



An Act

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To provide uniform policies with respect to recreation and fish and wildlife benefits and costs of Federal multiple-purpose water resource projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the policy of the Congress and the intent of this Act that (a) in investigating and planning any Federal navigation, flood control, reclamation, hydroelectric, or multiple-purpose water resource project, full consideration shall be given to the opportunities, if any, which the project affords for outdoor recreation and for fish and wildlife enhancement and that, wherever any such project can reasonably serve either or both of these purposes consistently with the provisions of this Act, it shall be constructed, operated, and maintained accordingly; (b) planning with respect to the development of the recreation potential of any such project shall be based on the coordination of the recreational use of the project area with the use of existing and planned Federal, State, or local public recreation developments; and (c) project construction agencies shall encourage non-Federal public bodies to administer project land and water areas for recreation and fish and wildlife enhancement purposes and operate, maintain, and replace facilities provided for those purposes unless such areas or facilities are included or proposed for inclusion within a national recreation area, or are appropriate for administration by a Federal agency as a part of the national forest system, as a part of the public lands classified for retention in Federal ownership, or in connection with an authorized Federal program for the conservation and development of fish and wildlife.

Federal Water
Project Recreation Act.

79 STAT. 213.
79 STAT. 214.

SEC. 2. (a) If, before authorization of a project, non-Federal public bodies indicate their intent in writing to agree to administer project land and water areas for recreation or fish and wildlife enhancement or for both of these purposes pursuant to the plan for the development of the project approved by the head of the agency having administrative jurisdiction over it and to bear not less than one-half the separable costs of the project allocated to either or both of said purposes, as the case may be, and all the costs of operation, maintenance, and replacement incurred therefor—

Non-Federal
public bodies.
Project administration.

(1) the benefits of the project to said purpose or purposes shall be taken into account in determining the economic benefits of the project;

(2) costs shall be allocated to said purpose or purposes and to other purposes in a manner which will insure that all project purposes share equitably in the advantages of multiple-purpose construction: *Provided*, That the costs allocated to recreation or fish and wildlife enhancement shall not exceed the lesser of the benefits from those functions or the costs of providing recreation or fish and wildlife enhancement benefits of reasonably equivalent use and location by the least costly alternative means; and

(3) not more than one-half the separable costs and all the joint costs of the project allocated to recreation and fish and wildlife enhancement shall be borne by the United States and be non-reimbursable.

Projects authorized during the calendar year 1965 may include recreation and fish and wildlife enhancement on the foregoing basis without

Projects for
1965, exception.

the required indication of intent. Execution of an agreement as aforesaid shall be a prerequisite to commencement of construction of any project to which this subsection is applicable.

Non-Federal share
of costs.

(b) The non-Federal share of the separable costs of the project allocated to recreation and fish and wildlife enhancement shall be borne by non-Federal interests, under either or both of the following methods as may be determined appropriate by the head of the Federal agency having jurisdiction over the project: (1) payment, or provision of lands, interests therein, or facilities for the project; or (2) repayment, with interest at a rate comparable to that for other interest-bearing functions of Federal water resource projects, within fifty years of first use of project recreation or fish and wildlife enhancement facilities: *Provided*, That the source of repayment may be limited to entrance and user fees or charges collected at the project by non-Federal interests if the fee schedule and the portion of fees dedicated to repayment are established on a basis calculated to achieve repayment as aforesaid and are made subject to review and renegotiation at intervals of not more than five years.

Non-reimbursable
costs.

SEC. 3. (a) No facilities or project modifications which will furnish recreation or fish and wildlife enhancement benefits shall be provided in the absence of the indication of intent with respect thereto specified in subsection 2(a) of this Act unless (1) such facilities or modifications serve other project purposes and are justified thereby without regard to such incidental recreation or fish and wildlife enhancement benefits as they may have or (2) they are minimum facilities which are required for the public health and safety and are located at access points provided by roads existing at the time of project construction or constructed for the administration and management of the project.

79 STAT. 214.

79 STAT. 215.

Calculation of the recreation and fish and wildlife enhancement benefits in any such case shall be based on the number of visitor-days anticipated in the absence of recreation and fish and wildlife enhancement facilities or modifications except as hereinbefore provided and on the value per visitor-day of the project without such facilities or modifications. Project costs allocated to recreation and fish and wildlife enhancement on this basis shall be nonreimbursable.

Provisions for
acquisition of
lands.

(b) Notwithstanding the absence of an indication of intent as specified in subsection 2(a), lands may be provided in connection with project construction to preserve the recreation and fish and wildlife enhancement potential of the project:

(1) If non-Federal public bodies execute an agreement within ten years after initial operation of the project (which agreement shall provide that the non-Federal public bodies will administer project land and water areas for recreation or fish and wildlife enhancement or both pursuant to the plan for the development of the project approved by the head of the agency having administrative jurisdiction over it and will bear not less than one-half the costs of lands, facilities, and project modifications provided for either or both of those purposes, as the case may be, and all costs of operation, maintenance, and replacement attributable thereto) the remainder of the costs of lands, facilities, and project modifications provided pursuant to this paragraph shall be nonreimbursable. Such agreement and subsequent development, however, shall not be the basis for any reallocation of joint costs of the project to recreation or fish and wildlife enhancement.

