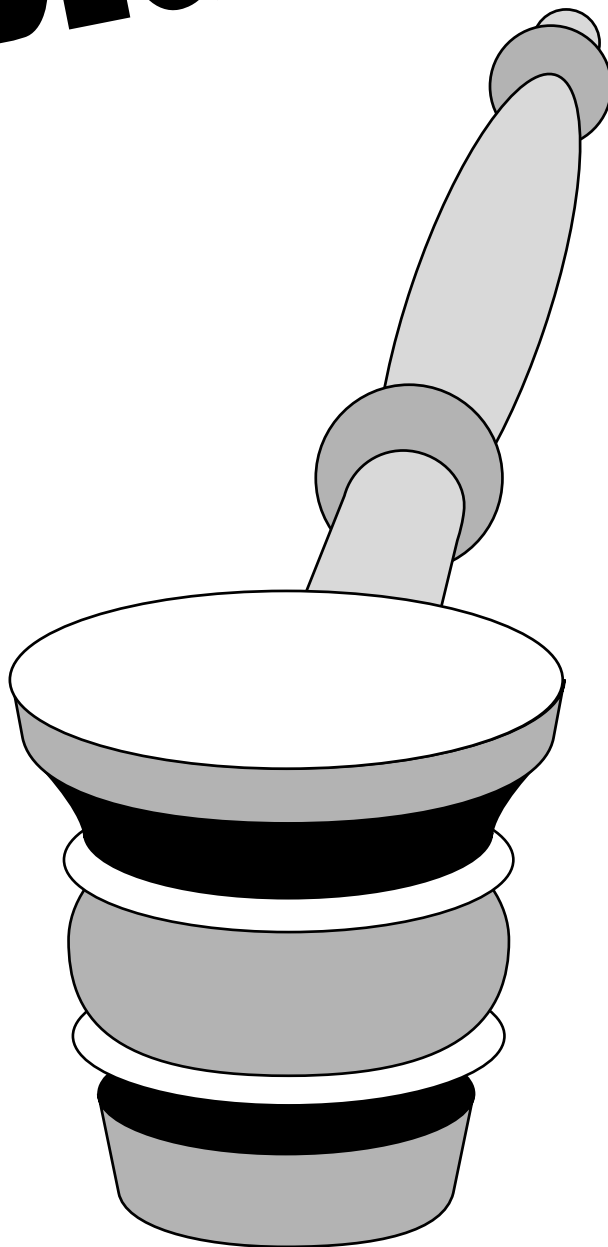


It Has Been
DEBATED, DECIDED,
and **DECLARED**



A Chronicle of the
Requirements for the
Waterpower &
Reservoir Resources
Program

MAY 2000

BUREAU OF LAND MANAGEMENT • NATIONAL SCIENCE & TECHNOLOGY CENTER

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A Chronicle of the Requirements for the
Waterpower and Reservoir Resources Program

May 2000

Bureau of Land Management
National Applied Resource Sciences Center

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The authority for the Waterpower and Reservoir Resources (WRR) inventory, monitoring, evaluation, and land actions activities are contained or implicit in several legislative acts, regulations, policies, and case laws. The following lists contain the authorities for the President, the Secretary of the Interior, the Director of the Bureau of Land Management, and the Director of the Geological Survey to accomplish these activities. The statutory authorities, delegated authorities, and cooperative agreements and arrangements with other bureaus and agencies are cited in chronological order. They include references to the U.S. Statutes at Large; Code of Federal Regulations (CFR), Titles 5, 16, 25, 30, 40, and 43; Departmental decisions relating to public lands; Departmental, United States Geological Survey (USGS), and Bureau of Land Management (BLM) Manuals; Executive, Departmental, and USGS Orders; and Conservation Division and Branch of Waterpower Classification (BWC) Manual, instructions and letters relating to work procedures (USGS, 1968, BWC 630.2.1).

Statutory Laws

May 18, 1796, Chapter 29, 1 Stat. 464-469; R.S. 2395.

