

AMENDMENTS

1975—Subsecs. (f) to (i). Pub. L. 93-608 redesignated subsecs. (g) to (i) as (f) to (h), respectively. Former subsec. (f), which required a report to Congress by the Secretary on classifications and reclassifications or project lands, was struck out.

§ 485h. New projects; sale of water and electric power; lease of power privileges

(a) Findings of Secretary

No expenditures for the construction of any new project, new division of a project, or new supplemental works on a project shall be made, nor shall estimates be submitted therefor, by the Secretary until after he has made an investigation thereof and has submitted to the President and to the Congress his report and findings on—

- (1) the engineering feasibility of the proposed construction;
- (2) the estimated cost of the proposed construction;
- (3) the part of the estimated cost which can properly be allocated to irrigation and probably be repaid by the water users;
- (4) the part of the estimated cost which can properly be allocated to power and probably be returned to the United States in net power revenues;
- (5) the part of the estimated cost which can properly be allocated to municipal water supply or other miscellaneous purposes and probably be returned to the United States.

If the proposed construction is found by the Secretary to have engineering feasibility and if the repayable and returnable allocations to irrigation, power, and municipal water supply or other miscellaneous purposes found by the Secretary to be proper, together with any allocation to flood control or navigation made under subsection (b) of this section, equal the total estimated cost of construction as determined by the Secretary, then the new project, new division of a project, or supplemental works on a project, covered by his findings, shall be deemed authorized and may be undertaken by the Secretary. If all such allocations do not equal said total estimated cost, then said new project, new division, or new supplemental works may be undertaken by the Secretary only after provision therefor has been made by Act of Congress enacted after the Secretary has submitted to the President and the Congress the report and findings involved.

(b) Allocation of part of cost to flood control or navigation

In connection with any new project, new division of a project, or supplemental works on a project there may be allocated to flood control or navigation the part of said total estimated cost which the Secretary may find to be proper. Items for any such allocations made in connection with projects which may be undertaken pursuant to subsection (a) of this section shall be included in the estimates of appropriations submitted by the Secretary for said projects, and funds for such portions of the projects shall not become available except as directly appropriated or allotted to the Department of the In-

terior. In connection with the making of such an allocation, the Secretary shall consult with the Chief of Engineers and the Secretary of the Army, and may perform any of the necessary investigations or studies under a cooperative agreement with the Secretary of the Army. In the event of such an allocation the Secretary of the Interior shall operate the project for purposes of flood control or navigation, to the extent justified by said allocation therefor.

(c) Furnishing water to municipalities; sale of electric power; lease of power privileges

(1) The Secretary is authorized to enter into contracts to furnish water for municipal water supply or miscellaneous purposes: *Provided*, That any such contract either (A) shall require repayment to the United States, over a period of not to exceed forty years from the year in which water is first delivered for the use of the contracting party, with interest not exceeding the rate of 3½ per centum per annum if the Secretary determines an interest charge to be proper, of an appropriate share as determined by the Secretary of that part of the construction costs allocated by him to municipal water supply or other miscellaneous purposes; or (B) shall be for such periods, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year. Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary deems proper: *Provided further*, That in said sales or leases preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 [7 U.S.C. 901 et seq.]. Nothing in this subsection shall be applicable to provisions in existing contracts, made pursuant to law, for the use of power and miscellaneous revenues of a project for the benefit of users of water from such project. The provisions of this subsection respecting the sales of electric power and leases of power privileges shall be an authorization in addition to and alternative to any authority in existing laws related to particular projects, including small conduit hydropower development. No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes.

(2)(A) When carrying out this subsection, the Secretary shall first offer the lease of power

privilege to an irrigation district or water users association operating the applicable transferred conduit, or to the irrigation district or water users association receiving water from the applicable reserved conduit. The Secretary shall determine a reasonable time frame for the irrigation district or water users association to accept or reject a lease of power privilege offer for a small conduit hydropower project.

(B) If the irrigation district or water users association elects not to accept¹ a lease of power privilege offer under subparagraph (A), the Secretary shall offer the lease of power privilege to other parties in accordance with this subsection.

(3) The Bureau of Reclamation shall apply its categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to small conduit hydropower development under this subsection, excluding siting of associated transmission facilities on Federal lands.

(4) The Power Resources Office of the Bureau of Reclamation shall be the lead office of small conduit hydropower policy and procedure-setting activities conducted under this subsection.