(2) If, within ten years after initial operation of the project there is not an executed agreement as specified in paragraph (1) of this subsection, the head of the agency having jurisdiction over

the project may utilize the lands for any lawful purpose within the jurisdiction of his agency, or may offer the land for sale to its immediate prior owner or his immediate heirs at its appraised fair market value as approved by the head of the agency at the time of offer or, if a firm agreement by said owner or his immediate heirs is not executed within ninety days of the date of the offer, may transfer custody of the lands to another Federal agency for use for any lawful purpose within the jurisdiction of that agency, or may lease the lands to a non-Federal public body, or may transfer the lands to the Administrator of General Services for disposition in accordance with the surplus property laws of the United States. In no case shall the lands be used or made available for use for any purpose in conflict with the purposes for which the project was constructed, and in every case except that of an offer to purchase made, as hereinbefore provided, by the prior owner or his heirs preference shall be given to uses which will preserve and promote the recreation and fish and wildlife enhancement potential of the project or, in the absence thereof, will not detract from that potential.

SEC. 4. At projects, the construction of which has commenced or been completed as of the effective date of this Act, where non-Federal public bodies agree to administer project land and water areas for recreation and fish and wildlife enhancement purposes and to bear the costs of operation, maintenance, and replacement of existing facilities servicing those purposes, such facilities and appropriate project lands may be leased to non-Federal public bodies.

Lease of facilities and lands to non-Federal public bodies.

SEC. 5. Nothing herein shall be construed as preventing or discouraging postauthorization development of any project for recreation or fish and wildlife enhancement or both by non-Federal public bodies pursuant to agreement with the head of the Federal agency having jurisdiction over the project. Such development shall not be the basis for any allocation or reallocation of project costs to recreation or fish and wildlife enhancement.

79 STAT: 215.
79 STAT: 216.

SEC. 6. (a) The views of the Secretary of the Interior developed in accordance with section 3 of the Act of May 28, 1963 (77 Stat. 49); with respect to the outdoor recreation aspects shall be set forth in any report of any project or appropriate unit thereof within the purview of this Act. Such views shall include a report on the extent to which the proposed recreation and fish and wildlife development conforms to and is in accord with the State comprehensive plan developed pursuant to subsection 5(d) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897).

Outdoor recreation provisions.
16 USC 4601-2.

(b) The first proviso of subsection 2(d) of the Act of August 12, 1955 (72 Stat. 563; 16 U.S.C. 662(d)), is amended to read as follows: "Provided, That such cost attributable to the development and improvement of wildlife shall not extend beyond that necessary for (1) land acquisition, (2) facilities as specifically recommended in water resource project reports, (3) modification of the project, and (4) modification of project operations, but shall not include the operation of wildlife facilities." The second proviso of subsection 2(d) of said Act is hereby repealed.

16 USC 4601-8.
Wildlife project costs.

(c) Expenditures for lands or interests in lands hereafter acquired by project construction agencies for the establishment of migratory waterfowl refuges recommended by the Secretary of the Interior at Federal water resource projects, when such lands or interests in lands would not have been acquired but for the establishment of a migratory waterfowl refuge at the project, shall not exceed \$28,000,000: Pro-

Repeal.
Migratory waterfowl refuges, establishment.
Limitation.

vided, That the aforementioned expenditure limitation in this subsection shall not apply to the costs of mitigating damages to migratory waterfowl caused by such water resource project.

Nonapplicability provisions.
70 Stat. 1044.
43 USC 422k.
68 Stat. 666.
16 USC 1001 note.

(d) This Act shall not apply to the Tennessee Valley Authority, nor to projects constructed under authority of the Small Reclamation Projects Act, as amended, or under authority of the Watershed Protection and Flood Prevention Act, as amended.

(e) Sections 2, 3, 4, and 5 of this Act shall not apply to nonreservoir local flood control projects, beach erosion control projects, small boat harbor projects, hurricane protection projects, or to project areas or facilities authorized by law for inclusion within a national recreation area or appropriate for administration by a Federal agency as a part of the national forest system, as a part of the public lands classified for retention in Federal ownership, or in connection with an authorized Federal program for the conservation and development of fish and wildlife.

--- "nonreimbursable."

(f) As used in this Act, the term "nonreimbursable" shall not be construed to prohibit the imposition of entrance, admission, and other recreation user fees or charges.

16 USC 4601-9.

(g) Subsection 6(a) (2) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) shall not apply to costs allocated to recreation and fish and wildlife enhancement which are borne by the United States as a nonreimbursable project cost pursuant to subsection 2(a) or subsection 3(b) (1) of this Act.

Disposition of payments and repayments.

