

requirements for completion of court ordered environmental impact statements prior to development and incorporation of allotment plans from being superseded by subsec. (d), providing for careful and considered consultation, cooperation, and coordination with certain persons, including landowners involved, district grazing advisory boards and States having lands within the covered area and for tailoring allotment management plans to the specific range condition of the covered area and periodic review thereof, authorizing the Secretary to terminate or develop the plans after review and careful and considered consultation, cooperation, and coordination with the parties involved, and defining "court ordered environmental impact statement" and "range condition".

Subsec. (e). Pub. L. 95-514, §8(b), substituted introductory word "In" for "Prior to October 1, 1988, or thereafter, in".

#### GRAZING PERMIT RENEWALS

Pub. L. 108-108, title III, §325, Nov. 10, 2003, 117 Stat. 1308, provided in part: "That beginning in November 2004, and every year thereafter, the Secretaries of the Interior and Agriculture shall report to Congress the extent to which they are completing analysis required under applicable laws prior to the expiration of grazing permits, and beginning in May 2004, and every two years thereafter, the Secretaries shall provide Congress recommendations for legislative provisions necessary to ensure all permit renewals are completed in a timely manner. The legislative recommendations provided shall be consistent with the funding levels requested in the Secretaries' budget proposals".

#### APPEALS OF REDUCTIONS IN GRAZING ALLOTMENTS ON PUBLIC RANGELAND; TIME; EFFECTIVE DATE OF REDUCTIONS; SUSPENSION PENDING FINAL ACTION ON APPEAL

Provisions requiring appeals of reductions in grazing allotments on public rangelands to be taken within a certain time period; providing that reductions of up to 10 per centum in grazing allotments are effective when so designated by the Secretary; suspending proposed reductions in excess of 10 per centum pending final action on appeals; and requiring final action on appeals to be completed within 2 years of filing of the appeal were contained in the following appropriation acts:

- Pub. L. 102-381, title I, Oct. 5, 1992, 106 Stat. 1378.
- Pub. L. 102-154, title I, Nov. 13, 1991, 105 Stat. 993.
- Pub. L. 101-512, title I, Nov. 5, 1990, 104 Stat. 1917.
- Pub. L. 101-121, title I, Oct. 23, 1989, 103 Stat. 704.
- Pub. L. 100-446, title I, Sept. 27, 1988, 102 Stat. 1776.
- Pub. L. 100-202, §101(g) [title I], Dec. 22, 1987, 101 Stat. 1329-213, 1329-216.
- Pub. L. 99-500, §101(h) [title I], Oct. 18, 1986, 100 Stat. 1783-242, 1783-245, and Pub. L. 99-591, §101(h) [title I], Oct. 30, 1986, 100 Stat. 3341-242, 3341-245.
- Pub. L. 99-190, §101(d) [title I], Dec. 19, 1985, 99 Stat. 1224, 1226.
- Pub. L. 98-473, title I, §101(c) [title I], Oct. 12, 1984, 98 Stat. 1837, 1840.
- Pub. L. 98-146, title I, Nov. 4, 1983, 97 Stat. 921.
- Pub. L. 97-394, title I, Dec. 30, 1982, 96 Stat. 1968.
- Pub. L. 97-100, title I, Dec. 23, 1981, 95 Stat. 1393.
- Pub. L. 96-514, title I, Dec. 12, 1980, 94 Stat. 2959.
- Pub. L. 96-126, title I, Nov. 27, 1979, 93 Stat. 956.

### § 1753. Grazing advisory boards

#### (a) Establishment; maintenance

For each Bureau district office and National Forest headquarters office in the sixteen contiguous Western States having jurisdiction over more than five hundred thousand acres of lands subject to commercial livestock grazing (hereinafter in this section referred to as "office"), the Secretary and the Secretary of Agriculture, upon the petition of a simple majority of the

livestock lessees and permittees under the jurisdiction of such office, shall establish and maintain at least one grazing advisory board of not more than fifteen advisers.

#### (b) Functions

The function of grazing advisory boards established pursuant to this section shall be to offer advice and make recommendations to the head of the office involved concerning the development of allotment management plans and the utilization of range-betterment funds.

#### (c) Appointment and terms of members

The number of advisers on each board and the number of years an adviser may serve shall be determined by the Secretary concerned in his discretion. Each board shall consist of livestock representatives who shall be lessees or permittees in the area administered by the office concerned and shall be chosen by the lessees and permittees in the area through an election prescribed by the Secretary concerned.

#### (d) Meetings

Each grazing advisory board shall meet at least once annually.

#### (e) Federal Advisory Committee Act applicability

Except as may be otherwise provided by this section, the provisions of the Federal Advisory Committee Act (86 Stat. 770) shall apply to grazing advisory boards.

