

EXTENSION OF VARIABLE PAYMENT PLAN

Authority of Secretary to extend benefits of variable payment plan to organizations with which he contracts or has contracted for the repayment of construction costs allocated to irrigation on any project undertaken by the United States, including contracts for the storage of water or for the use of stored water under this section, see section 2 of Pub. L. 85-611, Aug. 8, 1958, 72 Stat. 542, set out as a note under section 485h of this title.

SECTION AS UNAFFECTED BY SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of this title.

§ 390a. Repealed. Pub. L. 105-362, title IX, § 901(e)(2), Nov. 10, 1998, 112 Stat. 3289

Section, acts July 31, 1953, ch. 298, title I, 67 Stat. 266; Pub. L. 99-294, § 10, May 12, 1986, 100 Stat. 426, related to conditions precedent for construction of dams, reservoir, or water supply.

Provisions similar to those in this section were contained in act July 9, 1952, ch. 597, title I, 66 Stat. 451, prior to repeal by Pub. L. 105-362, title IX, § 901(e)(1), Nov. 10, 1998, 112 Stat. 3289.

§ 390b. Development of water supplies for domestic, municipal, industrial, and other purposes**(a) Declaration of policy**

It is declared to be the policy of the Congress to recognize the primary responsibilities of the States and local interests in developing water supplies for domestic, municipal, industrial, and other purposes and that the Federal Government should participate and cooperate with States and local interests in developing such water supplies in connection with the construction, maintenance, and operation of Federal navigation, flood control, irrigation, or multiple purpose projects.

(b) Storage in reservoir projects; agreements for payment of cost of construction or modification of projects

In carrying out the policy set forth in this section, it is provided that storage may be included in any reservoir project surveyed, planned, constructed or to be planned, surveyed and/or constructed by the Corps of Engineers or the Bureau of Reclamation to impound water for present or anticipated future demand or need for municipal or industrial water, and the reasonable value thereof may be taken into account in estimating the economic value of the entire project: *Provided*, That the cost of any construction or modification authorized under the provisions of this section shall be determined on the basis that all authorized purposes served by the project shall share equitably in the benefits of multiple purpose construction, as determined by the Secretary of the Army or the Secretary of the Interior, as the case may be: *Provided further*, That before construction or modification of any project including water supply provisions for present demand is initiated, State or local interests shall agree to pay for the cost of such provisions in accordance with the provisions of this section: *And provided further*, That (1) for Corps of Engineers projects, not to exceed 30 percent of the total estimated cost of any project may be allocated to anticipated future

demands, and, (2) for Bureau of Reclamation projects, not to exceed 30 per centum of the total estimated cost of any project may be allocated to anticipated future demands where State or local interests give reasonable assurances, and there is reasonable evidence, that such demands for the use of such storage will be made within a period of time which will permit paying out the costs allocated to water supply within the life of the project: *And provided further*, That for Corps of Engineers projects, the Secretary of the Army may permit the full non-Federal contribution to be made, without interest, during construction of the project, or, with interest, over a period of not more than thirty years from the date of completion, with repayment contracts providing for recalculation of the interest rate at, five-year intervals, and for Bureau of Reclamation projects, the entire amount of the construction costs, including interest during construction, allocated to water supply shall be repaid within the life of the project but in no event to exceed fifty years after the project is first used for the storage of water for water supply purposes, except that (1) no payment need be made with respect to storage for future water supply until such supply is first used, and (2) no interest shall be charged on such cost until such supply is first used, but in no case shall the interest-free period exceed ten years. For Corps of Engineers projects, all annual operation, maintenance, and replacement costs for municipal and industrial water supply storage under the provisions of this section shall be reimbursed from State or local interests on an annual basis. For Corps of Engineers projects, any repayment by a State or local interest shall be made with interest at a rate to be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which costs for the construction of the project are first incurred (or, when a recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs. For Bureau of Reclamation projects, the interest rate used for purposes of computing interest during construction and interest on the unpaid balance shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. The provisions of this subsection insofar as they relate to the Bureau of Reclamation and the Secretary of the Interior shall be alternative to and not a substitute for the provisions of the Reclamation Projects Act of 1939 (53 Stat. 1187) [43 U.S.C. 485 et seq.] relating to the same subject.

(c) Release of future water storage**(1) Establishment of 10-year plans for the utilization of future storage****(A) In general**

For the period beginning 180 days after June 10, 2014, and ending on January 1, 2016,

the Secretary may accept from a State or local interest a plan for the utilization of allocated water storage for future use under this Act.

(B) Contents

A plan submitted under subparagraph (A) shall include—

- (i) a 10-year timetable for the conversion of future use storage to present use; and
- (ii) a schedule of actions that the State or local interest agrees to carry out over a 10-year period, in cooperation with the Secretary, to seek new and alternative users of future water storage that is contracted to the State or local interest on June 10, 2014.