(h) All payments and repayment by non-Federal public bodies under the provisions of this Act shall be deposited in the Treasury as miscellaneous receipts, and revenue from the conveyance by deed, lease, or otherwise, of lands under subsection 3(b) (2) of this Act shall be deposited in the Land and Water Conservation Fund.

Reservoir projects.
32 Stat. 388.
43 USC 371 note.
79 STAT. 216.
79 STAT. 217.

SEC. 7. (a) The Secretary is authorized, in conjunction with any reservoir heretofore constructed by him pursuant to the Federal reclamation laws or any reservoir which is otherwise under his control, except reservoirs within national wildlife refuges, to investigate, plan, construct, operate and maintain, or otherwise provide for public outdoor recreation and fish and wildlife enhancement facilities, to acquire or otherwise make available such adjacent lands or interests therein as are necessary for public outdoor recreation or fish and wildlife use, and to provide for public use and enjoyment of project lands, facilities, and water areas in a manner coordinated with the other project purposes: *Provided*, That not more than \$100,000 shall be available to carry out the provisions of this subsection at any one reservoir. Lands, facilities and project modifications for the purposes of this subsection may be provided only after an agreement in accordance with subsection 3(b) of this Act has been executed.

Limitation.

Agreements with Federal agencies, etc.

(b) The Secretary of the Interior is authorized to enter into agreements with Federal agencies or State or local public bodies for the administration of project land and water areas and the operation, maintenance, and replacement of facilities and to transfer project lands or facilities to Federal agencies or State or local public bodies by lease agreement or exchange upon such terms and conditions as will best promote the development and operation of such lands or facilities in the public interest for recreation and fish and wildlife enhancement purposes.

Transfer of lands.

(c) No lands under the jurisdiction of any other Federal agency may be included for or devoted to recreation or fish and wildlife purposes under the authority of this section without the consent of the head of such agency; and the head of any such agency is authorized

\$100,000
LIMIT

to transfer any such lands to the jurisdiction of the Secretary of the Interior for purposes of this section. The Secretary of the Interior is authorized to transfer jurisdiction over project lands within or adjacent to the exterior boundaries of national forests and facilities thereon to the Secretary of Agriculture for recreation and other national forest system purposes; and such transfer shall be made in each case in which the project reservoir area is located wholly within the exterior boundaries of a national forest unless the Secretaries of Agriculture and Interior jointly determine otherwise. Where any project lands are transferred hereunder to the jurisdiction of the Secretary of Agriculture, the lands involved shall become national forest lands: Provided, That the lands and waters within the flow lines of any reservoir or otherwise needed or used for the operation of the project for other purposes shall continue to be administered by the Secretary of the Interior to the extent he determines to be necessary for such operation. Nothing herein shall limit the authority of the Secretary of the Interior granted by existing provisions of law relating to recreation or fish and wildlife development in connection with water resource projects or to disposition of public lands for such purposes.

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Sec. 8. Effective on and after July 1, 1966, neither the Secretary of the Interior nor any bureau nor any person acting under his authority shall engage in the preparation of any feasibility report under reclamation law with respect to any water resource project unless the preparation of such feasibility report has been specifically authorized by law, any other provision of law to the contrary notwithstanding.

Feasibility reports.

Sec. 9. Nothing contained in this Act shall be taken to authorize or to sanction the construction under the Federal reclamation laws or under any Rivers and Harbors or Flood Control Act of any project in which the sum of the allocations to recreation and fish and wildlife enhancement exceeds the sum of the allocations to irrigation, hydroelectric power, municipal, domestic and industrial water supply, navigation, and flood control, except that this section shall not apply to any such project for the enhancement of anadromous fisheries, shrimp, or for the conservation of migratory birds protected by treaty, when each of the other functions of such a project has, of itself, a favorable benefit-cost ratio.

Project allocations.
32 Stat. 388.
43 USC 371 note.

79 STAT. 217.
79 STAT. 218.

Sec. 10. As used in this Act:

Definitions.

(a) The term "project" shall mean a project or any appropriate unit thereof.

(b) The term "separable costs," as applied to any project purpose, means the difference between the capital cost of the entire multiple-purpose project and the capital cost of the project with the purpose omitted.

(c) The term "joint costs" means the difference between the capital cost of the entire multiple-purpose project and the sum of the separable costs for all project purposes.

(d) The term "feasibility report" shall mean any report of the scope required by the Congress when formally considering authorization of the project of which the report treats.

(e) The term "capital cost" includes interest during construction, wherever appropriate.

Sec. 11. Section 2, subsection (a) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) is hereby amended by striking out the words "notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury:" and

Entrance and user fees.
16 USC 4601-5.

inserting in lieu thereof the words "notwithstanding any other provision of law;" and by striking out the words "or any provision of law that provides that any fees or charges collected at particular Federal areas shall be used for or credited to specific purposes or special funds as authorized by that provision of law" and inserting in lieu thereof "or affect any contract heretofore entered into by the United States that provides that such revenues collected at particular Federal areas shall be credited to specific purposes".

Short title.

SEC. 12. This Act may be cited as the "Federal Water Project Recreation Act".

