shall not participate in litigation, except litigation pursuant to subsection (1) or condemnation proceedings initiated by other agencies.

(i) FUNDING.—(1) Amounts appropriated to the Secretary for the Commission shall be paid to the Commission immediately upon receipt of such funds by the Secretary. The Commission shall expend such funds in accordance with this Act.

(2) For each fiscal year, the Commission is authorized to use for administrative expenses an amount equal to 10 percent of the amounts available to the Commission pursuant to this Act during such fiscal year, but not to exceed \$1,000,000. Such amount shall be increased by the same proportion as the contributions to the Account under section 402(b)(3)(C).

(j) AVAILABILITY OF UNEXPENDED AMOUNTS UPON COMPLETION OF CONSTRUCTION PROJECTS.—Notwithstanding any other provision of law, upon the completion of any project authorized under this title, Federal funds appropriated for that project but not obligated or expended shall be deposited in the Account pursuant to section 402(b)(4)(D) and shall be available to the Commission in accordance with section 402(c)(2).

(k) TRANSFER OF PROPERTY AND AUTHORITY HELD BY THE COMMISSION.—Except as provided in section 402(b)(4)(A), upon the termination of the Commission in accordance with subsection (b)—

(1) the duties of the Commission shall be performed by the Utah Division of Wildlife Resources, which shall exercise such authority in consultation with the United States Fish and Wildlife Service, the District, the Bureau, and the Forest Service; and

(2) title to any real and personal properties then held by the Commission shall be transferred to the appropriate division within Utah Department of Natural Resources or, for such parcels of real property as may be within the boundaries of Federal land ownerships, to the appropriate Federal agency.

(l) REPRESENTATION BY ATTORNEY GENERAL.—The Attorney General of the United States shall represent the Commission in any litigation to which the Commission is a party.

(m) **CONGRESSIONAL OVERSIGHT.**—The activities of the Commission shall be subject to oversight by the Congress.

(n) **TERMINATION OF BUREAU ACTIVITIES.**—Upon appointment of the Commission as provided in subsection (b), the responsibility for implementing section 8 funds for mitigation and conservation projects and features authorized in this Act shall be transferred from the Bureau to the Commission.

SEC. 302. INCREASED PROJECT WATER CAPABILITY.

(a) **ACQUISITION.**—The District shall acquire, on an expedited basis with funds to be provided by the Commission in accordance with the schedule specified in section 315, by purchase from willing sellers or exchange, twenty-five thousand acre-feet of water rights in the Utah Lake drainage basin to achieve the purposes of this section. Water purchases which would have the effect of compromising groundwater resources or dewatering agricultural lands in the Upper Provo River areas should be avoided. Of the amounts authorized to be appropriated by section 201, \$15,000,000 shall be available only for the purposes of this subsection.

(b) **NONCONSUMPTIVE RIGHTS.**—A nonconsumptive right in perpetuity to any water acquired under this section shall be tendered in accordance with the laws of the State of Utah within thirty days of its acquisition by the District to the Utah Division of Wildlife Resources for the purposes of maintaining instream flows provided for in section 303(c)(3) and 303(c)(4) for fish, wildlife, and recreation in the Provo River.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—Of the amounts authorized to be appropriated by section 201, \$4,000,000 shall be available only to modify existing or construct new diversion structures on the Provo River below the Murdock diversion to facilitate the purposes of this section.

SEC. 303. STREAM FLOWS.

(a) **STREAM FLOW AGREEMENT.**—The District shall annually provide, from project water if necessary, amounts of water sufficient to sustain the minimum stream flows established pursuant to the Stream Flow Agreement.

(b) **INCREASED FLOWS IN THE UPPER STRAWBERRY RIVER TRIBUTARIES.**—(1) the District shall acquire, on an expedited basis with funds to be provided by the Commission, or by the Secretary in the event the Commission has not been established, in accordance with State law, the provisions of this section, and the schedule specified in section 315, all of the Strawberry basin water rights being diverted to the Heber Valley through the Daniels Creek drainage and shall apply such rights to increase minimum stream flows—

(A) in the upper Strawberry River and other tributaries to the Strawberry Reservoir;

(B) in the lower Strawberry River from the base of Soldier Creek Dam to Starvation Reservoir; and

(C) in other streams within the Uinta basin affected by the Strawberry Collection System in such a manner as deemed by the Commission in consultation with the United States Fish and Wildlife Service and the Utah State Division of Wildlife Resources to be in the best interest of fish and wildlife. The Commission's decision under subparagraph (C) shall not establish a statutory or otherwise mandatory minimum stream flow.

(2) The District may acquire the water rights identified in paragraph (1) prior to completion of the facilities identified in paragraph (3) only by lease and for a period not to exceed two years from willing sellers or by replacement or exchange of water in kind. Such leases may be extended for one additional year with the consent of Wasatch and Utah counties. The District shall proceed to fulfill the purposes of this subsection on an expedited basis but may not lease water from the Daniels Creek Irrigation Company before the beginning of fiscal year 1993.

(3)(A) The District shall construct with funds provided for in paragraph (4) a Daniels Creek replacement pipeline from the Jordanelle Reservoir to the existing Daniels Creek Irrigation Company Water storage facility for the purpose of providing a permanent replacement of water in an amount equal to the Strawberry basin water being supplied by the District for stream flows provided in paragraph (1) which would otherwise have been diverted to the Daniels Creek drainage.

(B) Such Daniels Creek replacement water may be exchanged by the District in accordance with State law with the Strawberry basin water identified above to provide a permanent supply of water for minimum flows provided in paragraph (1). Any such permanent replacement water so exchanged into the Strawberry basin by the District shall be tendered in accordance with State law within thirty days of its exchange by the District to the Utah Division of Wildlife Resources for the purposes of providing stream flows under paragraph (1).

(C) The Daniels Creek replacement water to be supplied by the District shall be at least equal in quality and reliability to the Daniels Creek water being replaced and shall be provided by the District at a cost to the Daniels Creek Irrigation Company which does not exceed the cost of supplying existing water deliveries (including operation and maintenance) through the Daniels Creek diversion.

(4) Of the amounts authorized to be appropriated by section 201, \$10,500,000 shall be available to fulfill the purposes of this section as follows:

(A) \$500,000 for leasing of water pursuant to paragraph

(2).

(B) \$10,000,000 for construction of the Daniels Creek replacement pipeline.

(C) Funds provided by this paragraph shall not be subject to the requirements of section 204 and shall be included in the final cost allocation provided for in section 211; except that not less than \$3,500,000 shall be treated as an expense under section 8, and \$7,000,000 shall be treated as an expense under section 5 of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. 105).

(D) Funds provided for the Daniels Creek replacement pipeline may be expended so as to integrate such pipeline with the Wasatch County conservation measures provided for in section 207(e)(2) and the Wasatch County Water Efficiency Project authorized in section 202(a)(3).

(c) STREAM FLOWS IN THE BONNEVILLE UNIT.—The yield and operating plans for the Bonneville Unit of the Central Utah Project shall be established or adjusted to provide for the following minimum stream flows, which flows shall be provided continuously and in perpetuity from the date first feasible, as determined by

the Commission in consultation with the United States Fish and Wildlife Service and the Utah State Division of Wildlife Resources:

(1) In the Diamond Fork River drainage subsequent to completion of the Monks Hollow Dam or other structure that rediverts water from the Diamond Fork River Drainage into the Diamond Fork component of the Bonneville Unit of the Central Utah Project—

(A) in Sixth Water Creek, from the exit of Strawberry Valley Tunnel to the Last Chance Powerplant and Switchyard, not less than thirty-two cubic feet per second during the months of May through October and not less than twenty-five cubic feet per second during the months of November through April, and

(B) in the Diamond Fork River, from the bottom of the Monks Hollow Dam to the Spanish Fork River, not less than eighty cubic feet per second during the months of May through September and not less than sixty cubic feet per second during the months of October through April, which flows shall be provided by the Bonneville Unit of the Central Utah Project.

(2) In the Provo River from the base of Jordanelle Dam to Deer Creek Reservoir a minimum of one hundred and twenty-five cubic feet per second.

(3) In the Provo River from the confluence of Deer Creek and the Provo River to the Olmsted Diversion a minimum of one hundred cubic feet per second.

(4) Upon the acquisition of the water rights in the Provo Drainage identified in section 302, in the Provo River from the Olmsted Diversion to Utah Lake, a minimum of seventy-five cubic feet per second.

(5) In the Strawberry River, from the base of Starvation Dam to the confluence with the Duchesne River, a minimum of fifteen cubic feet per second.

(d) MITIGATION OF EXCESSIVE FLOWS IN THE PROVO RIVER.—The District shall, with public involvement, prepare and conduct a study and develop a plan to mitigate the effects of peak season flows in the Provo River. Such study and plan shall be developed in consultation with the Fish and Wildlife Service, the Utah Division of Water Rights, the Utah Division of Wildlife Resources, affected water right holders and users, the Commission, and the Bureau. The study and plan shall discuss and be based upon, at a minimum, all mitigation and conservation opportunities identified through—

(1) a fishery and recreational use study that addresses anticipated peak flows;

(2) study of the mitigation and conservation opportunities possible through habitat or stream bed modification;

(3) study of the mitigation and conservation opportunities associated with the operating agreements referred to in section 209;

(4) study of the mitigation and conservation opportunities associated with the water acquisitions contemplated by section 302;

(5) study of the mitigation and conservation opportunities associated with section 202(2);

(6) study of the mitigation and conservation opportunities available in connection with water right exchanges; and

(7) study of the mitigation and conservation opportunities that could be achieved by construction of a bypass flowline from the base of Deer Creek Reservoir to the Olmsted Diversion.

(e) **EARMARK.**—Of the amounts authorized to be appropriated by section 201, \$500,000 shall be available only for the implementation of subsection (d).

(f) **STRAWBERRY VALLEY TUNNEL.**—(1) Upon completion of the Diamond Fork System, the Strawberry Tunnel shall not be used except for deliveries of water for the instream purposes specified in subsection (c). All other waters for the Bonneville Unit and Strawberry Valley Reclamation Project purposes shall be delivered through the Diamond Fork System.

(2) Paragraph (1) shall not apply during any time in which the District, in consultation with the Commission, has determined that the Syar Tunnel or the Sixth Water Aqueduct is rendered unusable or emergency circumstances require the use of the Strawberry Valley Tunnel for the delivery of contracted Central Utah Project water and Strawberry Valley Reclamation Project water.

SEC. 304. FISH, WILDLIFE, AND RECREATION PROJECTS IDENTIFIED OR PROPOSED IN THE 1988 DEFINITE PLAN REPORT FOR THE CENTRAL UTAH PROJECT.

The fish, wildlife, and recreation projects identified or proposed in the 1988 Definite Plan Report which have not been completed as of the date of enactment of this Act shall be completed in accordance with the 1988 Definite Plan Report and the schedule specified in section 315, unless otherwise provided in this Act.

SEC. 305. WILDLIFE LANDS AND IMPROVEMENTS.

(a) **ACQUISITION OF RANGELANDS.**—In addition to lands acquired on or before the date of enactment of this Act and in addition to the acreage to be acquired in accordance with the 1988 Definite Plan Report, the Commission shall acquire on an expedited basis from willing sellers, in accordance with the schedule specified in section 315 and a plan to be developed by the Commission, big game winter range lands to compensate for the impacts of Federal reclamation projects in Utah. Such lands shall be transferred to the Utah Division of Wildlife Resources or, for such parcels as may be within the boundaries of Federal land ownerships, to the appropriate Federal agency, for management as a big game winter range. In the case of such transfers, lands acquired within the boundaries of a national forest shall be administered by the Secretary of Agriculture as a part of the National Forest System. Of the amounts authorized to be appropriated by section 201, \$1,300,000 shall be available only for the purposes of this subsection.

(b) **BIG GAME CROSSINGS AND WILDLIFE ESCAPE RAMPS.**—In addition to the measures to be taken in accordance with the 1988 Definite Plan Report, the Commission shall construct big game crossings and wildlife escape ramps for the protection of big game animals along the Provo Reservoir Canal, Highline Canal, Strawberry Power Canal, and others. Of the amounts authorized to be appropriated by section 201, \$750,000 shall be available only for the purposes of this subsection.

SEC. 306. WETLANDS ACQUISITION, REHABILITATION, AND ENHANCEMENT.

(a) **WETLANDS AROUND THE GREAT SALT LAKE.**—Of the amounts authorized to be appropriated by section 201, \$14,000,000 shall be available only for the planning and implementation of projects to preserve, rehabilitate, and enhance wetland areas around the Great Salt Lake in accordance with a plan to be developed by the Commission.

(b) **INVENTORY OF SENSITIVE SPECIES AND ECOSYSTEMS.**—(1) The Commission shall, in cooperation with the Utah Division of Wildlife Resources and other appropriate State and Federal agencies, inventory, prioritize, and map the occurrences in Utah of sensitive nongame wildlife species and their habitats.

(2) Of the amounts authorized to be appropriated by section 201, \$750,000 shall be available only to carry out paragraph (1) of this section.

(3) The Commission shall, in cooperation with the Utah Department of Natural Resources and other appropriate State and Federal agencies, inventory, prioritize, and map the occurrences in Utah of sensitive plant species and ecosystems.

(4) Of the amounts authorized to be appropriated by section 201, \$750,000 shall be available for the Utah Natural Heritage Program only to carry out paragraph (3) of this section.

(c) **UTAH LAKE WETLANDS PRESERVE.**—(1) The Commission, in consultation with the Utah Division of Wildlife Resources and the United States Fish and Wildlife Service, shall, in accordance with paragraph (9), acquire private land, water rights, conservation easements, or other interests therein, necessary for the establishment of a wetlands preserve adjacent to or near the Goshen Bay and Benjamin Slough areas of Utah Lake as depicted on a map entitled "Utah Lake Wetland Preserve" and dated September 1990. Such a map shall be on file and available for inspection in the office of the Secretary of the Interior, Washington, District of Columbia.

Contracts.

(2) The Secretary shall enter into an agreement under which the Wetlands Preserve acquired under paragraph (1) shall be managed by the Utah Division of Wildlife Resources pursuant to a plan developed in consultation with the Secretary and in accordance with this Act and the substantive requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

(3) The Wetlands Preserve shall be managed for the protection of migratory birds, wildlife habitat, and wetland values in a manner compatible with the surrounding farmlands, orchards, and agricultural production area. Grazing will be allowed for wildlife habitat management purposes in accordance with the Act referenced in paragraph (2) and as determined by the Division to be compatible with the purposes stated herein.

(4) Nothing in this subsection shall restrict traditional agricultural practices (including the use of pesticides) on adjacent properties not included in the preserve by acquisition or easement.

(5) Nothing in this subsection shall affect existing water rights under Utah State law.

(6) Nothing in this subsection shall grant authority to the Secretary to introduce a federally protected species into the wetlands preserve.

(7) The creation of this preserve shall not in any way interfere with the operation of the irrigation and drainage system authorized by section 202(a)(1).

(8) All water rights not appurtenant to the lands purchased for the Wetlands Preserve acquired under paragraph (1) shall be purchased from the District at an amount not to exceed the cost of the District in acquiring such rights.

(9) Of the amounts authorized to be appropriated by section 201, \$16,690,000 shall be available for acquisition of the lands, water rights, and other interests therein described in paragraph (1) of this subsection for the establishment of the Utah Lake Wetland Preserve.

(10) Lands, easements, or water rights may not be acquired pursuant to this subsection without the consent of the owner of such lands or water rights.

(11) Base property of a lessee or permittee (and the heirs of such lessee or permittee) under a Federal grazing permit or lease held on the date of enactment of this Act shall include any land of such lessee or permittee acquired by the Commission under this subsection.

(d) **PROVO BAY.**—In order to protect wetland habitat, the United States shall not issue any Federal permit which allows commercial, industrial, or residential development on the southern portion of Provo Bay in Utah Lake, as described herein and depicted on a map dated October 11, 1990, except that recreational development consistent with wildlife habitat values shall be permitted. The southern portion of Provo Bay referred to in this subsection shall be that area extending two thousand feet out into the Bay from the ordinary high water line on the south shore of Provo Bay, beginning at a point at the mouth of the Spanish Fork River and extending generally eastward along the ordinary high water line to the intersection of such line with the Provo City limit, as it existed as of October 10, 1990, on the east shore of the Bay. Such a map shall be on file and available for inspection in the office of the Secretary of the Interior, Washington, District of Columbia. Nothing in this Act shall restrict present or future development of the Provo City Airport or airport access roads along the north side of Provo Bay.

SEC. 307. FISHERIES ACQUISITION, REHABILITATION, AND ENHANCEMENT.

Of the amounts authorized to be appropriated by section 201, the following amounts shall be in addition to amounts available under the 1988 Definite Plan Report and shall be available only for fisheries acquisition, rehabilitation, and improvement within the State:

(1) \$750,000 for fish habitat restoration on the Provo River between the Jordanelle and Deer Creek Reservoirs.

(2) \$4,000,000 for fish habitat restoration in streams impacted by Federal reclamation projects in Utah.

(3) \$1,000,000 for the restoration of tributaries of the Strawberry Reservoir to assure trout spawning recruitment.

(4) \$1,500,000 for post-treatment management and fishery development costs at the Strawberry Reservoir.

(5) \$1,000,000 for (A) a study to be conducted as directed by the Commission to determine the appropriate means for

improving Utah Lake as a warm water fishery and other related issues; and

(B) development of facilities and programs to implement management objectives.

(6) \$1,000,000 for fish habitat restoration and improvements in the Diamond Fork River and Sixth Water Creek drainages.

(7) \$475,000 for the restoration of native cutthroat trout populations in streams and lakes in the Bonneville Unit project area.

(8) \$2,500,000 for watershed restoration and improvements, erosion control, and wildlife habitat restoration and improvements in the Avintaquin, Red, and Currant Creek drainages and other Strawberry River drainages affected by the development of Federal reclamation projects in Utah.

SEC. 308. STABILIZATION OF HIGH MOUNTAIN LAKES IN THE UINTA MOUNTAINS.

(a) **REVISION OF PLAN.**—The project plan for the stabilization of high mountain lakes in the Upper Provo River drainage shall be revised to require that the following lakes will be stabilized at levels beneficial for fish habitat and recreation: Big Elk, Crystal, Duck, Fire, Island, Long, Wall, Marjorie, Pot, Star, Teapot, and Weir. Overland access by vehicles or equipment for stabilization and irrigation purposes under this subsection shall be minimized within the Lakes Management Area boundary, as depicted on the map in the Wasatch-Cache National Forest Plan (p. IV-166, dated 1987), to a level of practical necessity.

(b) **COSTS OF REHABILITATION.**—(1) The costs of rehabilitating water storage features at Trial, Washington, and Lost Lakes, which are to be used for project purposes, shall be borne by the project from amounts made available pursuant to section 201. Existing roads may be used for overland access to carry out such rehabilitation.

(2) The costs of stabilizing each of the lakes referred to in subsection (a) which is to be used for a purpose other than irrigation shall be treated as an expense under section 8.

(c) **FISH AND WILDLIFE HABITAT.**—Of the amounts authorized to be appropriated by section 201, \$5,000,000 shall be available only for stabilization and fish and wildlife habitat restoration in the lakes referred to in subsection (a). This amount shall be in addition to the \$7,538,000 previously authorized for appropriation under section 5 of the Act of April 11, 1956 (43 U.S.C. 620g) for the stabilization and rehabilitation of the lakes described in this section.

SEC. 309. STREAM ACCESS AND RIPARIAN HABITAT DEVELOPMENT.

(a) **IN GENERAL.**—Of the amounts authorized to be appropriated by section 201, the following amounts shall be in addition to amounts available under the 1988 Definite Plan Report and shall be available only for stream access and riparian habitat development in the State:

(1) \$750,000 for rehabilitation of the Provo River riparian habitat development between Jordanelle Reservoir and Utah Lake.

(2) \$250,000 for rehabilitation and development of watersheds and riparian habitats along Diamond Fork and Sixth Water Creek.

(3) \$350,000 for additional watershed stabilization, terrestrial wildlife and riparian habitat improvements, and road closures within the Central Utah Project area.

(4) \$8,500,000 for the acquisition of additional recreation and angler accesses and riparian habitats, which accesses and habitats shall be acquired in accordance with the recommendation of the Commission.

(b) STUDY OF IMPACT TO WILDLIFE AND RIPARIAN HABITATS WHICH EXPERIENCE REDUCED WATER FLOWS AS A RESULT OF THE STRAWBERRY COLLECTION SYSTEM.—Of the amounts authorized to be appropriated by section 201, \$400,000 shall be available only for the Commission to conduct a study of the impacts to soils and riparian fish and wildlife habitat in drainages that will experience substantially reduced water flows resulting from the operation of the Strawberry Collection System. The study shall identify mitigation opportunities that represent alternatives to increasing stream flows and make recommendations to the Commission.

SEC. 310. SECTION 8 EXPENSES.

(a) Unless otherwise expressly provided, all of the amounts authorized to be appropriated by this Act and listed in subsection (b) of this section shall be treated as expenses under section 8.

(b) The sections referred to in subsection (a) of this section are as follows: title III, and section 402(b)(2).

SEC. 311. JORDAN AND PROVO RIVER PARKWAYS AND NATURAL AREAS.

(a) **FISHERIES.**—Of the amounts authorized to be appropriated by section 201, \$1,150,000 shall be available only for fish habitat improvements to the Jordan River.

(b) **RIPARIAN HABITAT REHABILITATION.**—Of the amounts authorized to be appropriated by section 201, \$750,000 shall be available only for Jordan River riparian habitat rehabilitation, which amount shall be in addition to amounts available under the 1988 Definite Plan Report.

(c) **WETLANDS.**—Of the amounts authorized to be appropriated by section 201, \$7,000,000 shall be available only for the acquisition of wetland acreage, including those along the Jordan River identified by the multi-agency technical committee for the Jordan River Wetlands Advance Identification Study.

(d) **RECREATIONAL FACILITIES.**—(1) Of the amounts authorized to be appropriated by section 201, \$500,000 shall be available only to construct recreational facilities within Salt Lake County proposed by the State of Utah for the "Provo/Jordan River Parkway", a description of which is set forth in the report to accompany the bill H.R. 429 (S. Rept. 102-267).

(2) Of the amounts authorized to be appropriated by section 201, \$500,000 shall be available only to construct recreational facilities within Utah and Wasatch Counties proposed by the State of Utah for the "Provo/Jordan River Parkway", a description of which is set forth in the report to accompany the bill H.R. 429 (S. Rept. 102-267).

(e) **PROVO RIVER CORRIDOR.**—Of the amounts authorized to be appropriated by section 201, \$1,000,000 shall be available only for riparian habitat acquisition and preservation, stream habitat improvements, and recreation and angler access provided on a willing seller basis along the Provo River from the Murdock diver-

sion to Utah Lake, as determined by the Commission after consultation with local officials.

SEC. 312. RECREATION.

Of the amounts authorized to be appropriated by section 201, the following amounts shall be available to the Commission only for Central Utah Project recreation features:

- (a) \$2,000,000 for Utah Lake recreational improvements as proposed by the State and local governments.
- (b) \$750,000 for additional recreation improvements, which shall be made in accordance with recommendations made by the Commission, associated with Central Utah Project features and affected areas, including camping facilities, hiking trails, and signing.

SEC. 313. FISH AND WILDLIFE FEATURES IN THE COLORADO RIVER STORAGE PROJECT.

Of the amounts authorized to be appropriated by section 201, the following amounts shall be available only to provide mitigation and restoration of watersheds and fish and wildlife resources in Utah impacted by the Colorado River Storage Project:

(a) **HABITAT IMPROVEMENTS IN CERTAIN DRAINAGES.**—\$1,125,000 shall be available only for watershed and fish and wildlife improvements in the Fremont River drainage, which shall be expended in accordance with a plan developed by the Commission in consultation with the Wayne County Water Conservancy District.

(b) **SMALL DAMS AND WATERSHED IMPROVEMENTS.**—\$4,000,000 shall be available only for land acquisition for the purposes of watershed restoration and protection in the Albion Basin in the Wasatch Mountains and for restoration and conservation related improvements to small dams and watersheds on State of Utah lands and National Forest System lands within the Central Utah Project and the Colorado River Storage Project area in Utah, which amounts shall be expended in accordance with a plan developed by the Commission.

(c) **FISH HATCHERY PRODUCTION.**—\$22,800,000 shall be available only for the planning and implementation of improvements to existing hatchery facilities or the construction and development of new fish hatcheries to increase production of warmwater and coldwater fishes for the areas affected by the Colorado River Storage Project in Utah. Such improvements and construction shall be implemented in accordance with a plan identifying the long-term needs and management objectives for hatchery production prepared by the United States Fish and Wildlife Service, in consultation with the Utah Division of Wildlife Resources, and adopted by the Commission. The cost of operating and maintaining such new or improved facilities shall be borne by the Secretary.

SEC. 314. CONCURRENT MITIGATION APPROPRIATIONS.

Notwithstanding any other provision of this Act, the Secretary is directed to allocate funds appropriated for each fiscal year pursuant to titles II through IV of this Act as follows:

(a) Deposit the Federal contribution to the Account authorized in section 402(b)(2).

(b) Of any remaining funds, allocate the amounts available for implementation of the mitigation and conservation projects and features specified in the schedule in section 315 concur-

rently with amounts available for implementation of title II of this Act.

(c) Of the amounts allocated for implementation of the mitigation and conservation projects and features specified in the schedule in section 315, three percent of the total shall be used by the Secretary to fulfill subsections (d) and (e) of this section.

(d) The Secretary shall use the sums identified in subsection (c) outside the State of Utah to:

(1) restore damaged natural ecosystems on public lands and waterways affected by the Federal Reclamation program;

(2) acquire, from willing sellers only, other lands and properties, including water rights, or appropriate interests therein, with restorable damaged natural ecosystems, and restore such ecosystems;

(3) provide jobs and sustainable economic development in a manner that carries out the other purposes of this subsection;

(4) provide expanded recreational opportunities; and

(5) support and encourage research, training, and education in methods and technologies of ecosystem restoration.

(e) In implementing subsection (d), the Secretary shall give priority to restoration and acquisition of lands and properties or appropriate interests therein where repair of compositional, structural, and functional values will:

(1) reconstitute natural biological diversity that has been diminished;

(2) assist the recovery of species populations, communities, and ecosystems that are unable to survive on-site without intervention;

(3) allow reintroduction and reoccupation by native flora and fauna;

(4) control or eliminate exotic flora and fauna that are damaging natural ecosystems;

(5) restore natural habitat for the recruitment and survival of fish, waterfowl, and other wildlife;

(6) provide additional conservation values to State and local government lands;

(7) add to structural and compositional values of existing ecological preserves or enhance the viability, defensibility, and manageability of ecological preserves; and

(8) restore natural hydrological effects including sediment and erosion control, drainage, percolation, and other water quality improvement capacity.

SEC. 315. FISH, WILDLIFE, AND RECREATION SCHEDULE.

The mitigation and conservation projects and features shall be implemented in accordance with the following schedule:

FISH, WILDLIFE, AND RECREATION MITIGATION AND CONSERVATION SCHEDULE

I. BUDGET TO IMPLEMENT ADDITIONAL RECLAMATION MITIGATION

Projects and Features	Appropriations (Thousands of 1990 Dollars)			
	TOTAL	FY93	FY94	FY95
Instream flows:				
1.a. Lease of Daniels Creek water rights	\$500	\$500	\$0	\$0
b. Acquisition of Daniels Creek water rights to restore Upper Strawberry River flows and the Daniels Creek replacement pipeline (\$3,500,000 shall be treated as section 8) [Sec. 303(b)]	\$10,000	\$10,000	\$0	\$0
2.a. Acquisition of 25,000 AF on Provo River for streamflows from Murdock Diversion to Utah Lake [Sec. 302]	\$15,000	\$5,000	\$5,000	5,000
b. Modify or replace diversion structures on Provo River from Murdock Diversion to Utah Lake [Sec. 302]	\$4,000	\$500	\$1,500	\$1,500
3. Study and mitigation plan for excessive flows in the Provo River [Sec. 303(d)]	\$500	\$100	\$100	\$100
Subtotal	\$30,000	\$16,100	\$6,600	\$6,600
	FY96	FY97	FY98	
Instream flows:				
1.a. Lease of Daniels Creek water rights	\$0	\$0	\$0	
b. Acquisition of Daniels Creek water rights to restore Upper Strawberry River flows and the Daniels Creek replacement pipeline (\$3,500,000 shall be treated as section 8) [Sec. 303(b)]	\$0	\$0	\$0	
2.a. Acquisition of 25,000 AF on Provo River for streamflows from Murdock Diversion to Utah Lake [Sec. 302]	\$0	\$0	\$0	
b. Modify or replace diversion structures on Provo River from Murdock Diversion to Utah Lake [Sec. 302]	\$500	\$0	\$0	
3. Study and mitigation plan for excessive flows in the Provo River [Sec. 303(d)]	\$100	\$100	\$0	
Subtotal	\$600	\$100	\$0	
	TOTAL	FY93	FY94	FY95
Wildlife lands and improvement:				
1. Acquisition of big game winter range [Sec. 305(a)]	\$1,300	\$0	\$100	\$200
2. Construction of big game crossings and escape ramps—Provo Res. Canal, Highline Canal, Strawberry Power Canal or others [Sec. 305(b)]	\$750	\$0	\$0	\$250
Subtotal	\$2,050	\$0	\$100	\$450
	FY96	FY97	FY98	
Wildlife lands and improvement:				
1. Acquisition of big game winter range [Sec. 305(a)]	\$500	\$500	\$0	

**FISH, WILDLIFE, AND RECREATION MITIGATION AND
CONSERVATION SCHEDULE—Continued**

I. BUDGET TO IMPLEMENT ADDITIONAL RECLAMATION MITIGATION

Projects and Features	Appropriations (Thousands of 1990 Dollars)			
	TOTAL	FY93	FY94	FY95
2. Construction of big game crossings and escape ramps—Provo Res. Canal, Highline Canal, Strawberry Power Canal or others [Sec. 305(b)]	\$250	\$250	\$0	
Subtotal	\$750	\$750	\$0	
	FY96	FY97	FY98	
Wetland acquisition, rehabilitation, and development:				
1. Rehabilitation & enhancement of wetlands around Great Salt Lake [Sec. 306(a)]	\$14,000	\$1,000	\$2,600	\$2,600
2. Wetland acquisition along the Jordan River [Sec. 311(c)]	\$7,000	\$300	\$1,200	\$1,500
3. Inventory of sensitive species and ecosystems [Sec. 306(b)]	\$1,500	\$250	\$250	\$250
4. Acquisition of lands, waters, and interests for Utah Lake Wetland Preserve [Sec. 306(c)(9)]	\$16,690	\$1,690	\$3,000	\$3,000
Subtotal	\$39,190	\$3,240	\$7,050	\$7,350
	FY96	FY97	FY98	
Wetland acquisition, rehabilitation, and development:				
1. Rehabilitation & enhancement of wetlands around Great Salt Lake [Sec. 306(a)]	\$2,600	\$2,600	\$2,600	
2. Wetland acquisition along the Jordan River [Sec. 311(c)]	\$2,000	\$2,600	\$0	
3. Inventory of sensitive species and ecosystems [Sec. 306(b)]	\$250	\$250	\$250	
4. Acquisition of lands, waters, and interests for Utah Lake Wetland Preserve [Sec. 303(c)(9)]	\$3,000	\$3,000	\$3,000	
Subtotal	\$7,850	\$7,850	\$5,850	
	TOTAL	FY93	FY94	FY95
Fisheries acquisition and restoration:				
1. Fish habitat restoration on Provo River between Jordanelle Dam and Deer Creek Reservoir [Sec. 307(1)]	\$750	\$50	\$0	\$100
2. Fish habitat improvements to streams impacted by Federal reclamation projects in Utah [Sec. 307(2)]	\$4,000	\$0	\$400	\$600
3. Rehabilitation of tributaries to Strawberry Reservoir for trout reproduction [Sec. 307(3)]	\$1,000	\$200	\$200	\$200
4. Strawberry Reservoir post-treatment management and development [Sec. 307(4)]	\$1,500	\$300	\$300	\$300
5. Study and facilitate development to improve Utah Lake warm-water fishery [Sec. 307(5)]	\$1,000	\$150	\$150	\$200

**FISH, WILDLIFE, AND RECREATION MITIGATION AND
CONSERVATION SCHEDULE—Continued**

I. BUDGET TO IMPLEMENT ADDITIONAL RECLAMATION MITIGATION

Projects and Features	Appropriations (Thousands of 1990 Dollars)			
	TOTAL	FY93	FY94	FY95
6. Fish habitat improvements to Diamond Fork and Sixth Water Creek drainages [Sec. 307(6)]	\$1,000	\$0	\$0	\$0
7. Restoration of native cutthroat trout populations [Sec. 307(7)] ...	\$475	\$50	\$50	\$75
8. Fish habitat improvements to the Jordan River [Sec. 311(a)] ...	\$1,150	\$0	\$0	\$100
9. Stabilization of Upper Provo River reservoirs for fishery improvement [Sec. 308]	\$5,000	\$0	\$0	\$0
10. Development of additional fish hatchery production for CRSP waters in Utah [Sec. 313]	\$22,800	\$100	\$3,500	\$4,200
Subtotal	\$38,675	\$850	\$4,600	\$5,775
	FY96	FY97	FY98	
Fisheries acquisition and restoration:				
1. Fish habitat restoration on Provo River between Jordanelle Dam and Deer Creek Reservoir [Sec. 307(1)]	\$200	\$200	\$200	
2. Fish habitat improvements to streams impacted by Federal reclamation projects in Utah [Sec. 307(2)]	\$1,000	\$1,000	\$1,000	
3. Rehabilitation of tributaries to Strawberry Reservoir for trout reproduction [Sec. 307(3)]	\$200	\$200	\$0	
4. Strawberry Reservoir post-treatment management and development [Sec. 307(4)]	\$300	\$300	\$0	
5. Study and facilitate development to improve Utah Lake warmwater fishery [Sec. 307(5)]	\$150	\$150	\$200	
6. Fish habitat improvements to Diamond Fork and Sixth Water Creek drainages [Sec. 307(6)]	\$100	\$500	\$400	
7. Restoration of native cutthroat trout populations [Sec. 307(7)] ...	\$100	\$100	\$100	
8. Fish habitat improvements to the Jordan River [Sec. 311(a)] ...	\$300	\$400	\$350	
9. Stabilization of Upper Provo River reservoirs for fishery improvement [Sec. 308]	\$500	\$2,000	\$2,500	
10. Development of additional fish hatchery production for CRSP waters in Utah [Sec. 313]	\$5,000	\$5,000	\$5,000	
Subtotal	\$7,850	\$9,850	\$9,750	
	TOTAL	FY93	FY94	FY95
Watershed improvements:				
1. Projects for watershed improvement, erosion control, wildlife range improvements in Avintaquin Cr, Red Cr, Currant Cr and other drainages [Sec. 307(8)]	\$2,500	\$0	\$500	\$500
2. Watershed, stream and riparian improvements in Fremont River drainage [Sec. 313(a)]	\$1,125	\$125	\$200	\$200

FISH, WILDLIFE, AND RECREATION MITIGATION AND CONSERVATION SCHEDULE—Continued

I. BUDGET TO IMPLEMENT ADDITIONAL RECLAMATION MITIGATION

Projects and Features	Appropriations (Thousands of 1990 Dollars)			
	TOTAL	FY93	FY94	FY95
3. Small dam and watershed improvements in the CRSP area in Utah [Sec. 313(b)]	\$4,000	\$500	\$700	\$700
Subtotal	\$7,625	\$625	\$1,400	\$1,400
	FY96	FY97	FY98	
Watershed Improvements:				
1. Projects for watershed improvement, erosion control, wildlife range improvements in Avintaquin Cr, Red Cr, Currant Cr and other drainages [Sec. 307(8)]	\$500	\$500	\$500	
2. Watershed, stream and riparian improvements in Fremont River drainage [Sec. 313(a)]	\$200	\$200	\$200	
3. Small dam and watershed improvements in the CRSP area in Utah [Sec. 313(b)]	\$700	\$700	\$700	
Subtotal	\$1,400	\$1,400	\$1,400	
	TOTAL	FY93	FY94	FY95
Stream Access and Riparian Habitat Development:				
1. Rehabilitation of riparian habitat along Provo River from Jordanelle Dam to Utah Lake [Sec. 309(a)(1)]	\$750	\$0	\$250	\$250
2. Restoration of watersheds and riparian habitats in the Diamond Fork and Sixth Water Creek drainages [Sec. 309(a)(2)]	\$250	\$0	\$0	\$50
3. Watershed stabilization, terrestrial wildlife habitat improvements and road closures [Sec. 309(a)(3)]	\$350	\$0	\$0	\$50
4. Acquisition of angler and other recreational access, in addition to the 1988 DPR [Sec. 309(a)(4)]	\$8,500	\$500	\$1,000	\$1,500
5. Study of riparian impacts caused by CUP from reduced streamflows, and identify mitigation opportunities [Sec. 309(b)]	\$400	\$50	\$75	\$75
6. Riparian rehabilitation and development along Jordan River [Sec. 311(b)]	\$750	\$75	\$75	\$150
Subtotal	\$11,000	\$625	\$1,400	\$2,075
	FY96	FY97	FY98	
Stream Access and Riparian Habitat Development:				
1. Rehabilitation of riparian habitat along Provo River from Jordanelle Dam to Utah Lake [Sec. 309(a)(1)]	\$250	\$0	\$0	
2. Restoration of watersheds and riparian habitats in the Diamond Fork and Sixth Water Creek drainages [Sec. 309(a)(2)]	\$100	\$100	\$0	

**FISH, WILDLIFE, AND RECREATION MITIGATION AND
CONSERVATION SCHEDULE—Continued**
I. BUDGET TO IMPLEMENT ADDITIONAL RECLAMATION MITIGATION

Projects and Features	Appropriations (Thousands of 1990 Dollars)			
	TOTAL	FY93	FY94	FY95
3. Watershed stabilization, terrestrial wildlife habitat improvements and road closures [Sec. 309(a)(3)]	\$100	\$100	\$100	
4. Acquisition of angler and other recreational access, in addition to the 1988 DPR [Sec. 309(a)(4)]	\$1,500	\$2,000	\$2,000	
5. Study of riparian impacts caused by CUP from reduced streamflows, and identify mitigation opportunities [Sec. 309(b)]	\$75	\$75	\$50	
6. Riparian rehabilitation and development along Jordan River [Sec. 311(b)]	\$150	\$150	\$150	
Subtotal	\$2,175	\$2,425	\$2,300	
	TOTAL	FY93	FY94	FY95
Recreation funds:				
1. Recreational improvements at Utah Lake [Sec. 312(a)]	\$2,000	\$125	\$275	\$400
2. Recreation facilities at other CUP features, as recommended [Sec. 312(b)]	\$750	\$50	\$100	\$150
3. Provo/Jordan River Parkway Development [Sec. 311(d)]	\$1,000	\$0	\$75	\$75
4. Provo River corridor development [Sec. 311(e)]	\$1,000	\$0	\$75	\$75
Subtotal	\$4,750	\$175	\$525	\$700
Total Additional	\$133,290	\$21,615	\$21,675	\$24,350
	FY96	FY97	FY98	
Recreation funds:				
1. Recreational improvements at Utah Lake [Sec. 312(a)]	\$400	\$400	\$400	
2. Recreation facilities at other CUP features, as recommended [Sec. 312(b)]	\$150	\$150	\$150	
3. Provo/Jordan River Parkway Development [Sec. 311(d)]	\$200	\$300	\$350	
4. Provo River corridor development [Sec. 311(e)]	\$200	\$300	\$350	
Subtotal	\$950	\$1,150	\$1,250	
Total Additional	\$21,575	\$23,525	\$20,550	
Strawberry collection system:				
1. Acquire angler access on about 35 miles of streams identified in the Aquatic Mitigation Plan	\$2,700	\$900	\$900	\$900
2. Construct fish habitat improvements on about 70 miles of streams as identified in the Aquatic Mitigation Plan	\$3,990	\$666	\$803	\$790
3. Rehabilitation of Strawberry Project wildlife and riparian habitats	\$3,000	\$600	\$600	\$600
Subtotal	\$9,690	\$3,966	\$1,403	\$1,390

**FISH, WILDLIFE, AND RECREATION MITIGATION AND
CONSERVATION SCHEDULE—Continued**

I. BUDGET TO IMPLEMENT ADDITIONAL RECLAMATION MITIGATION

Projects and Features	Appropriations (Thousands of 1990 Dollars)			
	TOTAL	FY93	FY94	FY95
	FY96	FY97	FY98	
Strawberry collection system:				
1. Acquire angler access on about 35 miles of streams identified in the Aquatic Mitigation Plan	\$0	\$0	\$0	
2. Construct fish habitat improvements on about 70 miles of streams as identified in the Aquatic Mitigation Plan	\$453	\$604	\$674	
3. Rehabilitation of Strawberry Project wildlife and riparian habitats	\$600	\$600	\$0	
Subtotal	\$1,053	\$1,204	\$674	
	TOTAL	FY93	FY94	FY95
Duchesne canal rehabilitation:				
1. Acquire and develop 782 acres along Duchesne River	\$160	\$160	\$0	\$0
Subtotal	\$160	\$160	\$0	\$0
	FY96	FY97	FY98	
Duchesne canal rehabilitation:				
1. Acquire and develop 782 acres along Duchesne River	\$0	\$0	\$0	
Subtotal	\$0	\$0	\$0	
	TOTAL	FY93	FY94	FY95
Municipal and industry system:				
1. Fence and develop big game on north shoreline of Jordanelle Reservoir	\$226	\$100	\$126	\$0
2. Acquire angler access to entire reach of Provo River from Jordanelle Dam to Deer Creek Reservoir	\$1,050	\$525	\$525	\$0
3. Acquire and develop 100 acres of wetland at base of Jordanelle Dam	\$900	\$900	\$0	\$0
Subtotal	\$2,176	\$1,525	\$651	\$0
Total DPR	\$12,026	\$5,651	\$2,054	\$1,390
Grand Total	\$145,316	\$27,266	\$23,729	\$25,740
	FY96	FY97	FY98	
Municipal and industry system:				
1. Fence and develop big game on north shoreline of Jordanelle Reservoir	\$0	\$0	\$0	
2. Acquire angler access to entire reach of Provo River from Jordanelle Dam to Deer Creek Reservoir	\$0	\$0	\$0	
3. Acquire and develop 100 acres of wetland at base of Jordanelle Dam	\$0	\$0	\$0	
Subtotal	\$0	\$0	\$0	

**FISH, WILDLIFE, AND RECREATION MITIGATION AND
CONSERVATION SCHEDULE—Continued**
I. BUDGET TO IMPLEMENT ADDITIONAL RECLAMATION MITIGATION

Projects and Features	Appropriations (Thousands of 1990 Dollars)			
	TOTAL	FY93	FY94	FY95
Total DPR	\$1,053	\$1,204	\$674	
Grand Total	\$22,628	\$24,729	\$21,224	

**TITLE IV—UTAH RECLAMATION MITIGATION AND
CONSERVATION ACCOUNT**

SEC. 401. FINDINGS AND PURPOSE.

