

erected for the improvement of the navigation of the Mississippi River and certain of its tributaries, are declared to be, and to have been at all times prior to February 27, 1901, subject to the provisions of sections 934 to 939 of this title as fully, effectually, and to the same extent as though said lands had not been described in said proclamations, or withdrawn from sale thereby, but had remained with the body of public lands subject to private entry and sale: *Provided, however*, That any and all parts of said lands acquired by any railroad company under said sections shall at all times be subject to the right of flowage which at any time may become necessary in the construction or maintenance of dams, reservoirs, or other works which may be constructed or erected by or under the authority of the United States for the improvement of the navigation of the Mississippi River and its tributaries: *Provided further*, That the railroad companies availing themselves of this section shall, in addition to filing the maps required by law on February 27, 1901, to be filed, also file maps of definite location with elevation of rail of their lines of railroad over said water-reserve lands in the office of the Secretary of the Army; and no location shall be permitted which takes for right of way or stations or interferes with submergence of lands needed for the use of the reservoir system, existing on February 27, 1901, or in the construction of dams or other works, or any proposed or probable extension of the same, or which will obstruct or increase the cost of the present or prospective reservoir system: *Provided further*, That the plan for the location and construction of any such railway, or any part thereof, shall be first submitted to the Secretary of the Army and approved by him and by the Chief of Engineers of the United States Army.

(Feb. 27, 1901, ch. 614, 31 Stat. 815; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501.)

REPEAL OF SECTION

Section repealed by Pub. L. 94-579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System.

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

SAVINGS PROVISION

Repeal by Pub. L. 94-579 insofar as applicable to the issuance of rights-of-way not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of this title.

§ 944. Right of way in Oklahoma and Arizona

Where, under sections 934 to 939 of this title, or under special Acts of Congress, or under the

laws of the former Territories of Oklahoma and Arizona, railroads have been constructed and were on June 26, 1906, in operation in Oklahoma or Arizona which passed through any of the lands theretofore reserved for said Territories, such lands shall be disposed of subject to such railroad right or easement, but only to the extent of the right of way conferred by the said sections for such railroad purposes.

(June 26, 1906, ch. 3548, 34 Stat. 481.)

REPEAL OF SECTION

Section repealed by Pub. L. 94-579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System.

SAVINGS PROVISION

Repeal by Pub. L. 94-579 insofar as applicable to the issuance of rights-of-way not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of this title.

§ 945. Reservation in patents of right of way for ditches or canals

In all patents for lands taken up after August 30, 1890, under any of the land laws of the United States or on entries or claims validated by this Act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

(Aug. 30, 1890, ch. 837, §1, 26 Stat. 391.)

REFERENCES IN TEXT

The land laws of the United States, referred to in text, are classified generally to this title.

This Act, referred to in text, is act Aug. 30, 1890, ch. 837, 26 Stat. 371, which enacted sections 212 and 945 of this title, section 861a of former Title 10, The Army, section 446 of Title 16, Conservation, sections 497, 601, and 651 of former Title 31, Money and Finance, section 887 of Title 33, Navigation and Navigable Waters, section 120 of former Title 40, Public Buildings, Property, and Works, and amended sections 321 and 662 of this title. For complete classification of this Act to the Code, see Tables.

§ 945a. Compensation for rights-of-way for certain reclamation projects

Notwithstanding the existence of any reservation of right-of-way to the United States for canals under section 945 of this title, or any State statute, the Secretary of the Interior shall pay just compensation, including severance damages, to the owners of private land utilized for ditches or canals in connection with any reclamation project, or any unit or any division of a reclamation project, provided the construction of said ditches or canals commenced after January 1, 1961, and such compensation shall be paid notwithstanding the execution of any agreements or any judgments entered in any condemnation proceeding, prior to September 2, 1964.

(Pub. L. 88-561, §1, Sept. 2, 1964, 78 Stat. 808; Pub. L. 89-624, Oct. 4, 1966, 80 Stat. 873.)