(5) Nothing in this subsection shall obligate the Western Area Power Administration, the Bonneville Power Administration, or the Southwestern Power Administration to purchase or market any of the power produced by the facilities covered under this subsection and none of the costs associated with production or delivery of such power shall be assigned to project purposes for inclusion in project rates.

(6) Nothing in this subsection shall alter or impede the delivery and management of water by Bureau of Reclamation facilities, as water used for conduit hydropower generation shall be deemed incidental to use of water for the original project purposes. Lease of power privilege shall be made only when, in the judgment of the Secretary, the exercise of the lease will not be incompatible with the purposes of the project or division involved, nor shall it create any unmitigated financial or physical impacts to the project or division involved. The Secretary shall notify and consult with the irrigation district or water users association operating the transferred conduit before offering the lease of power privilege and shall prescribe terms and conditions that will adequately protect the planning, design, construction, operation, maintenance, and other interests of the United States and the project or division involved.

(7) Nothing in this subsection shall alter or affect any existing agreements for the development of conduit hydropower projects or disposition of revenues.

(8) Nothing in this subsection shall alter or affect any existing preliminary permit, license, or exemption issued by the Federal Energy Regulatory Commission under Part I of the Federal Power Act (16 U.S.C. 792 et seq.) or any project for which an application has been filed with the Federal Energy Regulatory Commission as of August 9, 2013.

(9) In this subsection:

(A) CONDUIT.—The term “conduit” means any Bureau of Reclamation tunnel, canal,

pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(B) IRRIGATION DISTRICT.—The term “irrigation district” means any irrigation, water conservation or conservancy, multicounty water conservation or conservancy district, or any separate public entity composed of two or more such districts and jointly exercising powers of its member districts.

(C) RESERVED CONDUIT.—The term “reserved conduit” means any conduit that is included in project works the care, operation, and maintenance of which has been reserved by the Secretary, through the Commissioner of the Bureau of Reclamation.

(D) TRANSFERRED CONDUIT.—The term “transferred conduit” means any conduit that is included in project works the care, operation, and maintenance of which has been transferred to a legally organized water users association or irrigation district.

(E) SMALL CONDUIT HYDROPOWER.—The term “small conduit hydropower” means a facility capable of producing 5 megawatts or less of electric capacity.

(d) Delivery of water for irrigation; repayment contract prerequisites

No water may be delivered for irrigation of lands in connection with any new project, new division of a project, or supplemental works on a project until an organization, satisfactory in form and powers to the Secretary, has entered into a repayment contract with the United States, in a form satisfactory to the Secretary, providing among other things—

(1) That the Secretary may fix a development period for each irrigation block, if any, of not to exceed ten years from and including the first calendar year in which water is delivered for the lands in said block; and that during the development period water shall be delivered to the lands in the irrigation block involved at a charge per annum per acre-foot, or other charge, to be fixed by the Secretary each year and to be paid in advance of delivery of water: *Provided*, That where the lands included in an irrigation block are for the most part lands owned by the United States, the Secretary, prior to execution of a repayment contract, may fix a development period, but in such case execution of such a contract shall be a condition precedent to delivery of water after the close of the development period: *Provided further*, That when the Secretary, by contract or by notice given thereunder, shall have fixed a development period of less than ten years, and at any time thereafter but before commencement of the repayment period conditions arise which in the judgment of the Secretary would have justified the fixing of a longer period, he may amend such contract or notice to extend such development period to a date not to exceed ten years from its commencement, and in a case where no development period was provided, he may amend such contract within the same limits: *Provided further*, That when the Secretary shall have de-

¹ So in original. Probably should be preceded by “to”.

ferred the payment of all or any part of any installments of construction charges under any repayment contract pursuant to the authority of the Act of September 21, 1959 (73 Stat. 584), he may, at any time prior to the due date prescribed for the first installment not reduced by such deferment, and by agreement with the contracting organization, terminate the supplemental contract by which such deferment was effected, credit the construction payments made, and exercise the authority granted in this section. After the close of the development period, any such charges collected and which the Secretary determines to be in excess of the cost of the operation and maintenance during the development period shall be credited to the construction cost of the project in the manner determined by the Secretary.