(a) **FINDINGS.**—The Congress finds that—

(1) the State of Utah is a State in which one of the largest trans-basin water diversions occurs, dewatering important natural areas as a result of the Colorado River Storage Project;

(2) the State of Utah is one of the most ecologically significant States in the Nation, and it is therefore important to protect, mitigate, and enhance sensitive species and ecosystems through effective long-term mitigation;

(3) the challenge of mitigating the environmental consequences associated with trans-basin water diversions are complex and involve many projects and measures (some of which are presently unidentifiable) and the costs for which will continue after projects of the Colorado River Storage Project in Utah are completed; and

(4) environmental mitigation associated with the development of the projects of the Colorado River Storage Project in the State of Utah are seriously in arrears.

(b) **PURPOSES.**—The purpose of this title is to establish an ongoing account to ensure that—

(1) the level of environmental protection, mitigation, and enhancement achieved in connection with projects identified in this Act and elsewhere in the Colorado River Storage Project in the State of Utah is preserved and maintained;

(2) resources are available to manage and maintain investments in fish and wildlife and recreation features of the projects identified in this Act and elsewhere in the Colorado River Storage Project in the State of Utah;

(3) resources are available to address known environmental impacts of the projects identified in this Act and elsewhere in the Colorado River Storage Project in the State of Utah for which no funds are being specifically authorized for appropriation and earmarked under this Act; and

(4) resources are available to address presently unknown environmental needs and opportunities for enhancement within the areas of the State of Utah affected by the projects identified in this Act and elsewhere in the Colorado River Storage Project.

SEC. 402. UTAH RECLAMATION MITIGATION AND CONSERVATION ACCOUNT.

(a) **ESTABLISHMENT.**—There is hereby established in the Treasury of the United States a Utah Reclamation Mitigation and Conservation Account (hereafter in this title referred to as the

"Account"). Amounts in the Account shall be available for the purposes set forth in section 401(b).

(b) DEPOSITS INTO THE ACCOUNT.—Amounts shall be deposited into the Account as follows:

(1) STATE CONTRIBUTIONS.—In each of fiscal years 1994 through 2001, or until the fiscal year in which the project is declared substantially complete, whichever occurs first, a voluntary contribution of \$3,000,000 from the State of Utah.

(2) FEDERAL CONTRIBUTIONS.—In each of fiscal years 1994 through 2001, or until the fiscal year in which the project is declared substantially complete, whichever occurs first, \$5,000,000 from amounts authorized to be appropriated by section 201, which shall be treated as an expense under section 8.

(3) CONTRIBUTIONS FROM PROJECT BENEFICIARIES.—(A) In each of fiscal years 1994 through 2001, or until the fiscal year in which the project is declared substantially complete in accordance with this Act, whichever occurs first, \$750,000 in non-Federal funds from the District.

(B) \$5,000,000 annually by the Secretary of Energy out of funds appropriated to the Western Area Power Administration, such expenditures to be considered nonreimbursable and nonreturnable.

(C) The annual contributions described in subparagraphs (A) and (B) shall be increased proportionally on March 1 of each year by the same percentage increase during the previous calendar year in the Consumer Price Index for urban consumers, published by the Department of Labor.

(4) INTEREST AND UNEXPENDED FUNDS.—(A) Any amount authorized and earmarked for fish, wildlife, or recreation expenditures which is appropriated but not obligated or expended by the Commission upon its termination under section 301.

(B) All funds annually appropriated to the Secretary for the Commission.

(C) All interest earned on amounts in the Account.

(D) Amounts not obligated or expended after the completion of a construction project and available pursuant to section 301(j).

(c) OPERATION OF THE ACCOUNT.—(1) All funds deposited as principal in the Account shall earn interest in the amount determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities. Such interest shall be added to the principal of the Account until completion of the projects and features specified in the schedule in section 315. After completion of such projects and features, all interest earned on amounts remaining in or deposited to the principal of the Account shall be available to the Commission pursuant to subsection (c)(2) of this section.

(2) The Commission is authorized to administer and expend without further authorization and appropriation by Congress all sums deposited into the Account pursuant to subsections (b)(4)(D), (b)(3)(A), and (b)(3)(B), as well as interest not deposited to the principal of the Account pursuant to paragraph (1) of this subsection. The Commission may elect to deposit funds not expended

under subsections (b)(4)(D), (b)(3)(A), and (b)(3)(B) into the Account as principal.

(3) All amounts deposited in the Account pursuant to subsections (b) (1) and (2), and any amount deposited as principal under paragraphs (c)(1) and (c)(2), shall constitute the principal of the Account. No part of the principal amount may be expended for any purpose.

(d) ADMINISTRATION BY THE UTAH DIVISION OF WILDLIFE RESOURCES.—(1) After the date on which the Commission terminates under section 301, the Utah Division of Wildlife Resources or its successor shall receive—

(A) all amounts contributed annually to the Account pursuant to section 402(b)(3)(B); and

(B) all interest on the principal of the Account, at the beginning of each year. The portion of the interest earned on the principal of the Account that exceeds the amount required to increase the principal of the Account proportionally on March 1 of each year by the percentage increase during the previous calendar year in the Consumer Price Index for urban consumers published by the Department of Labor, shall be available for expenditure by the Division in accordance with this section.

(2) The funds received by the Utah Division of Wildlife Resources under paragraph (1) shall be expended in a manner that fulfills the purposes of the Account established under this Act, in consultation with and pursuant to, a conservation plan and amendments thereto to be developed by the Utah Division of Wildlife Resources, in cooperation with the United States Forest Service, the Bureau of Land Management of the Department of the Interior, and the United States Fish and Wildlife Service.

(3) The funds to be distributed from the Account shall not be applied as a substitute for funding which would otherwise be provided or available to the Utah Division of Wildlife Resources.

(e) AUDIT BY INSPECTOR GENERAL.—The financial management of the Account shall be subject to audit by the Inspector General of the Department of the Interior.

TITLE V—UTE INDIAN RIGHTS SETTLEMENT

SEC. 501. FINDINGS.

(a) FINDINGS.—The Congress finds the following—

(1) the unquantified Federal reserved water rights of the Ute Indian Tribe are the subject of existing claims and prospective lawsuits involving the United States, the State, and the District and numerous other water users in the Uinta Basin. The State and the Tribe negotiated, but did not implement, a compact to quantify the Tribe's reserved water rights.

(2) There are other unresolved Tribal claims arising out of an agreement dated September 20, 1965, where the Tribe deferred development of a portion of its reserved water rights for 15,242 acres of the Tribe's Group 5 Lands in order to facilitate the construction of the Bonneville Unit of the Central Utah Project. In exchange the United States undertook to develop substitute water for the benefit of the Tribe.

(3) It was intended that the Central Utah Project, through construction of the Upalco and Uintah Units (Initial Phase) and the Ute Indian Unit (Ultimate Phase) would provide water

for growth in the Uinta Basin and for late season irrigation for both the Indians and non-Indian water users. However, construction of the Upalco and Uintah Units has not been undertaken, in part because the Bureau was unable to find adequate and economically feasible reservoir sites. The Ute Indian Unit has not been authorized by Congress, and there is no present intent to proceed with Ultimate Phase construction.

(4) Without the implementation of the plans to construct additional storage in the Uinta Basin, the water users (both Indian and non-Indian) continue to suffer water shortages and resulting economic decline.

(b) PURPOSE.—This Act and the proposed Revised Ute Indian Compact of 1990 are intended to—

- (1) quantify the Tribe's reserved water rights;
- (2) allow increased beneficial use of such water; and
- (3) put the Tribe in the same economic position it would have enjoyed had the features contemplated by the September 20, 1965 Agreement been constructed.

SEC. 502. PROVISIONS FOR PAYMENT TO THE UTE INDIAN TRIBE.

(a) BONNEVILLE UNIT TRIBAL CREDITS.—(1) Commencing one year after the date of enactment of this Act, and continuing for fifty years, the Tribe shall receive from the United States 26 percent of the annual Bonneville Unit municipal and industrial capital repayment obligation attributable to thirty-five thousand five hundred acre-feet of water, which represents a portion of the Tribe's water rights that were to be supplied by storage from the Central Utah Project, but will not be supplied because the Upalco and Uintah units are not to be constructed.

(2)(A) Commencing in the year 2042, the Tribe shall collect from the District 7 percent of the then fair market value of thirty-five thousand five hundred acre-feet of Bonneville Unit agricultural water which has been converted to municipal and industrial water. The fair market value of such water shall be recalculated every five years.

(B) In the event thirty-five thousand five hundred acre-feet of Bonneville Unit converted agricultural water to municipal and industrial have not yet been marketed as of the year 2042, the Tribe shall receive 7 percent of the fair market value of the first thirty-five thousand five hundred acre-feet of such water converted to municipal and industrial water. The monies received by the Tribe under this title shall be utilized by the Tribe for governmental purposes, shall not be distributed per capita, and shall be used to enhance the educational, social, and economic opportunities for the Tribe.

(b) BONNEVILLE UNIT TRIBAL WATERS.—The Secretary is authorized to make any unused capacity in the Bonneville Unit Strawberry Aqueduct and Collection System diversion facilities available for use by the Tribe. Unused capacity shall constitute capacity, only as available, in excess of the needs of the District for delivery of Bonneville Unit water and for satisfaction of minimum streamflow obligations established by this Act. In the event that the Tribe elects to place water in these components of the Bonneville Unit system, the Secretary and District shall only impose an operation and maintenance charge. Such charge shall commence at the time of the Tribe's use of such facilities. The operation

and maintenance charge shall be prorated on a per acre-foot basis, but shall only include the operation and maintenance costs of facilities used by the Tribe and shall only apply when the Tribe elects to use the facilities. As provided in the Ute Indian Compact, transfers of certain Indian reserved rights water to different lands or different uses will be made in accordance with the laws of the State of Utah governing change or exchange applications.

(c) **ELECTION TO RETURN TRIBAL WATERS.**—Notwithstanding the authorization provided for in subparagraph (b), the Tribe may at any time elect to return all or a portion of the water which it delivered under subparagraph (b) for use in the Uinta Basin. Any such Uinta Basin use shall protect the rights of non-Indian water users existing at the time of the election. Upon such election, the Tribe will relinquish any and all rights which it may have acquired to transport such water through the Bonneville Unit facilities.

SEC. 503. TRIBAL USE OF WATER.

(a) **RATIFICATION OF REVISED UTE INDIAN COMPACT.**—The Revised Ute Indian Compact of 1990, dated October 1, 1990, reserving waters to the Ute Indian Tribe and establishing the uses and management of such Tribal waters, is hereby ratified and approved, subject to re-ratification by the State and the Tribe. The Secretary is authorized to take all actions necessary to implement the Compact.

(b) **THE INDIAN INTERCOURSE ACT.**—The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water rights confirmed in the Compact. Nothing in this subsection shall be considered to amend, construe, supersede or preempt any State law, Federal law, interstate compact or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development and storage, regulation, allocation, conservation, exportation or quality of those waters.

(c) **RESTRICTION ON DISPOSAL OF WATERS INTO THE LOWER COLORADO RIVER BASIN.**—None of the waters secured to the Tribe in the Revised Ute Indian Compact of 1990 may be sold, exchanged, leased, used, or otherwise disposed of into or in the Lower Colorado River Basin, below Lees Ferry, unless water rights within the Upper Colorado River Basin in the State of Utah held by non-Federal, non-Indian users could be so sold, exchanged, leased, used, or otherwise disposed of under Utah State law, Federal law, interstate compacts, or international treaty pursuant to a final, non-appealable order of a Federal court or pursuant to an agreement of the seven States signatory to the Colorado River Compact; *Provided, however,* That in no event shall such transfer of Indian water rights take place without the filing and approval of the appropriate applications with the Utah State Engineer pursuant to Utah State law.

(d) **USE OF WATER RIGHTS.**—The use of the rights referred to in subsection (a) within the State of Utah shall be governed solely as provided in this section and the Revised Compact referred to in section 503(a). The Tribe may voluntarily elect to sell, exchange, lease, use, or otherwise dispose of any portion of a water right confirmed in the Revised Compact off the Uintah and Ouray Indian Reservation. If the Tribe so elects, and as a condition precedent to such sale, exchange, lease, use, or other disposition, that portion of the Tribe's water right shall be changed to a State

water right, but shall be such a State water right only during the use of that right off the reservation, and shall be fully subject to State laws, Federal laws, interstate compacts, and international treaties applicable to the Colorado River and its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

(e) **RULES OF CONSTRUCTION.**—Nothing in titles II through VI of this Act or in the Revised Ute Indian Compact of 1990 shall—

(1) constitute authority for the sale, exchange, lease, use, or other disposal of any Federal reserved water right off the reservation;

(2) constitute authority for the sale, exchange, lease, use, or other disposal of any Tribal water right outside the State of Utah; or

(3) be deemed a congressional determination that any holders of water rights do or do not have authority under existing law to sell, exchange, lease, use, or otherwise dispose of such water or water rights outside the State of Utah.

SEC. 504. TRIBAL FARMING OPERATIONS.

Of the amounts authorized to be appropriated by section 501, \$45,000,000 is authorized for the Secretary to permit the Tribe to develop over a three-year period—

(1) a seven thousand five hundred acre farming/feed lot operation equipped with satisfactory off-farm and on-farm water facilities out of tribally-owned lands and adjoining non-Indian lands now served by the Uintah Indian Irrigation Project;

(2) a plan to reduce the Tribe's expense on the remaining sixteen thousand acres of tribal land now served by the Uintah Indian Irrigation Project; and

(3) a fund to permit tribal members to upgrade their individual farming operations.

Any non-Indian lands acquired under this section shall be acquired from willing sellers and shall not be added to the reservation of the Tribe.

SEC. 505. RESERVOIR, STREAM, HABITAT AND ROAD IMPROVEMENTS WITH RESPECT TO THE UTE INDIAN RESERVATION.

(a) **REPAIR OF CEDARVIEW RESERVOIR.**—Of the amount authorized to be appropriated by section 201, \$5,000,000 shall be available to the Secretary, in cooperation with the Tribe, to repair the leak in Cedarview Reservoir in Dark Canyon, Duchesne County, Utah, so that the resultant surface area of the reservoir is two hundred and ten acres.

(b) **RESERVATION STREAM IMPROVEMENTS.**—Of the amount authorized to be appropriated by section 201, \$10,000,000 shall be available for the Secretary, in cooperation with the Tribe and in consultation with the Commission, to undertake stream improvements to not less than 53 linear miles (not counting meanders) for the Pole Creek, Rock Creek, Yellowstone River, Lake Fork River, Uinta River, and Whiterocks River, in the State of Utah. Nothing in this authorization shall increase the obligation of the District to deliver more than 44,400 acre-feet of Central Utah Project water as its contribution to the preservation of minimum stream flows in the Uinta Basin.

(c) **BOTTLE HOLLOW RESERVOIR.**—Of the amount authorized to be appropriated by section 201, \$500,000 in an initial appropriation shall be available to permit the Secretary to clean the Bottle

Hollow Reservoir on the Ute Indian Reservation of debris and trash resulting from a submerged sanitary landfill, to remove all non-game fish, and to secure minimum flow of water to the reservoir to make it a suitable habitat for a cold water fishery. The United States, and not the Tribe, shall be responsible for cleanup and all other responsibilities relating to the presently contaminated Bottle Hollow waters.

(d) **MINIMUM STREAM FLOWS.**—As a minimum, the Secretary shall endeavor to maintain continuous releases into Rock Creek to maintain twenty-nine cubic feet per second during May through October and continuous releases into Rock Creek of twenty-three cubic feet per second during November through April, at the reservation boundary. Nothing in this authorization shall increase the obligation of the District to deliver more than forty-four thousand four hundred acre-feet of Central Utah Project water as its contribution to the preservation of minimum stream flow in the Uinta Basin.

(e) **LAND TRANSFER.**—The Bureau shall transfer 315 acres of land to the Forest Service, located at the proposed site of the Lower Stillwater Reservoir as a wildlife mitigation measure.

(f) **RECREATION ENHANCEMENT.**—Of the amount authorized to be appropriated by section 201, \$10,000,000 shall be available for the Secretary, in cooperation with the Tribe, to permit the Tribe to develop, after consultation with the appropriate fish, wildlife, and recreation agencies, big game hunting, fisheries, campgrounds and fish and wildlife management facilities, including administration buildings and grounds on the Uintah and Ouray Reservation, in lieu of the construction of the Lower Stillwater Dam and related facilities.

(g) **MUNICIPAL WATER CONVEYANCE SYSTEM.**—Of the amounts authorized to be appropriated in section 201, \$3,000,000 shall be available to the Secretary for participation by the Tribe in the construction of pipelines associated with the Duchesne County Municipal Water Conveyance System.

SEC. 506. TRIBAL DEVELOPMENT FUNDS.

(a) **ESTABLISHMENT.**—Of the amount authorized to be appropriated by section 201, there is hereby established to be appropriated a total amount of \$125,000,000 to be paid in three annual and equal installments to the Tribal Development Fund which the Secretary is authorized and directed to establish for the Tribe.

(b) **ADJUSTMENT.**—To the extent that any portion of such amount is contributed after the period described above or in amounts less than described above, the Tribe shall, subject to appropriation Acts, receive, in addition to the full contribution to the Tribal Development Fund, an adjustment representing the interest income as determined by the Secretary, in his sole discretion, that would have been earned on any unpaid amount.

(c) **TRIBAL DEVELOPMENT.**—The Tribe shall prepare a Tribal Development Plan for all or a part of this Tribal Development Fund. Such Tribal Development Plan shall set forth from time to time economic projects proposed by the Tribe which in the opinion of two independent financial consultants are deemed to be reasonable, prudent and likely to return a reasonable investment to the Tribe. The financial consultants shall be selected by the Tribe with the advice and consent of the Secretary. Principal from the Tribal Development Fund shall be permitted to be expended only

in those cases where the Tribal Development Plan can demonstrate with specificity a compelling need to utilize principal in addition to income for the Tribal Development Plan.

(d) No funds from the Tribal Development Fund shall be obligated or expended by the Secretary for any economic project to be developed or constructed pursuant to subsection (c) of this section, unless the Secretary has complied fully with the requirements of applicable fish, wildlife, recreation, and environmental laws, including the National Environmental Policy Act of 1969 (43 U.S.C. 4321 et seq.).

SEC. 507. WAIVER OF CLAIMS.

(a) **GENERAL AUTHORITY.**—The Tribe is authorized to waive and release claims concerning or related to water rights as described below.

(b) **DESCRIPTION OF CLAIMS.**—The Tribe shall waive, upon receipt of the section 504, 505, and 506 moneys, any and all claims relating to its water rights covered under the agreement of September 20, 1965, including claims by the Tribe that it retains the right to develop lands as set forth in the Ute Indian Compact and deferred in such agreement. Nothing in this waiver of claims shall prevent the Tribe from enforcing rights granted to it under this Act or under the Compact. To the extent necessary to effect a complete release of the claims, the United States concurs in such release.

(c) **RESURRECTION OF CLAIMS.**—In the event the Tribe does not receive on a timely basis the moneys described in section 502, the Tribe is authorized to bring an action for an accounting against the United States, if applicable, in the United States Claims Court for moneys owed plus interest at 10 percent, and against the District, if applicable, in the United States District Court for the District of Utah for moneys owed plus interest at 10 percent. The United States and the District waive any defense based upon sovereign immunity in such proceedings.

TITLE VI—ENDANGERED SPECIES ACT AND NATIONAL ENVIRONMENTAL POLICY ACT

Notwithstanding any provision of titles II through V of this Act, nothing in such titles shall be interpreted as modifying or amending the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

TITLE VII—LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

SEC. 701. AUTHORIZATION.

The Secretary is authorized to construct, operate, and maintain a water treatment plant, including the disposal of sludge produced by said treatment plant as appropriate, and to install concrete lining on the rehabilitated portion of the Leadville Mine Drainage Tunnel, in order that water flowing from the Leadville Tunnel may meet water quality standards, and to contract with the Colorado Division of Wildlife to monitor concentrations of heavy metal contaminants in water, stream sediment, and aquatic life in the Arkansas River downstream of the water treatment plant.

SEC. 702. COSTS NONREIMBURSABLE.

Construction, operation, and maintenance costs of the works authorized by this title shall be nonreimbursable.

SEC. 703. OPERATION AND MAINTENANCE.

The Secretary shall be responsible for operation and maintenance of the water treatment plant, including sludge disposal authorized by this title. The Secretary may contract for these services.

SEC. 704. APPROPRIATIONS AUTHORIZED.

There is hereby authorized to be appropriated beginning October 1, 1989, for construction of a water treatment plant for water flowing from the Leadville Mine Drainage Tunnel, including sludge disposal, and concrete lining the rehabilitated portion of the tunnel, the sum of \$10,700,000 (October 1988 price levels), plus or minus such amounts, if any, as may be required by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein and, in addition thereto, such sums as may be required for operation and maintenance of the works authorized by this title, including but not limited to \$1,250,000 which shall be for a program to be conducted by the Colorado Division of Wildlife to monitor heavy metal concentrations in water, stream sediment, and aquatic life in the Arkansas River.

SEC. 705. LIMITATION.

The treatment plant authorized by this title shall be designed and constructed to treat the quantity and quality of effluent historically discharged from the Leadville Mine Drainage Tunnel.

SEC. 706. DESIGN AND OPERATION NOTIFICATION.

Prior to the initiation of construction and during construction of the works authorized by section 701, the Secretary shall submit the plans for design and operation of the works to the Administrator of the Environmental Protection Agency and the State of Colorado to obtain their views on the design and operation plans. After such review and consultation, the Secretary shall notify the President pro tempore of the Senate and the Speaker of the House of Representatives that the discharge from the works to be constructed will meet the requirements set forth in Federal Facilities Compliance Agreement Number FFCA 89-1, entered into by the Bureau of Reclamation and the Environmental Protection Agency on February 7, 1989, and in National Pollutant Discharge Elimination System permit Number CO 0021717 issued to the Bureau of Reclamation in 1975 and reissued in 1979 and 1981.

SEC. 707. FISH AND WILDLIFE RESTORATION.

(a) The Secretary is authorized, in consultation with the State of Colorado, to formulate and implement, subject to the terms of subsection (b) of this section, a program for the restoration of fish and wildlife resources of those portions of the Arkansas River basin impacted by the effluent discharged from the Leadville Mine Drainage Tunnel. The formulation of the program shall be undertaken with appropriate public consultation.

(b) Prior to implementing the fish and wildlife restoration program, the Secretary shall submit a copy of the proposed restoration program to the President pro tempore of the Senate and the Speaker

of the House of Representatives for a period of not less than sixty days.

SEC. 708. WATER QUALITY RESTORATION.

(a) The Secretary is authorized, in consultation with the State of Colorado, the Administrator of the Environmental Protection Agency, and other Federal entities, to conduct investigations of water pollution sources and impacts attributed to mining-related and other development in the Upper Arkansas River basin, to develop corrective action plans, and to implement corrective action demonstration projects. Neither the Secretary nor any person participating in a corrective action demonstration project shall be liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act for costs or damages as a result of actions taken or omitted in the course of implementing an approved work plan developed under this section; *Provided*, That this subsection shall not preclude liability for costs or damages which result from negligence on the part of such persons. The Secretary shall have no authority under this section at facilities which have been listed or proposed for listing on the National Priorities List, or are subject to or covered by the Resource Conservation and Recovery Act. For the purpose of this section, the term "Upper Arkansas River basin" means the Arkansas River hydrologic basin in Colorado extending from Pueblo Dam upstream to its headwaters.

(b) The development of all corrective action plans and subsequent corrective action demonstration projects shall be undertaken with appropriate public involvement pursuant to a public participation plan, consistent with regulations promulgated under the Federal Water Pollution Control Act, developed by the Secretary in consultation with the State of Colorado and the Administrator of the Environmental Protection Agency.

(c) The Secretary shall arrange for cost sharing with the State of Colorado and for the use of non-Federal funds and in-kind services where possible. The Secretary is authorized to fund all State costs required to conduct investigations and develop corrective action plans. The Federal share of costs associated with corrective action plans shall not exceed 60 percent.

(d) Prior to implementing any corrective action demonstration project, the Secretary shall submit a copy of the proposed project plans to the President pro tempore of the Senate and the Speaker of the House of Representatives.

(e) Nothing in this title shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to the discharge or release of hazardous substances, pollutants, or contaminants, as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act.

(f) There is authorized to be appropriated such sums as may be required to fulfill the provisions of sections 707 and 708 of this title.

Appropriation
authorization.

TITLE VIII—LAKE MEREDITH SALINITY CONTROL PROJECT, TEXAS AND NEW MEXICO**SEC. 801. AUTHORIZATION TO CONSTRUCT AND TEST.**

The Secretary is authorized to construct and test the Lake Meredith Salinity Control Project, New Mexico and Texas, in accordance with the Federal Reclamation laws (Act of June 17, 1902, 32 Stat. 788, and Acts amendatory thereof or supplementary thereto) and the provisions of this title and the plan set out in the June 1985 Technical Report of the Bureau of Reclamation on this project with such modification of, omissions from, or additions to the works, as the Secretary may find proper and necessary for the purpose of improving the quality of water delivered to the Canadian River downstream of Ute Reservoir, New Mexico, and entering Lake Meredith, Texas. The principal features of the project shall consist of production wells, observation wells, pipelines, pumping plants, brine disposal facilities, and other appurtenant facilities.

SEC. 802. CONSTRUCTION CONTRACT WITH THE CANADIAN RIVER MUNICIPAL WATER AUTHORITY.

(a) **AUTHORITY TO CONTRACT.**—The Secretary is authorized to enter into a contract with the Canadian River Municipal Water Authority of Texas (hereafter in this title the "Authority") for the design and construction management of project facilities by the Bureau of Reclamation and for the payment of construction costs by the Authority. Operation and maintenance of project facilities upon completion of construction and testing shall be the responsibility of the Authority.

(b) **CONSTRUCTION CONTINGENT ON CONTRACT.**—Construction of the project shall not be commenced until a contract has been executed by the Secretary with the Authority, and the State of New Mexico has granted the necessary permits for the project facilities.

SEC. 803. PROJECT COSTS.

(a) **CANADIAN RIVER MUNICIPAL WATER AUTHORITY SHARE.**—All costs of construction of project facilities shall be advanced by the Authority as the non-Federal contribution toward implementation of this title. Pursuant to the terms of the contract authorized by section 802 of this title, these funds shall be advanced on a schedule mutually acceptable to the Authority and the Secretary, as necessary to meet the expense of carrying out construction and land acquisition activities.

(b) **FEDERAL SHARE.**—All project costs for design preparation, and construction management shall be nonreimbursable as the Federal contribution for environmental enhancement by water quality improvement, except that the Federal contribution shall not exceed 33 per centum of the total project costs.

SEC. 804. CONSTRUCTION AND CONTROL.

(a) **PRECONSTRUCTION.**—The Secretary shall, upon entering into the contract specified in section 802 with the Authority, proceed with preconstruction planning, preparation of designs and specifications, acquiring permits, acquisition of land and rights, and award of construction contracts pending availability of appropriated funds.

(b) **TERMINATION OF CONSTRUCTION.**—At any time following the first advance of funds, the Authority may request that the Secretary terminate activities then in progress, and such request

shall be binding upon the Secretary, except that, upon termination of construction pursuant to this section, the Authority shall reimburse to the Secretary a sum equal to 67 per centum of all costs incurred by the Secretary in project verification, design and construction management, reduced by any sums previously paid by the Authority to the Secretary for such purposes. Upon such termination, the United States is under no obligation to complete the project as a nonreimbursable development.

(c) **TRANSFER OF CONTROL.**—Upon completion of construction and testing of the project, or upon termination of activities at the request of the Authority, the Secretary shall transfer the care, operation, and maintenance of the project works to the Authority or to a bona fide entity mutually agreeable to the States of New Mexico and Texas. As part of such transfer, the Secretary shall return unexpended balances of the funds advanced, assign to the Authority or the bona fide entity the rights to any contract in force, convey to the Authority or the bona fide entity any real estate, easements or personal property acquired by the advanced funds, and provide any data, drawings, or other items of value procured with advanced funds.

SEC. 805. TRANSFER OF TITLE.

Title to any facilities constructed under the authority of this title shall remain with the United States.

SEC. 806. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this title, except that the total Federal contribution to the cost of the activities undertaken under the authority of this title shall not exceed 33 per centum.

TITLE IX—CEDAR BLUFF UNIT, KANSAS

Water supply.

SEC. 901. AUTHORIZATION.

The Secretary, pursuant to the provisions of the Memorandum of Understanding between the Bureau of Reclamation and the Fish and Wildlife Service of the Department of the Interior, the State of Kansas, and the Cedar Bluff Irrigation District Number 6, dated December 17, 1987, is authorized to reformulate the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program, Kansas, including reallocation of the conservation capacity of the Cedar Bluff Reservoir, to create:

(a) a designated operating pool, as defined in such Memorandum of Understanding, for fish, wildlife, and recreation purposes, for groundwater recharge for environmental, domestic, municipal and industrial uses, and for other purposes; and

(b) a joint-use pool, as defined in such Memorandum of Understanding, for flood control, water sales, fish, wildlife, and recreation purposes; and for other purposes.

SEC. 902. CONTRACT.

The Secretary is authorized to enter into a contract with the State of Kansas for the sale, use, and control of the designated operating pool, with the exception of water reserved for the city of Russell, Kansas, and to allow the State of Kansas to acquire use and control of water in the joint-use pool, except that, the

State of Kansas shall not permit utilization of water from Cedar Bluff Reservoir to irrigate lands in the Smoky Hill River Basin from Cedar Bluff Reservoir to its confluence with Big Creek.

SEC. 903. CONTRACT.

(a) The Secretary is authorized to enter into a contract with the State of Kansas, accepting a payment of \$365,424, and the State's commitment to pay a proportionate share of the annual operation, maintenance, and replacement charges for the Cedar Bluff Dam and Reservoir, as full satisfaction of reimbursable costs associated with irrigation of the Cedar Bluff Unit, including the Cedar Bluff Irrigation District's obligations under Contract Number 0-07-70-W0064. After the reformulation of the Cedar Bluff Unit authorized by this title, any revenues in excess of operating and maintenance expenses received by the State of Kansas from the sale of water from the Cedar Bluff Unit shall be paid to the United States and covered into the Reclamation Fund to the extent that an operation, maintenance and replacement charge or reimbursable capital obligation exists for the Cedar Bluff Unit under Reclamation law. Once all such operation, maintenance and replacement charges or reimbursable obligations are satisfied, any additional revenues shall be retained by the State of Kansas.

(b) The Secretary is authorized to transfer title of the buildings, fixtures, and equipment of the United States Fish and Wildlife Service fish hatchery facility at Cedar Bluff Dam, and the related water rights, to the State of Kansas for its use and operation for fish, wildlife, and related purposes. If any of the property transferred by this subsection to the State of Kansas is subsequently transferred from State ownership or used for any purpose other than those provided for in this subsection, title to such property shall revert to the United States.

SEC. 904. TRANSFER OF DISTRICT HEADQUARTERS.

The Secretary is authorized to transfer title to all interests in real property, buildings, fixtures, equipment, and tools associated with the Cedar Bluff Irrigation District headquarters located near Hays, Kansas, contingent upon the District's agreement to close down the irrigation system to the satisfaction of the Secretary at no additional cost to the United States, after which all easement rights shall revert to the owners of the lands to which the easements are attached.

SEC. 905. LIABILITY AND INDEMNIFICATION.

The transferee of any interest conveyed pursuant to this title shall assume all liability with respect to such interests and shall indemnify the United States against all such liability.

SEC. 906. ADDITIONAL ACTIONS.

The Secretary is authorized to take all other actions consistent with the provisions of the Memorandum of Understanding referred to in section 901 that the Secretary deems necessary to accomplish the reformulation of the Cedar Bluff Unit.

TITLE X—SOUTH DAKOTA WATER PLANNING STUDIES**SEC. 1001. AUTHORIZATION FOR SOUTH DAKOTA WATER PLANNING STUDIES.**

(a) The Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, may perform the planning studies necessary (including a needs assessment) to determine the feasibility and estimated cost of incorporating all or portions of the Rosebud Sioux Reservation in South Dakota into the service areas of the rural water systems authorized by the Mni Wiconi Project Act of 1988 (Public Law 100-516).

(b) Section 3(f) of Public Law 100-516 is hereby amended to insert a new subsection (3) as follows: 102 Stat. 2567.

“(3) Notwithstanding subsections (1) and (2), the Secretary is authorized and directed to obligate up to \$1.466 million of the funds appropriated under Public Law 100-516 to construct an interim water system for the White Clay and Wakpamni Districts of the Pine Ridge Indian Reservation as soon as the final engineering report for that segment of the Oglala Rural Water Supply System has been completed and the requirements of the National Environmental Policy Act of 1969 for that segment of the System have been met.”

TITLE XI—SALTON SEA RESEARCH PROJECT, CALIFORNIA**SEC. 1101. RESEARCH PROJECT.**

(a) **RESEARCH PROJECT.**—The Secretary of the Interior, acting through the Bureau of Reclamation, shall conduct a research project for the development of a method or combination of methods to reduce and control salinity, provide endangered species habitat, enhance fisheries, and protect human recreational values in inland water bodies. Such research shall include testing an enhanced evaporation system for treatment of saline waters, and studies regarding in-water segregation of saline waters and of dilution from other sources. The project shall be located in the area of the Salton Sea of Southern California.

(b) **COST SHARE.**—The non-Federal share of the cost of the project referred to in subsection (a) shall be 50 percent of the cost of the project.

(c) **REPORT.**—Not later than September 30, 1996, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives regarding the results of the project referred to in subsection (a).

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$10,000,000 to carry out the purposes of this title.