AMENDMENTS

1966—Pub. L. 89-624 inserted “to the United States” and “or any State statute.”

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3 of Pub. L. 88-561 as added by Pub. L. 89-624 provided that: “The amendment made by this Act [enacting section 945b of this title and amending this section] shall apply to any condemnation action pending in any district court of the United States on the date of enactment of this Act [Oct. 4, 1966] and to any such action instituted after that date.”

§ 945b. Jurisdiction; procedure

Jurisdiction of an action brought by the United States or the landowner for the determination of just compensation pursuant to section 945a of this title is hereby conferred on the United States district court in the district in which any such land is situated, without limitation to the amount of compensation sought by such suit. The procedure for such an action shall be governed by the Federal Rules of Civil Procedure for the condemnation of real and personal property.

(Pub. L. 88-561, §2, as added Pub. L. 89-624, Oct. 4, 1966, 80 Stat. 874.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure for the condemnation of real and personal property, referred to in text, means rule 71A of the Federal Rules of Civil Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section applicable to Federal condemnation actions pending in any district court of the United States on or after Oct. 4, 1966, see section 3 of Pub. L. 88-561, as added by Pub. L. 89-624, set out as an Effective Date of 1966 Amendment note under section 945a of this title.

§ 946. Right of way to canal ditch companies and irrigation or drainage districts for irrigation or drainage purposes and operation and maintenance of reservoirs, canals, and laterals

The right of way through the public lands and reservations of the United States is granted to any canal ditch company, irrigation or drainage district formed for the purpose of irrigation or drainage, and duly organized under the laws of any State or Territory, and which shall have filed, or may hereafter file, with the Secretary of the Interior a copy of its articles of incorporation or, if not a private corporation, a copy of the law under which the same is formed and due proof of its organization under the same, to the extent of the ground occupied by the water of any reservoir and of any canals and laterals and fifty feet on each side of the marginal limits thereof, and, upon presentation of satisfactory showing by the applicant, such additional rights of way as the Secretary of the Interior may deem necessary for the proper operation and maintenance of said reservoirs, canals, and laterals; also the right to take from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: *Provided*, That no such right of way shall be so located as to interfere with the proper occupation by the Gov-

ernment of any such reservation, and all maps of location shall be subject to the approval of the department of the Government having jurisdiction of such reservation; and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.

(Mar. 3, 1891, ch. 561, §18, 26 Stat. 1101; Mar. 4, 1917, ch. 184, §1, 39 Stat. 1197; May 28, 1926, ch. 409, 44 Stat. 668.)

REPEAL OF SECTION

Section repealed by Pub. L. 94-579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System.

AMENDMENTS

1926—Act May 28, 1926, substituted “canal ditch company, irrigation or drainage district” for “canal or ditch company or drainage district” and inserted “or, if not a private corporation, a copy of the law under which the same is formed” after “articles of incorporation” and “, and, upon presentation of satisfactory showing by the applicant, such additional right of way as the Secretary of the Interior may deem necessary for the proper operation and maintenance of said reservoirs, canals, and laterals” after “marginal limits thereof”.

1917—Act Mar. 4, 1917, inserted “or drainage district,” after “any canal or ditch company,” and “or drainage,” after “for the purpose of irrigation”.

SAVINGS PROVISION

Repeal by Pub. L. 94-579 insofar as applicable to the issuance of rights-of-way not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of this title.

§ 947. Map; damages to settlers

Any canal or ditch company desiring to secure the benefits of sections 946 to 949 of this title shall, within twelve months after the location of ten miles of its canal, if the same be upon surveyed lands, and if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the officer, as the Secretary of the Interior may designate, of the land office for the district where such land is located a map of its canal or ditch and reservoir; and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way. Whenever any person or corporation, in the construction of any canal, ditch, or reservoir, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

(Mar. 3, 1891, ch. 561, §19, 26 Stat. 1102; 1946 Reorg. Plan No. 3, §403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

REPEAL OF SECTION

Section repealed by Pub. L. 94-579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793, effective on