Approved July 9, 1965.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 254 accompanying H. R. 5269 (Comm. on Interior & Insular Affairs) and No. 538 (Comm. of Conference).

SENATE REPORT No. 149 (Comm. on Interior & Insular Affairs).
CONGRESSIONAL RECORD, Vol. 111, (1965):

Apr. 13: Considered and passed Senate.
May 18: Considered and passed House, amended, in lieu of H. R. 5269.
June 23: House agreed to conference report.
June 25: Senate agreed to conference report.

FEDERAL WATER PROJECT RECREATION ACT

An act to provide uniform policies with respect to recreation and fish and wildlife benefits and costs of Federal multiple-purpose water resource projects, and for other purposes. (Act of July 9, 1965, Public Law 89-72, 79 Stat. 213)

[Sec. 1. Congressional policy.]—It is the policy of the Congress and the intent of this Act that (a) in investigating and planning any Federal navigation, flood control, reclamation, hydroelectric, or multiple-purpose water resource project, full consideration shall be given to the opportunities, if any, which the project affords for outdoor recreation and for fish and wildlife enhancement and that, wherever any such project can reasonably serve either or both of these purposes consistently with the provisions of this Act, it shall be constructed, operated, and maintained accordingly; (b) planning with respect to the development of the recreation potential of any such project shall be based on the coordination of the recreational use of the project area with the use of existing and planned Federal, State, or local public recreation developments; and (c) project construction agencies shall encourage non-Federal public bodies to administer project land and water areas for recreation and fish and wildlife enhancement purposes and operate, maintain, and replace facilities provided for those purposes unless such areas or facilities are included or proposed for inclusion within a national recreation area, or are appropriate for administration by a Federal agency as a part of the national forest system, as a part of the public lands classified for retention in Federal ownership, or in connection with an authorized Federal program for the conservation and development of fish and wildlife. (79 Stat. 213; 16 U.S.C. § 460f-12)

Sec. 2. [Non-Federal administration—Cost sharing.]—(a) If, before authorization of a project, non-Federal public bodies indicate their intent in writing to agree to administer project land and water areas for recreation or fish and wildlife enhancement or for both of these purposes pursuant to the plan for the development of the project approved by the head of the agency having administrative jurisdiction over it and to bear not less than one-half the separable costs of the project allocated to either or both of said purposes, as the case may be, and all the costs of operation, maintenance, and replacement incurred therefor—

- (1) the benefits of the project to said purpose or purposes shall be taken into account in determining the economic benefits of the project;
- (2) costs shall be allocated to said purpose or purposes and to other purposes in a manner which will insure that all project purposes share equitably in the advantages of multiple-purpose construction: *Provided*, That the costs allocated to recreation or fish and wildlife enhancement shall not exceed the lesser of the benefits from those functions or the costs of providing recreation or fish and wildlife enhancement benefits of reasonably equivalent use and location by the least costly alternative means; and
- (3) not more than one-half the separable costs and all the joint costs

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of the project allocated to recreation and fish and wildlife enhancement shall be borne by the United States and be nonreimbursable.

Projects authorized during the calendar year 1965 may include recreation and fish and wildlife enhancement on the foregoing basis without the required indication of intent. Execution of an agreement as aforesaid shall be a prerequisite to commencement of construction of any project to which this subsection is applicable.

(b) The non-Federal share of the separable costs of the project allocated to recreation and fish and wildlife enhancement shall be borne by non-Federal interests, under either or both of the following methods as may be determined appropriate by the head of the Federal agency having jurisdiction over the project: (1) payment, or provision of lands, interests therein, or facilities for the project; or (2) repayment, with interest at a rate comparable to that for other interest-bearing functions of Federal water resource projects, within fifty years of first use of project recreation or fish and wildlife enhancement facilities: Provided, That the source of repayment may be limited to entrance and user fees or charges collected at the project by non-Federal interests if the fee schedule and the portion of fees dedicated to repayment are established on a basis calculated to achieve repayment as aforesaid and are made subject to review and renegotiation at intervals of not more than five years. (79 Stat. 214; 16 U.S.C. § 460i-13)

NOTES OF OPINIONS

Local contribution 2
Repayment period 1
1. Repayment period

Although the initial repayment contract under section 2(b)(2) must establish a fee schedule that is reasonably calculated to achieve repayment within 50 years, the Secretary may extend the time for repayment beyond 50 years when repayment has not been achieved within that period. Memorandum of Deputy Solicitor Weinberg, September 19, 1966.

2. Local contribution

In computing the 50 percent share of costs required by sections 7(a) and 3(b) to be contributed by non-Federal interests, recognition may be given under section 2(b)(1) to non-Federal lands or facilities if title thereto is transferred to the United States. The amount of the contribution can be taken as either the fair market value of the lands and facilities on the date of the contract or the actual cost of lands specifically acquired for transfer to the United States as payment. Memorandum of Associate Solicitor Meyer, September 23, 1966.