"An Act providing for the Sale of the Lands of the United States, in the territory northwest of the river Ohio, and above the mouth of Kentucky river."

"SEC. 2. ...Every surveyor shall note in his field-book the true situations of all mines, salt licks, salt springs, and mill seats which come to his knowledge; all watercourses over which the line he runs may pass; and also the quality of the lands.

"SEC. 3. *Be it further enacted*, That a salt spring lying upon a creek which empties into the Sciota river, on the east side,...and every other salt spring which may be discovered, together with the section of one mile square which includes it, and also four sections at the centre of every township, containing each one mile square, shall be reserved, for the future disposal of the U.S."

"SEC. 9. *And be it further enacted*, That all navigable rivers, within the territory to be disposed of by virtue of this act, shall be deemed to be, and remain public highways."

September 28, 1850, Chapter 84, 14 Stat. 521; R.S. 2478; 43 U.S.C. 1201.

"An Act granting Bounty Land to certain Officers and Soldiers who have been engaged in the Military Service of the U.S."

Note: The BLM utilizes this legislation to issue Special Land-Use Permits for occupancy and for purposes to which other statutes do not apply. These permits are subject to clearance with agencies having interests in designated lands, include a standard power stipulation, and do not refer cases affecting power withdrawals to the Federal Energy Regulatory Commission.

June 12, 1866, Chapter 117, 14 Stat. 64.

"An Act to grant the Right of Way to the 'Humboldt Canal Company' through the Public Lands of the U.S."

"Be it enacted by the Senate and House of Representatives of the U.S. of America in Congress assembled, That the right of way for a canal through the public lands of the U.S. laying in Humboldt county, State of Nevada, and the use of the land for tow-paths, cuttings and embankments, to the extent of fifty feet on each side of the center of the canal, shall be, and is hereby, granted to the Humboldt Canal Company: Provided, That in cases where deep excavation or heavy embankment is required, such greater width, not exceeding two hundred feet, may be taken by said company as may be necessary.

"SEC. 2. And be it further enacted, That in order to create a reservoir for said company sufficient to feed said canal in all seasons, and said company shall be, and is hereby, authorized, by a dam across the Humboldt river, at such point at or near the gap in the Fremont range of mountains through which said river passes, to flow so much of the public lands above said dam as may be required for the purpose of said reservoir.

"SEC. 3. And be it further enacted, That there shall be and is hereby, granted to said company the necessary sites along said canal for waste-gates, mill-sites, depots, and other uses of said canal, so far as places convenient for the same fall upon the public lands, and also the privilege of discharging waste waters of said canal over any public lands into the Humboldt river, at such places as may be suitable for that purpose: Provided, That the proper offices of said company shall transmit to the commissioner of the general land office a correct plat of the survey and location of said canal, and of the sites needed for mills, depots, waste-gates, and other uses of said canal, before the appropriation thereof for said uses shall become operative: And provided further, That unless thirty miles of said canal shall be excavated within one year, [and] the whole within three years, from the date hereof, the grants hereby made shall cease and determine: And provided further, That if said canal shall at any time after its completion be discontinued or abandoned by said company, the grants hereby made shall cease and determine, and the lands hereby granted shall revert to the U.S.: And provided further, That nothing in this act shall be so construed as to interfere with any grant of the right of way and of public lands heretofore made to any grant of the right of way and of public lands theretofore made to any railroad company."

July 26, 1866, Chapter 262, 14 Stat. 253; R.S. 2339 and R.S. 2477.

"An Act granting the Right of Way to Ditch and Canal Owners over the Public Lands, and for other purposes."

Note: The "original" Right-of-Way Act. Section 8 granted rights-of-way for construction of highways over public lands not reserved for public uses. Grants of right-of-way under R.S. 2477 become effective upon the construction or establishment of highways in accordance with State laws or over public lands not reserved for public uses (such as waterpower withdrawals). No application should be filed as no action on the part of the Government is necessary except in cases where the highway crosses revested and reconveyed lands or land reserved for public uses. Section 9 of the act (R.S. 2339) granted rights to use of water for mining, agriculture, manufacturing, or other purposes. This act is the Organic Act for occupation for the development of hydroelectric power. This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792).