TITLE XII—AMENDMENT TO SABINE RIVER COMPACT**SEC. 1201. CONSENT TO AMENDMENT TO SABINE RIVER COMPACT.**

The consent of Congress is given to the amendment, described in section 1203, to the interstate compact, described in section 1202, relating to the waters of the Sabine River and its tributaries.

SEC. 1202. COMPACT DESCRIBED.

The compact referred to in the previous section is the compact between the States of Texas and Louisiana, and consented to by Congress in the Act of August 10, 1954 (chapter 668; 68 Stat. 690; Public Law 85-78).

SEC. 1203. AMENDMENT.

The amendment referred to in section 1201 strikes "One of the Louisiana members shall be ex officio the Director of the Louisiana Department of Public Works; the other Louisiana member shall be a resident of the Sabine Watershed and shall be appointed by the Governor of Louisiana for a term of four years: *Provided*, That the first member so appointed shall serve until June 30, 1958." in article VII(c) and inserts "The Louisiana members shall be residents of the Sabine Watershed and shall be appointed by the Governor for a term of four years, which shall run concurrent with the term of the Governor."

43 USC 1521
note.

TITLE XIII—SALT-GILA AQUEDUCT, ARIZONA**SEC. 1301. DESIGNATION.**

The Salt-Gila Aqueduct of the Central Arizona Project, constructed, operated, and maintained under section 301(a)(7) of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(7)), hereafter shall be known and designated as the "Fannin-McFarland Aqueduct".

SEC. 1302. REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the aqueduct referred to in section 1301 hereby is deemed to be a reference to the "Fannin-McFarland Aqueduct".

TITLE XIV—VERMEJO PROJECT RELIEF, NEW MEXICO

Section 401 of the Act of December 19, 1980 (94 Stat. 3227), is amended by striking the text that begins: "Transfer of project facilities to the district shall be without . . ." and ends with ". . . shall be maintained consistently with existing arrangements" and inserting in lieu thereof "Effective as of the date of the written consent of the Vermejo Conservancy District to amend contract 178r-458, all facilities are hereby transferred to the District. The transfer to the district of project facilities shall be without any additional consideration in excess of the existing repayment contract of the district and shall include all related lands or interest in lands acquired by the Federal Government for the project, but shall not include any lands or interests in land, or interests in water, purchased by the Federal Government from various land-owners in the district, consisting of approximately two thousand eight hundred acres, for the Maxwell Wildlife Refuge and shall not include certain contractual arrangements, namely Contract Number 14-06-500-1713 between the Bureau of Reclamation and the Bureau of Sport Fisheries and Wildlife, and concurred in by the district, dated December 5, 1969, and the lease agreement between the district and the Secretary dated January 17, 1992, and expiring January 17, 1995, for 468.38 acres under the district's Lakes 12 and 14, which contractual arrangements shall be maintained consistent with the terms thereof. The Secretary, acting

through the United States Fish and Wildlife Service, shall retain the right to manage Lake 13 for the conservation, maintenance, and development of the area as a component of the Maxwell National Wildlife Refuge in accordance with Contract Number 14-06-500-1713 and in a manner that does not interfere with operation of the Lake 13 dam and reservoir for the primary purposes of the Vermejo Reclamation Project.”

TITLE XV—SAN LUIS VALLEY PROTECTION, COLORADO

SEC. 1501. PERMIT ISSUANCE PROHIBITED.

(a) No agency or instrumentality of the United States shall issue any permit, license, right-of-way, grant, loan or other authorization or assistance for any project or feature of any project to withdraw water from the San Luis Valley, Colorado, for export to another basin in Colorado or export to any portion of another State, unless the Secretary of the Interior determines, after due consideration of all findings provided by the Colorado Water Conservation Board, that the project will not:

(1) increase the costs or negatively affect operation of the Closed Basin Project;

(2) adversely affect the purposes of any national wildlife refuge or Federal wildlife habitat area withdrawal located in the San Luis Valley, Colorado; or

(3) adversely affect the purposes of the Great Sand Dunes National Monument, Colorado.

(b) Nothing in this title shall be construed to alter, amend, or limit any provision of Federal or State law that applies to any project or feature of a project to withdraw water from the San Luis Valley, Colorado, for export to another basin in Colorado or another State. Nothing in this title shall be construed to limit any agency's authority or responsibility to reject, limit, or condition any such project on any basis independent of the requirements of this title.

SEC. 1502. JUDICIAL REVIEW.

The Secretary's findings required by this title shall be subject to judicial review in the United States district courts.

SEC. 1503. COSTS.

The direct and indirect costs of the findings required by section 1501 of this title shall be paid in advance by the project proponent under terms and conditions set by the Secretary.

SEC. 1504. DISCLAIMERS.

(a) Nothing in this title shall constitute either an expressed or implied reservation of water or water rights.

(b) Nothing in this title shall be construed as establishing a precedent with regard to any other Federal reclamation project.

TITLE XVI—RECLAMATION WASTEWATER AND GROUNDWATER STUDIES

SEC. 1601. SHORT TITLE.

This title may be referred to as the “Reclamation Wastewater and Groundwater Study and Facilities Act”.

Reclamation
Wastewater and
Groundwater
Study and
Facilities Act.
43 USC 390h
note.

43 USC 390h.

SEC. 1602. GENERAL AUTHORITY.

(a) The Secretary of the Interior (hereafter "Secretary"), acting pursuant to the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) and Acts amendatory thereof and supplementary thereto (hereafter "Federal reclamation laws"), is directed to undertake a program to investigate and identify opportunities for reclamation and reuse of municipal, industrial, domestic, and agricultural wastewater, and naturally impaired ground and surface waters, for the design and construction of demonstration and permanent facilities to reclaim and reuse wastewater, and to conduct research, including desalting, for the reclamation of wastewater and naturally impaired ground and surface waters.

(b) Such program shall be limited to the States and areas referred to in section 1 of the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) as amended.

(c) The Secretary is authorized to enter into such agreements and promulgate such regulations as may be necessary to carry out the purposes and provisions of this title.

California.

(d) The Secretary shall not investigate, promote or implement, pursuant to this title, any project intended to reclaim and reuse agricultural wastewater generated in the service area of the San Luis Unit of the Central Valley Project, California, except those measures recommended for action by the San Joaquin Valley Drainage Program in the report entitled A Management Plan for Agricultural Subsurface Drainage and Related Problems on the Westside San Joaquin Valley (September 1990).

43 USC 390h-1.

SEC. 1603. APPRAISAL INVESTIGATIONS.

(a) The Secretary shall undertake appraisal investigations to identify opportunities for water reclamation and reuse. Each such investigation shall take into account environmental considerations as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and regulations issued to implement the provisions thereof, and shall include recommendations as to the preparation of a feasibility study of the potential reclamation and reuse measures.

(b) Appraisal investigations undertaken pursuant to this title shall consider, among other things—

(1) all potential uses of reclaimed water, including, but not limited to, environmental restoration, fish and wildlife, groundwater recharge, municipal, domestic, industrial, agricultural, power generation, and recreation;

(2) the current status of water reclamation technology and opportunities for development of improved technologies;

(3) measures to stimulate demand for and eliminate obstacles to use of reclaimed water, including pricing;

(4) measures to coordinate and streamline local, State and Federal permitting procedures required for the implementation of reclamation projects; and

(5) measures to identify basic research needs required to expand the uses of reclaimed water in a safe and environmentally sound manner.

(c) The Secretary shall consult and cooperate with appropriate State, regional, and local authorities during the conduct of each appraisal investigation conducted pursuant to this title.

(d) Costs of such appraisal investigations shall be nonreimbursable.

SEC. 1604. FEASIBILITY STUDIES.

43 USC 390h-2.

(a) The Secretary is authorized to participate with appropriate Federal, State, regional, and local authorities in studies to determine the feasibility of water reclamation and reuse projects recommended for such study pursuant to section 1603 of this title. The Federal share of the costs of such feasibility studies shall not exceed 50 per centum of the total, except that the Secretary may increase the Federal share of the costs of such feasibility study if the Secretary determines, based upon a demonstration of financial hardship on the part of the non-Federal participant, that the non-Federal participant is unable to contribute at least 50 per centum of the costs of such study. The Secretary may accept as part of the non-Federal cost share the contribution of such in-kind services by the non-Federal participant that the Secretary determines will contribute substantially toward the conduct and completion of the study.

(b) The Federal share of feasibility studies, including those described in sections 1606 and 1608 through 1610 of this title, shall be considered as project costs and shall be reimbursed in accordance with the Federal reclamation laws, if the project studied is implemented.

(c) In addition to the requirements of other Federal laws, feasibility studies authorized under this title shall consider, among other things—

(1) near- and long-term water demand and supplies in the study area;

(2) all potential uses for reclaimed water;

(3) measures and technologies available for water reclamation, distribution, and reuse;

(4) public health and environmental quality issues associated with use of reclaimed water; and,

(5) whether development of the water reclamation and reuse measures under study would—

(A) reduce, postpone, or eliminate development of new or expanded water supplies, or

(B) reduce or eliminate the use of existing diversions from natural watercourses or withdrawals from aquifers.

SEC. 1605. RESEARCH AND DEMONSTRATION PROJECTS.

43 USC 390h-3.

The Secretary is authorized to conduct research and to construct, operate, and maintain cooperative demonstration projects for the development and demonstration of appropriate treatment technologies for the reclamation of municipal, industrial, domestic, and agricultural wastewater, and naturally impaired ground and surface waters. The Federal share of the costs of demonstration projects shall not exceed 50 per centum of the total cost including operation and maintenance. Rights to inventions developed pursuant to this section shall be governed by the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (Public Law 96-480) as amended by the Technology Transfer Act of 1986 (Public Law 99-502).

SEC. 1606. SOUTHERN CALIFORNIA COMPREHENSIVE WATER RECLAMATION AND REUSE STUDY.

43 USC 390h-4.

(a) The Secretary is authorized to conduct a study to assess the feasibility of a comprehensive water reclamation and reuse system for Southern California. For the purpose of this title, the

term "Southern California" means those portions of the counties of Imperial, Los Angeles, Orange, San Bernadino, Riverside, San Diego, and Ventura within the south coast and Colorado River hydrologic regions as defined by the California Department of Water Resources.

(b) The Secretary shall conduct the study authorized by this section in cooperation with the State of California and appropriate local and regional entities. The Federal share of the costs associated with this study shall not exceed 50 per centum of the total.

Reports.

(c) The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than six years after appropriation of funds authorized by this title.

43 USC 390h-5.

SEC. 1607. SAN JOSE AREA WATER RECLAMATION AND REUSE PROGRAM.

(a) The Secretary, in cooperation with the city of San Jose, California, and the Santa Clara Valley Water District, and local water suppliers, shall participate in the planning, design and construction of demonstration and permanent facilities to reclaim and reuse water in the San Jose metropolitan service area.

(b) The Federal share of the costs of the facilities authorized by subsection (a) shall not exceed 25 per centum of the total. The Secretary shall not provide funds for the operation or maintenance of the project.

43 USC 390h-6.

SEC. 1608. PHOENIX METROPOLITAN WATER RECLAMATION STUDY AND PROGRAM.

(a) The Secretary, in cooperation with the city of Phoenix, Arizona, shall conduct a feasibility study of the potential for development of facilities to utilize fully wastewater from the regional wastewater treatment plant for direct municipal, industrial, agricultural, and environmental purposes, groundwater recharge and direct potable reuse in the Phoenix metropolitan area, and in cooperation with the city of Phoenix design and construct facilities for environmental purposes, ground water recharge and direct potable reuse.

(b) The Federal share of the costs of the study authorized by this section shall not exceed 50 per centum of the total. The Federal share of the costs associated with the project described in subsection (a) shall not exceed 25 per centum of the total. The Secretary shall not provide funds for operation or maintenance of the project.

Reports.

(c) The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than two years after appropriation of funds authorized by this title.

43 USC 390h-7.

SEC. 1609. TUCSON AREA WATER RECLAMATION STUDY.

(a) The Secretary, in cooperation with the State of Arizona and appropriate local and regional entities, shall conduct a feasibility study of comprehensive water reclamation and reuse system for Southern Arizona. For the purpose of this section, the term "Southern Arizona" means those portions of the counties of Pima, Santa Cruz, and Pinal within the Tucson Active Management

Hydrologic Area as defined by the Arizona Department of Water Resources.

(b) The Federal share of the costs of the study authorized by this section shall not exceed 50 per centum of the total.

(c) The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than four years after appropriation of funds authorized by this title.

Reports.

SEC. 1610. LAKE CHERAW WATER RECLAMATION AND REUSE STUDY.

43 USC 390h-8.

(a) The Secretary is authorized, in cooperation with the State of Colorado and appropriate local and regional entities, to conduct a study to assess and develop means of reclaiming the waters of Lake Cheraw, Colorado, or otherwise ameliorating, controlling and mitigating potential negative impacts of pollution in the waters of Lake Cheraw on groundwater resources or the waters of the Arkansas River.

(b) The Federal share of the costs of the study authorized by this section shall not exceed 50 per centum of the total.

(c) The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than two years after appropriation of funds authorized by this title.

Reports.

SEC. 1611. SAN FRANCISCO AREA WATER RECLAMATION STUDY.

43 USC 390h-9.

(a) The Secretary, in cooperation with the city and county of San Francisco, shall conduct a feasibility study of the potential for development of demonstration and permanent facilities to reclaim water in the San Francisco area for the purposes of export and reuse elsewhere in California.

(b) The Federal share of the costs of the study authorized by this section shall not exceed 50 per centum of the total.

(c) The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than four years after appropriation of funds authorized by this title.

Reports.

SEC. 1612. SAN DIEGO AREA WATER RECLAMATION PROGRAM.

43 USC 390h-10.

(a) The Secretary, in cooperation with the city of San Diego, California or its successor agency in the management of the San Diego Area Wastewater Management District, shall participate in the planning, design and construction of demonstration and permanent facilities to reclaim and reuse water in the San Diego metropolitan service area.

(b) The Federal share of the costs of the facilities authorized by subsection (a) shall not exceed 25 per centum of the total. The Secretary shall not provide funds for the operation or maintenance of the project.

SEC. 1613. LOS ANGELES AREA WATER RECLAMATION AND REUSE PROJECT.

43 USC 390h-11.

(a) The Secretary is authorized to participate with the city and county of Los Angeles, State of California, West Basin Municipal Water District, and other appropriate authorities, in the design, planning, and construction of water reclamation and reuse projects

to treat approximately one hundred and twenty thousand acre-feet per year of effluent from the city and county of Los Angeles, in order to provide new water supplies for industrial, environmental, and other beneficial purposes, to reduce the demand for imported water, and to reduce sewage effluent discharged into Santa Monica Bay.

(b) The Secretary's share of costs associated with the project described in subsection (a) shall not exceed 25 per centum of the total. The Secretary shall not provide funds for operation or maintenance of the project.

43 USC 390h-12. **SEC. 1614. SAN GABRIEL BASIN DEMONSTRATION PROJECT.**

(a) The Secretary, in cooperation with the Metropolitan Water District of Southern California and the Main San Gabriel Water Quality Authority or a successor public agency, is authorized to participate in the design, planning and construction of a conjunctive-use facility designed to improve the water quality in the San Gabriel groundwater basin and allow the utilization of the basin as a water storage facility; *Provided*, That this authority shall not be construed to limit the authority of the United States under any other Federal statute to pursue remedial actions or recovery of costs for work performed pursuant to this subsection.

(b) The Secretary's share of costs associated with the project described in subsection (a) shall not exceed 25 per centum of the total. The Secretary shall not provide funds for the operation or maintenance of the project.

43 USC 390h-13. **SEC. 1615. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out the purposes and provisions of sections 1601 through 1614 of this title.

43 USC 390h-14. **SEC. 1616. GROUNDWATER STUDY.**

(a) In furtherance of the High Plains Groundwater Demonstration Program Act of 1983 (98 Stat. 1675), the Secretary of the Interior, acting through the Bureau of Reclamation and the Geological Survey, shall conduct an investigation and analysis of the impacts of existing Bureau of Reclamation projects on the quality and quantity of groundwater resources. Based on such investigation and analysis, the Secretary shall prepare a reclamation groundwater management and technical assistance report which shall include—

(1) a description of the findings of the investigation and analysis, including the methodology employed;

(2) a description of methods for optimizing Bureau of Reclamation project operations to ameliorate adverse impacts on groundwater, and

(3) the Secretary's recommendations, along with the recommendations of the Governors of the affected States, concerning the establishment of a groundwater management and technical assistance program in the Department of the Interior in order to assist Federal and non-Federal entity development and implementation of groundwater management plans and activities.

(b) In conducting the investigation and analysis, and in preparation of the report referred to in this section, the Secretary shall consult with the Governors of the affected States.

Reports.

(c) The report shall be submitted to the Committees on Appropriations and Interior and Insular Affairs of the House of Representatives and the Committees on Appropriations and Energy and Natural Resources of the Senate within three years of the appropriation of funds authorized by section 1617.

Reports.

SEC. 1617. AUTHORIZATION OF APPROPRIATIONS.

43 USC 390h-15.

There is authorized to be appropriated for fiscal years beginning after September 30, 1992, \$4,000,000 to carry out the study authorized by section 1616.

TITLE XVII—IRRIGATION ON STANDING ROCK INDIAN RESERVATION, NORTH DAKOTA**SEC. 1701. IRRIGATION ON STANDING ROCK INDIAN RESERVATION.**

(a) Section 5(e) of Public Law 89-108, as amended by section 3 of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99-294), is amended by striking "Fort Yates" and inserting "one or more locations within the Standing Rock Indian Reservation".

100 Stat. 419.

(b) Section 10 of Public Law 89-108, as amended by section 8 of Public Law 99-294, is further amended by adding subsection (e) as follows:

100 Stat. 424.

"(e) The portion of the \$61,000,000 authorized for Indian municipal, rural, and industrial water features shall be indexed as necessary to allow for ordinary fluctuations of construction costs incurred after October 1, 1986, as indicated by engineering costs indices applicable for the type of construction involved. All other authorized cost ceilings shall remain unchanged."

TITLE XVIII—GRAND CANYON PROTECTIONGrand Canyon
Protection Act
of 1992.**SEC. 1801. SHORT TITLE.**

This Act may be cited as the "Grand Canyon Protection Act of 1992".

SEC. 1802. PROTECTION OF GRAND CANYON NATIONAL PARK.

(a) **IN GENERAL.**—The Secretary shall operate Glen Canyon Dam in accordance with the additional criteria and operating plans specified in section 1804 and exercise other authorities under existing law in such a manner as to project, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to natural and cultural resources and visitor use.

(b) **COMPLIANCE WITH EXISTING LAW.**—The Secretary shall implement this section in a manner fully consistent with and subject to the Colorado River Compact, the Upper Colorado River Basin Compact, the Water Treaty of 1944 with Mexico, the decree of the Supreme Court in *Arizona v. California*, and the provisions of the Colorado River Storage Project Act of 1956 and the Colorado River Basin Project Act of 1968 that govern allocation, appropriation, development, and exportation of the waters of the Colorado River Basin.

(c) **RULE OF CONSTRUCTION.**—Nothing in this title alters the purposes for which the Grand Canyon National Park or the Glen Canyon National Recreation Area were established or affects the

authority and responsibility of the Secretary with respect to the management and administration of the Grand Canyon National Park and Glen Canyon National Recreation Area, including natural and cultural resources and visitor use, under laws applicable to those areas, including, but not limited to, the Act of August 25, 1916 (39 Stat. 535) as amended and supplemented.

SEC. 1803. INTERIM PROTECTION OF GRAND CANYON NATIONAL PARK.

(a) **INTERIM OPERATIONS.**—Pending compliance by the Secretary with section 1804, the Secretary shall, on an interim basis, continue to operate Glen Canyon Dam under the Secretary's announced interim operating criteria and the Interagency Agreement between the Bureau of Reclamation and the Western Area Power Administration executed October 2, 1991 and exercise other authorities under existing law, in accordance with the standards set forth in section 1802, utilizing the best and most recent scientific data available.

(b) **CONSULTATION.**—The Secretary shall continue to implement Interim Operations in consultation with—

(1) Appropriate agencies of the Department of the Interior, including the Bureau of Reclamation, United States Fish and Wildlife Service, and the National Park Service;

(2) The Secretary of Energy;

(3) The Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming;

(4) Indian Tribes; and

(5) The general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam.

(c) **DEVIATION FROM INTERIM OPERATIONS.**—The Secretary may deviate from Interim Operations upon a finding that deviation is necessary and in the public interest to—

(1) comply with the requirements of Section 1804(a);

(2) respond to hydrologic extremes or power system operation emergencies;

(3) comply with the standards set forth in Section 1802;

(4) respond to advances in scientific data; or

(5) comply with the terms of the Interagency Agreement.

(d) **TERMINATION OF INTERIM OPERATIONS.**—Interim operations described in this section shall terminate upon compliance by the Secretary with section 1804.

SEC. 1804. GLEN CANYON DAM ENVIRONMENTAL IMPACT STATEMENT; LONG-TERM OPERATION OF GLEN CANYON DAM.

(a) **FINAL ENVIRONMENTAL IMPACT STATEMENT.**—Not later than 2 years after the date of enactment of this Act, the Secretary shall complete a final Glen Canyon Dam environmental impact statement, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) **AUDIT.**—The Comptroller General shall—

(1) audit the costs and benefits to water and power users and to natural, recreational, and cultural resources resulting from management policies and dam operations identified pursuant to the environmental impact statement described in subsection (a); and

(2) report the results of the audit to the Secretary and the Congress.

(c) **ADOPTION OF CRITERIA AND PLANS.**—(1) Based on the findings, conclusions, and recommendations made in the environmental impact statement prepared pursuant to subsection (a) and the audit performed pursuant to subsection (b), the Secretary shall—

(A) adopt criteria and operating plans separate from and in addition to those specified in section 602(b) of the Colorado River Basin Project Act of 1968; and

(B) exercise other authorities under existing law, so as to ensure that Glen Canyon Dam is operated in a manner consistent with section 1802.

(2) Each year after the date of the adoption of criteria and operating plans pursuant to paragraph (1), the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report, separate from and in addition to the report specified in section 602(b) of the Colorado River Basin Project Act of 1968 on the preceding year and the projected year operations undertaken pursuant to this Act.

Reports.

(3) In preparing the criteria and operating plans described in section 602(b) of the Colorado River Basin Project Act of 1968 and in this subsection, the Secretary shall consult with the Governors of the Colorado River Basin States and with the general public, including—

(A) representatives of academic and scientific communities;

(B) environmental organizations;

(C) the recreation industry; and

(D) contractors for the purchase of Federal power produced at Glen Canyon Dam.

(d) **REPORT TO CONGRESS.**—Upon implementation of long-term operations under subsection (c), the Secretary shall submit to the Congress the environmental impact statement described in subsection (a) and a report describing the long-term operations and other reasonable mitigation measures taken to protect, mitigate adverse impacts to, and improve the condition of the natural, recreational, and cultural resources of the Colorado River downstream of Glen Canyon Dam.

(e) **ALLOCATION OF COSTS.**—The Secretary of the Interior, in consultation with the Secretary of Energy, is directed to reallocate the costs of construction, operation, maintenance, replacement and emergency expenditures for Glen Canyon Dam among the purposes directed in section 1802 of this Act and the purposes established in the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 170). Costs allocated to section 1802 purposes shall be nonreimbursable. Except that in fiscal year 1993 through 1997 such costs shall be nonreimbursable only to the extent to which the Secretary finds the effect of all provisions of this Act is to increase net offsetting receipts; *Provided*, That if the Secretary finds in any such year that the enactment of this Act does cause a reduction in net offsetting receipts generated by all provisions of this Act, the costs allocated to section 1802 purposes shall remain reimbursable. The Secretary shall determine the effect of all the provisions of this Act and submit a report to the appropriate House and Senate committees by January 31 of each fiscal year, and such report shall contain for that fiscal year a detailed accounting of expenditures incurred pursuant to this Act, offsetting receipts generated by this Act, and any increase or reduction in net offsetting receipts generated by this Act.

Reports.

SEC. 1805. LONG-TERM MONITORING.

(a) **IN GENERAL.**—The Secretary shall establish and implement long-term monitoring programs and activities that will ensure that Glen Canyon Dam is operated in a manner consistent with that of section 1802.

(b) **RESEARCH.**—Long-term monitoring of Glen Canyon Dam shall include any necessary research and studies to determine the effect of the Secretary's actions under section 1804(c) on the natural, recreational, and cultural resources of Grand Canyon National Park and Glen Canyon National Recreation Area.

(c) **CONSULTATION.**—The monitoring programs and activities conducted under subsection (a) shall be established and implemented in consultation with—

- (1) the Secretary of Energy;
- (2) the Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming;
- (3) Indian tribes; and
- (4) the general public, including representatives of academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam.

SEC. 1806. RULES OF CONSTRUCTION.

Nothing in this title is intended to affect in any way—

- (1) the allocations of water secured to the Colorado Basin States by any compact, law, or decree; or
- (2) any Federal environmental law, including the Endangered Species Act (16 U.S.C. 1531 et seq.).

SEC. 1807. STUDIES NONREIMBURSABLE.

All costs of preparing the environmental impact statement described in section 1804, including supporting studies, and the long-term monitoring programs and activities described in section 1805 shall be nonreimbursable. The Secretary is authorized to use funds received from the sale of electric power and energy from the Colorado River Storage Project to prepare the environmental impact statement described in section 1804, including supporting studies, and the long-term monitoring programs and activities described in section 1805, except that such funds will be treated as having been repaid and returned to the general fund of the Treasury as costs assigned to power for repayment under section 5 of the Act of April 11, 1956 (70 Stat. 170). Except that in fiscal year 1993 through 1997 such provisions shall take effect only to the extent to which the Secretary finds the effect of all the provisions of this Act is to increase net offsetting receipts; *Provided*, That if the Secretary finds in any such year that the enactment of this Act does cause a reduction in net offsetting receipts generated by all provisions of this Act, all costs described in this section shall remain reimbursable. The Secretary shall determine the effect of all the provisions of this Act and submit a report to the appropriate House and Senate committees by January 31 of each fiscal year, and such report shall contain for that fiscal year a detailed accounting of expenditures incurred pursuant to this Act, offsetting receipts generated by this Act, and any increase or reduction in net offsetting receipts generated by this Act.

Reports.

SEC. 1808. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

SEC. 1809. REPLACEMENT POWER.

The Secretary of Energy in consultation with the Secretary of the Interior and with representatives of the Colorado River Storage Project power customers, environmental organizations and the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall identify economically and technically feasible methods of replacing any power generation that is lost through adoption of long-term operational criteria for Glen Canyon Dam as required by section 1804 of this title. The Secretary shall present a report of the findings, and implementing draft legislation, if necessary, not later than two years after adoption of long-term operating criteria. The Secretary shall include an investigation of the feasibility of adjusting operations at Hoover Dam to replace all or part of such lost generation. The Secretary shall include an investigation of the modifications or additions to the transmission system that may be required to acquire and deliver replacement power.

Reports.

TITLE XIX—MID-DAKOTA RURAL WATER SYSTEMMid-Dakota
Rural Water
System Act
of 1992.
South Dakota.**SEC. 1901. SHORT TITLE.**

This title may be cited as the "Mid-Dakota Rural Water System Act of 1992".

SEC. 1902. DEFINITIONS.

For purposes of this title—

(1) the term "feasibility study" means the study entitled "Mid-Dakota Rural Water System Feasibility Study and Report" dated November 1988 and revised January 1989 and March 1989, as supplemented by the "Supplemental Report for Mid-Dakota Rural Water System" dated March 1990 (which supplemental report shall control in the case of any inconsistency between it and the study and report), as modified to reflect consideration of the benefits of the water conservation programs developed and implemented under section 1905 of this title;

(2) the term "pumping and incidental operational requirements" means all power requirements incident to the operation of intake facilities, pumping stations, water treatment facilities, reservoirs, and pipelines up to the point of delivery of water by the Mid-Dakota Rural Water System to—

(A) each entity that distributes water at retail to individual users; or

(B) each rural use location;

(3) the term "rural use location" includes a water use location—

(A) that is located in or in the vicinity of a municipality identified in appendix A of the feasibility report, for which municipality and vicinity there was on December 31, 1988, no entity engaged in the business of distributing water at retail to users in that municipality or vicinity; and

(B) that is one of no more than 40 water use locations in that municipality and vicinity;

(4) the term "Secretary" means the Secretary of the Interior;

(5) the term "summer electrical season" means May through October of each year;

(6) the term "water system" means the Mid-Dakota Rural Water System, substantially in accordance with the feasibility study;

(7) the term "Western" means the Western Area Power Administration;

(8) the term "wetland component" means the wetland development and enhancement component of the water system, substantially in accordance with the wetland component report; and

(9) the term "wetland component report" means the report entitled "Wetlands Development and Enhancement Component of the Mid-Dakota Rural Water System" dated April 1990.

SEC. 1903. FEDERAL ASSISTANCE FOR RURAL WATER SYSTEM.

(a) IN GENERAL.—The Secretary is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water system.

(b) SERVICE AREA.—The water system shall provide for safe and adequate municipal, rural, and industrial water supplies; mitigation of wetland areas; and water conservation in Beadle County (including the city of Huron), Buffalo, Hand, Hughes, Hyde, Jerauld, Potter, Sanborn, Spink, and Sully Counties, and elsewhere in South Dakota.

(c) TERMS AND CONDITIONS.—The Secretary shall make the grants and loans authorized by subsection (a) on terms and conditions equivalent to those applied by the Secretary of Agriculture in providing assistance to projects for the conservation, development, use, and control of water under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)), except to the extent that those terms and conditions are inconsistent with this title.

(d) AMOUNT OF GRANTS.—Grants made available under subsection (a) to Mid-Dakota Rural Water System, Inc. and water conservation measures consistent with section 1905 of this title shall not exceed 85 percent of the amount authorized to be appropriated by section 1912 of this title.

(e) LOAN TERMS.—

(1) a loan or loans made to Mid-Dakota Rural Water System, Inc. under the provisions of this title shall be repaid, with interest, within thirty years from the date of each loan or loans and no penalty for pre-payment; and

(2) interest on a loan or loans made under subsection (a) to Mid-Dakota Rural Water System, Inc.—

(A) shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest bearing, marketable issues sold by the Treasury during the fiscal year in which the expenditures by the United States were made; and

(B) shall not accrue during planning and construction of the water system, and the first payment on such a loan shall not be due until after completion of construction of the water system.

(f) **LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.**—The Secretary shall not obligate funds for the construction of the Mid-Dakota Water Supply System until—

(1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) have been met; and

(2) a final engineering report has been prepared and submitted to the Congress for a period of not less than ninety days.

Reports.

(g) **COORDINATION WITH THE DEPARTMENT OF AGRICULTURE.**—

(1) The Secretary shall coordinate with the Secretary of Agriculture, to the maximum extent practicable, grant and loan assistance made under this section with similar assistance available under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

(2) The Secretary of Agriculture shall take into consideration grant and loan assistance available under this section when considering whether to provide similar assistance available under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) to an applicant in the service area defined in subsection (b).

SEC. 1904. FEDERAL ASSISTANCE FOR WETLAND DEVELOPMENT AND ENHANCEMENT.

(a) **INITIAL DEVELOPMENT.**—The Secretary shall make grants and otherwise make funds available to Mid-Dakota Rural Water System, Inc. and other private, State, and Federal entities for the initial development of the wetland component.

(b) **OPERATION AND MAINTENANCE.**—The Secretary shall make a grant, not to exceed \$100,000 annually, to the Mid-Dakota Rural Water System, Inc., for the operation and maintenance of the wetland component.

(c) **NONREIMBURSEMENT.**—Funds provided under this section shall be nonreimbursable and nonreturnable.

SEC. 1905. WATER CONSERVATION.

(a) **WITHHOLDING OF FUNDS.**—The Secretary shall not obligate Federal funds for construction of the water system until the Secretary finds that non-Federal entities have developed and implemented water conservation programs throughout the service area of the water system.

(b) **PURPOSE OF PROGRAMS.**—The water conservation programs required by subsection (a) shall be designed to ensure that users of water from the water system will use the best practicable technology and management techniques to reduce water use and water system costs.

(c) **DESCRIPTION OF PROGRAMS.**—Such water conservation programs shall include (but are not limited to) adoption and enforcement of the following—

(1) low consumption performance standards for all newly installed plumbing fixtures;

(2) leak detection and repair programs;

(3) metering for all elements and individual connections of the rural water supply systems to be accomplished within five years. (For purposes of this paragraph, residential buildings of more than four units may be considered as individual customers);

(4) declining block rate schedules shall not be used for municipal households and special water users (as defined in the feasibility study);

(5) public education programs; and

(6) coordinated operation among each rural water system and the preexisting water supply facilities in its service area. Such programs shall contain provisions for periodic review and revision, in cooperation with the Secretary.

SEC. 1906. MITIGATION OF FISH AND WILDLIFE LOSSES.

Mitigation for fish and wildlife losses incurred as a result of the construction and operation of the water system shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction.

SEC. 1907. USE OF PICK-SLOAN POWER.

(a) **IN GENERAL.**—From power designated for future irrigation and drainage pumping for the Pick-Sloan Missouri River Basin Program, Western shall make available the capacity and energy required to meet the pumping and incidental operational requirements of the water system during the summer electrical season.

(b) **CONDITIONS.**—The capacity and energy described in subsection (a) shall be made available on the following conditions:

(1) The water system shall be operated on a not-for-profit basis.

(2) The water system shall contract to purchase its entire electric service requirements, including the capacity and energy made available under subsection (a), from a cooperative power supplier which purchases power from a cooperative power supplier which itself purchases power from Western.

(3) The rate schedule applicable to the capacity and energy made available under subsection (a) shall be Western's Pick-Sloan Eastern Division Firm Power Rate Schedule in effect when the power is delivered by Western.

(4) It shall be agreed by contract among—

(A) Western;

(B) the power supplier with which the water system contracts under paragraph (2);

(C) that entity's power supplier; and

(D) Mid-Dakota Rural Water System, Inc.;

that for the capacity and energy made available under subsection (a), the benefit of the rate schedule described in paragraph (3) shall be passed through to the water system, but the water system's power supplier shall not be precluded from including in its charges to the water system for such electric service its other usual and customary charges.

(5) Mid-Dakota Rural Water System, Inc., shall pay its power supplier for electric service, other than for capacity and energy supplied pursuant to subsection (a), in accordance with the power supplier's applicable rate schedule.

SEC. 1908. RULE OF CONSTRUCTION.

This title shall not be construed to limit authorization for water projects in the State of South Dakota under existing law or future enactments.

SEC. 1909. WATER RIGHTS.

Nothing in this title shall be construed to—

- (1) invalidate or preempt State water law or an interstate compact governing water;
- (2) alter the rights of any State to any appropriated share of the waters of any body of surface or groundwater, whether determined by past or future interstate compacts or by past or future legislative or final judicial allocations;
- (3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal; or
- (4) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any groundwater resources.

SEC. 1910. USE OF GOVERNMENT FACILITIES.

The use of and connection of water system facilities to Government facilities at the Oahe powerhouse and pumping plant and their use for the purpose of supplying water to the water system may be permitted to the extent that such use does not detrimentally affect the use of those Government facilities for the other purposes for which they are authorized.

SEC. 1911. AUTHORIZATION OF APPROPRIATIONS.

(a) **WATER SYSTEM.**—There is authorized to be appropriated to the Secretary \$100,000,000 for the planning and construction of the water system under section 1903, plus such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after October 1, 1989, such sums to remain available under expended.

(b) **WETLAND COMPONENT.**—There are authorized to be appropriated to the Secretary—

- (1) \$2,756,000 for the initial development of the wetland component under section 1904; and
- (2) such sums as are necessary for the operation and maintenance of the wetland component, not exceeding \$100,000 annually, under section 1904;

TITLE XX—LAKE ANDES-WAGNER/MARTY II, SOUTH DAKOTA

Lake Andes-
Wagner/
Marty II
Act of 1992.
Agriculture.
Irrigation.

SEC. 2001. SHORT TITLE.

This title may be cited as the “Lake Andes-Wagner/Marty II Act of 1992”.

SEC. 2002. DEMONSTRATION PROGRAM.

(a) The Secretary, acting pursuant to existing authority under the Federal reclamation laws, shall, through the Bureau of Reclamation, and in coordination with the Secretary of Agriculture and with the assistance and cooperation of an oversight committee consisting of representatives of the Bureau of Indian Affairs, Department of Agriculture, Environmental Protection Agency, United States Fish and Wildlife Service, United States Geological Survey, South Dakota Department of Game, Fish and Parks, South Dakota Department of Water and Natural Resources, Yankton-Sioux Tribe, and the Lake Andes-Wagner Water Systems, Inc., carry out a demonstration program (hereinafter in this title the “Demonstration Program”) in substantial accordance with the “Lake Andes-Wagner-Marty II Demonstration Program Plan of Study,” dated May 1990, a copy of which is on file with the Committee

on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(b) The objectives of the Demonstration Program shall include:

(1) development of accurate and definitive means of quantifying projected irrigation and drainage requirements and providing reliable estimates of drainage return flow quality and quantity with respect to glacial till and other soils found in the specific areas to be served with irrigation water by the planned Lake Andes-Wagner Unit and Marty II Unit and which may also have application to the irrigation and drainage of similar soils found in other areas of the United States;

(2) development of best management practices for the purpose of improving the efficiency of irrigation water use and developing and demonstrating management techniques and technologies for glacial till soils which will prevent or otherwise ameliorate the degradation of water quality by irrigation practices;

(3) investigation and demonstration of the potential for development and enhancement of wetlands and fish and wildlife within and adjacent to the service areas of the planned Lake Andes-Wagner Unit and the Marty II Unit through the application of water and other management practices;

(4) investigation and demonstration of the suitability of glacial till soils for crop production under irrigation, giving special emphasis to crops of agricultural commodities for which an acreage reduction program is not in effect under the provisions of the Agriculture Act of 1949 (7 U.S.C. 1461 et seq.) or by any successor programs established for crop years subsequent to 1990.