Sec. 3. [Basis for recreation and fish and wildlife enhancement.]—(a) No facilities or project modifications which will furnish recreation or fish and wildlife enhancement benefits shall be provided in the absence of the indication of intent with respect thereto specified in subsection 2(a) of this Act unless (1) such facilities or modifications serve other project purposes and are justified thereby without regard to such incidental recreation or fish and wildlife enhancement benefits as they may have or (2) they are minimum facilities which are required for the public health and safety and are located at access points provided by roads existing at the time of project construction or constructed for the administration and management of the project. Calculation of the recreation and fish and wildlife enhancement benefits in any such case shall be based on the number of visitor-days anticipated in the absence of recreation and fish and wildlife en-

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hancement facilities or modifications except as hereinbefore provided and on the value per visitor-day of the project without such facilities or modifications. Project costs allocated to recreation and fish and wildlife enhancement on this basis shall be nonreimbursable.

(b) Notwithstanding the absence of an indication of intent as specified in subsection 2(a), lands may be provided in connection with project construction to preserve the recreation and fish and wildlife enhancement potential of the project:

(1) If non-Federal public bodies execute an agreement within ten years after initial operation of the project (which agreement shall provide that the non-Federal public bodies will administer project land and water areas for recreation or fish and wildlife enhancement or both pursuant to the plan for the development of the project approved by the head of the agency having administrative jurisdiction over it and will bear not less than one-half the costs of lands, facilities, and project modifications provided for either or both of those purposes, as the case may be, and all costs of operation, maintenance, and replacement attributable thereto) the remainder of the costs of lands, facilities, and project modifications provided pursuant to this paragraph shall be nonreimbursable. Such agreement and subsequent development, however, shall not be the basis for any reallocation of joint costs of the project to recreation or fish and wildlife enhancement.

(2) If, within ten years after initial operation of the project, there is not an executed agreement as specified in paragraph (1) of this subsection, the head of the agency having jurisdiction over the project may utilize the lands for any lawful purpose within the jurisdiction of his agency, or may offer the land for sale to its immediate prior owner or his immediate heirs at its appraised fair market value as approved by the head of the agency at the time of offer or, if a firm agreement by said owner or his immediate heirs is not executed within ninety days of the date of the offer, may transfer custody of the lands to another Federal agency for use for any lawful purpose within the jurisdiction of that agency, or may lease the lands to a non-Federal public body, or may transfer the lands to the Administrator of General Services for disposition in accordance with the surplus property laws of the United States. In no case shall the lands be used or made available for use for any purpose in conflict with the purposes for which the project was constructed, and in every case except that of an offer to purchase made, as hereinbefore provided, by the prior owner or his heirs preference shall be given to uses which will preserve and promote the recreation and fish and wildlife enhancement potential of the project or, in the absence thereof, will not detract from that potential. (79 Stat. 214; 16 U.S.C. § 460l-14)

NOTE OF OPINION

1. Local contribution

In computing the 50 percent share of costs required by sections 2(a) and 3(b) to be contributed by non-Federal interests,

recognition may be given under section 2(b)(1) to non-Federal lands or facilities if title thereto is transferred to the United States. The amount of the contribution can

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an agreement within ten years such agreement shall provide that for project land and water areas agreement or both pursuant to the approved by the head of the agency and will bear not less than one-third of the project modifications provided for there may be, and all costs of operation (notwithstanding any contribution payable thereto) the remainder of the project modifications provided pursuant to such agreement and subsequent agreement for any reallocation of joint project land and wildlife enhancement.

in the case of the project, there is not provided in paragraph (1) of this subsection, the project may utilize the lands owned by his agency, or may offer the project to the owner or his immediate heirs at the time of the offer, or by the head of the agency at the time of the offer, or the owner or his immediate heirs at the date of the offer, may transfer the project for use for any lawful purpose or may lease the lands to a non-Federal public body or to the Administrator of the project with the surplus property on the lands be used or made available for the purposes for which the project was developed except that of an offer to purchase the project or owner or his heirs preference for the project and promote the recreation and wildlife enhancement on the project or, in the absence of such agreement, the project shall be transferred to the United States. (79 Stat. 214; 16 U.S.C.

contribution may be given under section 2(d) of the Act to non-Federal lands or facilities hereto is transferred to the United States. The amount of the contribution can

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be taken as either the fair market value of the lands and facilities on the date of the contract or the actual cost of lands specifically acquired for transfer to the United States as payment. Memorandum of Associate Solicitor Meyer, September 23, 1966.