July 9, 1870, Chapter 235, 16 Stat. 217.

"An Act to amend 'An Act granting the Right of Way to Ditch and Canal Owners over the Public Lands, and for other purposes.'"

SEC. 17. *And be it further enacted*, That none of the rights conferred by . . . of the act to which this act is amendatory shall be abrogated by this act, and the same are hereby extended to all public lands affected by this act;

Note: Added sections to the former act and added sections 12 to 17.

March 3, 1875, Chapter 152, 18 Stat. 483; 43 U.S.C. 934-939.

"An Act granting to railroads the right of way through the public lands of the United States."

Note: Grants a limited fee (not easement, 54 I.D. 392) rights-of-way over/across public lands for railroad and station ground purposes. It shall not apply to lands specially reserved from sale such as WRR withdrawals. This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792).

March 3, 1877, Chapter 107, 19 Stat. 377.

"An act to provide for the sale of desert lands in certain States and Territories."

"Provided however that the right to the use of water by the person so conducting the same, on or to any tract of desert land of six hundred and forty acres shall depend upon bona fide prior appropriation: and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation: and all surplus water over and above such actual appropriation and use, together with the water of all, lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey.

SEC. 2. That all lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of this action, which fact shall be ascertained by proof of two or more credible witness under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated."

June 20, 1878, Chapter 359, 20 Stat. 206-240.

"An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes."

"And the National Academy of Science is hereby required, at their next meeting, to take into consideration the methods and expenses of conducting all surveys of a scientific character under the War or Interior Department, and the surveys of the Land Office, and to report to Congress as soon thereafter as may be practicable a plan for surveying and mapping the Territories of the United States on such general system as will, in their judgement, secure the best results at the least possible cost; and also to recommend to

Congress a suitable plan for the publication and distribution of the reports, maps, and documents, and other results of said surveys..." [20 Stat. 230]

Note: The required report recommended a new agency to conduct the surveys and report the results. The result was the establishment of the U.S. Geological Survey on March 3, 1879 (20 Stat. 394).

March 3, 1879, Chapter 182, 20 Stat. 394; 43 U.S.C. 31.

"An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and eighty, and for other purposes."

"For the salary of the Director of the Geological Survey, which office is hereby established under the Interior Department, who shall be appointed by the President, by and with the advice and consent of the Senate, six thousand dollars; *Provided*, That this officer shall have the direction of the Geological Survey, and the classification of the public lands, and examination of the geological structure, minerals resources, and products of the national domain. And that the Director and members of the Geological Survey shall have no personal or private interest in the lands or mineral wealth of the region under survey, and shall execute no surveys or examinations for private parties or corporations; and the Geological and Geographical Survey of the Territories, and the Geographical and Geological Survey of the Rocky Mountain Region, under the Department of the Interior, and the Geographical Surveys West of the One-Hundredth Meridian, under War Department, are hereby discontinued, to take effect on the thirtieth day of June, eighteen hundred and seventy-nine. And all collections of rocks, minerals, soils, fossils, and objects of natural history, archaeology, and ethnology, made by the Coast and Interior Survey, the Geological Survey or by any other parties for the Government of the U.S., when no longer needed for investigations in progress, shall be deposited in the National Museum."

"For the expense of a commission on the codification of existing laws relating to the survey and disposition of the public domain, and for other purposes, twenty thousand dollars:

"Provided, that the Commission shall consist of the Commissioner of the General Land Office, the Director of the U.S. Geological Survey, and three civilians, to be appointed by the President, who shall receive a per diem compensation of ten dollars for each day while actually engaged, and their traveling expenses; and neither the Commissioner of the General Land Office nor the Director of the U.S. Geological Survey shall receive other compensation for their services upon said commission than their salaries, respectively, except their traveling expenses while engaged on said duties; and it shall be the duty of this commission to report to Congress within one year from the time of its organization; first, a codification of the present laws relating to the survey and disposition of the public domain; second, a system and standard of classification of public lands; as arable, irrigate, timber, pasturage, swamp, coal, mineral lands and such other classes as may be deemed proper, having due regard to humidity of climate, supply of water for irrigation, and other physical characteristics; third, a system of land parcelling [sic] surveys adopted to the economic uses of the several classes of lands; and, fourth, such recommendations as they may deem wise in relation to the best method of disposing of the public lands of the western portion of the U.S. to actual settlers.