(c) Study sites shall be obtained through leases from landowners who voluntarily agree to participate in the Demonstration Program under the following conditions:

(1) rentals paid under a lease shall be based on the fair rental market value prevailing for dry land farming of lands of similar quantity and quality plus a payment representing reasonable compensation for inconveniences to be encountered by the lessor;

(2) the Demonstration Program shall provide for the—
(A) supply of all water, delivery system, pivot systems and drains;

(B) operate and maintain the irrigation system;

(C) Secretary of Agriculture to supply all seed, fertilizers and pesticides and make standardized equipment available;

(D) Secretary of Agriculture to determine crop rotations and cultural practices;

(E) have unrestricted access to leased lands;

(3) the Secretary and the Secretary of Agriculture may contract with the lessor and/or custom operators to accomplish agriculture work, which work shall be performed in accordance with the Demonstration Program;

(4) no grazing may be performed on a study site;

(5) crops grown shall be the property of the United States;

and

(6) at the conclusion of the lease, the lands involved will, to the extent practicable, be restored by the Secretary to their pre-leased condition at no expense to the lessor.

(d) The Secretary of Agriculture shall offer crops grown under the Demonstration Program for sale to the highest bidder under terms and conditions to be prescribed by the Secretary. Any crops not sold shall be disposed of as the Secretary determines to be appropriate, except that no crop may be given away to any for-profit entity or farm operator. All receipts from crop sales shall be covered into the Treasury to the credit of the fund from which appropriations for the conduct of the Demonstration Program are derived.

(e) The land from each ownership in a study site shall be established by the Secretary as a separate farm. The Secretary of Agriculture shall provide for lessors to preserve the cropland base and history on lands leased to the Demonstration Project under the same terms and conditions provided for under section 1236(b) of the Food Security Act of 1985 (7 U.S.C. 3836(b)). Establishment of such study site farms shall not entitle the Secretary to participate in farm programs or to build program base.

(f) The Secretary shall periodically, but not less often than once a year, report to the Committee on Energy and Natural Resources of the Senate, to the Committee on Interior and Insular Affairs and the Committee on Agriculture of the House of Representatives, and to the Governor of South Dakota concerning the activities undertaken pursuant to this section. The Secretary's reports and other information and data developed pursuant to this section shall be available to the public without charge. Each Demonstration Program report, including the report referred to in paragraph (3) of this subsection, shall evaluate data covering the results of the Demonstration Program as carried out on the six study sites during the period covered by the report together with data developed under the wetlands enhancement aspect during that period. The demonstration phase of the Demonstration Program shall terminate at the conclusion of the fifth full irrigation season. Promptly thereafter, the Secretary shall:

Reports.

Public information.

(1) remove temporary facilities and equipment and restore the study sites as nearly as practicable to their prelease condition. The Secretary may transfer the pumping plant and/or distribution lines to public agencies for uses other than commercial irrigation if so doing would be less costly than removing such equipment;

(2) otherwise wind up the Demonstration Program; and

(3) prepare, in coordination with the Secretary of Agriculture, a concluding report and recommendations covering the entire demonstration phase, which report shall be transmitted by the Secretary to the Congress and to the Governor of South Dakota not later than April 1 of the calendar year following the calendar year in which the demonstration phase of the Demonstration Program terminates. The Secretary's concluding report, together with other information and data developed in the course of the Demonstration Program, shall be available to the public without charge.

Reports.

(g) Costs of the Demonstration Program funded by Congressional appropriations shall be accounted for pursuant to the Act of October 29, 1971 (85 Stat. 416). Costs incurred by the State of South Dakota and any agencies thereof arising out of consultation and participation in the Demonstration Program shall not be reimbursed by the United States.

(h) Funding to cover expenses of the Federal agencies participating in the Demonstration Program shall be included in the budget submittals for the Bureau of Reclamation. The Secretary, using only funds appropriated for the Demonstration Program, shall transfer to the other Federal agencies funds appropriated for their expenses.

SEC. 2003. PLANNING REPORTS-ENVIRONMENTAL IMPACT STATEMENTS.

(a) On the basis of the concluding report and recommendations of the Demonstration Program provided for in section 2002, the Secretary, with respect to the Lake Andes-Wagner Unit and the Marty II Unit, shall comply with the study and reporting requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and regulations issued to implement the provisions thereof. The final reports prepared under this subsection shall be transmitted to the Congress simultaneously with their filing with the Environmental Protection Agency.

(b) Each report prepared under subsection (a) shall include a detailed plan providing for the prevention or avoidance of adverse water quality conditions attributable to agricultural drainage water originating from lands to be irrigated by the Unit to which the report pertains. The Secretary shall not recommend that any funds be appropriated for construction of such Unit unless the respective report prepared pursuant to subsection (a) is accompanied by findings by the Secretary of Agriculture, the Director of the United States Fish and Wildlife Service, and the Administrator of the Environmental Protection Agency that the Unit to which the report pertains can be constructed, operated and maintained so as to comply with all applicable water quality standards and avoid significant adverse effects to fish and wildlife resulting from the bioaccumulation of selenium.

(c) The construction of a Unit may not be undertaken until the final report pertaining to that Unit, and the findings referred to in subsection (b) of this section, have lain before the Congress for not less than one hundred and eighty days and the Congress has appropriated funds for the initiation of construction.

SEC. 2004. AUTHORIZATION OF THE LAKE ANDES-WAGNER UNIT AND THE MARTY II UNIT, SOUTH DAKOTA.

Subject to the requirements of section 2003 of this title, the Secretary is authorized to construct, operate, and maintain the Lake Andes-Wagner Unit and the Marty II Unit, South Dakota, as units of the South Dakota Pumping Divisions, Pick-Sloan Missouri Basin Program. The units shall be integrated physically and financially with other Federal works constructed under the Pick-Sloan Missouri Basin Program.

SEC. 2005. CONDITIONS.

(a) The Lake Andes-Wagner Unit shall be constructed, operated and maintained to irrigate not more than approximately 45,000 acres substantially as provided in the Lake Andes-Wagner Unit Planning Report—Final Environmental Impact Statement filed September 17, 1985, supplemented as provided in section 2003 of this title. The Lake Andes-Wagner Unit shall include on-farm pumps, irrigation sprinkler systems, and other on-farm facilities necessary for the irrigation of not to exceed approximately 1,700 acres of Indian-owned lands. The use of electric power and energy

Reports.

required to operate the facilities for the irrigation of such Indian-owned lands and to provide pressurization for such Indian-owned lands shall be considered to be a project use.

(b) The Marty II Unit shall include a river pump, irrigation distribution system, booster pumps, irrigation sprinkler systems, farm and project drains, electrical distribution facilities, and the pressurization to irrigate not more than approximately three thousand acres of Indian-owned land in the Yankton-Sioux Indian Reservation, substantially as provided in the final report for the Marty II Unit prepared pursuant to section 2003 of this title.

(c) The construction costs of the Lake Andes-Wagner Unit allocated to irrigation of non-Indian owned lands (both those assigned for return by the water users and those assigned for return from power revenues of the Pick-Sloan Missouri Basin Program) shall be repaid no later than forty years following a determination by the Secretary that the project is substantially complete. Repayment of the construction costs of the Lake Andes-Wagner Unit apportioned to serving Indian-owned lands and of the Marty II Unit allocated to irrigation shall be governed by the Act of July 1, 1932 (47 Stat. 564, Chapter 369; 25 U.S.C. 386a).

(d) Indian-owned lands, or interests therein, required for the Lake Andes-Wagner Unit or the Marty II Unit may, as an alternative to their acquisition pursuant to existing authority under the Federal reclamation laws, be acquired by exchange for land or interests therein of equal or greater value which are owned by the United States and administered by the Secretary or which may be acquired for that purpose by the Secretary.

(e) For purposes of participation of lands in the Lake Andes-Wagner Unit and the Marty II Unit in programs covered by title V of the Agriculture Act of 1949 (7 U.S.C. 1461, et seq.) as amended by subtitle A of title XI of the Food, Agriculture, Conservation and Trade Act of 1990 the crop acreage base determined under title V of that Act as so amended and the program payment yield determined under title V of that Act as so amended shall be the crop acreage base and program payment yield established for the crop year immediately preceding the crop year in which the development period for each Unit is initiated. For any successor programs established for crop years subsequent to 1995, the acreage and yield on which any program payments are based shall be determined without taking into consideration any increase in acreage or yield resulting from the construction and operation of the Units.

(f) Mitigation of fish and wildlife losses incurred as a result of the construction and operation of the facilities authorized by this section shall be concurrent with the construction of the Unit involved and shall be on an acre-for-acre basis, based on ecological equivalency. In addition to the fish and wildlife enhancement to be provided by the fish rearing pond of the Lake Andes Unit, other facilities of that Unit may be utilized to provide fish and wildlife benefits beyond the mitigation required to the extent that such benefits may be provided without increasing costs of construction, operation, maintenance or replacement allocable to irrigation or impairing the efficiency of that Unit for irrigation purposes.

SEC. 2006. INDIAN EMPLOYMENT.

In carrying out sections 2002, 2004 and 2005 of this title, preference shall be given to the employment of members of the Yankton-Sioux Tribe who can perform the work required regardless

of age (subject to existing laws and regulations), sex, or religion, and to the extent feasible in connection with the efficient performance of such functions, training and employment opportunities shall be provided to members of the Yankton-Sioux Tribe regardless of age (subject to existing laws and regulations), sex, or religion who are not fully qualified to perform such functions.

SEC. 2007. FEDERAL RECLAMATION LAWS GOVERN.

This title is a supplement to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts supplemental thereto and amendatory thereof). The Federal reclamation laws shall govern all functions undertaken pursuant to this title, except as otherwise provided in this title.

SEC. 2008. COST SHARING.

(a) **IN GENERAL.**—The Secretary is authorized and directed to enter into negotiations with State and local interests for an agreement providing for the equitable sharing of the costs of constructing the Lake Andes-Wagner Unit.

(b) The agreement shall include provisions for:

(1) the establishment and capitalization of the non-Federal fund, including, subject to the Secretary's approval, investment policies and selection of the administering financial institution, and including also provisions dealing with withdrawals of moneys in the fund for construction purposes;

(2) the District to administer the design and construction, which shall be subject to the approval of the Secretary, of the distribution and drainage systems for the Lake Andes-Wagner Unit;

(3) financing, from moneys in the fund referred to in paragraph (1), the construction cost of the ring dike; and

(4) financing, from moneys in the fund referred to in paragraph (1), the construction cost of the Unit's closed drainage system; subject to the conditions that:

(A) construction of the closed drainage system shall commence not earlier than the sixth year of full operation of the Unit and shall continue over a period of thirty-five years as required by the Secretary subject to such modifications in the commencement date and the construction period as the Secretary determines to be required on the basis of physical conditions; and

(B) the District, in addition to such annual assessment as may be required to meet its expenses (including operation and maintenance costs and any annual repayment installments to the United States) shall, commencing three years after issuance by the Secretary of a notice that construction of the Unit (other than drainage facilities) has been completed, levy assessments annually of not less than \$1.00 per irrigable acre calculated to provide moneys sufficient, together with other moneys in the fund, including anticipated accruals, referred to in paragraph (1), to finance the construction of the closed drainage system.

(c) Notwithstanding any other requirements of this section, the Secretary shall require that the agreement to be negotiated pursuant to this section shall provide that the total non-Federal share of the costs of construction allocable to irrigation of the facilities of the Lake Andes-Wagner Unit to be constructed pursuant to subsection (a) of section 2004 of this title (other than the costs

apportionable to serving Indian-owned lands and the facilities described in the second sentence of that subsection) shall be 30 percent. The 30 percent non-Federal share shall include:

(1) funds to be deposited in the non-Federal fund referred to in paragraph (1) of subsection (b) of this section and interest earned thereon;

(2) all funds heretofore or hereafter made available to the United States by non-Federal interests, or expended by such interests, for planning or advance planning assistance for the Lake Andes-Wagner Unit or for the Marty II Unit; and

(3) any feature to which this section applies shall not be initiated until after the District and the State have entered into the cost-share agreement with the United States required by this section.

SEC. 2009. AUTHORIZATION OF APPROPRIATIONS.

(a) LAKE ANDES-WAGNER UNIT.—There are authorized to be appropriated, subject to the findings required pursuant to section 2003(b) of this title—

(1) \$175,000,000 (October 1989 price levels) for construction of the Lake Andes-Wagner Unit (other than the facilities described in the second sentence of subsection (a) of section 2005 of this title) less the non-Federal contributions as provided in subsections (b) and (c) of section 2008 of this title; and

(2) \$1,350,000 (October 1989 price levels) for construction of the facilities described in the second sentence of subsection (a) of section 2005 of this title, which amounts include costs of the Lake Andes-Wagner Irrigation District in administering design and construction of the irrigation distribution and drainage systems.

(b) MARTY II UNIT.—There are authorized to be appropriated \$24,000,000 (January 1989 price levels) for construction by the Bureau of Reclamation in consultation with the Bureau of Indian Affairs of the Marty II Unit.

(c) The amounts authorized to be appropriated by subsections (a) and (b) of this section shall be plus or minus such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indices applicable to the type of construction involved.

(d) DEMONSTRATION PROGRAM.—There are authorized to be appropriated such amounts as may be necessary to carry out the Demonstration Program.

(e) OPERATION AND MAINTENANCE.—There are authorized to be appropriated such amounts as may be necessary for the operation and maintenance of each Unit.

SEC. 2010. INDIAN WATER RIGHTS.

Nothing in this title shall be construed as affecting any water rights or claims thereto of the Yankton-Sioux tribe.

TITLE XXI—RIO GRANDE FLOODWAY, SAN ACACIA TO BOSQUE DEL APACHE UNIT, NEW MEXICO

SEC. 2101. CLARIFICATION OF COST-SHARE REQUIREMENTS.

Notwithstanding any other provision of law, the project for flood control, Rio Grande Floodway, San Acacia to Bosque del Apache Unit, New Mexico, authorized by section 203 of the Flood

Control Act of 1948 (Public Law 80-858) and amended by section 204 of the Flood Control Act of 1950 (Public Law 82-516) is modified to more equitably reflect the non-Federal benefits from the project in relation to the total benefits of the project by reducing the non-Federal contribution for the project by that percentage of benefits which is attributable to the Federal properties: *Provided, however*, That the Federal property benefits exceed 50 per centum of the total project benefits.

**TITLE XXII—SUNNYSIDE VALLEY IRRIGATION DISTRICT,
WASHINGTON**

SEC. 2201. CONVEYANCE TO SUNNYSIDE VALLEY IRRIGATION DISTRICT.

The Secretary of the Interior shall convey to Sunnyside Valley Irrigation District of Sunnyside, Washington, by quitclaim deed or other appropriate instrument and without consideration, all right, title, and interest of the United States, excluding oil, gas, and other mineral deposits, in and to a parcel of public land described at lots 1 and 2 of block 34 of the town of Sunnyside in section 25, township 10 north, range 22 east, Willamette Meridian, Washington.

TITLE XXIII—PLATORO RESERVOIR AND DAM, SAN LUIS VALLEY PROJECT, COLORADO

SEC. 2301. FINDINGS AND DECLARATIONS.

The Congress finds that and declares the following:

(1) Platoro Dam and Reservoir of the Platoro Unit of the Conejos Division of the San Luis Valley Project was built in 1951 and for all practical purposes has not been usable because of the constraints imposed by the Rio Grande Compact of 1939 on the use of the Rio Grande River among the States of Colorado, New Mexico, and Texas.

(2) The usefulness of Platoro Reservoir under future compact compliance depends upon the careful conservation and wise management of water and requires the operation of the reservoir project in conjunction with privately owned water rights of the local water users.

(3) It is in the best interest of the people of the United States to—

(A) transfer operation, maintenance, and replacement responsibility for the Platoro Dam and Reservoir to the Conejos Water Conservancy District of the State of Colorado, which is the local water user district with repayment responsibility to the United States, and the local representative of the water users with privately owned water rights;

(B) relieve the people of the United States from further risk or obligation in connection with the collection of construction charge repayments and annual operation and maintenance payments for the Platoro Dam and Reservoir by providing for payment of a one-time fee to the United States in lieu of the scheduled annual payments and termination of any further repayment obligation to the United States and the District (Contract Number I1r-1529, as amended); and

(C) determine such one-time fee, taking into account the assumption by the District of all of the operations and maintenance costs associated with the reservoir, including the existing Federal obligation for the operation and maintenance of the reservoir for flood control purposes, and maintaining a minimum stream flow as provided in section 2302(d) of this title.

SEC. 2302. TRANSFER OF OPERATION AND MAINTENANCE RESPONSIBILITY OF PLATORO RESERVOIR.

(a) **IN GENERAL.**—The Secretary is authorized and directed to undertake the following:

(1) Accept a one-time payment of \$450,000 from the district in lieu of the repayment obligation of paragraphs 8(d) and 11 of the Repayment Contract between the United States and the District (Number 11r-1529) as amended.

(2) Enter into an agreement for the transfer of all of the operation and maintenance functions of the Platoro Dam and Reservoir, including the operation and maintenance of the reservoir for flood control purposes, to the District. The agreement shall provide—

(A) that the District will have the exclusive responsibility for operations and the sole obligation for all of the maintenance of the reservoir in a satisfactory condition for the life of the reservoir subject to review of such maintenance by the Secretary to ensure compliance with reasonable operation, maintenance and dam safety requirements as they apply to Platoro Dam, and Reservoir under Federal and State law; and,

(B) that the District shall have the exclusive use and sole responsibility for maintenance of all associated facilities, including outlet works, remote control equipment, spillway, and land and buildings in the Platoro townsite. The District shall have sole responsibility for maintaining the land and buildings in a condition satisfactory to the United States Forest Service.

(b) **TITLE.**—Title to the Platoro Dam and Reservoir and all associated facilities shall remain with the United States, and authority to make recreational use of Platoro Dam and Reservoir shall be under the control and supervision of the United States Forest Service, Department of Agriculture.

(c) **AMENDMENTS TO CONTRACT.**—The Secretary is authorized to enter into such other amendments to such contract Number 11r-1529, as amended, necessary to facilitate the intended operations of the project by the District. All applicable provisions of the Federal reclamation laws shall remain in effect with respect to such contract.

(d) **CONDITIONS IMPOSED UPON THE DISTRICT.**—The transfer of operation and maintenance responsibility under subsection (a) shall be subject to the following conditions:

(1)(A) The district will, after consultation with the United States Forest Service, Department of Agriculture, operate the Platoro Dam and Reservoir in such a way as to provide—

(i) that releases of bypass from the reservoir flush out the channel of the Conejos River periodically in the spring or early summer to maintain the hydrologic regime of the river; and

(ii) that any releases from the reservoir contribute to even flows in the river as far as possible from October 1 to December 1 so as to be sensitive to the brown trout spawn.

(B) Operation of the Platoro Dam and Reservoir by the District for water supply uses (including storage and exchange of water rights owned by the District or its constituents), interstate compact and flood control purposes shall be senior and paramount to the channel flushing and fishery objectives referred to in subparagraph (A).

(2) The District will provide and maintain a permanent pool in the Platoro Reservoir for fish, wildlife, and recreation purposes, in the amount of three thousand acre-feet, including the initial filling of the pool and periodic replenishment of seepage and evaporation loss: *Provided, however,* That if necessary to maintain the winter instream flow provided in subparagraph (3), the permanent pool may be allowed to be reduced to two thousand four hundred acre-feet.

(3) In order to preserve fish and wildlife habitat below Platoro Reservoir, the District shall maintain releases of water from Platoro Reservoir of seven cubic feet per second during the months of October through April and shall bypass forty cubic feet per second or natural inflow, whichever is less, during the months of May through September.

(4) The United States Forest Service, Department of Agriculture, is directed to regularly monitor operation of Platoro Reservoir, including releases from it for instream flow purposes, and to enforce the provisions of this subsection under the laws, regulations, and rules applicable to the National Forest System.

(e) FLOOD CONTROL MANAGEMENT.—The Secretary of the Army, acting through the Chief of Engineers, shall retain exclusive authority over Platoro Dam and Reservoir for flood control purposes and shall direct the District in the operation of the dam for such purposes. To the extent possible, management by the Secretary of the Army under this subsection shall be consistent with the water supply use of the reservoir, with the administration of the Rio Grande Compact of 1939 by the Colorado State Engineer and with the provisions of subsection (d) hereof. The Secretary of the Army shall enter into a Letter of Understanding with the District and the United States Bureau of Reclamation prior to transfer of operations which details the responsibility of each party and specifies the flood control criteria for the reservoir.

(f) COMPLIANCE WITH COMPACT AND OTHER LAWS.—The transfer under section 2302 shall be subject to the District's compliance with the Rio Grande Compact of 1939 and all other applicable laws and regulations, whether of the State of Colorado or of the United States.

SEC. 2303. DEFINITIONS.

As used in this title—

(1) the term "District" means the Conejos Water Conservancy District of the State of Colorado;

(2) the term "Federal reclamation laws" means the Act of June 17, 1902 (32 Stat. 388), and Acts supplementary thereto and amendatory thereof;

(3) the term "Platoro Reservoir" means the Platoro Dam and Reservoir of the Platoro Unit of the Conejos Division of the San Luis Valley Project; and

(4) the term "Secretary" means the Secretary of the Interior.

TITLE XXIV—REDWOOD VALLEY COUNTY WATER DISTRICT, CALIFORNIA

SEC. 2401. SALE OF BUREAU OF RECLAMATION LOANS.

(a) The Secretary of the Interior (hereinafter in this title referred to as the "Secretary") shall conduct appropriate investigations regarding, and is authorized to, sell, or accept prepayment on, loans made pursuant to the Small Reclamation Projects Act (43 U.S.C. 422a-422l) to the Redwood Valley County Water District.

(b) Any sale or prepayment of such loans, which are numbered 14-06-200-8423A and 14-06-200-842A Amendatory to the Redwood Valley County Water District, shall realize an amount to the Federal Government calculated by discounting the remaining payments due on the loans by the interest rate determined according to this section.

(c) The Secretary shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget concerning loan sales and prepayment of loans.

(d) In determining the interest rate, the Secretary—

(1) shall not equate an appropriate amount of prepayment with the price of the loan if it were to be sold on the open market to a third party, and

(2) shall, in following the guidelines set forth in Circular A-129 regarding an allowance for administrative expenses and possible losses, make such an allowance from the perspective of the Federal Government as lender and not from the perspective of a third party purchasing the loan on the open market.

(e) If the borrower or purchaser of the loan has access to tax-exempt financing (including, but not limited to, tax-exempt bonds, tax-exempt cash reserves, and cash and loans of any kind from any tax-exempt entity) to finance the transaction, and if the Office of Management and Budget grants the Secretary the right to conduct such a transaction, then the interest rate by which the Secretary discounts the remaining payments due on the loan shall be adjusted by an amount that compensates the Federal Government for the direct or indirect loss of future tax revenues.

(f) Notwithstanding any other provision in this title, the interest rate shall not exceed a composite interest rate consisting of the current market yield on Treasury securities of comparable maturities.

(g) The Secretary shall obtain approval from the Secretary of the Treasury and the Director of the Office of Management and Budget of the final terms of any loan sale or prepayment made pursuant to this title.

SEC. 2402. SAVINGS PROVISIONS.

Nothing in this title, including prepayment or other disposition of any loans, shall—

(a) except to the extent that prepayment may have been authorized heretofore, relieve the borrower from the applica-

tions of the provisions of the Federal Reclamation Law (Act of June 17, 1902, and Acts amendatory thereof or supplementary thereto, including the Reclamation Reform Act of 1982), including acreage limitations, to the extent such provisions would apply absent such prepayment; or

(b) authorize the transfer of title to any federally owned facilities funded by the loans specified in section 2201 of this title without a specific Act of Congress.

SEC. 2403. FEES AND EXPENSES OF PROGRAM.

In addition to the amount to be realized by the United States as provided in section 2201, the Redwood Valley County Water District shall pay all reasonable fees and expenses incurred by the Secretary relative to the sale.

SEC. 2404. TERMINATION OF AUTHORITY.

The authority granted by this title to sell loans shall terminate two years after the date of enactment of this Act: *Provided*, That the borrower shall have at least sixty days to respond to any prepayment offer made by the Secretary.

**TITLE XXV—UNITED WATER CONSERVATION DISTRICT,
CALIFORNIA**

**SEC. 2501. SALE OF THE FREEMAN DIVERSION IMPROVEMENT
PROJECT LOAN.**

(a) AGREEMENT.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall conduct appropriate investigations regarding, and is authorized to sell, or accept prepayment on, the loan contract described in paragraph (2) to the United Water Conservation District in California (referred to in this title as the "District") for the Freeman Diversion Improvement Project.

(2) LOAN CONTRACT.—The loan contract described in paragraph (1) is numbered 7-07-20-W0615 and was entered into pursuant to the Small Reclamation Projects Act of 1956 (43 U.S.C. 422a et seq.).

(b) PAYMENT.—Any agreement negotiated pursuant to subsection (a) shall realize an amount to the Federal Government calculated by discounting the remaining payments due on the loans by the interest rate determined according to this section.

(c) The Secretary shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget concerning loan sales and prepayment of loans.

(d) In determining the interest rate, the Secretary—

(1) shall not equate an appropriate amount of prepayment with the price of the loan if it were to be sold on the open market to a third party, and

(2) shall, in following the guidelines set forth in Circular A-129 regarding an allowance for administrative expenses and possible losses, make such an allowance from the perspective of the Federal Government as lender and not from the perspective of a third party purchasing the loan on the open market.

(e) If the borrower or purchaser of the loan has access to tax-exempt financing (including, but not limited to, tax-exempt bonds, tax-exempt cash reserves, and cash and loans of any kind

from any tax-exempt entity) to finance the transaction, and if the Office of Management and Budget grants the Secretary the right to conduct such a transaction, then the interest rate by which the Secretary discounts the remaining payments due on the loan shall be adjusted by an amount that compensates the Federal Government for the direct or indirect loss of future tax revenues.

(f) Notwithstanding any other provision in this title, the interest rate shall not exceed a composite interest rate consisting of the current market yield on Treasury securities of comparable maturities.

(g) The Secretary shall obtain approval from the Secretary of the Treasury and the Director of the Office of Management and Budget of the final terms of any loan sale or prepayment made pursuant to this title.

SEC. 2502. TERMINATION AND CONVEYANCE OF RIGHTS.

Upon receipt of the payment specified in section 2301(b)—

(1) the District's obligation under the loan contract described in section 2301(a)(2) shall be terminated;

(2) the Secretary of the Interior shall convey all right and interest of the United States in the Freeman Diversion Improvement Project to the District; and

(3) the District shall absolve the United States, and its officers and agents, of any liability associated with the Freeman Diversion Improvement Project.

SEC. 2503. TERMINATION OF AUTHORITY.

The authority granted by this title to sell loans shall terminate two years after the date of enactment of this Act: *Provided*, That the borrower shall have at least sixty days to respond to any prepayment offer made by the Secretary.

TITLE XXVI—HIGH PLAINS GROUNDWATER PROGRAM

SEC. 2601. HIGH PLAINS STATES GROUNDWATER DEMONSTRATION PROGRAM ACT.

The High Plains States Groundwater Demonstration Program Act of 1983 (43 U.S.C. 390g-1 et seq.) is amended as follows:

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

(2) Section 4(c) is amended by adding at the end the following:

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

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

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

(3) Section 7 is amended by striking "\$20,000,000 (October 1983 price levels)" and inserting in lieu thereof "\$31,000,000

43 USC 390g-2,
390g-3.

Reports.

43 USC 390g-5.

(October 1990 price levels) plus or minus such amounts, if any, as may be required by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved herein”.

TITLE XXVII—MONTANA IRRIGATION PROJECTS

SEC. 2701. PICK-SLOAN PROJECT PUMPING POWER.

(a) The Secretary of the Interior, in cooperation with the Secretary of Energy, shall make available, as soon as practicable after the date of enactment of this Act, project pumping power from the Pick-Sloan Missouri River Basin Program (authorized by section 9 of the Act entitled “An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes” approved December 22, 1944 (58 Stat. 891) (commonly known as the “Flood Control Act of 1944”) to two existing non-Federal irrigation projects known as the—

(1) Haidle Irrigation Project, Prairie County, Montana; and

(2) Hammond Irrigation District, Rosebud County, Montana.

Provided, That the two districts are determined by the Secretary of Energy to be public agencies, as that term is used in section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. section 485h(c).

(b) Power made available under this section shall be at the firm power rate.

TITLE XXVIII—RECLAMATION RECREATION MANAGEMENT ACT

SEC. 2801. SHORT TITLE.

This title may be cited as the “Reclamation Recreation Management Act of 1992”.

SEC. 2802. FINDINGS.

The Congress finds and declares the following:

(1) There is a Federal responsibility to provide opportunities for public recreation at Federal water projects.

(2) Some provisions of the Federal Water Project Recreation Act are outdated because of increases in demand for outdoor recreation and changes in the economic climate for recreation managing entities.

(3) Provisions of such Act relating to non-Federal responsibility for all costs of operation, maintenance, and replacement of recreation facilities result in an unfair burden, especially in cases where the facilities are old or underdesigned.

(4) Provisions of such Act that limit the Federal share of recreation facility development at water projects completed before 1965 to \$100,000 preclude a responsible Federal share in providing adequate opportunities for safe outdoor recreation.

(5) There should be Federal authority to expand existing recreation facilities to meet public demand, in partnership with non-Federal interests.

(6) Nothing in this title changes the responsibility of the Bureau to meet the purposes for which Federal Reclamation projects were initially authorized and constructed.

Reclamation
Recreation
Management
Act of 1992.
16 USC 4601-31
note.

16 USC 4601-31.

(7) It is therefore in the best interest of the people of this Nation to amend the Federal Water Project Recreation Act to remove outdated restrictions and authorize the Secretary of the Interior to undertake specific measures for the management of Reclamation lands.

SEC. 2803. DEFINITIONS.

16 USC 4601-32.

For the purposes of this title:

(1) The term "Reclamation lands" means real property administered by the Secretary, acting through the Commissioner of Reclamation, and includes all acquired and withdrawn lands and water areas under jurisdiction of the Bureau.

(2) The term "Reclamation program" means any activity authorized under the Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 371)), and Acts supplementary thereto and amendatory thereof.

(3) The term "Reclamation project" means any water supply or water delivery project constructed or administered by the Bureau of Reclamation under the Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 371)), and Acts supplementary thereto and amendatory thereof.

(4) The term "Secretary" means the Secretary of the Interior.

SEC. 2804. AMENDMENTS TO THE FEDERAL WATER PROJECT RECREATION ACT.

(a) **ALLOCATION OF COSTS.**—Section 2(a) of the Federal Water Project Recreation Act (16 U.S.C. 4601-13(a)) is amended, in the matter preceding paragraph (1), by striking "all the costs of operation, maintenance, and replacement" and inserting "not less than one-half the costs of operation, maintenance, and replacement".

(b) **RECREATION AND FISH AND WILDLIFE ENHANCEMENT.**—Section 3(b)(1) of the Federal Water Project Recreation Act (16 U.S.C. 4601-14(b)(1)) is amended—

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

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

(c) **LEASE OF FACILITIES.**—Section 4 of the Federal Water Project Recreation Act (16 U.S.C. 4601-15) is amended by striking "costs of operation, maintenance, and replacement of existing" and inserting "not less than one-half the costs of operation, maintenance, and replacement of existing".

(d) **EXPANSION OR MODIFICATION OF EXISTING FACILITIES.**—Section 3 of the Federal Water Project Recreation Act (16 U.S.C. 4601-14) is amended by adding at the end the following new subsection:

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

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

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

"(i) will administer the expanded or modified facilities pursuant to a plan for development for the project that

is approved by the agency with administrative jurisdiction over the project; and

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

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

(e) **LIMITATION.**—Section 7(a) of the Federal Water Project Recreation Act (16 U.S.C. 4601-18(a)) is amended—

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

(2) by striking “subsection 3(b)” and inserting “subsection (b) or (c) of section 3”.

16 USC 4601-33.

SEC. 2805. MANAGEMENT OF RECLAMATION LANDS.

(a) **ADMINISTRATION.**—(1) Upon a determination that any such fee, charge, or commission is reasonable and appropriate, the Secretary acting through the Commissioner of Reclamation, is authorized to establish—

(A) filing fees for applications and other documents concerning entry upon and use of Reclamation lands;

(B) recreation user fees; and

(C) charges or commissions for the use of Reclamation lands.

(2) The Secretary, acting through the Commissioner of Reclamation, shall promulgate such regulations as the Secretary determines to be necessary—

(A) to carry out the provisions of this section and section 2806;

(B) to ensure the protection, comfort, and well-being of the public (including the protection of public safety) with respect to the use of Reclamation lands; and

(C) to ensure the protection of resource values.

(b) **INVENTORY.**—The Secretary, acting through the Commissioner of Reclamation, is authorized to—

(1) prepare and maintain on a continuing basis an inventory of resources and uses made of Reclamation lands and resources, keep records of such inventory, and make such records available to the public; and

(2) ascertain the boundaries of Reclamation lands and provide a means for public identification (including, where appropriate, providing signs and maps).

(c) **PLANNING.**—(1)(A) The Secretary, acting through the Commissioner of Reclamation, is authorized to develop, maintain, and revise resource management plans for Reclamation lands.

(B) Each plan described in subparagraph (A)—

(i) shall be consistent with applicable laws (including any applicable statute, regulation, or Executive order);

(ii) shall be developed in consultation with—

(I) such heads of Federal and non-Federal departments or agencies as the Secretary determines to be appropriate; and

Regulations.

(II) the authorized beneficiaries (as determined by the Secretary) of any Reclamation project included in the plan; and

(iii) shall be developed with appropriate public participation.

(C) Each plan described in subparagraph (A) shall provide for the development, use, conservation, protection, enhancement, and management of resources of Reclamation lands in a manner that is compatible with the authorized purposes of the Reclamation project associated with the Reclamation lands.

(d) **NONREIMBURSABLE FUNDS.**—Funds expended by the Secretary in carrying out the provisions of this title shall be nonreimbursable under the Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 371), and Acts supplementary thereto and amendatory thereof).

SEC. 2806. PROTECTION OF AUTHORIZED PURPOSES OF RECLAMATION PROJECTS. 16 USC 4601-34.

(a) Nothing in this title shall be construed to change, modify, or expand the authorized purposes of any Reclamation project.

(b) The expansion or modification of a recreational facility constructed under this title shall not increase the capital repayment responsibilities or operation and maintenance expenses of the beneficiaries of authorized purposes of the associated Reclamation project. The term “beneficiaries” does not include those entities who sign agreements or enter into contracts for recreation facilities pursuant to the Federal Water Project Recreation Act.

TITLE XXIX—SAN JUAN SUBURBAN WATER DISTRICT

SEC. 2901. REPAYMENT OF WATER PUMPS, SAN JUAN SUBURBAN WATER DISTRICT, CENTRAL VALLEY PROJECT, CALIFORNIA.

(a) **WATER PUMP REPAYMENT.**—The Secretary shall credit to the unpaid capital obligation of the San Juan Suburban Water District (District), as calculated in accordance with the Central Valley Project ratesetting policy, an amount equal to the documented price paid by the District for pumps and motors provided by the District to the Bureau of Reclamation, in 1991 and 1992, for installation at Folsom Dam, Central Valley Project, California.

(b) **CONDITIONS.**—(1) The amount credited shall not include any indirect or overhead costs associated with the acquisition of the pumps and motors, such as those associated with the negotiation of a sales price or procurement contract, inspection, and delivery of the pumps and motors from the seller to the Bureau of Reclamation.

(2) The credit is effective on the dates the pumps and motors were delivered to the Bureau of Reclamation for installation at Folsom Dam.

TITLE XXX—WESTERN WATER POLICY REVIEW

SEC. 3001. SHORT TITLE.

This title may be cited as the “Western Water Policy Review Act of 1992.”

Western Water
Policy Review
Act of 1992.
43 USC 371
note.

SEC. 3002. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the Nation needs an adequate water supply for all states at a reasonable cost;

(2) the demands on the Nation's finite water supply are increasing;

(3) coordination on both the Federal level and the local level is needed to achieve water policy objectives;

(4) not less than fourteen agencies of the Federal Government are currently charged with functions relating to the oversight of water policy;

(5) the diverse authority over Federal water policy has resulted in unclear goals and an inefficient handling of the Nation's water policy;

(6) the conflict between competing goals and objectives by Federal, State, and local agencies as well as by private water users is particularly acute in the nineteen Western States which have arid climates which include the seventeen reclamation States, Hawaii, and Alaska;

(7) the appropriations doctrine of water allocation which characterizes most western water management regimes varies from State to State, and results in many instances in increased competition for limited resources;

(8) the Federal Government has recognized and continues to recognize the primary jurisdiction of the several States over the allocation, priority, and use of water resources of the States, except to the extent such jurisdiction has been preempted in whole or in part by the Federal Government, including, but not limited to, express or implied Federal reserved water rights either for itself or for the benefit of Indian Tribes, and that the Federal Government will, in exercising its authorities, comply with applicable State laws;

(9) the Federal Government recognizes its trust responsibilities to protect Indian water rights and assist Tribes in the wise use of those resources;

(10) Federal agencies, such as the Bureau of Reclamation, have had, and will continue to have major responsibilities in assisting States in the wise management and allocation of scarce water resources; and

(11) the Secretary of the Interior, given his responsibilities for management of public land, trust responsibilities for Indians, administration of the reclamation program, investigations and reviews into ground water resources through the Geologic Survey, and the Secretary of the Army, given his responsibilities for flood control, water supply, hydroelectric power, recreation, and fish and wildlife enhancement, have the resources to assist in a comprehensive review, in consultation with appropriate officials from the nineteen Western States, into the problems and potential solutions facing the nineteen Western States and the Federal Government in the increasing competition for the scarce water resources of the Western States.

SEC. 3003. PRESIDENTIAL REVIEW.

Reports.

(a) The President is directed to undertake a comprehensive review of Federal activities in the nineteen Western States which directly or indirectly affect the allocation and use of water resources,

whether surface or subsurface, and to submit a report on the President's findings, together with recommendations, if any, to the Committees on Energy and Natural Resources, Environment and Public Works and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Public Works and Transportation, Merchant Marine and Fisheries and Appropriations of the House of Representatives.

(b) Such report shall be submitted within three years from the date of enactment of this Act.

(c) In conducting the review and preparing the report, the President is directed to consult with the Advisory Commission established under section 3004 of this title, and may request the Secretary of the Interior and the Secretary of the Army or other Federal officials or the Commission to undertake such studies or other analyses as the President determines would assist in the review.

(d) The President shall consult periodically with the Commission, and upon the request of the President, the heads of other Federal agencies are directed to cooperate with and assist the Commission in its activities.

SEC. 3004. THE ADVISORY COMMISSION.

(a) The President shall appoint an Advisory Commission (hereafter in this title referred to as the "Commission") to assist in the preparation and review of the report required under this title.