Sec. 4. [Lease of facilities and lands to non-Federal public bodies.]—At the time of the construction of which has commenced or been completed as of the effective date of this Act, where non-Federal public bodies agree to administer project land and water areas for recreation and fish and wildlife enhancement purposes and to bear the costs of operation, maintenance, and replacement of existing facilities serving those purposes, such facilities and appropriate project lands may be leased to non-Federal public bodies. (79 Stat. 215; 16 U.S.C. § 460i-15)

Sec. 5. [Post authorization project development.]—Nothing herein shall be construed as preventing or discouraging postauthorization development of any project for recreation or fish and wildlife enhancement or both by non-Federal public bodies pursuant to agreement with the head of the Federal agency having jurisdiction over the project. Such development shall not be the basis for any allocation or reallocation of project costs to recreation or fish and wildlife enhancement. (79 Stat. 215; 16 U.S.C. § 460i-16)

Sec. 6. [Misc.: Reports, cost allocation, expenditures, TVA and other projects excluded, payments and repayments.]—(a) The views of the Secretary of the Interior developed in accordance with section 3 of the Act of May 28, 1963 (77 Stat. 49), with respect to the outdoor recreation aspects shall be set forth in any report of any project or appropriate unit thereof within the purview of this Act. Such views shall include a report on the extent to which the proposed recreation and fish and wildlife development conforms to and is in accord with the State comprehensive plan developed pursuant to subsection 5(d) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897). (79 Stat. 216; 16 U.S.C. § 460i-17)

EXPLANATORY NOTE

References in the Text. The Act of May 28, 1963 (77 Stat. 49), and the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), enacted September 3, 1964, referred to in the text are both found herein in chronological order.

(b) The first proviso of subsection 2(d) of the Act of August 12, 1958 (72 Stat. 563; 16 U.S.C. 662(d)), is amended to read as follows: "Provided, That such cost attributable to the development and improvement of wildlife shall not extend beyond that necessary for (1) land acquisition, (2) facilities as specifically recommended in water resource project reports, (3) modification of the project, and (4) modification of project operations, but shall not include the operation of wildlife facilities." The second proviso of subsection 2(d) of said Act is hereby repealed. (79 Stat. 216; 16 U.S.C. § 662)

EXPLANATORY NOTE

Reference in Text. The Act of August 12, 1958, referred to in text, names and amends the Fish and Wildlife Coordination Act. The second proviso of section 2(d) of that Act, here repealed, among other things, provided that costs of Federal reclamation projects attributable to mitigation of damage to fish and wildlife resources were nonreimbursable. The 1958 Act appears herein in chronological order. The full text of the Fish and Wildlife Coordination Act, as amended, appears herein in chronological order under the Act of August 14, 1946.

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(c) Expenditures for lands or interests in lands hereafter acquired by project construction agencies for the establishment of migratory waterfowl refuges recommended by the Secretary of the Interior at Federal water resource projects, when such lands or interests in lands would not have been acquired but for the establishment of a migratory waterfowl refuge at the project, shall not exceed \$28,000,000: *Provided*, That the aforementioned expenditure limitation in this subsection shall not apply to the costs of mitigating damages to migratory waterfowl caused by such water resource project. (79 Stat. 216; 16 U.S.C. § 4601-17)

(d) This Act shall not apply to the Tennessee Valley Authority, nor to projects constructed under authority of the Small Reclamation Projects Act, as amended, or under authority of the Watershed Protection and Flood Prevention Act, as amended. (79 Stat. 216; 16 U.S.C. § 4061-17)

EXPLANATORY NOTE

References in the Text. The Small Reclamation Projects Act (enacted August 6, 1956), and the Watershed and Flood Prevention Act (enacted August 4, 1954), referred to in the text, both appear herein in chronological order.

(e) Sections 2, 3, 4, and 5 of this Act shall not apply to nonreservoir local flood control projects, beach erosion control projects, small boat harbor projects, hurricane protection projects, or to project areas or facilities authorized by law for inclusion within a national recreation area or appropriate for administration by a Federal agency as a part of the national forest system, as a part of the public lands classified for retention in Federal ownership, or in connection with an authorized Federal program for the conservation and development of fish and wildlife. (79 Stat. 216; 16 U.S.C. § 4601-17)

(f) As used in this Act, the term "nonreimbursable" shall not be construed to prohibit the imposition of entrance, admission, and other recreation user fees or charges. (79 Stat. 216; 16 U.S.C. § 4601-17)

(g) Subsection 6(a)(2) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) shall not apply to costs allocated to recreation and fish and wildlife enhancement which are borne by the United States as a nonreimbursable project cost pursuant to subsection 2(a) or subsection 3(b)(1) of this Act. (79 Stat. 216; 16 U.S.C. § 4601-17)

EXPLANATORY NOTE

Reference in the Text. Subsection 6(a)(2) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), enacted September 3, 1964, referred to in the text, deals with moneys appropriated from the fund which are paid into miscellaneous receipts of the Treasury as a partial offset to costs allotted to recreation and fish and wildlife values at Federal water development projects. The Act appears herein in chronological order.

(h) All payments and repayment by non-Federal public bodies under the provisions of this Act shall be deposited in the Treasury as miscellaneous receipts, and revenue from the conveyance by deed, lease, or otherwise, of lands under subsection 3(b)(2) of this Act shall be deposited in the Land and Water Conservation Fund. (79 Stat. 216; 16 U.S.C. § 4601-17)

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RECREATION ACT

lands hereafter acquired by project of migratory waterfowl refuges at Federal water resource projects, not have been acquired but for the use at the project, shall not exceed the expenditure limitation in this subsection in mitigating damages to migratory project. (79 Stat. 216; 16 U.S.C.