"The publications of the Geological Survey shall consist of the annual report of operations, geological and economic maps illustrating [20 Stat. 394] the resources and classifications of the lands, and reports upon general economic geology and paleontology. The annual report of the Geological Survey shall accompany the annual report of the Secretary of the Interior. All special memoirs and reports of said survey shall be issued in uniform quarto series if deemed necessary by the Director, but otherwise in ordinary octavos. Three thousand copies of each shall be published for scientific exchanged and for sale at the price of publication; and all literary and cartographic materials, received in exchange shall be the property of the U.S. and form a part of the library of the organization; and the money resulting from the sale of each such publication shall be covered into Treasury of the United States..." [20 Stat. 395]

Note: This act followed the recommendations of the National Academy of Science. The act authorized publications illustrating the resources and classification of the lands (43 U.S.C. 41). In the original text, these publications included reports, maps, and illustrations necessary for completing the office work. Further related actions include the Joint Resolution relating to publications of the Geological Survey (May 16, 1902, No. 22, 32 Stat. 741; 43 U.S.C. 41). After the Federal Water Power Act of 1920 (41 Stat. 1063-1077), withdrawals were made utilizing this authority and were titled Power Site Classifications (PSC).

July 7, 1884, Chapter 332, 23 Stat. 212; 43 U.S.C. 34.

"An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and eighty-five, and for other purposes."

"And the scientific employees of the Geological Survey shall be selected, by the Director, subject to the approval of the Secretary of the Interior exclusively for their qualifications as professional experts."

February 13, 1888, [Senate Resolution].

"Resolved, That the Secretary of the Interior be requested to inform the Senate if, in his opinion, it is desirable to authorize the organization in his Department known as the Geological Survey to segregate lands of the public domain capable of irrigation in the sections of the United States where irrigation is required from other lands, and to lay out suitable places to be reserved for reservoirs, and rights of way for ditches and canals, for the purposes of irrigation."

March 20, 1888, No. 7, 25 Stat. 618.

"Joint Resolution directing the Secretary of the Interior by means of the Director of the Geological Survey to investigate the practicability of constructing reservoirs for the storage of water in the arid region of the United States, and to report to congress."

"Whereas a large portion of the unoccupied public lands of the United States is located within what is known as the arid region and now utilized only for grazing purposes, but much of which, by means of irrigation, may be rendered as fertile and productive as any in the world, capable of supporting a large population thereby adding to the national wealth and prosperity;

"Whereas all the water flowing during the summer months in many of the streams of the Rocky Mountains, upon which chiefly the husbandman of the plains and the mountain valleys chiefly depends for moisture for his crops has been appropriated and is used for the irrigation of lands contiguous thereto whereby a comparatively small area has been reclaimed; and

"Whereas there are many natural depressions near the sources and along the courses of these streams which may be converted into reservoirs for the storage of the surplus water which during the winter and spring seasons flows through the streams: from which reservoirs the water there stored can be drawn and conducted through properly constructed canals, at the proper season, thus bringing large areas of land into cultivation and making desirable much of the public land for which there is now no demand; therefore be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior by means of the Director of the Geological Survey be, and he is hereby, directed to make an examination of that portion of the arid regions of the United States where agriculture is carried on by means of irrigation, as to the natural advantages for the storage of water for irrigating purposes with the practicability of constructing reservoirs, together with the capacity of the streams and the cost of construction and capacity of reservoirs, and such other facts as bear on the question of storage of water for irrigating purposes; and that he be further directed to report to Congress as soon as practicable the result of such investigation."