President.
Establishment.

(b) The Commission shall be composed of eighteen members as follows:

- (1) Ten members appointed by the President including:
 - (A) the Secretary of the Interior or his designee;
 - (B) the Secretary of the Army or his designee;
 - (C) at least one representative chosen from a list submitted by the Western Governors Association; and
 - (D) at least one representative chosen from a list submitted by Tribal governments located in the Western States.

(2) In addition to the ten members appointed by the President, twelve Members from the United States Congress shall serve as ex officio members of the Commission. For the United States Senate: the Chairmen and the Ranking Minority Members of the Committees on Energy and Natural Resources, and Appropriations, and the Subcommittee of the Committee on Energy and Natural Resources which has jurisdiction over the Bureau of Reclamation. For the United States House of Representatives: the Chairman and Ranking Minority Members of the Committees on Interior and Insular Affairs, Public Works and Transportation, and Appropriations.

(c) The President shall appoint one member of the Commission to serve as Chairman.

President.

(d) Any vacancy which may occur on the Commission shall be filled in the same manner in which the original appointment was made.

(e) Members of the Commission shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

SEC. 3005. DUTIES OF THE COMMISSION.

The Commission shall—

(1) review present and anticipated water resource problems affecting the nineteen Western States, making such projections of water supply requirements as may be necessary and identifying alternative ways of meeting these requirements—giving considerations, among other things, to conservation and more efficient use of existing supplies, innovations to encourage the most beneficial use of water and recent technological advances;

(2) examine the current and proposed Federal programs affecting such States and recommend to the President whether they should be continued or adopted and, if so, how they should be managed for the next twenty years, including the possible reorganization or consolidation of the current water resources development and management agencies;

(3) review the problems of rural communities relating to water supply, potable water treatment, and wastewater treatment;

(4) review the need and opportunities for additional storage or other arrangements to augment existing water supplies including, but not limited to, conservation;

(5) review the history, use, and effectiveness of various institutional arrangements to address problems of water allocation, water quality, planning, flood control and other aspects of water development and use, including, but not limited to, interstate water compacts, Federal-State regional corporations, river basin commissions, the activities of the Water Resources Council, municipal and irrigation districts and other similar entities with specific attention to the authorities of the Bureau of Reclamation under reclamation law and the Secretary of the Army under water resources law;

(6) review the legal regime governing the development and use of water and the respective roles of both the Federal Government and the States over the allocation and use of water, including an examination of riparian zones, appropriation and mixed systems, market transfers, administrative allocations, ground water management, interbasin transfers, recordation of rights, Federal-State relations including the various doctrines of Federal reserved water rights (including Indian water rights and the development in several States of the concept of a public trust doctrine); and

(7) review the activities, authorities, and responsibilities of the various Federal agencies with direct water resources management responsibility, including but not limited to the Bureau of Reclamation, the Department of the Army, and those agencies whose decisions would impact on water resource availability and allocation, including, but not limited to, the Federal Energy Regulatory Commission.

SEC. 3006. REPRESENTATIVES.

(a) The Chairman of the Commission shall invite the Governor of each Western State to designate a representative to work closely with the Commission and its staff in matters pertaining to this title.

(b) The Commission, at its discretion, may invite appropriate public or private interest groups including, but not limited to, Indian and Tribal organizations to designate a representative to work closely with the Commission and its staff in matters pertaining to this title.

SEC. 3007. POWERS OF THE COMMISSION.

(a) The Commission may—

(1) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it may deem advisable;

(2) use the United States mail in the same manner and upon the same conditions as other departments and agencies of the United States;

(3) enter into contracts or agreements for studies and surveys with public and private organizations and transfer funds to Federal agencies to carry out such aspects of the Commission's functions as the Commission determines can best be carried out in that manner; and

(4) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required to perform its functions under this title.

(b) Any member of the Commission is authorized to administer oaths when it is determined by a majority of the Commission that testimony shall be taken or evidence received under oath.

(c) The Commission shall have a Director who shall be appointed by the Commission and who shall be paid at a rate not to exceed the maximum rate of basic pay payable for level II of the Executive Schedule.

(1) With the approval of the Commission, the Director may appoint and fix the pay of such personnel as the Director considers appropriate but only to the extent that such personnel cannot be obtained from the Secretary of the Interior or by detail from other Federal agencies. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such Title relating to classification and General Schedule pay rates.

(2) With the approval of the Commission, the Director may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(d) The Secretary of the Interior and the Secretary of the Army shall provide such office space, furnishings and equipment as may be required to enable the Commission to perform its functions. The Secretary shall also furnish the Commission with such staff, including clerical support, as the Commission may require.

SEC. 3008. POWERS AND DUTIES OF THE CHAIRMAN.

(a) Subject to general policies adopted by the Commission, the Chairman shall be the chief executive of the Commission and shall exercise its executive and administrative powers as set forth in paragraphs (2) through (4) of section 3007(a).

(b) The Chairman may make such provisions as he shall deem appropriate authorizing the performance of any of his executive and administrative functions by the Director or other personnel of the Commission.

SEC. 3009. OTHER FEDERAL AGENCIES.

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

(b) Upon request of the Commission, the President may direct the head of any other Federal department or agency to assist the Commission and such head of any Federal department or agency is authorized—

(1) to furnish to the Commission, to the extent permitted by law and within the limits of available funds, including funds transferred for that purpose pursuant to section 3007(a)(7) of this title, such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and

(2) to detail to temporary duty with the Commission on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

(c) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the Secretary of the Interior.

SEC. 3010. APPROPRIATIONS.

There are hereby authorized to be appropriated not to exceed \$10,000,000 to carry out the purposes of sections 3001 through 3009 of this title.

TITLE XXXI—MOUNTAIN PARK MASTER CONSERVANCY DISTRICT, OKLAHOMA**SEC. 3101. PAYMENT BY MOUNTAIN PARK MASTER CONSERVANCY DISTRICT.**

(a) **IN GENERAL.**—The Secretary shall conduct appropriate investigations regarding, and is authorized to accept prepayment of, the repayment obligation of the District for the reimbursable construction costs of the project allocated to municipal and industrial water supply for the city, and, upon receipt of such prepayment, the District's obligation to the United States shall be reduced by the amount of such costs.

(b) **PAYMENT AMOUNT.**—Any prepayment made pursuant to subsection (a) shall realize an amount to the Federal Government calculated by discounting the remaining repayment obligation by the interest rate determined according to this section.

(c) **INTEREST RATE.**—The Secretary shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget concerning loan sales and prepayment of loans.

(d) **INVESTIGATIONS.**—In determining the interest rate, the Secretary—

(1) shall not equate an appropriate amount of prepayment with the price of the loan if it were to be sold on the open market to a third party, and

(2) shall, in following the guidelines set forth in Circular A-129 regarding an allowance for administrative expenses and possible losses, make such an allowance from the perspective

of the Federal Government as lender and not from the perspective of a third party purchasing the loan on the open market.

(e) **TAX-EXEMPT FINANCING.**—If the borrower or purchaser of the loan has access to tax-exempt financing (including, but not limited to, tax-exempt bonds, tax-exempt cash reserves, and cash and loans of any kind from any tax-exempt entity) to finance the transaction, and if the Office of Management and Budget grants the Secretary the right to conduct such a transaction, then the interest rate by which the Secretary discounts the remaining payments due on the loan shall be adjusted by an amount that compensates the Federal Government for the direct or indirect loss of future tax revenues.

(f) **LIMIT ON INTEREST RATE.**—Notwithstanding any other provision in this title, the interest rate shall not exceed a composite interest rate consisting of the current market yield on Treasury securities of comparable maturities.

(g) **APPROVAL.**—The Secretary shall obtain approval from the Secretary of the Treasury and the Director of the Office of Management and Budget of the final terms of any prepayment made pursuant to this title.

(h) **TERMINATION OF AUTHORITY.**—The authority granted by this title to sell loans shall terminate two years after the date of enactment of this Act: *Provided*, That the borrower shall have at least sixty days to respond to any prepayment offer made by the Secretary.

(i) **TITLE TO PROJECT FACILITIES.**—Notwithstanding any payments made by the District pursuant to this section or pursuant to any contract with the Secretary, title to the project facilities shall remain with the United States.

(j) **DEFINITIONS.**—For the purposes of this section—

(1) the term “city” means the city of Frederick, Oklahoma; the city of Snyder, Oklahoma; or the city of Altus, Oklahoma;

(2) the term “District” means the Mountain Park Master Conservancy District of Mountain Park, Oklahoma;

(3) the term “project” means the Mountain Park Project, Oklahoma; and

(4) the term “Secretary” means the Secretary of the Interior.

SEC. 3102. RESCHEDULE OF REPAYMENT OBLIGATION.

(a) The Secretary shall conduct appropriate investigations regarding the ability of the District to meet its repayment obligation.

(b) If the Secretary finds that the District does not have the ability to pay its repayment obligation, then the Secretary shall offer the District a revised schedule of payments for purposes of meeting the repayment obligation of the District: *Provided*, That such schedule of payments shall—

(1) be consistent with the ability to pay of the District, and

(2) have the same discounted present value as the repayment obligation of the District.

(c) The Secretary shall conduct the investigations and make any offer of a revised schedule of payments pursuant to this section no later than twelve months after the date of enactment of this section.

TITLE XXXII—SOUTH DAKOTA PRESERVATION AND RESTORATION TRUST

Subpart A—Biological Diversity Trust

SEC. 3201. SOUTH DAKOTA BIOLOGICAL DIVERSITY TRUST.

(a) The Secretary, subject to the provisions of subsection (d) of this section, shall make an annual Federal contribution to a South Dakota Biological Diversity Trust established in accordance with subsection (b) of this section and operated in accordance with subsection (c) of this section. Contributions from the State of South Dakota may be paid to the Trust in such amounts and in such manner as may be agreed upon by the Governor and the Secretary. The total Federal contribution pursuant to this section, including subsection (d), shall not exceed \$12,000,000.

(b) A South Dakota Biological Diversity Trust shall be eligible to receive Federal contributions pursuant to subsection (a) of this section if it complies with each of the following requirements:

(1) The Trust is established by non-Federal interests as a nonprofit corporation under the laws of South Dakota with its principal office in South Dakota.

(2) The Trust is under the direction of a Board of Trustees which has the power to manage all affairs of the corporation, including administration, data collection, and implementation of the purposes of the Trust.

(3) The Board is comprised of five persons appointed as follows, each for a term of five years:

(A) 1 person appointed by the Governor of South Dakota;

(B) 1 person appointed by each United States Senator from South Dakota;

(C) 1 person appointed by the United States Representative from South Dakota; and

(D) 1 person appointed by the South Dakota Academy of Science.

(4) Vacancies on the Board are filled in the manner in which the original appointments were made. Any member of the Board is eligible for reappointment for successive terms. Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed is appointed only for the remainder of such term. A member may serve after the expiration of his or her term until his or her successor has taken office. Members of the Board shall serve without compensation.

(5) The corporate purposes of the Trust are to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity, its rare species, exemplary examples of plant and animal communities and large-scale natural ecosystems.

(c) A South Dakota Biological Diversity Trust established by non-Federal interests as provided in subsection (b) shall be deemed to be operating in accordance with this subsection if, in the opinion of the Secretary, each of the following requirements are met:

(1) the Trust is operated to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity; its rare species, extraordinary examples of plant and animal communities and large-scale

natural ecosystems in accordance with its corporate purpose; and

(2) the Trust is managed in a fiscally responsible fashion by investing in private and public financial vehicles with the goal of producing income and preserving principal. The principal will be inviolate, but income will be used to accomplish the goals of the trust.

Securities.

(3) Proceeds from the Trust are used for the following purposes:

(A) \$10,000 per year or 5 percent of the total funds expended by the Trust (whichever is larger) will be provided to the South Dakota Natural Heritage Program (currently as part of the South Dakota Game, Fish, and Parks Departments), in order to do the following:

(i) maintain and update the South Dakota Biodiversity Priority Site List;

(ii) conduct inventory to discover and survey new sites for the Priority Site List; and

(iii) manage data to maintain the Natural Heritage Databases needed to produce and document the Priority Site List.

(B) Up to 5 percent of the costs of each project are used for preserve design or site planning to ensure that sites are selected for funding which are well-designed to maintain the long-term viability of the significant species and communities found at the site.

(C) Proceeds from the Trust may be used to complete land protection projects designed to protect biological diversity.

(D) Projects may include acquisition of land, water rights or other partial interests from willing sellers only, or arranging management agreements, registry and other techniques to protect significant sites.

(E) Ownership of land acquired with Trust proceeds will be held by the public agency or private non-profit organization which proposed and completed the project, or another conservation owner with the approval of the Board. The land will be managed and used for the protection of biological diversity. If the property is used or managed otherwise, title will revert to the Trust for disposition.

(F) Projects eligible for funding must be included on the South Dakota Biodiversity Priority List and located within the borders of South Dakota.

(G) At the discretion of the Board, Trust proceeds may be used for direct project costs including direct expenses incurred during project completion. Land project funding may also include the creation of a stewardship endowment subject to the following terms:

(i) Up to 25 percent of the total fair market value of the project may be placed in a separate endowment.

(ii) The proceeds from the endowment will be used for the ongoing management costs of maintaining the biological integrity and viability of the significant biological features of the site.

(iii) Endowment funds may not be used for activities which primarily promote recreational or economic use of the site.

(iv) The endowment for each site will be held in a separate account from the body of the Trust and other endowments. The endowments will be managed by the Trust Board but the owner or manager of the site may draw upon the proceeds of the stewardship endowment to fund management activities with approval of the Board. Additional management funds may be secured from other public and private sources.

(H) Should the biological significance of a site be destroyed or greatly reduced, the land may be disposed of but the proceeds and any stewardship endowment will revert to the Trust for use in other projects.

(I) Proceeds from the Trust may be used for management of public or private lands, including but not restricted to lands purchased with Trust funds, except that only those management projects that result in the maintenance or restoration of statewide biological diversity are eligible for consideration.

(d) For each fiscal year after 1992, 2 percent of the Federal contributions for the same fiscal year, determined pursuant to subsection (a) of this section, shall be used by the Secretary in order to do the following:

(1) restore damaged natural ecosystems on public lands and waterways affected by the Reclamation program outside South Dakota;

(2) acquire from willing sellers only other lands and properties or appropriate interests therein outside South Dakota with restorable damaged natural ecosystems and restore such ecosystems;

(3) provide jobs and suitable economic development in a manner that carries out the other purposes of this subsection;

(4) provide expanded recreational opportunities; and

(5) support and encourage research, training and education in methods and technologies of ecosystem restoration.

(e) In implementing subsection (d), the Secretary shall give priority to restoration and acquisition of lands and properties (or appropriate interests therein) where repair of compositional, structural and functional values will do the following:

(1) reconstitute natural biological diversity that has been diminished;

(2) assist the recovery of species populations, communities and ecosystems that are unable to survive onsite without intervention;

(3) allow reintroduction and reoccupation by native flora and fauna;

(4) control or eliminate exotic flora and fauna which are damaging natural ecosystems;

(5) restore natural habitat for the recruitment and survival of fish, waterfowl and other wildlife;

(6) provide additional conservation values to state and local government lands;

(7) add to structural and compositional values of existing preserves or enhance the viability, defensibility and manageability of preserves; and

(8) restore natural hydrological effects including sediment and erosion control, drainage, percolation and other water quality improvement capacity.

(f) The Secretary shall annually report on activities under this section to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate and the Committee on Interior and Insular Affairs and the Committee on Appropriations of the House of Representatives.

Reports.

(g) There are authorized to be appropriated not to exceed \$12,000,000 for the purposes of this title.

Subpart B—Wetland Habitat Restoration Program

SEC. 3202. DEFINITIONS.

(1) The term "Foundation" means the South Dakota Game, Fish and Parks Foundation, a nonprofit corporation under the laws of the State of South Dakota with its principal office in South Dakota.

(2) The term "wetland trust" means a trust established in accordance with section 3602(b) and operated in accordance with section 3602(c).

SEC. 3203. WETLAND TRUST.

(a) FEDERAL CONTRIBUTIONS.—Subject to appropriations therefor, the Secretary shall make a Federal contribution to a wetland trust that is—

- (1) established in accordance with subsection (b); and
- (2) operated in accordance with subsection (c), in the amount of \$3,000,000 in the first year in which a contribution is made and \$1,000,000 in each of the following four years.

(b) ESTABLISHMENT OF WETLAND TRUST.—A wetland trust is established in accordance with this subsection if—

- (1) the wetland trust is administered by the Foundation;
- (2) the Foundation is under the direction of a Board of Directors that has power to manage all affairs of the Foundation, including administration, data collection, and implementation of the purposes of the wetland trust;

(3) members of the Board of Directors of the Foundation serve without compensation;

(4) the corporate purposes of the Foundation in administering the wetland trust are to preserve, enhance, restore, and manage wetland and associated wildlife habitat in the State of South Dakota;

(5) an advisory committee is created to provide the Board of Directors of the Foundation with necessary technical expertise and the benefit of a multiagency perspective;

(6) the advisory committee described in paragraph (5) is composed of—

(A) 1 member of the staff of the Wildlife Division of the South Dakota Department of Game, Fish and Parks, appointed by the Secretary of that department;

(B) 1 member of the United States Fish and Wildlife Service, appointed by the Director of Region 6 of the United States Fish and Wildlife Service;

(C) 1 representative from the Department of Agriculture, as determined by the Secretary of Agriculture; and

(D) 3 residents of the State of South Dakota who are members of wildlife or environmental organizations,

appointed by the Governor of the State of South Dakota;
and

(7) the wetland trust is empowered to accept non-Federal donations, gifts, and grants.

(c) OPERATION OF WETLAND TRUST.—The wetland trust shall be considered to be operated in accordance with this subsection if—

(1) the wetland trust is operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat in the State of South Dakota;

(2) under the corporate charter of the Foundation, the Board of Directors, acting on behalf of the Foundation, is empowered to—

(A) acquire lands and interests in land and power to acquire water rights (but only with the consent of the owner);

(B) acquire water rights; and

(C) finance wetland preservation, enhancement, and restoration programs;

(3)(A) all funds provided to the wetland trust under subsection (a) are to be invested in accordance with subsection (d);

(B) no part of the principal amount (including capital gains thereon) of such funds are to be expended for any purpose;

(C) the income received from the investment of such funds is to be used only for purposes and operations in accordance with this subsection or, to the extent not required for current operations, reinvested in accordance with subsection (d);

(D) income earned by the wetland trust (including income from investments made with funds other than those provided to the wetland trust under subsection (a)) is used to—

(i) enter into joint ventures, through the Division of Wildlife of the South Dakota Department of Game, Fish and Parks, with public and private entities or with private landowners to acquire easements or leases or to purchase wetland and adjoining upland; or

(ii) pay for operation and maintenance of the wetland component;

(E) when it is necessary to acquire land other than wetland and adjoining upland in connection with an acquisition of wetland and adjoining upland, wetland trust funds (including funds other than those provided to the wetland trust under subsection (a) and income from investments made with such funds) are to be used only for acquisition of the portions of land that contain wetland and adjoining upland that is beneficial to the wetland;

(F) all land purchased in fee simple with wetland trust funds shall be dedicated to wetland preservation and use; and

(G)(i) proceeds of the sale of land or any part thereof that was purchased with wetland trust funds are to be remitted to the wetland trust;

(ii) management, operation, development, and maintenance of lands on which leases or easements are acquired;

(iii) payment of annual lease fees, one-time easement costs, and taxes on land areas containing wetlands purchased in fee simple;

(iv) payment of personnel directly related to the operation of the wetland trust, including administration; and

(v) contractual and service costs related to the management of wetland trust funds, including audits.

(4) the Board of Directors of the Foundation agrees to provide such reports as may be required by the Secretary and makes its records available for audit by Federal agencies; and

Reports.
Records.

(5) the advisory committee created under subsection (b)—

(A) recommends criteria for wetland evaluation and selection: *Provided*, That income earned from the Trust shall not be used to mitigate or compensate for wetland damage caused by Federal water projects;

(B) recommends wetland parcels for lease, easement, or purchase and states reasons for its recommendations; and

(C) recommends management and development plans for parcels of land that are purchased.

(d) INVESTMENT OF WETLAND TRUST FUNDS.—(1) The Secretary, in consultation with the Secretary of the Treasury, shall establish requirements for the investment of all funds received by the wetland trust under subsection (a) or reinvested under subsection (c)(3).

(2) The requirements established under paragraph (1) shall ensure that—

(A) funds are invested in accordance with sound investment principles; and

(B) the Board of Directors of the Foundation manages such investments and exercises its fiduciary responsibilities in an appropriate manner.

(e) COORDINATION WITH THE SECRETARY OF AGRICULTURE.—

(1) The Secretary shall make the Federal contribution under subsection (a) after consulting with the Secretary of Agriculture to provide for the coordination of activities under the wetland trust established under subsection (b) with the water bank program, the wetlands reserve program, and any similar Department of Agriculture programs providing for the protection of wetlands.

(2) The Secretary of Agriculture shall take into consideration wetland protection activities under the wetland trust established under subsection (b) when considering whether to provide assistance under the water bank program, the wetlands reserve program, and any similar Department of Agriculture programs providing for the protection of wetlands.

SEC. 3204. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary \$7,000,000 for the Federal contribution to the wetland trust established under section 3203.

TITLE XXXIII—ELEPHANT BUTTE IRRIGATION DISTRICT, NEW MEXICO

SEC. 3301. TRANSFER.

The Secretary is authorized to transfer to the Elephant Butte Irrigation District, New Mexico, and El Paso County Water Improvement District No. 1, Texas, without cost to the respective district, title to such easements, ditches, laterals, canals, drains, and other rights-of-way, which the United States has acquired on behalf of

the project, that are used solely for the purpose of serving the respective district's lands and which the Secretary determines are necessary to enable the respective district to carry out operation and maintenance with respect to that portion of the Rio Grande project to be transferred. The transfer of the title to such easements, ditches, laterals, canals, drains, and other rights-of-way located in New Mexico, which the Secretary has, that are used for the purpose of jointly serving Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, may be transferred to Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, jointly, upon agreement by the Secretary and both districts. Any transfer under this section shall be subject to the condition that the respective district assume responsibility for operating and maintaining their portion of the project.

SEC. 3302. LIMITATION.

Title to and responsibility for operation and maintenance of Elephant Butte and Caballo dams, and Percha, Leasburg, and Mesilla diversion dams and the works necessary for their protection and operation shall be unaffected by this title.

SEC. 3303. EFFECT OF ACT ON OTHER LAWS.

Nothing in this title shall affect any right, title, interest or claim to land or water, if any, of the Ysleta del Sur Pueblo, a federally recognized Indian Tribe.

**TITLE XXXIV—CENTRAL VALLEY PROJECT
IMPROVEMENT ACT**

SEC. 3401. SHORT TITLE.

This title may be cited as the "Central Valley Project Improvement Act".

SEC. 3402. PURPOSES.

The purposes of this title shall be—

(a) to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California;

(b) to address impacts of the Central Valley Project on fish, wildlife and associated habitats;

(c) to improve the operational flexibility of the Central Valley Project;

(d) to increase water-related benefits provided by the Central Valley Project to the State of California through expanded use of voluntary water transfers and improved water conservation;

(e) to contribute to the State of California's interim and long-term efforts to protect the San Francisco Bay/Sacramento-San Joaquin Delta Estuary;

(f) to achieve a reasonable balance among competing demands for use of Central Valley Project water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors.

SEC. 3403. DEFINITIONS.

As used in this title—

Central Valley
Project
Improvement
Act.
Water supply.
California.

(a) the term "anadromous fish" means those stocks of salmon (including steelhead), striped bass, sturgeon, and American shad that ascend the Sacramento and San Joaquin rivers and their tributaries and the Sacramento-San Joaquin Delta to reproduce after maturing in San Francisco Bay or the Pacific Ocean;

(b) the terms "artificial propagation" and "artificial production" mean spawning, incubating, hatching, and rearing fish in a hatchery or other facility constructed for fish production;

(c) the term "Central Valley Habitat Joint Venture" means the association of Federal and State agencies and private parties established for the purpose of developing and implementing the North American Waterfowl Management Plan as it pertains to the Central Valley of California;

(d) the terms "Central Valley Project" or "project" mean all Federal reclamation projects located within or diverting water from or to the watershed of the Sacramento and San Joaquin rivers and their tributaries as authorized by the Act of August 26, 1937 (50 Stat. 850) and all Acts amendatory or supplemental thereto, including but not limited to the Act of October 17, 1940 (54 Stat. 1198, 1199), Act of December 22, 1944 (58 Stat. 887), Act of October 14, 1949 (63 Stat. 852), Act of September 26, 1950 (64 Stat. 1036), Act of August 27, 1954 (68 Stat. 879), Act of August 12, 1955 (69 Stat. 719), Act of June 3, 1960 (74 Stat. 156), Act of October 23, 1962 (76 Stat. 1173), Act of September 2, 1965 (79 Stat. 615), Act of August 19, 1967 (81 Stat. 167), Act of August 27, 1967 (81 Stat. 173), Act of October 23, 1970 (84 Stat. 1097), Act of September 28, 1976 (90 Stat. 1324) and Act of October 27, 1986 (100 Stat. 3050);

(e) the term "Central Valley Project service area" means that area of the Central Valley and San Francisco Bay Area where water service has been expressly authorized pursuant to the various feasibility studies and consequent congressional authorizations for the Central Valley Project;

(f) the term "Central Valley Project water" means all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Central Valley Project and in accordance with the terms and conditions of water rights acquired pursuant to California law;

(g) the term "full cost" has the meaning given such term in paragraph (3) of section 202 of the Reclamation Reform Act of 1982;

(h) the term "natural production" means fish produced to adulthood without direct human intervention in the spawning, rearing, or migration processes;

(i) the term "Reclamation laws" means the Act of June 17, 1902 (82 Stat. 388) and all Acts amendatory thereof or supplemental thereto;

(j) the term "Refuge Water Supply Report" means the report issued by the Mid-Pacific Region of the Bureau of Reclamation of the U.S. Department of the Interior entitled Report on Refuge Water Supply Investigations, Central Valley Hydrologic Basin, California (March 1989);

(k) the terms "repayment contract" and "water service contract" have the same meaning as provided in sections 9(d)

and 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1187, 1195), as amended;

(l) the terms "Restoration Fund" and "Fund" mean the Central Valley Project Restoration Fund established by this title; and,

(m) the term "Secretary" means the Secretary of the Interior.

SEC. 3404. LIMITATION ON CONTRACTING AND CONTRACT REFORM.

(a) **NEW CONTRACTS.**—Except as provided in subsection (b) of this section, the Secretary shall not enter into any new short-term, temporary, or long-term contracts or agreements for water supply from the Central Valley Project for any purpose other than fish and wildlife before:

(1) the provisions of subsections 3406(b)–(d) of this title are met;

(2) the California State Water Resources Control Board concludes the review ordered by the California Court of Appeals in *United States v. State Water Resources Control Board*, 182 Cal. App. 3d 82 (1986) and determines the means of implementing its decision, including the obligations of the Central Valley Project, if any, and the Administrator of the Environmental Protection Agency shall have approved such decision pursuant to existing authorities; and,

(3) at least one hundred and twenty days shall have passed after the Secretary provides a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives explaining the obligations, if any, of the Central Valley Project system, including its component facilities and contracts, with regard to achieving its responsibilities for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary as finally established and approved by relevant State and Federal authorities, and the impact of such obligations on Central Valley Project operations, supplies, and commitments.

(b) **EXCEPTIONS TO LIMIT ON NEW CONTRACTS.**—The prohibition on execution of new contracts under subsection (a) of this section shall not apply to contracts executed pursuant to section 305 of Public Law 102-250 or section 206 of Public Law 101-514 or to one-year contracts for delivery of surplus flood flows or contracts not to exceed two years in length for delivery of class II water in the Friant Unit. Notwithstanding the prohibition in the Energy and Water Development Appropriations Act of 1990, the Secretary is authorized, pursuant to section 203 of the Flood Control Act of 1962, to enter into a long-term contract in accordance with the Reclamation laws with the Tuolumne Regional Water District, California, for the delivery of water from the New Melones project to the county's water distribution system and a contract with the Secretary of Veteran Affairs to provide for the delivery in perpetuity of water from the project in quantities sufficient, but not to exceed 850 acre-feet per year, to meet the needs of the San Joaquin Valley National Cemetery, California.

(c) **RENEWAL OF EXISTING LONG-TERM CONTRACTS.**—Notwithstanding the provisions of the Act of July 2, 1956 (70 Stat. 483), the Secretary shall, upon request, renew any existing long-term repayment or water service contract for the delivery of water from

the Central Valley Project for a period of twenty-five years and may renew such contracts for successive periods of up to 25 years each.

(1) No such renewals shall be authorized until appropriate environmental review, including the preparation of the environmental impact statement required in section 3409 of this title, has been completed. Contracts which expire prior to the completion of the environmental impact statement required by section 3409 may be renewed for an interim period not to exceed three years in length, and for successive interim periods of not more than two years in length, until the environmental impact statement required by section 3409 has been finally completed, at which time such interim renewal contracts shall be eligible for long-term renewal as provided above. Such interim renewal contracts shall be modified to comply with existing law, including provisions of this title. With respect to all contracts renewed by the Secretary since January 1, 1988, the Secretary shall incorporate in said contracts a provision requiring payment of the charge mandated in subsection 3406(c) and subsection 3407(b) of this title and all other modifications needed to comply with existing law, including provisions of this title. This title shall be deemed "applicable law" as that term is used in Article 14(c) of contracts renewed by the Secretary since January 1, 1988.

(2) Upon renewal of any long-term repayment or water service contract providing for the delivery of water from the Central Valley Project, the Secretary shall incorporate all requirements imposed by existing law, including provisions of this title, within such renewed contracts. The Secretary shall also administer all existing, new, and renewed contracts in conformance with the requirements and goals of this title.

(3) In order to encourage early renewal of project water contracts and facilitate timely implementation of this title, the Secretary shall impose on existing contractors an additional mitigation and restoration payment of one and one-half times the annual mitigation and restoration payment calculated under subsection 3407(d) of this title for every year starting October 1, 1997 or January 1 of the year following the year in which the environmental impact statement required under section 3409 is completed, whichever is sooner, and ending on the effective date of the renewed contract payable prior to the renewal of such contract, to be covered to the Restoration Fund: *Provided, however,* That this paragraph shall not apply to contracts renewed after January 1, 1988, and prior to the date of enactment of this title or, in the event the environmental impact statement required by section 3409 is not completed by October 1, 1997, to any holder of a contract in existence on the date of enactment of this title who enters into a binding agreement with the Secretary prior to October 1, 1997, to renew its contract immediately upon completion of that environmental impact statement, if such contract has not expired prior to such date.

SEC. 3405. WATER TRANSFERS, IMPROVED WATER MANAGEMENT AND CONSERVATION.

Contracts.

(a) **WATER TRANSFERS.**—In order to assist California urban areas, agricultural water users, and others in meeting their future

water needs, subject to the conditions and requirements of this subsection, all individuals or districts who receive Central Valley Project water under water service or repayment contracts, water rights settlement contracts or exchange contracts entered into prior to or after the date of enactment of this title are authorized to transfer all or a portion of the water subject to such contract to any other California water user or water agency, State or Federal agency, Indian tribe, or private nonprofit organization for project purposes or any purpose recognized as beneficial under applicable State law. Except as provided herein, the terms of such transfers shall be set by mutual agreement between the transferee and the transferor.

(1) **CONDITIONS FOR TRANSFERS.**—All transfers to Central Valley Project water authorized by this subsection shall be subject to review and approval by the Secretary under the conditions specified in this subsection. Transfers involving more than 20 percent of the Central Valley Project water subject to long-term contract within any contracting district or agency shall also be subject to review and approval by such district or agency under the conditions specified in this subsection:

(A) No transfer to combination of transfers authorized by this subsection shall exceed, in any year, the average annual quantity of water under contract actually delivered to the contracting district or agency during the last three years of normal water delivery prior to the date of enactment of this title.

(B) All water under the contract which is transferred under authority of this subsection to any district or agency which is not a Central Valley Project contractor at the time of enactment of this title shall, if used for irrigation purposes, be repaid at the greater of the full-cost or cost of service rates, or, if the water is used for municipal and industrial purposes, at the greater of the cost of service or municipal and industrial rates.

(C) No transfers authorized by this subsection shall be approved unless the transfer is between a willing buyer and a willing seller under such terms and conditions as may be mutually agreed upon.

(D) No transfer authorized by this subsection shall be approved unless the transfer is consistent with State law, including but not limited to provisions of the California Environmental Quality Act.

(E) All transfers authorized by this subsection shall be deemed a beneficial use of water by the transferor for the purposes of section 8 of the Act of June 17, 1902, 32 Stat. 390, 43 U.S.C. 372.

(F) All transfers entered into pursuant to this subsection for uses outside the Central Valley Project service area shall be subject to a right of first refusal on the same terms and conditions by entities within the Central Valley Project service area. The right of first refusal must be exercised within ninety days from the date that notice is provided of the proposed transfer. Should an entity exercise the right of first refusal, it must compensate the transferee who had negotiated the agreement upon which the right of first refusal is being exercised for that entity's

total costs associated with the development and negotiation of the transfer.

(G) No transfer authorized by this subsection shall be considered by the Secretary as conferring supplemental or additional benefits on Central Valley Project water contractors as provided in section 203 of Public Law 97-293 (43 U.S.C. 390(cc)).

(H) The Secretary shall not approve a transfer authorized by this subsection unless the Secretary has determined, consistent with paragraph 3405(a)(2) of this title, that the transfer will not violate the provisions of this title or other Federal law and will have no significant adverse effect on the Secretary's ability to deliver water pursuant to the Secretary's Central Valley Project contractual obligations or fish and wildlife obligations under this title because of limitations in conveyance or pumping capacity.

(I) The water subject to any transfer undertaken pursuant to this subsection shall be limited to water that would have been consumptively used or irretrievably lost to beneficial use during the year or years of the transfer.

(J) The Secretary shall not approve a transfer authorized by this subsection unless the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer will have no significant long-term adverse impact on groundwater conditions in the transferor's service area.

(K) The Secretary shall not approve a transfer unless the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer will have no unreasonable impact on the water supply, operations, or financial conditions of the transferor's contracting district or agency or its water users.

(L) The Secretary shall not approve a transfer if the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer would result in a significant reduction in the quantity or decrease in the quality of water supplies currently used for fish and wildlife purposes, unless the Secretary determines pursuant to findings setting forth the basis for such determination that such adverse effects would be more than offset by the benefits of the proposed transfer. In the event of such a determination, the Secretary shall develop and implement alternative measures and mitigation activities as integral and concurrent elements of any such transfer to provide fish and wildlife benefits substantially equivalent to those lost as a consequence of such transfer.

(M) Transfers between Central Valley Project contractors within countries, watersheds, or other areas of origin, as those terms are utilized under California law, shall be deemed to meet the conditions set forth in subparagraphs (A) and (I) of this paragraph.

(2) REVIEW AND APPROVAL OF TRANSFERS.—All transfers subject to review and approval under this subsection shall be reviewed and approved in a manner consistent with the following:

(A) Decisions on water transfers subject to review by a contracting district or agency or by the Secretary shall

be rendered within ninety days of receiving a written transfer proposal from the transferee or transferor. Such written proposal should provide all information reasonably necessary to determine whether the transfer complies with the terms and conditions of this subsection.

(B) All transfers subject to review by a contracting district or agency shall be reviewed in a public process similar to that provided for in section 226 of Public Law 97-293.

(C) The contracting district or agency or the Secretary shall approve all transfers subject to review and approval by such entity if such transfers are consistent with the terms and conditions of this subsection. To disapprove a transfer, the contracting district or agency or the Secretary shall inform the transferee and transferor, in writing, why the transfer does not comply with the terms and conditions of this subsection and what alternatives, if any, could be included so that the transfer would reasonably comply with the requirements of this subsection.

(D) If the contracting district or agency or the Secretary fails to approve or disapprove a proposed transfer within ninety days of receiving a complete written proposal from the transferee or transferor, then the transfer shall be deemed approved.

(3) Transfers executed after September 30, 1999 shall only be governed by the provisions of subparagraphs 3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title, and by State law.

(b) **METERING OF WATER USE REQUIRED.**—All Central Valley Project water service or repayment contracts for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title, shall provide that the contracting district or agency shall ensure that all surface water delivery systems within its boundaries are equipped with water measuring devices or water measuring methods of comparable effectiveness acceptable to the Secretary within five years of the date of contract execution, amendment, or renewal, and that any new surface water delivery systems installed within its boundaries on or after the date of contract renewal are so equipped. The contracting district or agency shall inform the Secretary and the State of California annually as to the monthly volume of surface water delivered within its boundaries.

(c) **STATE AND FEDERAL WATER QUALITY STANDARDS.**—All Central Valley Project water service or repayment contracts for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title, shall provide that the contracting district or agency shall be responsible for compliance with all applicable State and Federal water quality standards applicable to surface and subsurface agricultural drainage discharges generated within its boundaries. This subsection shall not affect or alter any legal obligation of the Secretary to provide drainage services.

(d) **WATER PRICING REFORM.**—All Central Valley Project water service or repayment contracts for a term longer than three years for agricultural, municipal, or industrial purposes that are entered

Inter-
governmental
relations.

into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title shall provide that all project water subject to contract shall be made available to districts, agencies, and other contracting entities pursuant to a system of tiered water pricing. Such a system shall specify rates for each district, agency or entity based on an inverted block rate structure with the following provisions:

(1) the first rate tier shall apply to a quantity of water up to 80 percent of the contract total and shall not be less than the applicable contract rate;

(2) the second rate tier shall apply to that quantity of water over 80 percent and under 90 percent of the contract total and shall be at a level halfway between the rates established under paragraphs (1) and (3) of this subsection;

(3) the third rate tier shall apply to that quantity of water over 90 percent of the contract total and shall not be less than the full cost rate; and

(4) the Secretary shall charge contractors only for water actually delivered.

The Secretary shall waive application of this subsection as it relates to any project water delivered to produce a crop which the Secretary determines will provide significant and quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced: *Provided*, That such waiver shall apply only if such habitat values can be assured consistent with the purposes of this title through binding agreements executed with or approved by the Secretary.

(e) **WATER CONSERVATION STANDARDS.**—The Secretary shall establish and administer an office of Central Valley Project water conservation best management practices that shall, in consultation with the Secretary of Agriculture, the California Department of Water Resources, California academic institutions, and Central Valley Project water users, develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.

