

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as a note under section 1231 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97-98, set out as an Effective Date note under section 4301 of Title 7, Agriculture.

§ 1237. Acquisition and reclamation of land adversely affected by past coal mining practices

(a) Findings of fact; notice; right of entry

If the Secretary or the State pursuant to an approved State program, makes a finding of fact that—

- (1) land or water resources have been adversely affected by past coal mining practices; and
- (2) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
- (3) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or
- (4) the owners will not give permission for the United States, the States, political subdivisions, their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

then, upon giving notice by mail to the owners if known or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality in which the land lies, the Secretary, his agents, employees, or contractors, or the State pursuant to an approved State program, shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: *Provided, however*, That this provision is not intended to create new rights of action or eliminate existing immunities.

(b) Studies or exploratory work

The Secretary, his agents, employees, or contractors or the State pursuant to an approved State program, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or

prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

(c) Requirements for acquisition of affected land

The Secretary or the State pursuant to an approved State program, may acquire any land, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the Secretary determines that acquisition of such land is necessary to successful reclamation and that—

- (1) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; and
- (2) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or
- (3) acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this subchapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(d) Title to affected land; value

Title to all lands acquired pursuant to this section shall be in the name of the United States or, if acquired by a State pursuant to an approved program, title shall be in the name of the State. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

(e) State participation; grants

States are encouraged as part of their approved State programs, to reclaim abandoned and unreclaimed mined lands within their boundaries and, if necessary, to acquire or to transfer such lands to the Secretary or the appropriate State regulatory authority under appropriate Federal regulations. The Secretary is authorized to make grants on a matching basis to States in such amounts as he deems appropriate for the purpose of carrying out the provisions of this subchapter but in no event shall any grant exceed 90 per centum of the cost of acquisition of the lands for which the grant is made. When a State has made any such land available to the Federal Government under this subchapter, such State shall have a preference right to purchase such lands after reclamation at fair market value less the State portion of the original acquisition price. Notwithstanding the provisions of paragraph (1) of subsection (c) of this section, reclaimed land may be sold to the State or local government in which it is located at a price less than fair market value, which in no case shall be less than the cost to the United States of the purchase and reclamation of the land, as negotiated by the Secretary, to be used for a valid public purpose. If any land

sold to a State or local government under this paragraph is not used for a valid public purpose as specified by the Secretary in the terms of the sales agreement then all right, title, and interest in such land shall revert to the United States. Money received from such sale shall be deposited in the fund.

(f) Rules and regulations

The Secretary, in formulating regulations for making grants to the States to acquire land pursuant to this section, shall specify that acquired land meet the criteria provided for in subsections (c) and (d) of this section. The Secretary may provide by regulation that money derived from the lease, rental, or user charges of such acquired land and facilities thereon will be deposited in the fund.

(g) Public sale; notice and hearing

(1) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the Secretary may sell or authorize the States to sell such land by public sale under a system of competitive bidding, at not less than fair market value and under such other regulations promulgated to insure that such lands are put to proper use consistent with local and State land use plans, if any, as determined by the Secretary.

(2) The Secretary or the State pursuant to an approved State program, when requested after appropriate public notice shall hold a public hearing, with the appropriate notice, in the county or counties or the appropriate subdivisions of the State in which lands acquired pursuant to this section are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(h) Construction or rehabilitation of housing for disabled, displaced, or dislocated persons; grants

In addition to the authority to acquire land under subsection (d) of this section the Secretary is authorized to use money in the fund to acquire land by purchase, donation, or condemnation, and to reclaim and transfer acquired land to any State or to a political subdivision thereof, or to any person, firm, association, or corporation, if he determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as provided in section 1240 of this title or persons dislocated as the result of natural disasters or catastrophic failures from any cause. Such activities shall be accomplished under such terms and conditions as the Secretary shall require, which may include transfers of land with or without monetary consideration: *Provided,*

That, to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. No part of the funds provided under this subchapter may be used to pay the actual construction costs of housing. The Secretary may carry out the purposes of this subsection directly or he may make grants and commitments for grants, and may advance money under such terms and conditions as he may require to any State, or any department, agency, or instrumentality of a State, or any public body or nonprofit organization designated by a State.

(Pub. L. 95-87, title IV, § 407, Aug. 3, 1977, 91 Stat. 462; Pub. L. 101-508, title VI, § 6012(d)(4)-(7), Nov. 5, 1990, 104 Stat. 1388-298.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-508, § 6012(d)(4), (5), substituted a semicolon for the period at end of par. (4) and “then, upon giving notice” for “Then, upon giving notice” in concluding provisions.

Subsec. (e). Pub. L. 101-508, § 6012(d)(6), substituted “paragraph (1) of subsection (c) of this section” for “paragraph (1), of this subsection”.

Subsec. (g)(2). Pub. L. 101-508, § 6012(d)(7), substituted “use or” for “use of” before “disposition”.

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Amendment by Pub. L. 101-508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as a note under section 1231 of this title.

§ 1238. Liens

(a) Filing of statement and appraisal

Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the Secretary or the State, pursuant to an approved State program, shall itemize the moneys so expended and may file a statement thereof in the office of the county in which the land lies which has the responsibility under local law for the recording of judgments against land, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the moneys so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this subsection, who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

(b) Petition

The landowner may proceed as provided by local law to petition within sixty days of the filing of the lien, to determine the increase in the market value of the land as a result of the res-