Mississippi Valley Authority, nor to National Reclamation Projects Act, as amended, Protection and Flood Prevention Act (16-17)

NOTE

in Act (enacted August 4, 1954), referred to in the text, both appear herein in chronological order.

will not apply to nonreservoir local projects, small boat harbor projects, easements or facilities authorized by law or appropriate for administration of a recreation system, as a part of the public trust system, or in connection with an investigation and development of fish and

non-reimbursable" shall not be construed to include, and other recreation user fees

Water Conservation Fund Act of 1956 located to recreation and fish and wildlife in the United States as a nonreimbursable project subsection 3(b)(1) of this Act.

NOTE

of the Treasury as a partial offset of costs allotted to recreation and fish and wildlife values at Federal water development projects. The Act appears herein in chronological order.

Federal public bodies under the jurisdiction of the Treasury as miscellaneous receipts, or otherwise, of lands under their jurisdiction deposited in the Land and Water Conservation Fund (16-17)

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FEDERAL WATER PROJECT RECREATION ACT 1825

Sec. 7. [Existing reservoirs—Other agencies.]—(a) The Secretary is authorized, in conjunction with any reservoir heretofore constructed by him pursuant to the Federal reclamation laws or any reservoir which is otherwise under his control, except reservoirs within national wildlife refuges, to investigate, plan, construct, operate and maintain, or otherwise provide for public outdoor recreation and fish and wildlife enhancement facilities, to acquire or otherwise make available such adjacent lands or interests therein as are necessary for public outdoor recreation or fish and wildlife use, and to provide for public use and enjoyment of project lands, facilities, and water areas in a manner coordinated with the other project purposes: *Provided*, That not more than \$100,000 shall be available to carry out the provisions of this subsection at any one reservoir. Lands, facilities and project modifications for the purposes of this subsection may be provided only after an agreement in accordance with subsection 3(b) of this Act has been executed.

NOTES OF OPINIONS

- Authority for development 1
- Limit on Federal expenditures 2
- Local contribution 3

1. Authority for development
The Federal Water Project Recreation Act does not grant the Secretary authority to construct and operate recreation facilities and to acquire lands for recreation purposes at new water resource projects, and therefore such authority must be contained in the authorizing legislation for each new project. However, the Secretary continues to have the authority under the Fish and Wildlife Coordination Act to construct fish and wildlife enhancement facilities, and the intrinsic authority to construct minimum health and safety facilities. Memorandum of Acting Solicitor Weinberg, August 13, 1965.

2. Limit on Federal expenditures
The \$100,000 limit extends to that part of the Federal expenditure which is to be repaid by the non-Federal public body as well as to that part which is nonreim-

bursable. For example, if the total cost of the project is \$150,000, \$100,000 of Federal money is authorized to be expended on it, of which \$75,000 (one-half of total project cost) would be nonreimbursable and \$25,000 would be subject to repayment; the non-Federal public body would have to contribute \$50,000 in cash or in kind. Memorandum of Associate Solicitor Hogan, September 27, 1965.

3. Local contribution
In computing the 50 percent share of costs required by sections 7(a) and 3(b) to be contributed by non-Federal interests, recognition may be given under section 2(b)(1) to non-Federal lands or facilities if title thereto is transferred to the United States. The amount of the contribution can be taken as either the fair market value of the lands and facilities on the date of the contract or the actual cost of lands specifically acquired for transfer to the United States as payment. Memorandum of Associate Solicitor Meyer, September 23, 1966.

(b) The Secretary of the Interior is authorized to enter into agreements with Federal agencies or State or local public bodies for the administration of project land and water areas and the operation, maintenance, and replacement of facilities and to transfer project lands or facilities to Federal agencies or State or local public bodies by lease agreement or exchange upon such terms and conditions as will best promote the development and operation of such lands or facilities in the public interest for recreation and fish and wildlife enhancement purposes.

(c) No lands under the jurisdiction of any other Federal agency may be included for or devoted to recreation or fish and wildlife purposes under the authority of this section without the consent of the head of such agency; and

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the head of any such agency is authorized to transfer any such lands to the jurisdiction of the Secretary of the Interior for purposes of this section. The Secretary of the Interior is authorized to transfer jurisdiction over project lands within or adjacent to the exterior boundaries of national forests and facilities thereon to the Secretary of Agriculture for recreation and other national forest system purposes; and such transfer shall be made in each case in which the project reservoir area is located wholly within the exterior boundaries of a national forest unless the Secretaries of Agriculture and Interior jointly determine otherwise. Where any project lands are transferred hereunder to the jurisdiction of the Secretary of Agriculture, the lands involved shall become national forest lands: *Provided*, That the lands and waters within the flow lines of any reservoir or otherwise needed or used for the operation of the project for other purposes shall continue to be administered by the Secretary of the Interior to the extent he determines to be necessary for such operation. Nothing herein shall limit the authority of the Secretary of the Interior granted by existing provisions of law relating to recreation or fish and wildlife development in connection with water resource projects or to disposition of public lands for such purposes. (79 Stat. 216; 16 U.S.C. § 460l-18)