#### (f) Expiration date

The provisions of this section shall expire December 31, 1985.

(Pub. L. 94-579, title IV, §403, Oct. 21, 1976, 90 Stat. 2775; Pub. L. 95-514, §10, Oct. 25, 1978, 92 Stat. 1808.)

#### REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### AMENDMENTS

1978—Subsec. (a). Pub. L. 95-514 substituted "sixteen contiguous Western States" for "eleven contiguous Western States".

### SUBCHAPTER V—RIGHTS-OF-WAY

### § 1761. Grant, issue, or renewal of rights-of-way

#### (a) Authorized purposes

The Secretary, with respect to the public lands (including public lands, as defined in section 1702(e) of this title, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. 818)) and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for—

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases,

other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act, including part 1<sup>1</sup> thereof (41 Stat. 1063, 16 U.S.C. 791a-825r).<sup>2</sup>

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock drive-ways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

**(b) Procedures applicable; administration**

(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-of-way<sup>3</sup> pursuant to this subchapter, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination, in accordance with the provisions of this subchapter, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where applicable: (A) the name and address of each partner; (B) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any

class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

(3) The Secretary of Agriculture shall have the authority to administer all rights-of-way granted or issued under authority of previous Acts with respect to lands under the jurisdiction of the Secretary of Agriculture, including rights-of-way granted or issued pursuant to authority given to the Secretary of the Interior by such previous Acts.

**(c) Permanent easement for water systems; issuance, preconditions, etc.**

(1) Upon receipt of a written application pursuant to paragraph (2) of this subsection from an applicant meeting the requirements of this subsection, the Secretary of Agriculture shall issue a permanent easement, without a requirement for reimbursement, for a water system as described in subsection (a)(1) of this section, traversing Federal lands within the National Forest System ("National Forest Lands"), constructed and in operation or placed into operation prior to October 21, 1976, if—

(A) the traversed National Forest lands are in a State where the appropriation doctrine governs the ownership of water rights;

(B) at the time of submission of the application the water system is used solely for agricultural irrigation or livestock watering purposes;

(C) the use served by the water system is not located solely on Federal lands;

(D) the originally constructed facilities comprising such system have been in substantially continuous operation without abandonment;

(E) the applicant has a valid existing right, established under applicable State law, for water to be conveyed by the water system;

(F) a recordable survey and other information concerning the location and characteristics of the system as necessary for proper management of National Forest lands is provided to the Secretary of Agriculture by the applicant for the easement; and

(G) the applicant submits such application on or before December 31, 1996.

(2)(A) Nothing in this subsection shall be construed as affecting any grants made by any previous Act. To the extent any such previous grant of right-of-way is a valid existing right, it shall remain in full force and effect unless an owner thereof notifies the Secretary of Agriculture that such owner elects to have a water system on such right-of-way governed by the provisions of this subsection and submits a written application for issuance of an easement pursuant to this subsection, in which case upon the issuance of an easement pursuant to this subsection such previous grant shall be deemed to have been relinquished and shall terminate.

(B) Easements issued under the authority of this subsection shall be fully transferable with all existing conditions and without the imposition of fees or new conditions or stipulations at the time of transfer. The holder shall notify the Secretary of Agriculture within sixty days of

<sup>1</sup> So in original. Probably should be part "I".

<sup>2</sup> So in original. The period preceding the semicolon probably should not appear.

<sup>3</sup> So in original. Probably should be "right-of-way".

any address change of the holder or change in ownership of the facilities.

(C) Easements issued under the authority of this subsection shall include all changes or modifications to the original facilities in existence as of October 21, 1976, the date of enactment of this Act.

(D) Any future extension or enlargement of facilities after October 21, 1976, shall require the issuance of a separate authorization, not authorized under this subsection.

(3)(A) Except as otherwise provided in this subsection, the Secretary of Agriculture may terminate or suspend an easement issued pursuant to this subsection in accordance with the procedural and other provisions of section 1766 of this title. An easement issued pursuant to this subsection shall terminate if the water system for which such easement was issued is used for any purpose other than agricultural irrigation or livestock watering use. For purposes of subparagraph (D) of paragraph (1) of this subsection, non-use of a water system for agricultural irrigation or livestock watering purposes for any continuous five-year period shall constitute a rebuttable presumption of abandonment of the facilities comprising such system.

(B) Nothing in this subsection shall be deemed to be an assertion by the United States of any right or claim with regard to the reservation, acquisition, or use of water. Nothing in this subsection shall be deemed to confer on the Secretary of Agriculture any power or authority to regulate or control in any manner the appropriation, diversion, or use of water for any purpose (nor to diminish any such power or authority of such Secretary under applicable law) or to require the conveyance or transfer to the United States of any right or claim to the appropriation, diversion, or use of water.