(2) That the part of the construction costs allocated by the Secretary to irrigation shall be included in a general repayment obligation of the organization; and that the organization may vary its distribution of construction charges in a manner that takes into account the productivity of the various classes of lands and the benefits accruing to the lands by reason of the construction: *Provided*, That no distribution of construction charges over the lands included in the organization shall in any manner be deemed to relieve the organization or any party or any land therein of the organization's general obligation to the United States.

(3) That the general repayment obligation of the organization shall be spread in annual installments, of the number and amounts fixed by the Secretary, over a period of not more than 40 years, exclusive of any development period fixed under paragraph (1) of this subsection, for any project contract unit or, if the project contract unit be divided into two or more irrigation blocks, for any such block, or as near to said period of not more than forty years as is consistent with the adoption and operation of a variable payment formula which, being based on full repayment within such period under average conditions, permits variance in the required annual payments in the light of economic factors pertinent to the ability of the organization to pay.

(4) That the first annual installment for any project contract unit, or for any irrigation block, as the case may be, shall accrue, on the date fixed by the Secretary, in the year after the last year of the development period or, if there be not development period, in the calendar year after the Secretary announces that the construction contemplated in the repayment contract is substantially completed or is advanced to a point where delivery of water can be made to substantially all of the lands in said unit or block to be irrigated; and if there be no development period fixed, that prior to and including the year in which the Secretary makes said announcement water shall be delivered only on the toll charge basis hereinbefore provided for development periods.

(e) Contracts to furnish water

In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of

this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short- or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d).

(f) Public participation

No less than sixty days before entering into or amending any repayment contract or any contract for the delivery of irrigation water (except any contract for the delivery of surplus or interim irrigation water whose duration is for one year or less) the Secretary shall—

(1) publish notice of the proposed contract or amendment in newspapers of general circulation in the affected area and shall make reasonable efforts to otherwise notify interested parties which may be affected by such contract or amendment, together with information indicating to whom comments or inquiries concerning the proposed actions can be addressed; and

(2) provide an opportunity for submission of written data, views and arguments, and shall consider all substantive comments so received.

(Aug. 4, 1939, ch. 418, § 9, 53 Stat. 1193; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501; Pub. L. 85-611, §§ 1, 3, Aug. 8, 1958, 72 Stat. 542, 543; Pub. L. 87-613, § 2, Aug. 28, 1962, 76 Stat. 407; Pub. L. 97-293, title II, § 226, Oct. 12, 1982, 96 Stat. 1273; Pub. L. 113-24, § 2, Aug. 9, 2013, 127 Stat. 498.)

REFERENCES IN TEXT

The Rural Electrification Act of 1936, referred to in subsec. (c)(1), is act May 20, 1936, ch. 432, 49 Stat. 1363, as amended, which is classified generally to chapter 31 (§901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c)(3), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Federal Power Act, referred to in subsec. (c)(8), is act June 10, 1920, ch. 285, 41 Stat. 1063. Part I of the Act is classified generally to subchapter I (§791a et seq.) of chapter 12 of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

Act of September 21, 1959, referred to in subsec. (d)(1), is Pub. L. 86-308, Sept. 21, 1959, 73 Stat. 584, which

amended section 485b-1 of this title, enacted provisions set out as a note under section 485b-1 of this title, and amended provisions set out as a note under section 485b of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2013—Subsec. (c). Pub. L. 113-24 designated existing provisions as par. (1) and redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), substituted “respecting the sales of electric power and leases of power privileges shall be an authorization in addition to and alternative to any authority in existing laws related to particular projects, including small conduit hydropower development” for “respecting the terms of sales of electric power and leases of power privileges shall be in addition and alternative to any authority in existing laws relating to particular projects”, and added pars. (2) to (9).

1982—Subsec. (f). Pub. L. 97-293 added subsec. (f).

1962—Subsec. (d)(1). Pub. L. 87-613 authorized the Secretary, when a development period of less than ten years was fixed by contract and, before repayment period conditions arose which would justify a longer period, to amend such contract to extend such period to not exceed ten years from its start, and where no period was provided, to grant a period not to exceed ten years, and where he deferred payment of any construction charges pursuant to act of September 21, 1959, authorized him, prior to the due date of the first installment not reduced by such deferment, by agreement with the contracting organization, to terminate the supplemental contract by which such deferment was effected, credit the construction payments made, and exercise the authority granted in this section.