(1) Criteria developed pursuant to this subsection shall be established within six months following enactment of this title and shall be reviewed periodically thereafter, but no less than every three years, with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices. The criteria shall include, but not be limited to agricultural water suppliers' efficient water management practices developed pursuant to California State law or reasonable alternatives.

(2) The Secretary, through the office established under this subsection, shall review and evaluate within 18 months following enactment of this title all existing conservation plans submitted by project contractors to determine whether they meet the conservation and efficiency criteria established pursuant to this subsection.

(3) In developing the water conservation best management practice criteria required by this subsection, the Secretary shall take into account and grant substantial deference to the recommendations for action specific to water conservation and drainage source reduction proposed in the Final Report of the

San Joaquin Valley Drainage Program, entitled A Management Plan for Agricultural Subsurface Drainage and Related Problems on the Westside San Joaquin Valley (September 1990).

(f) INCREASED REVENUES.—All revenues received by the Secretary as a result of the increased repayment rates applicable to water transferred from irrigation use to municipal and industrial use under subsection 3405(a) of this section, and all increased revenues received by the Secretary as a result of the increased water prices established under subsection 3405(d) of this section, shall be covered to the Restoration Fund.

SEC. 3406. FISH, WILDLIFE AND HABITAT RESTORATION.

(a) AMENDMENTS TO CENTRAL VALLEY PROJECT AUTHORIZATIONS.—Act of August 26, 1937.—Section 2 of the Act of August 26, 1937 (chapter 832; 50 Stat. 850), as amended, is amended—

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

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

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

(4) by adding at the end the following: “(e) Nothing in this title shall affect the State’s authority to condition water rights permits for the Central Valley Project.”

(b) FISH AND WILDLIFE RESTORATION ACTIVITIES.—The Secretary, immediately upon the enactment of this title, shall operate the Central Valley Project to meet all obligations under State and Federal law, including but not limited to the Federal Endangered Species Act, 16 U.S.C. 1531, et seq., and all decisions of the California State Water Resources Control Board establishing conditions on applicable licenses and permits for the project. The Secretary, in consultation with other State and Federal agencies, Indian tribes, and affected interests, is further authorized and directed to:

(1) develop within three years of enactment and implement a program which makes all reasonable efforts to ensure that, by the year 2002, natural production of anadromous fish in Central Valley rivers and streams will be sustainable, on a long-term basis, at levels not less than twice the average levels attained during the period of 1967–1991; *Provided*, That this goal shall not apply to the San Joaquin River between Friant Dam and the Mendota Pool, for which a separate program is authorized under subsection 3406(c) of this title; *Provided further*, That the programs and activities authorized by this section shall, when fully implemented, be deemed to meet the mitigation, protection, restoration, and enhancement purposes established by subsection 3406(a) of this title; *And provided further*, That in the course of developing and implementing

California.

this program the Secretary shall make all reasonable efforts consistent with the requirements of this section to address other identified adverse environmental impacts of the Central Valley Project not specifically enumerated in this section.

(A) This program shall give first priority to measures which protect and restore natural channel and riparian habitat values through habitat restoration actions, modifications to Central Valley Project operations, and implementation of the supporting measures mandated by this subsection; shall be reviewed and updated every five years; and shall describe how the Secretary intends to operate the Central Valley Project to meet the fish, wildlife, and habitat restoration goals and requirements set forth in this title and other project purposes.

(B) As needed to achieve the goals of this program, the Secretary is authorized and directed to modify Central Valley Project operations to provide flows of suitable quality, quantity, and timing to protect all life stages of anadromous fish, except that such flows shall be provided from the quantity of water dedicated to fish, wildlife, and habitat restoration purposes under paragraph (2) of this subsection; from the water supplies acquired pursuant to paragraph (3) of this subsection; and from other sources which do not conflict with fulfillment of the Secretary's remaining contractual obligations to provide Central Valley Project water for other authorized purposes. Instream flow needs for all Central Valley Project controlled streams and rivers shall be determined by the Secretary based on recommendations of the United States Fish and Wildlife Service after consultation with the California Department of Fish and Game.

(C) The Secretary shall cooperate with the State of California to ensure that, to the greatest degree practicable, the specific quantities of yield dedicated to and managed for fish and wildlife purposes under this title are credited against any additional obligations of the Central Valley Project which may be imposed by the State of California following enactment of this title, including but not limited to increased flow and reduced export obligations which may be imposed by the California State Water Resources Control Board in implementing San Francisco Bay/Sacramento-San Joaquin Delta Estuary standards pursuant to the review ordered by the California Court of Appeals in *United States v. State Water Resources Control Board*, 182 Cal.App.3d 82 (1986), and that, to the greatest degree practicable, the programs and plans required by this title are developed and implemented in a way that avoids inconsistent or duplicative obligations from being imposed upon Central Valley Project water and power contractors.

(D) Costs associated with this paragraph shall be reimbursable pursuant to existing statutory and regulatory procedures.

(2) upon enactment of this title dedicate and manage annually eight hundred thousand acre-feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; to assist the State of California in its efforts

Inter-
governmental
relations.

Inter-
governmental
relations.

to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and to help to meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of enactment of this title, including but not limited to additional obligations under the Federal Endangered Species Act. For the purpose of this section, the term "Central Valley Project yield" means the delivery capability of the Central Valley Project during the 1928-1934 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing at the time of enactment of this title have been met.

(A) Such quantity of water shall be in addition to the quantities needed to implement paragraph 3406(d)(1) of this title and in addition to all water allocated pursuant to paragraph (23) of this subsection for release to the Trinity River for the purposes of fishery restoration, propagation, and maintenance; and shall be supplemented by all water that comes under the Secretary's control pursuant to subsections 3406(b)(3), 3408(h)-(i), and through other measures consistent with subparagraph 3406(b)(1)(B) of this title.

(B) Such quantity of water shall be managed pursuant to conditions specified by the United States Fish and Wildlife Service after consultation with the Bureau of Reclamation and the California Department of Water Resources and in cooperation with the California Department of Fish and Game.

(C) The Secretary may temporarily reduce deliveries of the quantity of water dedicated under this paragraph up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley Project water; *Provided*, That such reductions shall not exceed in percentage terms the reductions imposed on agricultural service contractors; *Provided further*, That nothing in this subsection or subsection 3406(e) shall require the Secretary to operate the project in a way that jeopardizes human health or safety.

(D) If the quantity of water dedicated under this paragraph, or any portion thereof, is not needed for the purposes of this section, based on a finding by the Secretary, the Secretary is authorized to make such water available for other project purposes.

(3) develop and implement a program in coordination and in conformance with the plan required under paragraph (1) of this subsection for the acquisition of a water supply to supplement the quantity of water dedicated to fish and wildlife purposes under paragraph (2) of this subsection and to fulfill the Secretary's obligations under paragraph 3406(d)(2) of this title. The program should identify how the Secretary intends to utilize, in particular the following options: improvements in or modifications of the operations of the project; water banking; conservation; transfers; conjunctive use; and temporary and permanent land fallowing, including purchase, lease, and option of water, water rights, and associated agricultural land.

(4) develop and implement a program to mitigate for fishery impacts associated with operations of the Tracy Pumping Plant. Such program shall include, but is not limited to improvement or replacement of the fish screens and fish recovery facilities and practices associated with the Tracy Pumping Plant. Costs associated with this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California. The reimbursable share of funding for this and other facility repairs, improvements, and construction shall be allocated among project water and power users in accordance with existing project cost allocation procedures.

(5) develop and implement a program to mitigate for fishery impacts resulting from operations of the Contra Costa Canal Pumping Plant No. 1. Such program shall provide for construction and operation of fish screening and recovery facilities, and for modified practices and operations. Costs associated with this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(6) install and operate a structural temperature control device at Shasta Dam and develop and implement modifications in CVP operations as needed to assist in the Secretary's efforts to control water temperatures in the upper Sacramento River in order to protect anadromous fish in the upper Sacramento River. Costs associated with planning and construction of the structural temperature control device shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(7) meet flow standards and objectives and diversion limits set forth in all laws and judicial decisions that apply to Central Valley Project facilities, including, but not limited to, provisions of this title and all obligations of the United States under the "Agreement Between the United States and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project" dated May 20, 1985, as well as Public Law 99-546.

(8) make use of short pulses of increased water flows to increase the survival of migrating anadromous fish moving into and through the Sacramento-San Joaquin Delta and Central Valley rivers and streams.

(9) develop and implement a program to eliminate, to the extent possible, losses of anadromous fish due to flow fluctuations caused by the operation of any Central Valley Project storage or re-regulating facility. The program shall be patterned where appropriate after the agreement between the California Department of Water Resources and the California Department of Fish and Game with respect to the operation of the California State Water Project Oroville Dam complex.

(10) develop and implement measures to minimize fish passage problems for adult and juvenile anadromous fish at

the Red Bluff Diversion Dam in a manner that provides for the use of associated Central Valley Project conveyance facilities for delivery of water to the Sacramento Valley National Wildlife Refuge complex in accordance with the requirements of subsection (d) of this section. Costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(11) rehabilitate and expand the Coleman National Fish Hatchery by implementing the United States Fish and Wildlife Service's Coleman National Fish Hatchery Development Plan, and modify the Keswick Dam Fish Trap to provide for its efficient operation at all project flow release levels and modify the basin below the Keswick Dam spillway to prevent the trapping of fish. Costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 50 percent shall be reimbursed as main project features and 50 percent shall be considered a nonreimbursable Federal expenditure.

(12) develop and implement a comprehensive program to provide flows to allow sufficient spawning, incubation, rearing, and outmigration for salmon and steelhead from Whiskeytown Dam as determined by instream flow studies conducted by the California Department of Fish and Game after Clear Creek has been restored and a new fish ladder has been constructed at the McCormick-Saeltzer Dam. Costs associated with channel restoration, passage improvements, and fish ladder construction required by this paragraph shall be allocated 50 percent to the United States as a nonreimbursable expenditure and 50 percent to the State of California. Costs associated with providing the flows required by this paragraph shall be allocated among project purposes.

(13) develop and implement a continuing program for the purpose of restoring and replenishing, as needed, spawning gravel lost due to the construction and operation of Central Valley Project dams, bank protection projects, and other actions that have reduced the availability of spawning gravel and rearing habitat in the Upper Sacramento River from Keswick Dam to Red Bluff Diversion Dam, and in the American and Stanislaus Rivers downstream from the Nimbus and Goodwin Dams, respectively. The program shall include preventive measures, such as re-establishment of meander belts and limitations on future bank protection activities, in order to avoid further losses of instream and riparian habitat. Costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(14) develop and implement a program which provides for modified operations and new or improved control structures at the Delta Cross Channel and Georgiana Slough during times when significant numbers of striped bass eggs, larvae, and juveniles approach the Sacramento River intake to the Delta Cross Channel or Georgiana Slough. Costs associated with

implementation of this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(15) construct, in cooperation with the State of California and in consultation with local interests, a barrier at the head of Old River in the Sacramento-San Joaquin Delta to be operated on a seasonal basis to increase the survival of young outmigrating salmon that are diverted from the San Joaquin River to Central Valley Project and State Water Project pumping plants and in a manner that does not significantly impair the ability of local entities to divert water. The costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(16) establish, in cooperation with independent entities and the State of California, a comprehensive assessment program to monitor fish and wildlife resources in the Central Valley to assess the biological results and effectiveness of actions implemented pursuant to this subsection. 37.5 percent of the costs associated with implementation of this paragraph shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(17) develop and implement a program to resolve fishery passage problems at the Anderson-Cottonwood Irrigation District Diversion Dam as well as upstream stranding problems related to Anderson-Cottonwood Irrigation District Diversion Dam operations. Costs associated with implementation of this paragraph shall be allocated 50 percent to the United States as a nonreimbursable expenditure and 50 percent to the State of California.

(18) if requested by the State of California, assist in developing and implementing management measures to restore the striped bass fishery of the Bay-Delta estuary. Such measures shall be coordinated with efforts to protect and restore native fisheries. Costs associated with implementation of this paragraph shall be allocated 50 percent to the United States and 50 percent to the State of California. The United States' share of costs associated with implementation of this paragraph shall be nonreimbursable.

(19) reevaluate existing operational criteria in order to maintain minimum carryover storage at Sacramento and Trinity River reservoirs to protect and restore the anadromous fish of the Sacramento and Trinity Rivers in accordance with the mandates and requirements of this subsection and subject to the Secretary's responsibility to fulfill all project purposes, including agricultural water delivery.

(20) participate with the State of California and other Federal agencies in the implementation of the on-going program to mitigate fully for the fishery impacts associated with operations of the Glenn-Colusa Irrigation District's Hamilton City Pumping Plant. Such participation shall include replacement of the defective fish screens and fish recovery facilities associ-

ated with the Hamilton City Pumping Plant. This authorization shall not be deemed to supersede or alter existing authorizations for the participation of other Federal agencies in the mitigation program. Seventy-five percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(21) assist the State of California in efforts to develop and implement measures to avoid losses of juvenile anadromous fish resulting from unscreened or inadequately screened diversions on the Sacramento and San Joaquin rivers, their tributaries, the Sacramento-San Joaquin Delta, and the Suisun Marsh. Such measures shall include but shall not be limited to construction of screens on unscreened diversions, rehabilitation of existing screens, replacement of existing non-functioning screens, and relocation of diversions to less fishery-sensitive areas. The Secretary's share of costs associated with activities authorized under this paragraph shall not exceed 50 percent of the total cost of any such activity.

(22) provide such incentives as the Secretary determines to be appropriate or necessary, consistent with the goals and objectives of this title, to encourage farmers to participate in a program, which the Secretary shall develop, under which such farmers will keep fields flooded during appropriate time periods for the purposes of waterfowl habitat creation and maintenance and for Central Valley Project yield enhancement; *Provided*, That such incentives shall not exceed \$2,000,000 annually, either directly or through credits against other contractual payment obligations, including the pricing waivers authorized under subsection 3405(d) of this title; *Provided further*, That the holder of the water contract shall pass such incentives through to farmers participating in the program, less reasonable contractor costs, if any; *And provided further*, That such water may be transferred subject to section 3405(a) of this title only if the farmer waives all rights to such incentives. This provision shall terminate by the year 2002.

(23) in order to meet Federal trust responsibilities to protect the fishery resources of the Hoopa Valley Tribe, and to meet the fishery restoration goals of the Act of October 24, 1984, Public Law 98-541, provide through the Trinity River Division, for water years 1992 through 1996, an instream release of water to the Trinity River of not less than three hundred and forty thousand acre-feet per year for the purposes of fishery restoration, propagation, and maintenance and,

(A) by September 30, 1996, the Secretary, after consultation with the Hoopa Valley Tribe, shall complete the Trinity River Flow Evaluation Study currently being conducted by the United States Fish and Wildlife Service under the mandate of the Secretarial Decision of January 14, 1981, in a manner which insures the development of recommendations, based on the best available scientific data, regarding permanent instream fishery flow requirements and Trinity River Division operating criteria and procedures for the restoration and maintenance of the Trinity River fishery; and

(B) not later than December 31, 1996, the Secretary shall forward the recommendations of the Trinity River Flow Evaluation Study, referred to in subparagraph (A)

of this paragraph, to the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives. If the Secretary and the Hoopa Valley Tribe concur in these recommendations, any increase to the minimum Trinity River instream fishery releases established under this paragraph and the operating criteria and procedures referred to in subparagraph (A) shall be implemented accordingly. If the Hoopa Valley Tribe and the Secretary do not concur, the minimum Trinity River instream fishery releases established under this paragraph shall remain in effect unless increased by an Act of Congress, appropriate judicial decree, or agreement between the Secretary and the Hoopa Valley Tribe. Costs associated with implementation of this paragraph shall be reimbursable as operation and maintenance expenditures pursuant to existing law.

If the Secretary and the State of California determine that long-term natural fishery productivity in all Central Valley Project controlled rivers and streams resulting from implementation of this section exceeds that which existed in the absence of Central Valley Project facilities, the costs of implementing those measures which are determined to provide such enhancement shall become credits to offset reimbursable costs associated with implementation of this subsection.

(c) **SAN JOAQUIN AND STANISLAUS RIVERS.**—The Secretary shall, by not later than September 30, 1996:

(1) develop a comprehensive plan, which is reasonable, prudent, and feasible, to address fish, wildlife, and habitat concerns on the San Joaquin River, including but not limited to the streamflow, channel, riparian habitat, and water quality improvements that would be needed to reestablish where necessary and to sustain naturally reproducing anadromous fisheries from Friant Dam to its confluence with the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. Such plan shall be developed in cooperation with the California Department of Fish and Game and in coordination with the San Joaquin River Management Program under development by the State of California; shall comply with and contain any documents required by the National Environmental Policy Act and contain findings setting forth the basis for the Secretary's decision to adopt and implement the plan as well as recommendations concerning the need for subsequent Congressional action, if any; and shall incorporate, among other relevant factors, the potential contributions of tributary streams as well as the alternatives to be investigated under paragraph (2) of this subsection. During the time that the Secretary is developing the plan provided for in this subsection, and until such time as Congress has authorized the Secretary to implement such plan, with or without modifications, the Secretary shall not, as a measure to implement this title, make releases for the restoration of flows between Gravelly Ford and the Mendota Pool and shall not thereafter make such releases as a measure to implement this title without a specific Act of Congress authorizing such releases. In lieu of such requirement, and until such time as flows of sufficient quantity, quality and

timing are provided at and below Gravelly Ford to meet the anadromous fishery needs identified pursuant to such plan, if any, entities who receive water from the Friant Division of the Central Valley Project shall be assessed, in addition to all other applicable charges, a \$4 per acre-foot surcharge for all Project water delivered on or before September 30, 1997; a \$5 per acre-foot surcharge for all Project water delivered after September 30, 1997 but on or before September 30, 1999; and a \$7 per acre-foot surcharge for all Project water delivered thereafter, to be covered into the Restoration Fund.

(2) in the course of preparing the Stanislaus River Basin and Calaveras River Water Use Program Environmental Impact Statement and in consultation with the State of California, affected counties, and other interests, evaluate and determine existing and anticipated future basin needs in the Stanislaus River Basin. In the course of such evaluation, the Secretary shall investigate alternative storage, release, and delivery regimes, including but not limited to conjunctive use operations, conservation strategies, exchange arrangements, and the use of base and channel maintenance flows, in order to best satisfy both basin and out-of-basin needs consistent, on a continuing basis, with the limitations and priorities established in the Act of October 23, 1962 (76 Stat. 173). For the purposes of this subparagraph, "basin needs" shall include water supply for agricultural, municipal and industrial uses, and maintenance and enhancement of water quality, and fish and wildlife resources within the Stanislaus River Basin as established by the Secretary's June 29, 1981 Record of Decision; and "out-of-basin" needs shall include all such needs outside of the Stanislaus River Basin, including those of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and those of the San Joaquin River under paragraph (1) of this subsection.

(d) CENTRAL VALLEY REFUGES AND WILDLIFE HABITAT AREAS.—

In support of the objectives of the Central Valley Habitat Joint Venture and in furtherance of the purposes of this title, the Secretary shall provide, either directly or through contractual agreements with other appropriate parties, firm water supplies of suitable quality to maintain and improve wetland habitat areas on units of the National Wildlife Refuge System in the Central Valley of California; on the Gray Lodge, Los Banos, Volta, North Grasslands, and Mendota state wildlife management areas; and on the Grasslands Resources Conservation District in the Central Valley of California.

(1) Upon enactment of this title, the quantity and delivery schedules of water measured at the boundaries of each wetland habitat area described in this paragraph shall be in accordance with level 2 of the "Dependable Water Supply Needs" table for those habitat areas as set forth in the Refuge Water Supply Report and two-thirds of the water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation. Such water shall be provided through long-term contractual agreements with appropriate parties and shall be supplemented by the increment of water provided for in paragraph (1) of this subsection; *Provided*, That the Secretary shall be obligated to provide such water whether or not such long-term contractual

agreements are in effect. In implementing this paragraph, the Secretary shall endeavor to diversify sources of supply in order to minimize possible adverse effects upon Central Valley Project contractors.

(2) Not later than ten years after enactment of this title, the quantity and delivery schedules of water measured at the boundaries of each wetland habitat area described in this paragraph shall be in accordance with level 4 of the "Dependable Water Supply Needs" table for those habitat areas as set forth in the Refuge Water Supply Report and the full water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation. The quantities of water required to supplement the quantities provided under paragraph (1) of this subsection shall be acquired by the Secretary in cooperation with the State of California and in consultation with the Central Valley Habitat Joint Venture and other interests in cumulating increments of not less than ten percent per annum through voluntary measures which include water conservation, conjunctive use, purchase, lease, donations, or similar activities, or a combination of such activities which do not require involuntary reallocations of project yield.

(3) All costs associated with implementation of paragraph (1) of this subsection shall be reimbursable pursuant to existing law. Incremental costs associated with implementation of paragraph (2) of this subsection shall be fully allocated in accordance with the following formula: 75 percent shall be deemed a nonreimbursable Federal expenditure; and 25 percent shall be allocated to the State of California for recovery through direct reimbursements or through equivalent in-kind contributions.

(4) The Secretary may temporarily reduce deliveries of the quantity of water dedicated under paragraph (1) of this subsection up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley Project water; *Provided*, That such reductions shall not exceed in percentage terms the reductions imposed on agricultural service contractors. For the purpose of shortage allocation, the priority or priorities applicable to the increment of water provided under paragraph (2) of this subsection shall be the priority or priorities which applied to the water in question prior to its transfer to the purpose of providing such increment.

(5) The Secretary is authorized and directed to construct or to acquire from non-Federal entities such water conveyance facilities, conveyance capacity, and wells as are necessary to implement the requirements of this subsection; *Provided*, That such authorization shall not extend to conveyance facilities in or around the Sacramento-San Joaquin Delta Estuary. Associated construction or acquisition costs shall be reimbursable pursuant to existing law in accordance with the cost allocations set forth in paragraph (3) of this subsection.

(6) The Secretary, in consultation with the State of California, the Central Valley Habitat Joint Venture, and other interests, shall investigate and report on the following supplemental actions by not later than September 30, 1997: Reports.

(A) alternative means of improving the reliability and quality of water supplies currently available to privately owned wetlands in the Central Valley and the need, if any, for additional supplies; and

(B) water supply and delivery requirements necessary to permit full habitat development for water dependent wildlife on one hundred and twenty thousand acres supplemental to the existing wetland habitat acreage identified in Table 8 of the Central Valley Habitat Joint Venture's "Implementation Plan" dated April 19, 1990, as well as feasible means of meeting associated water supply requirements.

(e) **SUPPORTING INVESTIGATIONS.**—Not later than five years after the date of enactment of this title, the Secretary shall investigate and provide recommendations to the Committee on Energy and Natural Resources of the Senate and the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House on the feasibility, cost, and desirability of developing and implementing each of the following, including, but not limited to, the impact on the project, its users, and the State of California:

(1) measures to maintain suitable temperatures for anadromous fish survival in the Sacramento and San Joaquin rivers and their tributaries, and the Sacramento-San Joaquin Delta by controlling or relocating the discharge of irrigation return flows and sewage effluent, and by restoring riparian forests;

(2) opportunities for additional hatchery production to mitigate the impacts of water development and operations on, or enhance efforts to increase Central Valley fisheries; *Provided*, That additional hatchery production shall only be used to supplement or to re-establish natural production while avoiding adverse effects on remaining wild stocks;

(3) measures to eliminate barriers to upstream and downstream migration of salmonids in the Central Valley, including but not limited to screening programs, barrier removal programs and programs for the construction or rehabilitation of fish ladders on tributary streams;

(4) installation and operation of temperature control devices at Trinity Dam and Reservoir to assist in the Secretary's efforts to conserve cold water for fishery protection purposes;

(5) measures to provide for modified operations and new or improved control structures at the Delta Cross Channel and Georgiana Slough to assist in the successful migration of anadromous fish; and

(6) other measures which the Secretary determines would protect, restore, and enhance natural production of salmon and steelhead trout in tributary streams of the Sacramento and San Joaquin Rivers, including but not limited to the Merced, Mokelumne, and Calaveras Rivers and Battle, Butte, Deer, Elder, Mill, and Thomes Creeks.

(f) **REPORT ON PROJECT FISHERY IMPACTS.**—The Secretary, in consultation with the Secretary of Commerce, the State of California, appropriate Indian tribes, and other appropriate public and private entities, shall investigate and report on all effects of the Central Valley Project on anadromous fish populations and the fisheries, communities, tribes, businesses and other interests and entities that have now or in the past had significant economic, social or cultural association with those fishery resources. The Sec-

retary shall provide such report to the Committee on Energy and Natural Resources of the Senate and the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House of Representatives not later than two years after the date of enactment of this title.

(g) ECOSYSTEM AND WATER SYSTEM OPERATIONS MODELS.—

The Secretary, in cooperation with the State of California and other relevant interests and experts, shall develop readily usable and broadly available models and supporting data to evaluate the ecologic and hydrologic effects of existing and alternative operations of public and private water facilities and systems in the Sacramento, San Joaquin, and Trinity River watersheds. The primary purpose of this effort shall be to support the Secretary's efforts in fulfilling the requirements of this title through improved scientific understanding concerning, but not limited to, the following:

(1) a comprehensive water budget of surface and ground-water supplies, considering all sources of inflow and outflow available over extended periods;

(2) related water quality conditions and improvement alternatives, including improved temperature prediction capabilities as they relate to storage and flows;

(3) surface-ground and stream-wetland interactions;

(4) measures needed to restore anadromous fisheries to optimum and sustainable levels in accordance with the restored carrying capacities of Central Valley rivers, streams, and riparian habitats;

(5) development and use of base flows and channel maintenance flows to protect and restore natural channel and riparian habitat values;

(6) implementation of operational regimes at State and Federal facilities to increase springtime flow releases, retain additional floodwaters, and assist in restoring both upriver and downriver riparian habitats;

(7) measures designed to reach sustainable harvest levels of resident and anadromous fish, including development and use of systems of tradeable harvest rights;

(8) opportunities to protect and restore wetland and upland habitats throughout the Central Valley; and

(9) measures to enhance the firm yield of existing Central Valley Project facilities, including improved management and operations, conjunctive use opportunities, development of offstream storage, levee setbacks, and riparian restoration.

All studies and investigations shall take into account and be fully consistent with the fish, wildlife, and habitat protection and restoration measures required by this title or by any other State or Federal law. Seventy-five percent of the costs associated with implementation of this subsection shall be borne by the United States as a nonreimbursable cost; the remaining 25 percent shall be borne by the State of California.

(h) The Secretary shall enter into a binding cost-share agreement with the State of California with respect to the timely reimbursement of costs allocated to the State in this title. Such agreement shall provide for consideration of the value of direct reimbursements, specific contributions to the Restoration Fund, and water, conveyance capacity, or other contributions in-kind that would supplement existing programs and that would, as determined

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by the Secretary, materially contribute to attainment of the goals and objectives of this title.

SEC. 3407. RESTORATION FUND.

(a) **RESTORATION FUND ESTABLISHED.**—There is hereby established in the Treasury of the United States the “Central Valley Project Restoration Fund” (hereafter “Restoration Fund”) which shall be available for deposit of donations from any source and revenues provided under sections 3404(c)(3), 3405(f), 3406(c)(1), and 3407(d) of this title. Amounts deposited shall be credited as offsetting collections. Not less than 67 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the habitat restoration, improvement and acquisition (from willing sellers) provisions of this title. Not more than 33 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the provisions of paragraphs 3406(b)(4)–(6), (10)–(18), and (20)–(22) of this title. Monies donated to the Restoration Fund by non-Federal entities for specific purposes shall be expended for those purposes only and shall not be subject to appropriation.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—Such sums as are necessary, up to \$50,000,000 per year (October 1992 price levels), are authorized to be appropriated to the Secretary to be derived from the Restoration Fund to carry out programs, projects, plans, and habitat restoration, improvement, and acquisition provisions of this title. Any funds paid into the Restoration Fund by Central Valley Project water and power contractors and which are also used to pay for the projects and facilities set forth in section 3406(b), shall act as an offset against any water and power contractor cost share obligations that are otherwise provided for in this title.

(c) **MITIGATION AND RESTORATION PAYMENTS BY WATER AND POWER BENEFICIARIES.**—

(1) To the extent required in appropriation Acts, the Secretary shall assess and collect additional annual mitigation and restoration payments, in addition to the charges provided for or collected under sections 3404(c)(3), 3405(a)(1)(C), 3405(f), and 3406(c)(1) of this title, consisting of charges to direct beneficiaries of the Central Valley Project under subsection (d) of this section in order to recover a portion or all of the costs of fish, wildlife, and habitat restoration programs and projects under this title.

(2) The payment described in this subsection shall be established at amounts that will result in collection, during each fiscal year, of an amount that can be reasonably expected to equal the amount appropriated each year, subject to subsection (d) of this section, and in combination with all other receipts identified under this title, to carry out the purposes identified in subsection (b) of this section; *Provided*, That, if the total amount appropriated under subsection (b) of this section for the fiscal years following enactment of this title does not equal \$50,000,000 per year (October 1992 price levels) on an average annual basis, the Secretary shall impose such charges in fiscal year 1998 and in each fiscal year thereafter, subject to the limitations in subsection (d) of this section, as may be required to yield in fiscal year 1998 and in each fiscal

year thereafter total collections equal to \$50,000,000 per year (October 1992 price levels) on a three-year rolling average basis for each fiscal year that follows enactment of this title.

(d) ADJUSTMENT AND ASSESSMENT OF MITIGATION AND RESTORATION PAYMENTS.—

(1) In assessing the annual payments to carry out subsection (c) of this section, the Secretary shall, prior to each fiscal year, estimate the amount that could be collected in each fiscal year pursuant to subparagraphs 2(A) and (B) of this subsection. The Secretary shall decrease all such payments on a proportionate basis from amounts contained in the estimate so that an aggregate amount is collected pursuant to the requirements of paragraph (c)(2) of this section.

(2) The Secretary shall assess and collect the following mitigation and restoration payments, to be covered to the Restoration Fund, subject to the requirements of paragraph (1) of this subsection:

(A) The Secretary shall require Central Valley Project water and power contractors to make such additional annual payments as are necessary to yield, together with all other receipts, the amount required under paragraph (c)(2) of this subsection; *Provided*, That such additional payments shall not exceed \$30,000,000 (October 1992 price levels) on a three-year rolling average basis; *Provided further*, That such additional annual payments shall be allocated so as not to exceed \$6 per acre-foot (October 1992 price levels) for agricultural water sold and delivered by the Central Valley Project, and \$12 per acre-foot (October 1992 price levels) for municipal and industrial water sold and delivered by the Central Valley Project; *Provided further*, That the charge imposed on agricultural water shall be reduced, if necessary, to an amount within the probable ability of the water users to pay as determined and adjusted by the Secretary no less than every five years, taking into account the benefits resulting from implementation of this title; *Provided further*, That the Secretary shall impose an additional annual charge of \$25 per acre-foot (October 1992 price levels) for Central Valley Project water sold or transferred to any State or local agency or other entity which has not previously been a Central Valley Project customer and which contracts with the Secretary or any other individual or district receiving Central Valley Project water to purchase or otherwise transfer any such water for its own use for municipal and industrial purposes, to be deposited in the Restoration Fund; *And Provided further*, That upon the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406 of this title, the Secretary shall reduce the sums described in paragraph (c)(2) of this section to \$35,000,000 per year (October 1992 price levels) and shall reduce the annual mitigation and restoration payment ceiling established under this subsection to \$15,000,000 (October 1992 price levels) on a three-year rolling average basis. The amount of the mitigation and restoration payment made by Central Valley Project water and power users, taking into account all funds collected under this title, shall, to the greatest degree practicable, be assessed in

the same proportion, measured over a ten-year rolling average, as water and power users' respective allocations for repayment of the Central Valley Project.

(e) **FUNDING TO NON-FEDERAL ENTITIES.**—If the Secretary determines that the State of California or an agency or subdivision thereof, an Indian tribe, or a nonprofit entity concerned with restoration, protection, or enhancement of fish, wildlife, habitat, or environmental values is able to assist in implementing any action authorized by this title in an efficient, timely, and cost effective manner, the Secretary is authorized to provide funding to such entity on such terms and conditions as he deems necessary to assist in implementing the identified action.

(f) **RESTORATION FUND FINANCIAL REPORTS.**—The Secretary shall, not later than the first full fiscal year after enactment of this title, and annually thereafter, submit a detailed report to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate, and the Committee on Interior and Insular Affairs, the Committee on Merchant Marine and Fisheries, and the Committee on Appropriations of the House of Representatives. Such report shall describe all receipts to and uses made of monies within the Restoration Fund and the Restoration Account during the prior fiscal year and shall include the Secretary's projection with respect to receipts to and uses to be made of the funds during the next upcoming fiscal year.

SEC. 3408. ADDITIONAL AUTHORITIES.

(a) **REGULATIONS AND AGREEMENTS AUTHORIZED.**—The Secretary is authorized and directed to promulgate such regulations and enter into such agreements as may be necessary to implement the intent, purposes and provisions of this title.

(b) **USE OF ELECTRICAL ENERGY.**—Electrical energy used to operate and maintain facilities developed for fish and wildlife purposes pursuant to this title, including that used for groundwater development, shall be deemed as Central Valley Project power and shall, if reimbursable, be repaid in accordance with Reclamation law at a price not higher than the lowest price paid by or charged to other Central Valley Project contractors.

(c) **CONTRACTS FOR ADDITIONAL STORAGE AND DELIVERY OF WATER.**—The Secretary is authorized to enter into contracts pursuant to Reclamation law and this title with any Federal agency, California water user or water agency, State agency, or private nonprofit organization for the exchange, impoundment, storage, carriage, and delivery of Central Valley Project and non-project water for domestic, municipal, industrial, fish and wildlife, and any other beneficial purpose, except that nothing in this subsection shall be deemed to supersede the provisions of section 103 of Public Law 99-546 (100 Stat. 3051).

(d) **USE OF PROJECT FACILITIES FOR WATER BANKING.**—The Secretary, in consultation with the State of California, is authorized to enter into agreements to allow project contracting entities to use project facilities, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carry-over storage of irrigation and other water for drought protection, multiple-benefit credit-storage operations, and other purposes. The use of such water shall be consistent with and subject to State law. All or a portion of the water provided

for fish and wildlife under this title may be banked for fish and wildlife purposes in accordance with this subsection.

(e) **LIMITATION ON CONSTRUCTION.**—This title does not and shall not be interpreted to authorize construction of water storage facilities, nor shall it limit the Secretary's ability to participate in water banking or conjunctive use programs.

(f) **ANNUAL REPORTS TO CONGRESS.**—Not later than September 30 of each calendar year after the date of enactment of this title, the Secretary shall submit a detailed report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives. Such report shall describe all significant actions taken by the Secretary pursuant to this title and progress toward achievement of the intent, purposes and provisions of this title. Such report shall include recommendations for authorizing legislation or other measures, if any, needed to implement the intent, purposes and provisions of this title.

(g) **RECLAMATION LAW.**—This title shall amend and supplement the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof.

(h) **LAND RETIREMENT.**—

(1) The Secretary is authorized to purchase from willing sellers land and associated water rights and other property interests identified in paragraph (h)(2) which receives Central Valley Project water under a contract executed with the United States, and to target such purchases to areas deemed most beneficial to the overall purchase program, including the purposes of this title.

(2) The Secretary is authorized to purchase, under the authority of paragraph (h)(i), and pursuant to such rules and regulations as may be adopted or promulgated to implement the provisions of this subsection, agricultural land which, in the opinion of the Secretary—

(A) would, if permanently retired from irrigation, improve water conservation by a district, or improve the quality of an irrigation district's agricultural wastewater and assist the district in implementing the provisions of a water conservation plan approved under section 210 of the Reclamation Reform Act of 1982 and agricultural wastewater management activities developed pursuant to recommendations specific to water conservation, drainage source reduction, and land retirement contained in the final report of the San Joaquin Valley Drainage Program (September, 1990); or

(B) are no longer suitable for sustained agricultural production because of permanent damage resulting from severe drainage or agricultural wastewater management problems, groundwater withdrawals, or other causes.

(i) **WATER CONSERVATION.**—

(1) The Secretary is authorized to undertake, in cooperation with Central Valley Project irrigation contractors, water conservation projects or measures needed to meet the requirements of this title. The Secretary shall execute a cost-sharing agreement for any such project or measure undertaken. Under such agreement, the Secretary is authorized to pay up to 100 percent of the costs of such projects or measures. Any water saved

by such projects or measures shall be governed by the conditions of subparagraph 3405(a)(1) (A) and (J) of this title, and shall be made available to the Secretary in proportion to the Secretary's contribution to the total cost of such project or measure. Such water shall be used by the Secretary to meet the Secretary's obligations under this title, including the requirements of paragraph 3406(b)(3). Such projects or measures must be implemented fully by September 30, 1999.

(2) There are authorized to be appropriated through the end of fiscal year 1998 such sums as may be necessary to carry out the provisions of this subsection. Funds appropriated under this subsection shall be a nonreimbursable Federal expenditure.

(j) **PROJECT YIELD INCREASE.**—In order to minimize adverse effects, if any, upon existing Central Valley Project water contractors resulting from the water dedicated to fish and wildlife under this title, and to assist the State of California in meeting its future water needs, the Secretary shall, not later than three years after the date of enactment of this title, develop and submit to the Congress, a least-cost plan to increase, within fifteen years after the date of enactment of this title, the yield of the Central Valley Project by the amount dedicated to fish and wildlife purposes under this title. The plan authorized by this subsection shall include, but shall not be limited to a description of how the Secretary intends to use the following options:

- (1) improvements in, modification of, or additions to the facilities and operations of the project;
- (2) conservation;
- (3) transfers;
- (4) conjunctive use;
- (5) purchase of water;
- (6) purchase and idling of agricultural land; and
- (7) direct purchase of water rights.

Such plan shall include recommendations on appropriate cost-sharing arrangements and shall be developed in a manner consistent with all applicable State and Federal law.

(k) Except as specifically provided in this title, nothing in this title is intended to alter the terms of any final judicial decree confirming or determining water rights.

SEC. 3409. ENVIRONMENTAL REVIEW.