Sec. 8. [Reclamation feasibility reports must be specifically authorized by law.]—Effective on and after July 1, 1966, neither the Secretary of the Interior nor any bureau nor any person acting under his authority shall engage in the preparation of any feasibility report under reclamation law with respect to any water resource project unless the preparation of such feasibility report has been specifically authorized by law, any other provision of law to the contrary notwithstanding. (79 Stat. 217; 16 U.S.C. § 460l-19)

Sec. 9. [Cost allocations—Limitations.]—Nothing contained in this Act shall be taken to authorize or to sanction the construction under the Federal reclamation laws or under any Rivers and Harbors or Flood Control Act of any project in which the sum of the allocations to recreation and fish and wildlife enhancement exceeds the sum of the allocations to irrigation, hydroelectric power, municipal, domestic and industrial water supply, navigation, and flood control, except that this section shall not apply to any such project for the enhancement of anadromous fisheries, shrimp, or for the conservation of migratory birds protected by treaty, when each of the other functions of such a project has, of itself, a favorable benefit-cost ratio. (79 Stat. 217; 16 U.S.C. § 460l-20)

Sec. 10. [Definitions.]—As used in this Act:

- (a) The term "project" shall mean a project or any appropriate unit thereof.
- (b) The term "separable costs," as applied to any project purpose, means the difference between the capital cost of the entire multiple-purpose project and the capital cost of the project with the purpose omitted.
- (c) The term "joint costs" means the difference between the capital cost of the entire multiple-purpose project and the sum of the separable costs for all project purposes.
- (d) The term "feasibility report" shall mean any report of the scope required by the Congress when formally considering authorization of the project of which the report treats.

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to transfer any such lands to the
for purposes of this section. The
transfer jurisdiction over project lands
of national forests and facilities
recreation and other national forest
made in each case in which the
within the exterior boundaries of a
culture and Interior jointly deter-
are transferred hereunder to the
the lands involved shall become
lands and waters within the flow lines
for the operation of the project
administered by the Secretary of the
necessary for such operation. Nothing
of the Interior granted by existing
fish and wildlife development in con-
disposition of public lands for such

must be specifically authorized by
neither the Secretary of the Interior
nor his authority shall engage in the
reclamation law with respect to any
portion of such feasibility report has
no provision of law to the contrary
(79 Stat. 217; 16 U.S.C. § 460i-19)

Nothing contained in this Act shall
interfere with the Federal reclama-
tion Act of any project
for flood control and fish and wildlife enhance-
ment, irrigation, hydroelectric power,
navigation, and flood control,
any such project for the enhance-
ment for the conservation of migratory
wildlife or other functions of such a project
(79 Stat. 217; 16 U.S.C. § 460i-20)

For the purpose of this Act, the term
"project or any appropriate unit thereof"
as used in any project purpose, means
the entire multiple-purpose project
purpose omitted.

Reference between the capital cost of
a project and the sum of the separable costs for all

in any report of the scope required
for authorization of the project of which

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(e) The term "capital cost" includes interest during construction, wherever
appropriate. (79 Stat. 218; 16 U.S.C. § 460i-21)

Sec. 11. [Entrance and users fees—Amendments.]—Section 2, subsection
(a) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) is
hereby amended by striking out the words "notwithstanding any provision of
law that such proceeds shall be credited to miscellaneous receipts of the Treas-
ury:" and inserting in lieu thereof the words "notwithstanding any other pro-
vision of law:" and by striking out the words "or any provision of law that
provides that any fees or charges collected at particular Federal areas shall be
used for or credited to specific purposes or special funds as authorized by that
provision of law" and inserting in lieu thereof "or affect any contract heretofore
entered into by the United States that provides that such revenues collected at
particular Federal areas shall be credited to specific purposes". (79 Stat. 218;
16 U.S.C. § 460i-5)

EXPLANATORY NOTE

Reference in the Text. The Land and Water Conservation Fund Act of 1965 (78 Stat. 897), enacted September 3, 1964, referred to in the text, appears herein in chronological order.

Sec. 12. [Short title.]—This Act may be cited as the "Federal Water Project Recreation Act". (79 Stat. 218; 16 U.S.C. § 460i-12)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions are included only to the extent deemed relevant to activities of the Bureau of Reclamation under this statute.
Legislative History. S. 1229, Public Law 89-72 in the 89th Congress. Reported in Senate from Interior and Insular Affairs April 7, 1965; S. Rept. No. 149. Passed Senate April 13, 1965. Passed House, amended, May 18, 1965. Senate asks for a conference May 20, 1965. House agrees to a conference May 27, 1965. Conference report filed June 22, 1965; H.R. Rept. No. 538. House agrees to conference report June 23, 1965. Senate agrees to conference report June 25, 1965. Companion bill H.R. 5269 reported in House from Interior and Insular Affairs April 27, 1965, H.R. Rept. No. 254.