(2) Future water storage

For water resource development projects managed by the Secretary, a State or local interest that the Secretary determines has complied with paragraph (1) may request from the Secretary a release to the United States of any right of the State or local interest to future water storage under this Act that was allocated for future use water supply prior to November 17, 1986.

(3) Administration

(A) In general

Not later than 180 days after receiving a request under paragraph (2), the Secretary shall provide to the applicable State or local interest a written decision on whether the Secretary recommends releasing future water storage rights.

(B) Recommendation

If the Secretary recommends releasing future water storage rights, the Secretary shall include that recommendation in the annual plan submitted under section 2282d of title 33.

(4) Savings clause

Nothing in this subsection authorizes the Secretary to release a State or local interest from a contractual obligation unless specifically authorized by Congress.

(d) Application to other laws

The provisions of this section shall not be construed to modify the provisions of section 701-1 of title 33 and section 390 of this title, as amended and extended, or the provisions of sections 372 and 383 of this title.

(e) Approval of Congress of modifications of reservoir projects

Modifications of a reservoir project heretofore authorized, surveyed, planned, or constructed to include storage as provided in subsection (b) which would seriously affect the purposes for which the project was authorized, surveyed, planned, or constructed, or which would involve major structural or operational changes shall be made only upon the approval of Congress as now provided by law.

(f) Apalachicola-Chattahoochee-Flint River System and Alabama-Coosa-Tallapoosa River System projects

The Committees of jurisdiction are very concerned about the operation of projects in the

Apalachicola-Chattahoochee-Flint River System and the Alabama-Coosa-Tallapoosa River System, and further, the Committees of jurisdiction recognize that this ongoing water resources dispute raises serious concerns related to the authority of the Secretary of the Army to allocate substantial storage at projects to provide local water supply pursuant to the Water Supply Act of 1958 [43 U.S.C. 390b] absent congressional approval. Interstate water disputes of this nature are more properly addressed through interstate water agreements that take into consideration the concerns of all affected States including impacts to other authorized uses of the projects, water supply for communities and major cities in the region, water quality, freshwater flows to communities, rivers, lakes, estuaries, and bays located downstream of projects, agricultural uses, economic development, and other appropriate concerns. To that end, the Committees of jurisdiction strongly urge the Governors of the affected States to reach agreement on an interstate water compact as soon as possible, and we pledge our commitment to work with the affected States to ensure prompt consideration and approval of any such agreement. Absent such action, the Committees of jurisdiction should consider appropriate legislation to address these matters including any necessary clarifications to the Water Supply Act of 1958 or other law. This subsection does not alter existing rights or obligations under law.

(Pub. L. 85-500, title III, §301, July 3, 1958, 72 Stat. 319; Pub. L. 87-88, §10, July 20, 1961, 75 Stat. 210; Pub. L. 99-662, title IX, §932(a), Nov. 17, 1986, 100 Stat. 4196; Pub. L. 113-121, title I, §§1046(d), 1051(a), June 10, 2014, 128 Stat. 1254, 1259.)

REFERENCES IN TEXT

The Reclamation Projects Act of 1939, referred to in subsec. (b), is act Aug. 4, 1939, ch. 418, 53 Stat. 1187, as amended, which is classified principally to subchapter X (§485 et seq.) of this chapter. For complete classification of this Act to the Code, see section 485k of this title and Tables.

This Act, referred to in subsec. (c)(1)(A), (2), probably means the Water Supply Act of 1958. See below.

The Water Supply Act of 1958, referred to in subsec. (f), is title III of Pub. L. 85-500, July 3, 1958, 72 Stat. 319, which enacted this section and enacted a provision set out as a note under this section. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

2014—Subsecs. (c) to (e). Pub. L. 113-121, §1046(d), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (f). Pub. L. 113-121, §1051(a), added subsec. (f).

1986—Subsec. (b). Pub. L. 99-662 inserted in third proviso “(1) for Corps of Engineers projects, not to exceed 30 percent of the total estimated cost of any project may be allocated to anticipated future demands, and, (2) for Bureau of Reclamation projects,” inserted in fourth proviso “for Corps of Engineers projects, the Secretary of the Army may permit the full non-Federal contribution to be made, without interest, during construction of the project, or, with interest, over a period of not more than thirty years from the date of completion, with repayment contracts providing for recalculation of the interest rate at, five-year intervals, and for Bureau of Reclamation projects,” inserted after first sentence “For Corps of Engineers projects, all annual operation, maintenance, and replacement costs for mu-

municipal and industrial water supply storage under the provisions of this section shall be reimbursed from State or local interests on an annual basis. For Corps of Engineers projects, any repayment by a State or local interest shall be made with interest at a rate to be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which costs for the construction of the project are first incurred (or, when a recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs.”, and substituted “For Bureau of Reclamation projects, the interest rate used” for “The interest rate used”.