Not later than three years after the date of enactment of this title, the Secretary shall prepare and complete a programmatic environmental impact statement pursuant to the National Environmental Policy Act analyzing the direct and indirect impacts and benefits of implementing this title, including all fish, wildlife, and habitat restoration actions and the potential renewal of all existing Central Valley Project water contracts. Such statement shall consider impacts and benefits within the Sacramento, San Joaquin, and Trinity River basins, and the San Francisco Bay/Sacramento-San Joaquin River Delta Estuary. The cost of the environmental impact statement described in this section shall be treated as a capital expense in accordance with Reclamation law.

SEC. 3410. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title. Funds appro-

priated under this title shall remain available until expended without fiscal year limitation.

SEC. 3411. COMPLIANCE WITH STATE WATER LAW AND COORDINATED OPERATIONS AGREEMENT.

(a) Notwithstanding any other provision of this title, the Secretary shall, prior to the reallocation of water from any purpose of use or place of use specified within applicable Central Valley Project water rights permits and licenses to a purpose of use or place of use not specified within said permits or licenses, obtain a modification in those permits and licenses, in a manner consistent with the provisions of applicable State law, to allow such change in purpose of use or place of use.

(b) The Secretary, in the implementation of the provisions of this title, shall fully comply with the United States' obligations as set forth in the "Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project" dated May 20, 1985, and the provisions of Public Law 99-546; and shall take no action which shifts an obligation that otherwise should be borne by the Central Valley Project to any other lawful water rights permittee or licensee.

SEC. 3412. EXTENSION OF THE TEHAMA-COLUSA CANAL SERVICE AREA.

The first paragraph of section 2 of the Act of September 26, 1950 (64 Stat. 1036), as amended by the Act of August 19, 1967 (81 Stat. 167), and the Act of December 22, 1980 (94 Stat. 3339), authorizing the Sacramento Valley Irrigation Canals, Central Valley Project, California, is further amended by striking "Tehama, Glenn, and Colusa Counties, and those portions of Yolo County within the boundaries of the Colusa County, Dunnigan, and Yolo-Zamora water districts or" and inserting "Tehama, Glenn, Colusa, Solano, and Napa Counties, those portions of Yolo County within the boundaries of Colusa County Water District, Dunnigan Water District, Yolo-Zamora Water District, and Yolo County Flood Control and Water Conservation District, or".

TITLE XXXV—THREE AFFILIATED TRIBES AND STANDING ROCK SIOUX TRIBE EQUITABLE COMPENSATION PROGRAM, NORTH DAKOTA

Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act.

SEC. 3501. SHORT TITLE.

This title may be cited as the "Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act".

SEC. 3502. DEFINITIONS.

As used in this title, the term—

- (1) "Secretary" means the Secretary of the Interior;
- (2) "Three Affiliated Tribes" means the Mandan, Hidatsa, and Arikara Tribes that reside on the Fort Berthold Indian Reservation, a Federal reservation established by treaty and agreement between the Tribes and the United States;
- (3) "Standing Rock Sioux Tribe" means the members of the Great Sioux Nation that reside on the Standing Rock Indian Reservation, established by treaty between the Tribe and the United States; and

(4) "Joint Tribal Advisory Committee" means the commission established by the Secretary on May 10, 1985, for the purpose of assessing the impacts of the Garrison and Oahe Dams on the Three Affiliated Tribes and the Standing Rock Sioux Tribe.

SEC. 3503. FINDINGS; DECLARATIONS.

(a) **FINDINGS.**—In recognition of the findings, conclusions, and recommendations of the Secretary's Joint Tribal Advisory Committee, Congress finds that the Three Affiliated Tribes and the Standing Rock Sioux Tribe should be adequately compensated for the taking, in the case of the Three Affiliated Tribes, of one hundred and fifty-six thousand acres of reservation lands and, in the case of the Standing Rock Sioux Tribe, fifty-six thousand acres of reservation lands, as the site for the Garrison Dam and Reservoir, and the Oahe Dam and Reservoir. Congress concurs in the Advisory Committee's findings and conclusions that the United States Government did not justly compensate such Tribes when it acquired those lands.

(b) **DECLARATIONS.**—(1) The Congress declares that the Three Affiliated Tribes are entitled to additional financial compensation for the taking of one hundred and fifty-six thousand acres of their reservation lands, including thousands of acres of prime agricultural bottom lands, as the site for the Garrison Dam and Reservoir, and that such amounts should be deposited in the Recovery Fund established by section 3504(a) for use in accordance with this title.

(2) The Congress declares that the Standing Rock Sioux Tribe is entitled to additional financial compensation for the taking of over fifty-six thousand acres of its reservation lands, as the site for the Oahe Dam and Reservoir, and that such amounts should be deposited in the Standing Rock Sioux Tribe Economic Recovery Fund established by section 3504(b) for use in accordance with this title.

SEC. 3504. FUNDS.

(a) **THREE AFFILIATED TRIBES ECONOMIC RECOVERY FUND.**—

(1) There is established in the Treasury of the United States the "Three Affiliated Tribes Economic Recovery Fund" (hereinafter referred to as the "Recovery Fund").

(2) Commencing with fiscal year 1993, and each fiscal year thereafter, the Secretary of the Treasury shall deposit in the Three Affiliated Tribes Economic Recovery Fund an amount, which shall be nonreimbursable and nonreturnable equal to 25 percent of the receipts from deposits to the United States Treasury for the preceding fiscal year from the integrated programs of the Eastern Division of the Pick-Sloan Missouri River Basin Project administered by the Western Area Power Administration, but in no event shall the aggregate of the amounts deposited to the Fund established by this subsection for compensation for the Three Affiliated Tribes pursuant to this paragraph and paragraph (3) exceed \$149,200,000.

(3) For payment to the Three Affiliated Tribes of amounts to which they remain entitled pursuant to the Act entitled "An Act to make certain provisions in connection with the construction of the Garrison Diversion unit, Missouri River Basin Project, by the Secretary of the Interior," approved August 5, 1965 (79 Stat. 433), there is authorized to be appropriated to the Recovery Fund established by subsection (a) for fiscal year 1994 and each of the next following nine fiscal years, the sum of \$6,000,000.

(4) The Secretary of the Treasury shall deposit the interest which accrues on deposits to the Three Affiliated Tribes Economic Recovery Fund in a separate account in the Treasury of the United States. Such interest shall be available, without fiscal year limitation, for use by the Secretary of the Interior, commencing with fiscal year 1998, and each fiscal year thereafter, in making payments to the Three Affiliated Tribes for use for educational, social welfare, economic development, and other programs, subject to the approval of the Secretary. No part of the principal of the Three Affiliated Tribes Economic Development Fund shall be available for making such payments.

(b) **STANDING ROCK SIOUX TRIBE ECONOMIC RECOVERY FUND.**—

(1) There is established in the Treasury of the United States the "Standing Rock Sioux Tribe Economic Recovery Fund."

(2) Commencing with fiscal year 1993, and for each fiscal year thereafter, the Secretary of the Treasury shall deposit in the Standing Rock Sioux Tribe Economic Recovery Fund an amount, which shall be nonreimbursable and nonreturnable equal to 25 percent of the receipts from deposits to the United States Treasury for the preceding fiscal year from the integrated programs of the Eastern Division of the Pick-Sloan Missouri River Basin Project administered by the Western Area Power Administration, but in no event shall the aggregate of the amounts deposited to the Recovery Fund established by this subsection for compensation for the Standing Rock Sioux Tribe pursuant to this paragraph exceed \$90,600,000.

(3) The Secretary of the Treasury shall deposit the interest which accrues on deposits to the Standing Rock Sioux Tribe Economic Recovery Fund in a separate account in the Treasury of the United States. Such interest shall be available, without fiscal year limitation, for use by the Secretary of the Interior, commencing with fiscal year 1998, and each fiscal year thereafter, in making payments to the Standing Rock Sioux Tribe for use for educational, social welfare, economic development, and other programs, subject to the approval of the Secretary. No part of the principal of the Standing Rock Sioux Tribe Economic Recovery Fund shall be available for making such payments.

SEC. 3505. ELIGIBILITY FOR OTHER SERVICES NOT AFFECTED.

No payments pursuant to this title shall result in the reduction, or the denial, of any Federal services or programs that the Three Affiliated Tribes or the Standing Rock Sioux Tribe, or any of their members, are otherwise entitled to, or eligible for, because of their status as a federally recognized Indian tribe or member pursuant to Federal law. No payments pursuant to this title shall be subject to Federal or State income tax, or affect Pick-Sloan Missouri River Basin power rates in any way.

SEC. 3506. PER CAPITA PAYMENTS PROHIBITED.

No part of any moneys in any fund under this title shall be distributed to any member of the Three Affiliated Tribes or the Standing Rock Sioux Tribe on a per capita basis.

SEC. 3507. STANDING ROCK SIOUX INDIAN RESERVATION.

(a) **IRRIGATION.**—The Secretary of the Interior is authorized to develop irrigation within the boundaries of the Standing Rock Indian Reservation in a two thousand three hundred and eighty acre project service area, except that no appropriated funds are authorized to be expended for construction of this project unless

the Secretary has made a finding of irrigability of the lands to receive water as required by the Act of July 31, 1953 (43 U.S.C. 390a). Repayment for the units authorized under this subsection shall be made pursuant to the Act of July 1, 1932 (25 U.S.C. 386a).

(b) **SPECIFIC.**—There is authorized to be appropriated, in addition to any other amounts authorized by this title, or any other law, to the Secretary of the Interior \$4,660,000 for use by the Secretary of the Interior in carrying out irrigation projects for the Standing Rock Sioux Tribe.

(c) **DISCLAIMER.**—This section shall not limit future irrigation development, in the event that such irrigation is subsequently authorized.

SEC. 3508. TRANSFER OF LANDS.

(a) **FORMER TRIBAL LANDS.**—(1) Except as provided in subsection (j), the Secretary of the Army shall transfer administrative jurisdiction over the lands described in paragraph (2) (including the improvements thereon) to the Secretary of the Interior to be administered as set out in subsection (d).

(2) The lands referred to in paragraph (1) are those Federal lands which were acquired from the Three Affiliated Tribes by the United States for the Garrison Dam Project pursuant to the Act of October 29, 1949 and which are within the external boundary of the Fort Berthold Indian Reservation and located at or above contour elevation one thousand eight hundred and sixty feet mean sea level.

(b) **FOUR BEARS AREA.**—All rights, title, and interest of the United States in the following described lands (including the improvements thereon) and underlying Federal minerals are hereby declared to be held in trust by the United States for the Three Affiliated Tribes as part of the Fort Berthold Indian Reservation:

(1) approximately 142.2 acres, more or less, lying above contour elevation one thousand eight hundred and fifty-four feet mean sea level and located south of the southerly right-of-way line of North Dakota State Highway No. 23, in the following sections of Township 152 North, range 93 west of the 5th principal meridian, McKenzie County, North Dakota:

Section 15: south half of the southwest quarter;

Section 21: northeast quarter and northwest quarter of the southeast quarter;

Section 22: north half of the northwest quarter; and

(2) approximately 45.80 acres, more or less, situated in the east half of the southwest quarter and the east half of the west half of the southwest quarter of section 15, lying at or above contour elevation one thousand eight hundred and fifty-four mean sea level, located north of the northerly right-of-way line of North Dakota State Highway No. 23 and South-easterly of the following described line:

Commencing at a point on the west line of said section 15, said point being 528.00 feet Northerly of the existing northerly right-of-way line of North Dakota State Highway No. 23; thence north 77° 00' 00" east to the west line of said east half of the west half of the southwest quarter of section 15, and the point of beginning of such line; thence northeasterly to the northwest corner of the east half of the southwest quarter and the point of termination.

(c) **FORMER NONTRIBAL LANDS.**—(1) Except as provided in subsection (j), the Secretary of the Army shall transfer administrative jurisdiction over the lands described in paragraph (2) (including the improvements thereon) to the Secretary of the Interior to be administered as set out in subsection (d).

(2) The lands referred to in paragraph (1) are—

(A) those Federal lands acquired from individual Indian owners by the United States for the Garrison Dam Project pursuant to the Act of October 29, 1949; and

(B) those lands acquired from non-Indian owners by the United States for such Project (either by purchase or condemnation);

and which are within the external boundary of the Fort Berthold Reservation, and located at or above contour elevation one thousand eight hundred and sixty feet mean sea level.

(d) **RIGHT OF FIRST REFUSAL.**—(1) The Secretary of the Interior shall, within one year following the date of the enactment of this title, offer to the Three Affiliated Tribes, and to such individual Indian owners and non-Indian owners from whom such lands were acquired, or their heirs or assigns, a right of first refusal, for a period to be determined by the Secretary of the Interior not to exceed twelve months following notice of the offer to such Tribes, owners, heirs, or assigns, to purchase at fair market value any land, in the case of the Three Affiliated Tribes, described in subsection (b), and in the case of individual Indian and non-Indian owners, described in subsection (c), which was so acquired. If any such former owner, or his or her heirs or assigns, refuses or fails to exercise his or her right to repurchase, an option to purchase such land shall be afforded to the Three Affiliated Tribes.

(2) Lands purchased from the Secretary of the Interior by former owners, or their heirs or assigns, under this subsection shall not be sold by former owners, their heirs or assigns, within the 5-year period following such purchase, unless the Three Affiliated Tribes has been afforded a right of first refusal to purchase such lands. Such right of first refusal shall afford the Tribes—

(A) thirty days from such notification to inform the prospective seller whether the Tribes intend to exercise their right of first refusal to purchase such lands at the price of the bona fide offer; and

(B) one year from such notification to complete the purchase of such lands under their right of first refusal.

(e) **CONSIDERATION.**—In consideration for the transfer of the lands described above, the Secretary of the Interior, or his designee, shall be responsible for determining the location of contour elevations one thousand eight hundred and sixty feet mean sea level (for subsections (a) and (c)) and one thousand eight hundred and fifty-four feet mean sea level (for subsection (b)) by surveying and monumenting such contour at intervals no greater than five hundred feet. The survey and monumentation shall be completed within two years after the date of the enactment of this title.

(f) **RESERVATIONS.**—The United States hereby reserves the perpetual right, power, privilege, and easement permanently to overflow, flood, submerge, saturate, percolate, and erode the land described in subsections (a), (b), and (c) in connection with the operation and maintenance of the Garrison Dam Project, as authorized by the Act of Congress approved December 22, 1944, and the continuing right to clear and remove any brush, debris, and

natural obstructions which, in the opinion of the Secretary of the Army, may be detrimental to the Project. The Three Affiliated Tribes, and the owners or their heirs or assigns who reacquired such lands pursuant to this title may exercise all other rights and privileges on the land except for those rights and privileges which would interfere with or abridge the rights and easements hereby reserved.

(g) **PROHIBITIONS.**—With respect to any lands described in this section that are below one thousand eight hundred and sixty feet mean sea level, no structures for human habitation shall be constructed or maintained on the land, and no other structures shall be constructed or maintained on the land except as may be approved in writing by the Secretary of the Army.

(h) **EXCAVATION.**—With respect to lands described in subsection (a), (b), or (c), no excavation shall be conducted and no landfill placed on the land without approval by the Secretary of the Army as to the location and method of excavation or placement of landfill.

(i) **DISCLAIMER.**—Nothing in this section shall deprive any person of any right-of-way, leasehold, or other right, interest, or claim which such person may have in the lands described in subsections (a), (b), and (c) prior to the date of the enactment of this title.

(j) **TRUST LANDS.**—(1) All rights, title, and interest of the United States in the improvements and recreation facilities described in paragraph (2) are hereby declared to be held in trust by the United States for the Three Affiliated Tribes.

(2) The improvements and facilities referred to in paragraph (1) are the Red Butte Bay Public Use Area and the Deepwater Bay Public Use Area. The recreation facilities include those facilities located both above and below contour elevation 1,860 feet mean sea level.

(3) The improvements and facilities described in this subsection are transferred as is and without warranty of any kind, and the Corps of Engineers shall have no obligation or responsibility to operate, maintain, repair, or replace any of such improvements or facilities. Operation and maintenance of the improvements and recreational facilities in this subsection shall be the responsibility of the Department of the Interior.

SEC. 3509. TRANSFER OF LANDS AT OAHE DAM AND LAKE PROJECT.

(a) **FORMER TRIBAL LANDS.**—(1) Except as provided in subsection (i), the Secretary of the Army shall transfer administrative jurisdiction over the lands described in paragraph (2) (including the improvements thereon) to the Secretary of the Interior to be administered as set out in subsection (c).

(2) The lands referred to in paragraph (1) are those Federal lands which were acquired from the Standing Rock Sioux Tribe by the United States for the Oahe Dam Reservoir Project pursuant to the Act of September 2, 1958 (Public Law 85-915), and—

(A) which extend southerly from the south shore of Cannonball River, in Sioux County, North Dakota, to a point along the boundary between the Standing Rock and Cheyenne River Indian Reservations, in Dewey County, South Dakota; and

(B) which are located at or above contour elevation one thousand six hundred and twenty feet mean sea level.

(b) **FORMER NONTRIBAL LANDS.**—(1) Except as provided in subsection (i), the Secretary of the Army shall transfer administrative jurisdiction over the lands described in paragraph (2) (including

the improvements thereon) to the Secretary of the Interior to be administered as set out in subsection (c).

(2) The lands referred to in paragraph (1) are those Federal lands acquired from individual Indian owners by the United States for the Oahe Dam and Reservoir Project pursuant to the Act of September 2, 1958 (Public Law 85-915), and from non-Indian owners (either by purchase or condemnation), and

(A) which extend southerly from the south shore of the Cannonball River, in Sioux County, North Dakota to a point along the boundary between the Standing Rock and Cheyenne River Indian Reservations, in Dewey County, South Dakota; and

(B) which are located at or above contour elevation one thousand six hundred and twenty feet mean sea level.

(c) **RIGHT OF FIRST REFUSAL.**—(1) The Secretary of the Interior shall, within one year following the date of the enactment of this title, offer to the Standing Rock Sioux Tribe, and to such individual Indian owners and non-Indian owners from whom such lands were acquired, or their heirs or assigns, a right of first refusal, for a period to be determined by the Secretary of the Interior not to exceed twelve months following notice of the offer to the Standing Rock Sioux Tribe, owners, heirs or assigns, to purchase at fair market value any land, in the case of the Standing Rock Sioux Tribe, described in subsection (a), and in the case of individual Indian and non-Indian owners, described in subsection (b), which was so acquired. If any such owner, or his or her heirs or assigns, refuses or fails to exercise their right to repurchase, an option to purchase such lands shall be afforded to the Standing Rock Sioux Tribe.

(2) Lands purchased from the Secretary of the Interior by such former owners, or their heirs or assigns, under this subsection shall not be sold by the former owners, their heirs or assigns, within the five-year period following such purchase, unless the Standing Rock Sioux Tribe has been afforded a right of first refusal to purchase such lands. Such right of first refusal shall afford the Tribe—

(A) thirty days from such notification to inform the prospective seller whether the Tribe intends to exercise its right of first refusal to purchase such lands at the price of the bona fide offer, and

(B) one year from such notification to complete the purchase of such lands under its right of first refusal.

(d) **CONSIDERATION.**—In consideration for the transfer of the lands described above, the Secretary of the Interior, or his designee, shall be responsible for determining the location of contour elevation one thousand six hundred and twenty feet mean sea level by surveying and monumenting such contour at intervals no greater than five hundred feet. The survey and monumentation shall be completed within two years after the date of the enactment of this title.

(e) **RESERVATIONS.**—The United States hereby reserves the perpetual right, power, privilege and easement permanently to overflow, flood, submerge, saturate, percolate and erode the land described in subsections (a) and (b) in connection with the operation and maintenance of the Oahe Dam and Lake Project, as authorized by the Act of Congress approved December 22, 1944, and the continuing right to clear and remove any brush, debris and natural

obstructions which, in the opinion of the Secretary of the Army may be detrimental to the Project. The Standing Rock Sioux Tribe, and the owners or their heirs and assigns, who reacquired any such lands pursuant to this title, may exercise all other rights and privileges on the land except for those rights and privileges which would interfere with or abridge the rights and easement hereby reserved.

(f) **PROHIBITIONS.**—With respect to lands described in this section that are below one thousand six hundred and twenty feet mean sea level, no structures for human habitation shall be constructed or maintained on the land and no other structures shall be constructed or maintained on the land except as may be approved in writing by the Secretary of the Army.

(g) **EXCAVATION.**—With respect to lands described in subsections (a) or (b), no excavation shall be conducted and no landfill placed on the land without approval by the Secretary of the Army as to the location and method of excavation or placement of landfill.

(h) **DISCLAIMER.**—Nothing in this section shall deprive any person of any right-of-way, leasehold, or other right, interest, or claim which such person may have in the lands described in subsections (a) and (b) prior to the date of the enactment of this title.

(i) **TRUST LANDS.**—(1) All rights, title and interest of the United States in the improvements and recreation facilities described in paragraph (2) are hereby declared to be held in trust by the United States for the Standing Rock Sioux Tribe.

(2) The improvements and facilities referred to in paragraph (1) are the levee around the City of Fort Yates, North Dakota, and the recreation facilities located at the Fort Yates Recreation Area, the Walker Bottoms Recreation Area, and the Grand River Recreation Area, including those recreation facilities located both above and below contour elevation one thousand six hundred and twenty feet mean sea level.

(3) The improvements and facilities described in this subsection are transferred as is and without warranty of any kind, and the Corps of Engineers shall have no obligation or responsibility to operate, maintain, repair or replace any of such improvements or facilities. Operation and maintenance of the improvements and recreational facilities in this subsection shall be the responsibility of the Department of the Interior.

(j) **EXCEPTION.**—Notwithstanding subsection (i), the transfer of such improvements and facilities pursuant to subsection (i) does not include the improvements and facilities located at the Indian Memorial Recreation Area and the Grand River Fish Spawning Station, unless and until the State of South Dakota consents in writing and then only upon amendment of the "Agreement Between the United States and the State of South Dakota for Recreation and Fish and Wildlife Development at Lake Oahe, South Dakota" entered into on September 2, 1983, which amendment shall specifically provide for such transfer.

(k) **FISH AND WILDLIFE.**—Notwithstanding any other provision of law, the lands transferred under subsection (a) which, prior to the date of enactment of this title, were designated by the Corps of Engineers as mitigation lands for purposes of fish and wildlife conservation in accordance with the Fish and Wildlife Conservation Act of 1958, shall be included in any subsequent determination of the Corps' compliance with the fish and wildlife mitigation requirements of the Fish and Wildlife Conservation Act

of 1958. The Standing Rock Sioux Tribe shall use its best efforts to conduct fish and wildlife conservation and mitigation on such lands. Notwithstanding the provisions of the Fish and Wildlife Conservation Act of 1958, the State of South Dakota shall have no claim, right, or cause of action pursuant to Federal law to compel designation of additional lands currently under the jurisdiction of the Corps of Engineers, for purposes of fish and wildlife conservation in lieu of the lands transferred by subsection (a).

SEC. 3510. CONFORMING AMENDMENT.

Section 10(a)(2) of Public Law 89-108 is amended by striking “\$67,910,000” and inserting “\$7,910,000.” 79 Stat. 433.

SEC. 3511. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of section 3504 of this title.

**TITLE XXXVI—SONOMA BAYLANDS WETLAND
DEMONSTRATION PROJECT, CALIFORNIA**

SEC. 3601. SONOMA BAYLANDS WETLAND DEMONSTRATION PROJECT.

(a) **IN GENERAL.**—The Secretary of the Army is directed to develop and carry out in accordance with this section a three hundred and twenty-acre Sonoma Baylands wetland demonstration project in the San Francisco Bay-Delta estuary, California. The project shall utilize dredged material suitable for aquatic disposal to restore, protect, and expand the Sonoma Baylands for the purposes of preserving waterfowl, fish, and other wetland dependent species of plants and animals and to provide flood control, water quality improvement, and sedimentation control.

(b) **ADDITIONAL PROJECT PURPOSES.**—In addition to the purposes described in subsection (a), the purposes of the project under this section are to restore tidal wetlands, provide habitat for endangered species, expand the feeding and nesting areas for waterfowl along the Pacific flyway, and demonstrate the use of suitable dredged material as a resource, facilitating the completion of Bay Area dredging projects in an environmentally sound manner.

(c) **PLAN.**—

(1) **GENERAL REQUIREMENT.**—The Secretary, in cooperation with appropriate Federal and State agencies, and in accordance with applicable Federal and State environmental laws, shall develop in accordance with this subsection a plan for implementation of the Sonoma Baylands project under this section.

(2) **CONTENTS.**—The plan shall include initial design and engineering, construction, general implementation and site monitoring.

(3) **TARGET DATES.**—

(A) **FIRST PHASE.**—The first phase of the plan for final design and engineering shall be completed within six months of the date of the enactment of this Act.

(B) **SECOND PHASE.**—The second phase of the plan, including the construction of on-site improvements, shall be completed within ten months of the date of the enactment of this Act.

(C) **THIRD PHASE.**—The third phase of the plan, including dredging, transportation, and placement of material, shall be started no later than July 1, 1994.

(D) **FOURTH PHASE.**—The final phase of the plan shall include monitoring of project success and function and remediation if necessary.

Contracts.

(d) **NON-FEDERAL PARTICIPATION.**—Any work undertaken pursuant to this title shall be initiated only after non-Federal interests have entered into a cooperative agreement according to the provisions of section 221 of the Flood Control Act of 1970. The non-Federal interests shall agree to:

(1) provide 25 percent of the cost associated with the project, including provision of all lands, easements, rights-of-way, and necessary relocations; and

(2) pay 100 percent of the cost of operation, maintenance, replacement, and rehabilitation costs associated with the project.

(e) **REPORTS TO CONGRESS.**—The Secretary shall report to Congress at the end of each of the time periods referred to in subsection (c)(3) on the progress being made toward development and implementation of the project under this section.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$15,000,000 for carrying out this section for fiscal years beginning after September 30, 1992. Such sums shall remain available until expended.

TITLE XXXVII—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT, ARIZONA

San Carlos
Apache Tribe
Water Rights
Settlement Act
of 1992.
Contracts.
Claims.

SEC. 3701. SHORT TITLE.

This title may be cited as the "San Carlos Apache Tribe Water Rights Settlement Act of 1992".

SEC. 3702. CONGRESSIONAL FINDINGS.

(a) **SPECIFIC FINDINGS.**—The Congress finds and declares that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on the development of viable Indian reservation economies;

(3) qualification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on November 9, 1871, and by actions subsequent thereto, the United States Government established a reservation for the San Carlos Apache Tribe in Arizona;

(5) the United States, as trustee for the San Carlos Apache Tribe, obtained water entitlements for the Tribe pursuant to the Globe Equity Decree of 1935; however, continued uncertainty as to the full extent of the Tribe's entitlement to water has severely limited the Tribe's access to water and financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence

on Federal program funding and achieve meaningful self-determination and self-sufficiency;

(6) proceedings to determine the full extent and nature of the Tribe's water rights are currently pending before the United States District Court in Arizona and in the Superior Court of the State of Arizona in and for Maricopa County, as part of the General Adjudication of the Gila River System and Source;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Tribe's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Tribe and its neighboring non-Indian communities have sought to settle their dispute to water and reduce the burdens of litigation;

(8) after lengthy negotiations, which included participation by representatives of the United States Government, the Tribe, and neighboring non-Indian communities of the Salt River and Gila River Valleys, who are all party to the General Adjudication of the Gila River System and Source, the parties are prepared to enter into an Agreement to resolve all water rights claims between and among themselves, to quantify the Tribe's entitlement to water, and to provide for the orderly development of the Tribe's lands;

(9) pursuant to the Agreement, the neighboring non-Indian communities will relinquish claims to approximately fifty-eight thousand seven hundred and thirty-five acre-feet of surface water to the Tribe, provide the means of storing water supplies of the Tribe behind Coolidge Dam on the Gila River in Arizona to enhance fishing, recreation, and other environmental benefits, and make substantial additional contributions to carry out the Agreement's provisions; and

(10) to advance the goal of Federal Indian policy and to fulfill the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Tribe to utilize fully its water resources in developing a diverse, efficient reservation economy.

(b) PURPOSES OF TITLE.—It is the purpose of this title—

(1) to approve, ratify, and confirm the Agreement to be entered into by the Tribe and its neighboring non-Indian communities,

(2) to authorize and direct the Secretary of the Interior to execute and perform such Agreement, and

(3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Tribe as provided in the Agreement and this title.

SEC. 3703. DEFINITIONS.

For purposes of this title:

(1) "Active conservation capacity" means that storage space, exclusive of bank storage, available to store water which can be released through existing reservoir outlet works.

(2) "Agreement" means that agreement among the San Carlos Apache Tribe; the United States of America; the State

of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Arizona cities of Chandler, Glendale, Globe, Mesa, Safford, Scottsdale and Tempe, the town of Gilbert; Buckeye Water Conservation and Drainage District, Buckeye Irrigation Company, the Phelps Dodge Corporation and the Central Arizona Water Conservation District, together with all exhibits thereto, as the same is executed by the Secretary of the Interior pursuant to sections 3710(c) and 3711(a)(7) of this title.

(3) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(4) "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(5) "Globe Equity Decree" means the decree dated June 29, 1935, entered in the United States of America v. Gila Valley Irrigation District, et al., Globe Equity 59, in the District Court of the United States in and for the District of Arizona, and all decrees and decisions supplemental thereto.

(6) "Reservation" means the reservation authorized by the Treaty with the Apache Nation dated July 1, 1852 (10 Stat. 979), established by the Executive orders of November 9, 1871 and December 14, 1872, as modified by subsequent Executive orders and Acts of Congress including the Executive order of August 5, 1873.

(7) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(8) "Secretary" means the Secretary of the Interior.

(9) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona Corporation.

(10) "SCIP" means the San Carlos Irrigation Project authorized pursuant to the Act of June 7, 1924 (42 Stat. 475), expanded pursuant to the Act of March 7, 1928 (45 Stat. 200, 210), and administered by the Bureau of Indian Affairs.

(11) "Tribe" means the San Carlos Apache Tribe, a tribe of Apache Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476), and duly recognized by the Secretary.

SEC. 3704. WATER.

(a) REALLOCATION OF WATER.—The Secretary shall reallocate, for the exclusive use of the Tribe, all of the water referred to in subsection (f)(2) of section 2 of the Act of October 19, 1984 (98 Stat. 2698), which is not required for delivery to the Ak-Chin Indian Reservation under that Act. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-0906-09W-09245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from

CAWCD's repayment obligation and such costs shall be nonreimbursable.

(b) **PARTIAL SATISFACTION OF CLAIMS.**—Notwithstanding any other provision of this title, in the event the authorizations contained in section 3708(b) do not become effective, the water referred to in subsection 3704(a) of this title shall constitute partial satisfaction of the Tribe's claims for water in the proceeding entitled "In Re the General Adjudication of All Rights To Use Water in the Gila River System and Source", Maricopa County Superior Court Nos. W-091, W-092, W-093, and W-094 (consolidated), as against the parties identified in section 3703(2) of this title.

(c) **ADDITIONAL ALLOCATIONS.**—The Secretary shall reallocate to the Tribe an annual entitlement to fourteen thousand six hundred and fifty-five acre-feet of water from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to Phelps Dodge Corporation in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12446 et seq.). The Tribe shall pay the United States or, if directed by the Secretary, CAWCD, all operation, maintenance and replacement costs associated with such CAP water. Except as provided in subsection (e)(3) of section 3706, water service capital charges, or any other charges or payments for such CAP water other than operation, maintenance and replacement costs shall be nonreimbursable. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-0906-09W-09245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable.

(d) **ADDITIONAL ALLOCATIONS.**—The Secretary shall reallocate to the Tribe an annual entitlement to three thousand four hundred and eighty acre-feet of water from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to the city of Globe, Arizona, in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12466 et seq.). The Tribe shall pay the United States or, if directed by the Secretary, CAWCD, all operation, maintenance and replacement costs associated with such CAP water. Except as provided in subsection (e)(3) of section 3706, water service capital charges, or any other charges or payments for such CAP water other than operation, maintenance and replacement costs shall be nonreimbursable. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-0906-09W-09245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be reimbursable.

(e) **WATER STORAGE POOL.**—Notwithstanding the Act of June 7, 1924 (43 Stat. 475), as amended by the Act of March 7, 1928 (45 Stat. 200, 210), in order to permit the Tribe to maintain permanently a pool of stored water for fish, wildlife, recreation and other purposes, the Secretary shall designate for the benefit of the Tribe such active conservation capacity behind Coolidge Dam

on the Gila River in Arizona as is not being used by the Secretary to meet the obligations of SCIP for irrigation storage, except that any water stored by the Tribe shall be the first water to spill ("spill water") from Coolidge Dam. The water stored by the Tribe shall be, at the Tribe's designation, the water provided to the Tribe pursuant to subsections (a), (c) and (d) of this section, its entitlement of twelve thousand and seven hundred acre-feet of water under its Tribal CAP Delivery Contract dated December 11, 1981; the water referred to in section 3710(f), or any combination thereof. A pro rata share of evaporation and seepage losses shall be deducted daily from the Tribe's stored water balance as provided in the Agreement. The Tribe shall pay an equitable share of the operation and maintenance costs for the water stored for the benefit of the Tribe, subject to the Act of July 1, 1932 (47 Stat. 564, 25 U.S.C. 386 et seq.). The water stored by the Tribe pursuant to this subsection shall not be subject to apportionments pursuant to Article VIII (2) of the Globe Equity Decree. Not later than January 31 of each year, the Secretary shall notify the United States District Court for the District of Arizona of the Tribe's stored water balance as of January 1 of that year. The Secretary shall notify said Court of the Tribe's stored water balance at least once per calendar month and at such more frequent intervals as conditions, in the Secretary's judgment, may require.

(f) EXECUTION OF AGREEMENT.—The Secretary shall execute the Agreement which establishes, as between and among the parties to Agreement, the Tribe's permanent right, except as provided in paragraphs 13.0, 14.0 and 15.0 of the Agreement, to the on-reservation diversion and use of all ground water beneath the Tribe's Reservation, subject to the management plan referred to in section 3710(d) of this title, and all surface water in all tributaries within the Tribe's Reservation to the mainstreams of: The Black River, the Salt River below its confluence with the Black River, the San Pedro River and the Gila River, including the right, except as provided in paragraphs 14.0 and 15.0 of the Agreement, to fully regulate and store such water on the tributaries. The Tribe's rights to the mainstream of Black River, San Pedro River and the Gila River shall be as provided in the Agreement and the Globe Equity Decree. With respect to parties not subject to the waiver authorized by subsection 3708(b) of this title, the claims of the Tribe and the United States, as trustee for the Tribe, are preserved.

(g) GILA RIVER EXCHANGES.—Any exchange pursuant to this legislation of Gila River water for water supplied by the CAP shall not amend, alter or conflict with the exchanges authorized by section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)).

SEC. 3705. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) RATIFICATION OF CONTRACT.—Except as provided in section 3710(i), the contract between the SRP and RWCD District dated October 24, 1924, together with all amendments thereto and any extension thereto entered into pursuant to the Agreement, is ratified, confirmed, and declared to be valid.

(b) SUBCONTRACT.—The Secretary shall revise the subcontract of the Roosevelt Water Conservation District for agricultural water service from the CAP to include an addendum substantially in the form of exhibit "A" to the Agreement and to execute the sub-

contract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time or times as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(c) **RESTRICTIONS.**—The lands within RWCD and SRP shall be free from the ownership and full cost pricing limitations of Federal reclamation law and from all full cost pricing provisions of Federal law.

(d) **DISCLAIMER.**—No person, entity or lands shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) or any full cost pricing provision of Federal law by virtue of their participation in the settlement or their execution and performance of the Agreement, or the use, storage or delivery of CAP water pursuant to a lease, sublease or exchange of water to which the Tribe is entitled under this title.

(e) **FULL COST PRICING PROVISIONS.**—The lands within the Tribe's Reservation shall be free from all full cost pricing provisions of Federal law.

(f) **CERTAIN EXTENSIONS AUTHORIZED.**—Notwithstanding any other provision of law or any other provision of this title, the Secretary, subject to tribal approval, is authorized and directed to: extend the term of that right-of-way permit granted to Phelps Dodge Corporation on March 8, 1950, and all amendments thereto, for the construction, operation and maintenance of an electrical transmission line and existing road for access to those facilities over the lands of the Tribe; extend the term of that right-of-way permit numbered 2000089 granted on July 25, 1944, to Phelps Dodge Corporation, and all amendments thereto, for the construction, use, operation and maintenance of a water plant, pipeline, canal, water flowage easement through Willow Creek and existing road for access to those facilities over the lands of the Tribe; and grant a water flowage easement through the portions of Eagle Creek flowing through the Tribe's Reservation. Notwithstanding any other provision of law, each such right-of-way and flowage easement shall be for a term expiring on March 8, 2090, and shall be subject to the right of Phelps Dodge to renew the rights-of-way and flowage easements for an additional term of up to one hundred years, subject to payment of rental at a rate based upon fair market retail value.

SEC. 3706. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE, WATER WITHDRAWAL.

(a) **AMENDMENT OF CONTRACT.**—The Secretary shall amend the CAP water delivery contract between the United States and the Ak-Chin Indian Community dated December 11, 1980, and the contract between the United States and the Ak-Chin Indian Community dated October 2, 1985, as is necessary to satisfy the requirements of section 3704(a) of this title.

(b) **CONTRACT AMENDMENT.**—The Secretary shall amend the CAP water delivery contract between the United States and the Tribe dated December 11, 1980 (hereinafter referred to as the "Tribal CAP Delivery Contract"), as follows:

(1) To include the obligation by the United States to deliver water to the Tribe upon the same terms and conditions set forth in the Tribal CAP Delivery Contract as follows: water from those sources described in subsections (a), (c), and (d)

of section 3704 of this title; except that the water reallocated pursuant to such subsections shall retain the priority such water had prior to its reallocation. The cost to the United States to meet the Secretary's obligation to design and construct new facilities to deliver CAP water shall not exceed the cost of construction of the delivery and distribution system for the twelve thousand and seven hundred acre-feet of CAP water originally allocated to the Tribe.

(2) To extend the term of such contract to December 31, 2100, and to provide for its subsequent renewal upon the same terms and conditions as the Tribal CAP Delivery Contract, as amended.

(3) To authorize the Tribe to lease or to enter into an option or options to lease the water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, within Maricopa, Pinal and Pima Counties for terms not exceeding one hundred years and to renew such leases.

(4) To authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, to the city of Scottsdale under the terms and conditions of the Water Lease set forth in Exhibit "B" to the Agreement.

(5) To authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, including, but not limited to, the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe and the town of Gilbert.