1958—Subsec. (d)(3). Pub. L. 85-611, §1, permitted the general repayment obligation to be spread in annual installments as near to the period of not more than 40 years as is consistent with the adoption and operation of a variable payment formula which permits variance in the required annual payments.

Subsec. (d)(5). Pub. L. 85-611, §3, struck out provisions which required repayment contracts to provide that each year the installment of the organization's repayment obligation scheduled for such year shall be the construction charges due and payable for such year, or that each year the installment for such year of the organization's repayment obligation shall be increased or decreased on the basis of the normal and percentages plan provided in former section 485c of this title for modification of existing obligations to pay construction charges, and the amount of the annual installment, as thus increased or decreased, shall be the construction charges due and payable for such year.

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.

CONSTRUCTION WITH SECTION 101-1 OF TITLE 33

Section as amended and modified by act Dec. 22, 1944, ch. 665, §1(c), 58 Stat. 665, see section 701-1(c) of Title 33, Navigation and Navigable Waters.

MUNICIPAL, DOMESTIC, AND INDUSTRIAL WATER SUPPLY CONTRACTS; RENEWALS; CONFORMING AMENDMENTS TO EXISTING CONTRACTS; “LONG-TERM CONTRACT” DEFINED

Pub. L. 88-44, June 21, 1963, 77 Stat. 68, provided: “That the Secretary of the Interior shall, upon request of the other party to any long-term contract for municipal, domestic, or industrial water supply hereafter en-

tered into under clause (2) in the proviso to the first sentence of section 9, subsection (c), of the Reclamation Project Act of 1939 (53 Stat. 1195, 43 U.S.C. 485h), include provision for renewal thereof subject to renegotiation of (1) the charges set forth in the contract in the light of circumstances prevailing at the time of renewal and (2) any other matters with respect to which the right to renegotiate is reserved in the contract. Any right of renewal shall be exercised within such reasonable time prior to the expiration of the contract as the parties shall have agreed upon and set forth therein.

“SEC. 2. The Secretary shall also, upon like request, provide in any such long-term contract or in any contract entered into under clause (1) of the proviso aforesaid that the other party to the contract shall, during the term of the contract and of any renewal thereof and subject to fulfillment of all obligations thereunder, have a first right for the purposes stated in the contract (to which right the holders of any other type of contract for municipal, domestic, or industrial water supply shall be subordinate) to a stated share or quantity of the project's water supply available for municipal, domestic, or industrial use.

“SEC. 3. The Secretary is hereby authorized, upon request by the other party, to negotiate amendments to existing contracts entered into pursuant to the first sentence of section 9, subsection (c), of the Reclamation Project Act of 1939 [subsec. (c) of this section] to conform said contracts to the provisions of this Act.

“SEC. 4. As used in this Act, the term ‘long-term contract’ means any contract the term of which is more than ten years.”

EXTENSION OF VARIABLE PAYMENT PLAN TO OTHER ORGANIZATIONS

Pub. L. 85-611, §2, Aug. 8, 1958, 72 Stat. 542, provided that: “The benefits of a variable payment plan as provided in the amendment to paragraph (3) of section 9, subsection (d), of the Reclamation Project Act of 1939 [subsec. (d)(3) of this section] contained in section 1 of this Act may be extended by the Secretary to any organization 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 under the Act of August 11, 1939 (53 Stat. 1418), as amended [section 590y et seq. of Title 16, Conservation], and contracts for the storage of water or for the use of stored water under section 8 of the Act of December 22, 1944 (58 Stat. 887, 891) [section 390 of this title]. In the case of any project for which a maximum repayment period longer than that prescribed in said paragraph (3) has been or is allowed by Act of Congress, the period so allowed may be used by the Secretary in lieu of the forty-year period provided in said amendment to paragraph (3).”

§ 485h-1. Administration of repayment contracts and long-term contracts to furnish water; renewal and conversion; credit for payments; right to available water supply; rates; construction component

In administering subsections (d) and (e) of section 485h of this title, the Secretary of the Interior shall—

(1) include in any long-term contract hereafter entered into under subsection (e) of section 485h of this title provision, if the other contracting party so requests, for renewal thereof under stated terms and conditions mutually agreeable to the parties. Such terms and conditions shall provide for an increase or decrease in the charges set forth in the contract to reflect, among other things, increases or decreases in construction, operation, and maintenance costs and improvement or deterioration in the party's repayment capacity.