1961—Subsec. (b). Pub. L. 87-88 substituted provisions permitting not more than 30 per centum of the total estimated cost of any project to be allocated to anticipated future demands where State or local interests give reasonable assurances, and there is reasonable evidence, that such demands for the use of such storage will be made within a period of time which will permit paying out the costs allocated to water supply within the life of the project for provisions which permitted not more than 30 per centum of the total estimated cost of any project to be allocated to anticipated future demands where States or local interests give reasonable assurance that they will contract for the use of storage for anticipated future demands within a period of time which will permit paying out the costs allocated to water supply within the life of the project.

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87-88, §11, July 20, 1961, 75 Stat. 210, provided that: “This Act [amending this section, and sections 1151, 1153 to 1155, 1157 to 1160, 1171 to 1173 of Title 33, Navigation and Navigable Waters, and enacting provisions set out as notes under sections 1151, 1157, and 1159 of Title 33] may be cited as the ‘Federal Water Pollution Control Act Amendments of 1961’.”

SHORT TITLE

Pub. L. 85-500, title III, §302, July 3, 1958, 72 Stat. 320, provided that: “Title III of this Act [enacting this section] may be cited as the ‘Water Supply Act of 1958’.”

AMENDMENT OF CONTRACTS EXISTING PRIOR TO NOVEMBER 17, 1986

Pub. L. 99-662, title IX, §932(b), Nov. 17, 1986, 100 Stat. 4197, provided that: “Nothing in this section [amending this section] shall be deemed to amend or require amendment of any valid contract entered into pursuant to the Water Supply Act of 1958 [this section], or Federal reclamation law and approved by the Secretary of the Army or the Secretary of the Interior prior to the date of enactment of this Act [Nov. 17, 1986].”

§ 390b-1. Improving planning and administration of water supply storage

(1) In general

For each water supply feature of a reservoir managed by the Secretary, the Secretary shall notify the applicable non-Federal interests before each fiscal year of the anticipated operation and maintenance activities for that fiscal year and each of the subsequent 4 fiscal years (including the cost of those activities) for which the non-Federal interests are required to contribute amounts.

(2) Clarification

The information provided to a non-Federal interest under paragraph (1) shall—

(A) be an estimate which the non-Federal interest may use for planning purposes; and

(B) not be construed as or relied upon by the non-Federal interest as the actual amounts that the non-Federal interest will be required to contribute.

(Pub. L. 113-121, title I, §1046(b), June 10, 2014, 128 Stat. 1254.)

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113-121, set out as a note under section 2201 of Title 33, Navigation and Navigable Waters.

§ 390c. Water reservoirs; interests of States and local agencies in storage space

Cognizant that many States and local interests have in the past contributed to the Government, or have contracted to pay to the Government over a specified period of years, money equivalent to the cost of providing for them water storage space at Government-owned dams and reservoirs, constructed by the Corps of Engineers of the United States Army, and that such practices will continue, and, that no law defines the duration of their interest in such storage space, and realizing that such States and local interests assume the obligation of paying substantially their portion of the cost of providing such facilities, their right to use may be continued during the existence of the facility as hereinafter provided.

(Pub. L. 88-140, §1, Oct. 16, 1963, 77 Stat. 249.)

§ 390d. Dams and reservoirs wherein costs thereof, or rights thereto, have been acquired by local interests

Sections 390c to 390f of this title are applicable to all dams and reservoirs heretofore or hereafter constructed by the United States Government (acting through the Corps of Engineers of the United States Army) wherein either a part of the construction cost thereof shall have been contributed or may be contributed by States or local interests (hereinafter called “local interests”) or local interests have acquired or may acquire rights to utilize certain storage space thereof by making payments during the period of such use as specified in the agreement with the Government and wherein the amount of money paid, exclusive of interest, is equivalent to the cost of providing that part of such dam and reservoir which is allocated to such use, whether such share of cost shall have been determined by the “incremental cost” method or by the “separable costs-remaining benefits” method or by any other method. Included among the dams and reservoirs affected by sections 390c to 390f of this title are those constructed by the Corps of Engineers of the Department of the Army, but nothing in sections 390c to 390f of this title shall be construed to affect or modify section 390 of this title.

(Pub. L. 88-140, §2, Oct. 16, 1963, 77 Stat. 249.)

§ 390e. Rights, acquisition and availability of; obligation for operation and maintenance; costs for reconstruction, rehabilitation, or replacement; use during Government operation or by contract

The right thus acquired by any such local interest is declared to be available to the local in-