(c) APPROVAL OF AMENDMENTS.—Notwithstanding any other provision of law, the amendments to the Tribal CAP Delivery Contract set forth in Exhibit "C" to the Agreement are hereby authorized, approved and confirmed.

(d) CHARGES NOT TO BE IMPOSED.—The United States shall not impose upon the Tribe the operation, maintenance and replacement charges described and set forth in section 6 of the Tribal CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the lessee or lessees of the options to lease or leases herein authorized.

(e) WATER LEASE.—Except as provided in paragraph (3) of this subsection, any Water Lease entered into by the Tribe as authorized by section 3706 shall specifically provide that—

(1) the lessee shall pay all operation, maintenance and replacement costs of such water to the United States, or if directed by the Secretary, to CAWCD;

(2) except as provided in paragraph (3) of this subsection, the lessee shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance and replacement costs and lease payments; and

(3) with respect to the water reallocated to the Tribe pursuant to subsections (c) and (d) of section 3704, the Tribe or lessee shall pay any water service capital charges or municipal and industrial subcontract charges for any water use or lease from the effective date of this title through September 30, 1995.

(f) ALLOCATION AND REPAYMENT OF COSTS.—For the purpose of determining allocation and repayment of costs of the CAP as

provided in Article 9.3 of Contract Numbered 14-0906-09W-09245, Amendment No. 1, between the United States of America and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with the delivery of water to which the Tribe is entitled under the Tribal Delivery Contract, as amended, to the lessee or lessees of the options to lease or leases herein authorized shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(g) AGREEMENTS.—The Secretary shall, in consultation with the Tribe, enter into agreements necessary to permit the Tribe to exchange, within the State of Arizona, all or part of the water available to it under its Tribal CAP Delivery Contract, as amended.

(h) RATIFICATION.—As among the parties to the Agreement, the right of the city of Globe to withdraw and use water from under the Cutter subarea under the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

(i) USE OF WATER.—As among the parties to the Agreement, the right of the city of Safford to withdraw and use water from the Bonita Creek watershed as provided in the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

(j) WITHDRAWAL AND USE OF WATER.—As between the Tribe and Phelps Dodge, the right of Phelps Dodge to divert, withdraw and use water as provided in the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

(k) PROHIBITIONS.—Except as authorized by this section, no water made available to the Tribe pursuant to the Agreement, the Globe Equity Decree, or this title may be sold, leased, transferred or in any way used off the Tribe's Reservation.

SEC. 3707. CONSTRUCTION AND REHABILITATION; TRUST FUND.

(a) DUTIES.—

(1) The Secretary is directed, pursuant to the existing authority of the Colorado River Basin Project Act (43 U.S.C. 1501 et. seq.), to design and construct new facilities for the delivery of 12,700 acre-feet of CAP water originally allocated to the Tribe to tribal reservation lands at a cost which shall not exceed the cost for such design and construction which would have been incurred by the Secretary in the absence of the Agreement and this title;

(2) The Secretary of Commerce is directed to amend the contract between the United States Economic Development Administration and the Tribe relating to the construction of Elgo Dam on the San Carlos Apache Indian Reservation, Project No. 07-0981-09000210, to provide that all remaining repayment obligations owing to the United States on the date of the enactment of this title are discharged.

(b) FUND.—There is established in the Treasury of the United States a fund to be known as the "San Carlos Apache Tribe Development Trust Fund" (hereinafter called the "Fund") for the exclusive use and benefit of the Tribe. The Secretary shall deposit into the Fund the funds authorized to be appropriated in subsection (c) and the \$3,000,000 provided by the State of Arizona pursuant to the Agreement. There shall be deposited into the Fund any monies paid to the Tribe or to the Secretary on behalf of the Tribe from leases or options to lease water authorized by section 3706 of this title. Such sums shall be invested in interest-bearing

Securities.

deposits and securities in accordance with the Act of June 24, 1938 (25 U.S.C. 162(a)).

(c) **AUTHORIZATION.**—There are authorized to be appropriated \$38,400,000 in fiscal year 1994, together with interest accruing thereon beginning one year from the date of enactment of this title at rates determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Federal obligations of comparable maturity, to carry out the provisions of subsection (b).

(d) **USE OF FUND.**—When the authorizations contained in section 3708(b) of this title are effective, the principal of the Fund and any interest or income accruing thereon may be used by the Tribe to put to beneficial use the Tribe's water entitlement, to defray the cost to the Tribe of CAP operation, maintenance and replacement charges as appropriate, and for other economic and community development purposes. The income from the Fund shall be distributed by the Secretary to the San Carlos Apache Tribe only upon presentation to the Secretary of a certified copy of a duly enacted Resolution of the Tribal Council requesting distribution and a written budget approved by the Tribal Council. Such income may thereafter be expended only in accordance with such budget. Income not distributed shall be added to principal. The principal from the Fund may be distributed by the Secretary to the San Carlos Apache Tribe only upon presentation to the Secretary of a certified copy of a duly enacted Resolution of the Tribal Council requesting distribution and a written budget approved by the Tribal Council and the Secretary. Such principal may thereafter be expended only in accordance with such budget: *Provided, however,* That the principal may only be utilized for long-term economic development projects. In approving a budget for the distribution of income or principal, the Secretary shall, in accordance with regulations promulgated pursuant to subsection (e) of this section, be assured that methods exist and will be employed to ensure that use of the funds shall be in accordance with the approved budget.

(e) **REGULATIONS.**—The Secretary shall, no later than thirty days after the date the authorizations contained in section 3708(b) are effective, promulgate regulations necessary to carry out the purposes of subsection (d).

(f) **DISCLAIMER.**—The United States shall not be liable for any claim or cause of action arising from the Tribe's use or expenditure of moneys distributed from the Fund.

SEC. 3708. SATISFACTION OF CLAIMS.

(a) **FULL SATISFACTION OF CLAIMS.**—Except as provided in subsection (e) of this section, the benefits realized by the Tribe and its members under this title shall constitute full and complete satisfaction of all members' claims for water rights or injuries to water rights under Federal, State, and other laws (including claims for water rights in ground water, surface water, and effluent) from time immemorial to the effective date of this title. Notwithstanding the foregoing, nothing in this title shall be deemed to recognize or establish any right of a member of the Tribe to water on the Tribe's Reservation.

(b) **RELEASE.**—The Tribe, on behalf of itself and its members, and the Secretary on behalf of the United States, are authorized, as part of the performance of the obligations under the Agreement,

to execute a waiver and release, except as provided in the Agreement, of all claims of water rights or injuries to water rights (including water rights in ground water, surface water and effluent), from time immemorial to the effective date of this title, and any and all future claims of water rights (including water rights in ground water, surface water and effluent), from and after the effective date of this title, which the Tribe and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States, the State of Arizona or otherwise.

(c) **ADDITIONAL RELEASES.**—Except as provided in the Agreement, the United States shall not assert any claim against the State of Arizona or any political subdivision thereof, or any person, corporation or municipal corporation, arising under the laws of the United States, the State of Arizona or otherwise in its own right or on behalf of the Tribe based upon—

(1) water rights or injuries to water rights (including water rights in ground water, surface water and effluent) of the Tribe and its members, or

(2) water rights or injuries to water rights (including water rights in ground water, surface water and effluent) held by the United States on behalf of the Tribe and its members.

(d) **SAVINGS PROVISION.**—In the event the authorizations contained in subsection (b) of this section do not become effective pursuant to section 3711(a), the Tribe and the United States shall retain the right to assert past and future water rights claims as to all Reservation lands.

(e) **DISCLAIMER.**—Nothing in this title shall affect the water right or claims related to the San Carlos Apache Allotments outside the exterior boundaries of the Reservation.

(f) **CLAIMS.**—(1) The United States District Court for the District of Arizona and the United States Claims Court are authorized to hear and decide any claim brought by the Central Arizona Water Conservation District or other contractors of CAP water. Any such claim shall be filed within two years of the date of enactment of this Act, and shall be heard by the court on an expedited basis. If such a claim is filed and the court grants judgment for the plaintiff(s), the court shall award such relief as it deems proper, and shall award costs and attorneys' fees to the plaintiff(s). Any judgment of the court shall be subject to appeal on the same basis that other judgments of that court are subject to review under existing law.

(2) For purposes of this subsection, "claim" means a claim that the reallocation of water to the Tribe pursuant to section 3704(a) of this Act has unlawfully deprived the Central Arizona Water Conservation District or other contractors of CAP water of legal rights to such water.

SEC. 3709. ENVIRONMENTAL COMPLIANCE.

(a) **NO MAJOR FEDERAL ACTION.**—Execution of the settlement agreement by the Secretary as provided for in section 3710(c) shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary shall carry out all necessary environmental compliance during the implementation phase of this settlement.

(b) **AUTHORIZATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out all necessary environmental compliance associated with the settlement under this title, including mitigation measures adopted by the Secretary.

(c) **LEAD AGENCY.**—With respect to such settlement, the Bureau of Reclamation shall be designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable Federal environmental laws.

(d) **ENVIRONMENTAL ACTS.**—The Secretary shall comply with all aspects of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and the Endangered Species Act (16 U.S.C. 1531 et seq.), and other applicable Federal environmental Acts and regulations in proceeding through the implementation phase of such settlement.

SEC. 3710. MISCELLANEOUS PROVISIONS.

(a) **WAIVER OF SOVEREIGN IMMUNITY.**—In the event any party to the Agreement files a lawsuit in any United States district court relating only and directly to the interpretation or enforcement of this title or the Agreement, naming the United States of America or the Tribe as parties, authorization is hereby granted to joining the United States of America or the Tribe, or both, in any such litigation, and any claim by the United States of America or the Tribe to sovereign immunity from such suit is hereby waived.

(b) **CERTAIN CLAIMS PROHIBITED.**—The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this title or the Agreement against any lands within the San Carlos Apache Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) **APPROVAL OF AGREEMENT.**—Except to the extent that the Agreement conflicts with the provisions of this title, such Agreement is hereby approved, ratified and confirmed. The Secretary shall execute and perform such Agreement as approved, ratified and confirmed. The Secretary is authorized to execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(d) **GROUND WATER MANAGEMENT PLAN.**—The Secretary shall establish a ground water management plan for the San Carlos Apache Reservation which, except as is necessary to be consistent with the provisions of this title, will have the same effect as a management plan developed under Arizona law.

(e) **AMENDMENT TO THE ACT OF APRIL 4, 1938.**—The Act of April 4, 1938 (52 Stat. 193; 25 U.S.C. 390), is amended by inserting immediately before the period at the end thereof a colon and the following: “*Provided further*, That concessions for recreation and fish and wildlife purposes on San Carlos Lake may be granted only by the governing body of the San Carlos Apache Tribe upon such conditions and subject to such limitations as may be set forth in the constitution and bylaws of such Tribe”.

(f) **SAN CARLOS RESERVOIR.**—There is hereby transferred to the Tribe the Secretary's entitlement of 30,000 acre-feet of water, less any evaporation and seepage losses from the date of acquisition by the Secretary to the date of transfer, which the Secretary may have acquired through substituting CAP water for water to which

the Gila River Indian Community and the San Carlos Irrigation and Drainage District had a right to be released from San Carlos Reservoir and delivered to them in 1990.

(g) **LIMITATION.**—No part of the Fund established by section 3707(b) of this title, including principal and income, or income from options to lease water or water leases authorized by section 3706, may be used to make per capita payments to members of the Tribe.

(h) **DISCLAIMER.**—Nothing in this title shall be construed to repeal, modify, amend, change or affect the Secretary's obligations to the Ak-Chin Indian Community pursuant to the Act of October 19, 1984 (98 Stat. 2698).

(i) **WATER RIGHTS.**—Nothing in this title shall be construed to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona tribe, band or community, other than the San Carlos Apache Tribe.

(j) **PLANET RANCH.**—The Secretary is authorized and directed to acquire, with the consent of and upon terms mutually acceptable to the city of Scottsdale ("city") and the Secretary, all of the city's right, title and interest in Planet Ranch located on the Bill Williams River in Arizona, including all water rights appurtenant to that property, and the city's January 1988 application filed with the Arizona Department of Water Resources to appropriate water from the Bill Williams River through a land exchange based on fair market value. If an exchange is made with land purchased by the Bureau of Reclamation for the construction and operation of the Central Arizona Project, then, upon commencement of repayment by CAWCD of the reimbursable costs of the Central Arizona Project, the fair market value of those lands so exchanged shall be credited in full against the annual payments due from CAWCD under Article 9.4(a) of Contract No. 14-0906-09W-09245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, until exhausted: *Provided, however,* That the authorized appropriation ceiling of the Central Arizona Project shall not be affected in any manner by the provisions of this subsection.

(k) **REPEAL.**—Section 304(c)(3) of the Colorado River Basin Project Act (43 U.S.C. 1524(c)(3)) is hereby repealed. This subsection does not authorize transportation of water pumped within the exterior boundary of a Federal reclamation project established prior to September 30, 1968, pursuant to the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 391), as amended and supplemented, across project boundaries.

43 USC 1524
note.

(l) **WATER RIGHTS.**—Nothing in this title shall be construed to affect the water rights or the water rights claims of any Federal agency other than the Bureau of Indian Affairs on behalf of the San Carlos Apache Tribe, nor shall anything in this title be construed to prohibit the United States from confirming in the Agreement, except on behalf of Indian tribes other than the San Carlos Apache Tribe, the Gila River and Little Colorado River watershed water rights of other parties to the Agreement by making express provisions for the same in the Agreement.

SEC. 3711. EFFECTIVE DATE.

25 USC 390 note.

(a) **EFFECTIVE DATE OF AUTHORIZATION.**—The authorization contained in section 3708(b) of this title shall become effective

Federal
Register,
publication.

as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

(1) the Secretary has fulfilled the requirements of sections 3704 and 3706;

(2) the Roosevelt Water Conservation District subcontract for agricultural water service from CAP has been revised and executed as provided in section 3705(b);

(3) the funds authorized by section 3707(c) have been appropriated and deposited into the Fund;

(4) the contract referred to in section 3707(a)(2) has been amended;

(5) the State of Arizona has appropriated and deposited into the Fund \$3,000,000 as required by the Agreement;

(6) the stipulations attached to the Agreement as Exhibits "D" and "E" have been approved; and

(7) the Agreement has been modified, to the extent it is in conflict with this title, and has been executed by the Secretary.

(b) CONDITIONS.—(1) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), and (7) of subsection (a) of this section have not occurred by December 31, 1994, subsections (c) and (d) of section 3704, subsections (a) and (b) of section 3705, section 3706, subsections (a)(2), (c), (d), and (f) of section 3707, subsections (b) and (c) of section 3708, and subsections (a), (b), (c), (d), (e), (g), (h), (j), and (l) of section 3710 of this title, together with any contracts entered into pursuant to any such section or subsection, shall not be effective on and after the date of enactment of this title, and any funds appropriated pursuant to section 3707(c), and remaining unobligated and unexpended on the date of the enactment of this title, shall immediately revert to the Treasury, as general revenues, and any funds appropriated by the State of Arizona pursuant to the Agreement, and remaining unobligated and unexpended on the date of the enactment of this title, shall immediately revert to the State of Arizona.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, if the provisions of subsections (a) and (b) of section 3705 of this title have been otherwise accomplished pursuant to provisions of the Act of October 20, 1988, the provisions of paragraph (1) of this subsection shall not be construed as affecting such subsections.

TITLE XXXVIII—SAN FRANCISCO WATER RECLAMATION AND REUSE DEMONSTRATION PROJECT

The Secretary of the Interior is authorized and directed to undertake a demonstration project in the City and County of San Francisco to examine the feasibility and effectiveness of using advanced ecologically engineered technology for water reclamation and reuse in accordance with the title 22 standards of the California Water Code. "Advanced Ecologically Engineered Technology" refers to a greenhouse-based, ecologically engineered technology which employs highly populated pond and marsh ecosystems to produce water for reclamation and reuse. One-half of the costs associated with implementation of this title shall be borne by the United States as a nonreimbursable cost; the other one-half shall be borne by the State of California and the City and County of San Francisco.

TITLE XXXIX—SIPHON REPAIR AND REPLACEMENT

(a) Congress finds that the prestressed concrete pipe siphons installed in the Hayden-Rhodes Aqueduct portion of the Central Arizona Project designed and constructed by the Secretary pursuant to the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.) have been determined to be defective, inadequate and unsuitable for aqueduct purposes and must be replaced or substantial repairs completed for the transfer of the operation of the Project to its local sponsors.

(b) Notwithstanding any other provision of law or contract, 50 percent of the costs incurred in the repair, modification or replacement, together with associated costs, of the Hayden-Rhodes Aqueduct siphons at Salt River, New River, Hassayampa River, Jackrabbit Wash, Centennial Wash and Aqua Fria River, all features of the Central Arizona Project, shall be borne by the United States and shall be nonreimbursable and nonreturnable and the remaining costs shall be allocated to the authorized purposes of the project.

TITLE XL—NATIONAL HISTORIC PRESERVATION ACT AMENDMENTS

National
Historic
Preservation Act
Amendments of
1992.
16 USC 470 note.

SEC. 4001. SHORT TITLE.

This title may be cited as the "National Historic Preservation Act Amendments of 1992".

SEC. 4002. POLICY.

Section 2 of the National Historic Preservation Act (16 U.S.C. 470-1) is amended as follows—

(1) In paragraph (2) insert "and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments" after "community of nations".

(2) In paragraph (6) insert "Indian tribes and Native Hawaiian organizations" after "local governments".

SEC. 4003. REVIEW OF THREATS TO PROPERTIES.

Section 101(a) of the National Historic Preservation Act (16 U.S.C. 470a(a)) is amended by adding the following new paragraph at the end thereof:

"(8) The Secretary shall, at least once every 4 years, in consultation with the Council and with State Historic Preservation Officers, review significant threats to properties included in, or eligible for inclusion on, the National Register, in order to—

"(A) determine the kinds of properties that may be threatened;

"(B) ascertain the causes of the threats; and

"(C) develop and submit to the President and Congress recommendations for appropriate action."

SEC. 4004. STATE HISTORIC PRESERVATION PROGRAMS.

Section 101(b) of the National Historic Preservation Act (16 U.S.C. 470a(b)) is amended as follows:

(1) Amend paragraph (2) to read as follows:

"(2)(A) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council on the appropriate provisions of

this Act, and in cooperation with the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with this Act.

Contracts.

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

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

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

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

“(ii) provides for independent professional peer review.

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

(2) Amend paragraph (3) as follows:

(A) In subparagraph (G), strike “relating to the Federal and State Historic Preservation Programs; and” and insert “in historic preservation;”.

(B) In subparagraph (H), strike the period at the end thereof and insert a semicolon.

(C) Add at the end thereof the following new subparagraphs—

“(I) consult with appropriate Federal agencies in accordance with this Act on—

“(i) Federal undertakings that may affect historic properties; and

“(ii) the content and sufficiency of any plans developed to protect, manage, or reduce or mitigate harm to such properties; and

“(J) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.”.

(3) Amend paragraph (5) by striking “1980” and inserting “1992”.

(4) Add at the end thereof the following new paragraphs:

“(6)(A) Subject to subparagraphs (C) and (D), the Secretary may enter into contracts or cooperative agreements with a State Historic Preservation Officer for any State authorizing such Officer to assist the Secretary in carrying out one or more of the following responsibilities within that State—

“(i) Identification and preservation of historic properties.

“(ii) Determination of the eligibility of properties for listing on the National Register.

“(iii) Preparation of nominations for inclusion on the National Register.

“(iv) Maintenance of historical and archaeological data bases.

“(v) Evaluation of eligibility for Federal preservation incentives.

Nothing in this paragraph shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.

“(B) The Secretary may enter into a contract or cooperative agreement under subparagraph (A) only if—

“(i) the State Historic Preservation Officer has requested the additional responsibility;

“(ii) the Secretary has approved the State historic preservation program pursuant to section 101(b) (1) and (2);

“(iii) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that such Officer is fully capable of carrying out such responsibility in such manner;

“(iv) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to such contract or cooperative agreement; and

“(v) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such responsibility.

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

“(D) Nothing in this subsection shall have the effect of diminishing the preservation programs and activities of the National Park Service.”

SEC. 4005. CERTIFICATION OF LOCAL GOVERNMENTS.

Section 101(c) of the National Historic Preservation Act (16 U.S.C. 470a(c)) is amended by adding at the end thereof the following new paragraph:

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

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

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

SEC. 4006. TRIBAL HISTORIC PRESERVATION PROGRAMS.

(a) REVISION OF EXISTING LAW.—Section 101 of the National Historic Preservation Act (16 U.S.C. 470a) is amended as follows—

(1) Redesignate subsections (d), (e), (f), (g), and (h) as subsections (e), (f), (g), (h), and (i), respectively.

(2) Insert after subsection (c) the following new subsection:

“(d)(1)(A) The Secretary shall establish a program and promulgate regulations to assist Indian tribes in preserving their particular historic properties. The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation

Regulations.

program to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.

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

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

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

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

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

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

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

“(i) that the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (C);

“(ii) that the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer;

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

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

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

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

Contracts.

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

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

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

“(i) the tribe’s traditional cultural authorities;

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

“(iii) the interested public.

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

“(6)(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

“(B) In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).

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

Hawaii.

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

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

“(iii) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate such property to the National Register and to carry out the cultural component of such preservation program or plan.”.

(b) CONFORMING AMENDMENT.—Section 110(c) of the National Historic Preservation Act (16 U.S.C. 470h-2(c)) is amended by striking “101(g)” and inserting “101(h)”.

SEC. 4007. MATCHING GRANTS.

16 USC 470a.

Section 101(e) of the National Historic Preservation Act, as redesignated by section 4006(a)(1) of this title, is amended as follows—

(1) Amend paragraph (1) to read as follows:

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

(2) Add the following at the end thereof:

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

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

Territories.

“(6)(A) As part of the program of matching grant assistance from the Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau (referred to as the Micronesian States) in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1681 note), the Trusteeship Agreement for the Trust Territory of the Pacific Islands, and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled ‘Joint Resolution to approve the “Compact of Free Association” between the United States and Government of Palau, and for other purposes’ (48 U.S.C. 1681 note). The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each Micronesian State so that at the termination of the compacts the programs shall be firmly established. The Secretary may waive or modify the requirements of this section to conform to the cultural setting of those nations.

Historic preservation.

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

SEC. 4008. EDUCATION AND TRAINING.

Section 101 of the National Historic Preservation Act (16 U.S.C. 470a), as amended by section 4005 of this Act, is further amended by adding at the end thereof the following new subsection:

“(j)(1) The Secretary shall, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-

Federal organizations, develop and implement a comprehensive preservation education and training program.

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

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

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

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

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

"(i) distribution of information on preservation technologies;

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

"(iii) support for research, analysis, conservation, curation, interpretation, and display related to preservation."

SEC. 4009. REQUIREMENTS FOR AWARDING OF GRANTS.

Section 102 of the National Historic Preservation Act (16 U.S.C. 470b) is amended as follows:

(1) Amend paragraph (3) of subsection (a) to read as follows:

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

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

(3) Add at the end thereof the following new subsections:

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

"(e) The total administrative costs, direct and indirect, charged for carrying out State projects and programs may not exceed 25 percent of the aggregate costs except in the case of grants under section 101(e)(6)."

SEC. 4010. APPORTIONMENT OF GRANT FUNDS.

Section 103 of the National Historic Preservation Act (16 U.S.C. 470c) is amended as follows—

(1) In subsection (a) strike "for comprehensive statewide historic surveys and plans under this Act", and insert "for the purposes this Act".

(2) In subsection (b) strike "by the Secretary in accordance with needs as disclosed in approved statewide historic preserva-

tion plans.” and insert “as the Secretary determines to be appropriate.”.

(3) At the end of subsection (b) insert “The Secretary shall analyze and revise as necessary the method of apportionment. Such method and any revision thereof shall be published by the Secretary in the Federal Register.”.

Federal
Register,
publication.

SEC. 4011. EXTENSION OF AUTHORIZATION FOR HISTORIC PRESERVATION FUND.

Section 108 of the National Historic Preservation Act (16 U.S.C. 470h-2) is amended by striking “1992” and inserting “1997”.

16 USC 470h.

SEC. 4012. FEDERAL AGENCY HISTORIC PRESERVATION PROGRAMS.

Section 110 of the National Historic Preservation Act (16 U.S.C. 470h-2) is amended as follows—

(1) In subsection (a)(1) strike “101(f)” and insert “101(g)”.

(2) Amend subsection (a)(2) to read as follows:

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

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

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

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

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

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

“(i) are consistent with regulations issued by the Council pursuant to section 211;

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

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

(3) Add at the end thereof the following new subsections:

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

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

SEC. 4013. LEASE OR EXCHANGE OF FEDERAL HOUSING PROPERTIES.

Section 111(a) of the National Historic Preservation Act (16 U.S.C. 470h-3(a)) is amended by striking “may, after consultation with the Advisory Council on Historic Preservation,” and inserting “after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may”.

SEC. 4014. PROFESSIONAL STANDARDS.

Title I of the National Historic Preservation Act (16 U.S.C. 470 et seq.) is amended by adding at the end thereof the following new section:

“SEC. 112. PROFESSIONAL STANDARDS.

16 USC 470h-4.

“(a) **IN GENERAL.**—Each Federal agency that is responsible for the protection of historic resources, including archaeological resources pursuant to this Act or any other law shall ensure each of the following—

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

Contracts.

“(B) Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after the date of enactment of this Act for the disciplines involved, specifically archaeology, architecture, conservation, curation, history, landscape architecture, and planning. Such standards shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved.

Records.
Regulations.

“(2) Records and other data, including data produced by historical research and archaeological surveys and excavations are permanently maintained in appropriate data bases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.

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

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

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

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

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

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

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

“(C) allow access to artifacts for research purposes; and

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

SEC. 4015. INTERSTATE AND INTERNATIONAL TRAFFIC IN ANTIQUITIES.

Title I of the National Historic Preservation Act (16 U.S.C. 470 et seq.) is amended by adding at the end thereof of the following new section after section 112:

16 USC 470h-5.

“SEC. 113. INTERSTATE AND INTERNATIONAL TRAFFIC IN ANTIQUITIES.

Reports.

“(a) STUDY.—In order to help control illegal interstate and international traffic in antiquities, including archaeological, curatorial, and architectural objects, and historical documents of all kinds, the Secretary shall study and report on the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities.

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

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

“(d) AUTHORIZATION.—There are authorized to be appropriated not more than \$500,000 for the study described in subsection (a), such sums to remain available until expended.”.

Appropriation
authorization.

SEC. 4016. MEMBERSHIP OF ADVISORY COUNCIL ON HISTORIC PRESERVATION.

Section 201(a) of the National Historic Preservation Act (16 U.S.C. 470i(a)) is amended as follows:

- (1) Strike “and” at the end of paragraph (9).
- (2) Strike the period at the end of paragraph (10) and insert “; and”.
- (3) Add at the end thereof the following new paragraph:
“(11) one member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President.”.

SEC. 4017. AUTHORIZATION OF APPROPRIATIONS FOR ADVISORY COUNCIL ON HISTORIC PRESERVATION.

16 USC 470t.

Section 212(a) of the National Historic Preservation Act (16 U.S.C. 470) and following is amended by striking the last sentence thereof and inserting “There are authorized to be appropriated for purposes of this title not to exceed \$5,000,000 for each of the fiscal years 1993 through 1996.”.

SEC. 4018. ADVISORY COUNCIL REGULATIONS.

Section 211 of the National Historic Preservation Act (16 U.S.C. 470s) is amended by striking the period at the end of the first sentence and inserting “in its entirety.”.

SEC. 4019. DEFINITIONS.

(a) AMENDMENT AND ADDITION OF DEFINITIONS.—Section 301 of the National Historic Preservation Act (16 U.S.C. 470w) is amended as follows—

- (1) In paragraph (1) strike “Code,” and all that follows through the end of the paragraph, and insert in lieu thereof “Code.”.
- (2) In paragraph (2) strike “the Trust Territories of the Pacific Islands” and insert “the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau”.
- (3) Amend paragraph (4) to read as follows:

"(4) 'Indian tribe' or 'tribe' means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

(4) In paragraph (5) strike "Register" and all that follows through the end of the paragraph and insert "Register, including artifacts, records, and material remains related to such a property or resource."

(5) Amend paragraph (7) to read as follows:

"(7) 'Undertaking' means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

"(A) those carried out by or on behalf of the agency;

"(B) those carried out with Federal financial assistance;

"(C) those requiring a Federal permit license, or approval; and

"(D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency."

(6) In paragraph (8) strike "maintenance and reconstruction," and insert "maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities,".

(7) In paragraph (9) strike "urban area" and insert "area".

(8) In paragraph (10) strike "urban area of one or more neighborhoods and" and insert "area".

(9) In paragraph (11) after "of the Interior" insert "acting through the Director of the National Park Service".

(10) In paragraph (12) strike "and architecture" and insert "architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture".

(11) In paragraph (13) strike "archaeology" and insert "pre-historic and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture".

(12) Add at the end thereof the following new paragraphs:

"(14) 'Tribal lands' means—

"(A) all lands within the exterior boundaries of any Indian reservation; and

"(B) all dependent Indian communities.

"(15) 'Certified local government' means a local government whose local historic preservation program has been certified pursuant to section 101(c).

"(16) 'Council' means the Advisory Council on Historic Preservation established by section 201.

"(17) 'Native Hawaiian' means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

"(18) 'Native Hawaiian organization' means any organization which—

"(A) serves and represents the interests of Native Hawaiians;

“(B) has as a primary and stated purpose the provision of services to Native Hawaiians; and

“(C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.”

(b) TECHNICAL AMENDMENT.—Section 201(a) of the National Historic Preservation Act (16 U.S.C. 470i(a)) is amended by striking “(hereafter referred to as the ‘Council’)”.

SEC. 4020. ACCESS TO INFORMATION.

Section 304 of the National Historic Preservation Act (16 U.S.C. 4702-3) is amended to read as follows:

16 USC 470w-3.

“SEC. 304. ACCESS TO INFORMATION.

“(a) AUTHORITY TO WITHHOLD FROM DISCLOSURE.—The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may—

“(1) cause a significant invasion of privacy;

“(2) risk harm to the historic resources; or

“(3) impede the use of a traditional religious site by practitioners.

“(b) ACCESS DETERMINATION.—When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

“(c) CONSULTATION WITH COUNCIL.—When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f), the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b).”.

SEC. 4021. RECOMMENDATIONS.

The Secretary of the Interior, in consultation with the Advisory Council, shall seek to ensure that historic properties preserved under the National Historic Preservation Act fully reflect the historical experience of this nation.

16 USC 470a
note.

SEC. 4022. NATIONAL CENTER FOR PRESERVATION TECHNOLOGY AND TRAINING.

The National Historic Preservation Act (16 U.S.C. 470 and following) is amended by adding the following at the end thereof:

“TITLE IV—NATIONAL CENTER FOR PRESERVATION TECHNOLOGY AND TRAINING

“SEC. 401. FINDINGS.

16 USC 470x.

“The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and

promote research, distribute information, and provide training about preservation skills and technologies would be beneficial.

16 USC 470x-1.

"SEC. 402. DEFINITIONS.

"For the purposes of this title—

"(1) The term 'Board' means the National Preservation Technology and Training Board established pursuant to section 404.

"(2) The term 'Center' means the National Center for Preservation Technology and Training established pursuant to section 403.

"(3) The term 'Secretary' means the Secretary of the Interior.

Louisiana.
16 USC 470x-2.

"SEC. 403. ESTABLISHMENT OF NATIONAL CENTER.

"(a) ESTABLISHMENT.—There is hereby established within the Department of the Interior a National Center for Preservation Technology and Training. The Center shall be located at Northwestern State University of Louisiana in Natchitoches, Louisiana.

"(b) PURPOSES.—The purposes of the Center shall be to—

"(1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources;

"(2) develop and facilitate training for Federal, State and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;

"(3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;

"(4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and

"(5) cooperate with related international organizations including, but not limited to the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

"(c) PROGRAMS.—Such purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through a program of grants established under section 405.

"(d) EXECUTIVE DIRECTOR.—The Center shall be headed by an Executive Director with demonstrated expertise in historic preservation appointed by the Secretary with advice of the Board.

"(e) ASSISTANCE FROM SECRETARY.—The Secretary shall provide the Center assistance in obtaining such personnel, equipment, and facilities as may be needed by the Center to carry out its activities.

16 USC 470x-3.

"SEC. 404. PRESERVATION TECHNOLOGY AND TRAINING BOARD.

"(a) ESTABLISHMENT.—There is established a Preservation Technology and Training Board.

"(b) DUTIES.—The Board shall—

"(1) provide leadership, policy advice, and professional oversight to the Center;

"(2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and

"(3) submit an annual report to the President and the Congress. Reports.

"(c) MEMBERSHIP.—The Board shall be comprised of—

"(1) the Secretary, or the Secretary's designee;

"(2) 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations, and

"(3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications who represent major organizations in the fields of archaeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

"SEC. 405. PRESERVATION GRANTS.

16 USC 470x-4.

"(a) IN GENERAL.—The Secretary, in consultation with the Board, shall provide preservation technology and training grants to eligible applicants with a demonstrated institutional capability and commitment to the purposes of the Center, in order to ensure an effective and efficient system of research, information distribution and skills training in all the related historic preservation fields.

"(b) GRANT REQUIREMENTS.—(1) Grants provided under this section shall be allocated in such a fashion to reflect the diversity of the historic preservation fields and shall be geographically distributed.

"(2) No grant recipient may receive more than 10 percent of the grants allocated under this section within any year.

"(3) The total administrative costs, direct and indirect, charged for carrying out grants under this section may not exceed 25 percent of the aggregate costs.

"(c) ELIGIBLE APPLICANTS.—Eligible applicants may include Federal and non-Federal laboratories, accredited museums, universities, nonprofit organizations; offices, units, and Cooperative Park Study Units of the National Park System, State Historic Preservation Offices, tribal preservation offices, and Native Hawaiian organizations.

"(d) STANDARDS.—All such grants shall be awarded in accordance with accepted professional standards and methods, including peer review of projects.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as may be necessary.

"SEC. 406. GENERAL PROVISIONS.

16 USC 470x-5.

"(a) ACCEPTANCE OF GRANTS AND TRANSFERS.—The Center may accept—

"(1) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and

"(2) transfers of funds from other Federal agencies.

"(b) CONTRACTS AND COOPERATIVE AGREEMENTS.—Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public entities to carry out the Center's responsibilities under this title.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the establish-

ment, operation, and maintenance of the Center. Funds for the Center shall be in addition to existing National Park Service programs, centers, and offices.

16 USC 470x-6.

"SEC. 407. NATIONAL PARK SERVICE PRESERVATION.

"In order to improve the use of existing National Park Service resources, the Secretary shall fully utilize and further develop the National Park Service preservation (including conservation) centers and regional offices. The Secretary shall improve the coordination of such centers and offices within the National Park Service, and shall, where appropriate, coordinate their activities with the Center and with other appropriate parties."

SEC. 4023. REQUIREMENT FOR SPECIFIC AUTHORIZATION FOR PROJECTS UNDER THE HISTORIC SITES, BUILDINGS, AND ANTIQUITIES ACT.

16 USC 466.

Section 6 of the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" (16 U.S.C. 461-467) is amended to read as follows:

"SEC. 6. REQUIREMENT FOR SPECIFIC AUTHORIZATION FOR PROJECTS UNDER THE HISTORIC SITES, BUILDINGS, AND ANTIQUITIES ACT.

"(a) IN GENERAL.—Except as provided in subsection (b), notwithstanding any other provision of law, no funds appropriated or otherwise made available to the Secretary of the Interior to carry out section 2(e) or 2(f) may be obligated or expended after the date of enactment of this section—

"(1) unless the appropriation of such funds has been specifically authorized by law enacted on or after the date of enactment of this section; or

"(2) in excess of the amount prescribed by law enacted on or after such date.

"(b) SAVINGS PROVISION.—Nothing in this section shall prohibit or limit the expenditure or obligation of any funds appropriated prior to January 1, 1993.

"(c) AUTHORIZATION OF APPROPRIATIONS.—Except as provided by subsection (a), there is authorized to be appropriated for carrying out the purposes of this Act such sums as the Congress may from time to time determine."

Georgia.

SEC. 4024. MARTIN LUTHER KING, JUNIOR, NATIONAL HISTORIC SITE AND PRESERVATION DISTRICT.

16 USC 461 note.

(a) BOUNDARY MODIFICATION.—Subsection (a) of the first section of the Act entitled "An Act to establish the Martin Luther King, Junior, National Historic Site in the State of Georgia, and for other purposes" (Public Law 96-428; 94 Stat. 1839), establishing the Martin Luther King, Junior, National Historic Site and Preservation District, is amended by striking "numbered NASM/SERO/20, 109-C, and dated May 1980" and inserting in lieu thereof "number 489/80,013B, and dated September 1992".

16 USC 461 note.

(b) LIMITATION ON APPROPRIATIONS.—Section 6 of Public Law 96-428 (94 Stat. 1842) is amended by striking ", but not to exceed \$1,000,000 for development, \$100,000 for local planning, and \$3,500,000 for the acquisition of lands and interests therein".

SEC. 4025. SECRETARIAL REPORT.16 USC 470a
note.

(a) **REPORT.**—Not later than one year after the date of enactment of this Act, the Secretary of the Interior shall prepare and submit to the Congress a report on the manner in which properties are listed or determined to be eligible for listing on the National Register, including but not limited to, the appropriateness of the criteria used in determining such eligibility, and the effect, if any, of such listing or finding of eligibility.

(b) **PREPARATION.**—In preparing the report, the Secretary shall consult with, and consider the views and comments of other Federal agencies, as well as interested individuals and public and private organizations, and shall include representative comments received as an appendix to the report.

Approved October 30, 1992.

LEGISLATIVE HISTORY—H.R. 429:

HOUSE REPORTS: Nos. 102-114, Pt. 1 (Comm. on Interior and Insular Affairs) and 102-1016 (Comm. of Conference).

SENATE REPORTS: No. 102-267 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 137 (1991): June 20, considered and passed House.

Vol. 138 (1992): Apr. 10, considered and passed Senate, amended.

June 18, House concurred in Senate amendment with an amendment.

July 31, Senate concurred in House amendment with an amendment; vitiated concurrence in House amendment with an amendment; and insisted on its amendment.

Oct. 5, House agreed to conference report.

Oct. 8, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 28 (1992):

Oct. 30, Presidential statement.