(C) Except as otherwise provided in this subsection, all rights-of-way issued pursuant to this subsection are subject to all conditions and requirements of this Act.

(D) In the event a right-of-way issued pursuant to this subsection is allowed to deteriorate to the point of threatening persons or property and the holder of the right-of-way, after consultation with the Secretary of Agriculture, refuses to perform the repair and maintenance necessary to remove the threat to persons or property, the Secretary shall have the right to undertake such repair and maintenance on the right-of-way and to assess the holder for the costs of such repair and maintenance, regardless of whether the Secretary had required the holder to furnish a bond or other security pursuant to subsection (i) of this section.

**(d) Rights-of-way on certain Federal lands**

With respect to any project or portion thereof that was licensed pursuant to, or granted an exemption from, part I of the Federal Power Act [16 U.S.C. 791a et seq.] which is located on lands subject to a reservation under section 24 of the Federal Power Act [16 U.S.C. 818] and which did not receive a permit, right-of-way or other approval under this section prior to October 24, 1992, no such permit, right-of-way, or other approval shall be required for continued operation, including continued operation pursuant to sec-

tion 15 of the Federal Power Act [16 U.S.C. 808], of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest lands not subject to such reservation.

(Pub. L. 94-579, title V, §501, Oct. 21, 1976, 90 Stat. 2776; Pub. L. 99-545, §1(b), (c), Oct. 27, 1986, 100 Stat. 3047, 3048; Pub. L. 102-486, title XXIV, §2401, Oct. 24, 1992, 106 Stat. 3096.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsecs. (a)(4) and (d), is act June 20, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. Part I of the Act is classified generally to subchapter I (§791a et seq.) of chapter 12 of Title 16. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

This Act, referred to in subsecs. (b)(1) and (c)(3)(C), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-486, §2401(1), inserted “(including public lands, as defined in section 1702(e) of this title, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. 818))”.

Subsec. (a)(4). Pub. L. 102-486, §2401(2), substituted “Federal Energy Regulatory Commission under the Federal Power Act, including part 1 thereof (41 Stat. 1063, 16 U.S.C. 791a-825r).” for “Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791)”. The substitution was made to reflect the probable intent of Congress, in the absence of closing quotations designating the provisions to be struck out.

Subsec. (d). Pub. L. 102-486, §2401(3), added subsec. (d). 1986—Subsec. (b)(3). Pub. L. 99-545, §1(c), added par. (3).

Subsec. (c). Pub. L. 99-545, §1(b), added subsec. (c).

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with land use permits for other associated land uses issued under sections 1761, and 1763 to 1771 of this title, and such functions of Secretary or other official in Department of the Interior related to compliance with land use permits for temporary use of public lands and other associated land uses, issued under sections 1732, 1761, and 1763 to 1771 of this title, with respect to pre-construction, construction, and initial operation of transportation systems for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

**§ 1762. Roads****(a) Authority to acquire, construct, and maintain; financing arrangements**

The Secretary, with respect to the public lands, is authorized to provide for the acquisition, construction, and maintenance of roads within and near the public lands in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management of such lands for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of timber and other products from the public lands, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided*, That, where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of timber and other products from public lands shall not, except when the provisions of the second proviso of this subsection apply, be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate: *Provided further*, That when timber is offered with the condition that the purchaser thereof will build a road or roads in accordance with standards specified in the offer, the purchaser of the timber will be responsible for paying the full costs of construction of such roads.

**(b) Recordation of copies of affected instruments**

Copies of all instruments affecting permanent interests in land executed pursuant to this section shall be recorded in each county where the lands are located.

**(c) Maintenance or reconstruction of facilities by users**

The Secretary may require the user or users of a road, trail, land, or other facility administered by him through the Bureau, including purchasers of Government timber and other products, to maintain such facilities in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a facility to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and over-

lapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

**(d) Fund for user fees for delayed payment to grantor**

Whenever the agreement under which the United States has obtained for the use of, or in connection with, the public lands a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

(Pub. L. 94-579, title V, §502, Oct. 21, 1976, 90 Stat. 2777.)

**§ 1763. Right-of-way corridors; criteria and procedures applicable for designation**

In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary concerned the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this Act. In designating right-of-way corridors and in determining whether to require that rights-of-way be confined to them, the Secretary concerned shall take into consideration national and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary concerned shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing transportation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review.

(Pub. L. 94-579, title V, §503, Oct. 21, 1976, 90 Stat. 2778.)

## REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

## TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with land use permits for other associated land uses issued under sections 1761, and 1763 to 1771 of this title, and such functions of Secretary or other official in Department of the Interior related to compliance with land use permits for temporary use of public lands and other associated land uses, issued under sections 1732, 1761, and 1763 to 1771 of this title, with respect to pre-construction, construction, and initial operation of transportation systems for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alas-