Note: This established the precedent leading to the technical evaluation of Waterpower and Reservoir Resources.

March 27, 1888, [Senate Resolution].

"Resolved, That the Secretary of the Interior is hereby directed to report to the Senate what appropriation is necessary to enable the United States Geological Survey to carry into effect the joint resolution "Directing the Secretary of the Interior, by means of the Geological Survey, to investigate the practicability of constructing reservoirs for the storage of water in the arid region of the United States, and to report to Congress," approved March 20, 1888, and the several acts of Congress requiring such Geological Survey, under the direction of the Secretary of the Interior, to classify the public lands and furnish a map or maps showing the various divisions of the public domain suitable for agricultural, mineral and other purposes; and particularly to segregate the lands susceptible of irrigation, where irrigation is required, from other lands, and designating places for reservoirs, canals, and other hydraulic works."

October 2, 1888, Chapter 1069, 25 Stat. 526; 43 U.S.C. 662.

"An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes."

"For the purpose of investigating the extent to which the arid region of the United States can be redeemed by irrigation, and the segregation of the irrigable lands in such arid region, and for the selection of sites for reservoirs and other hydraulic works necessary for the storage and utilization of water for irrigation and the prevention of floods and overflows, and to make the necessary maps, including the pay of employees in field and in office, the cost of all instruments, apparatus, and materials, and all other

necessary expenses connected therewith, the work to be performed by the Geological Survey, under the direction of the Secretary of the Interior, the sum of one hundred thousand dollars or so much thereof as may be necessary. And the Director of the Geological Survey under the supervision of the Secretary of the Interior shall make a report to Congress on the first Monday in December of each year, showing in detail how the said money has been expended, the amount used for actual survey and engineer work in the field in locating sites for reservoirs and an itemized account of the expenditures under this appropriation. And the lands which may hereafter be designated or selected by such United States surveys for sites for reservoirs, ditches or canals for irrigation purposes and all the lands made susceptible of irrigation by such reservoirs, ditches or canals are from this time henceforth hereby reserved from sale as the property of the United States, and shall not be subject after the passage of this act, to entry, settlement, or occupation until further provided by law:

"Provided: That the President may at any time in his discretion by proclamation open any portion or all of the lands reserved by this provision to settlement under the homestead laws."

Note: Provided for investigation and segregation of irrigable lands and sites for reservoirs for irrigation and the prevention of floods and overflows. Withdrawals made utilizing this authority were titled Reservoir Sites (RS). This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792); however, remaining withdrawals remain intact.

August 30, 1890, Chapter 837, 26 Stat. 391; 43 U.S.C. 662.

"An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes."

"For topographic surveys in various portions of the United States, three hundred and twenty-five thousand dollars, one-half of which sum shall be expended west of the one hundredth meridian; and so much of the act of October second, eighteen hundred and eighty-eight, entitled 'An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes,' as provides for the Reservation of arid withdrawal of the public lands from entry, occupation and settlement, is hereby repealed and all entries made or claims initiated in good faith and valid but for said act, shall be recognized and may be perfected in the same manner as if said law had not been enacted, except that reservoir sites heretofore located or selected shall remain segregated and reserved from entry or settlement as provided by said act, until otherwise provided by law, and reservoir sites hereafter located or selected on public lands shall in like manner be reserved from the date of the location or selection thereof.

"No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act: *Provided*, That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or

claims validated by this act west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described, a right of way thereon for ditches or canals constructed by the authority of the United States."

Note: Repealed the reservations of the Act of October 2, 1888 (Chapter 1069, 25 Stat. 526; 43 U.S.C. 662), except for those made for reservoir sites (RS).

March 3, 1891, Chapter 561, 26 Stat. 1101; 43 U.S.C. 663.

"An Act to repeal timber-culture laws, and for other purposes."

"SEC. 17. That reservoir sites located or selected and to be located and selected under the provisions of 'An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes,' and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs; excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs..."

Note: Excluded from the segregation under the Act of October 2, 1888, all lands except those actually required for reservoir sites (RS). Grants a limited fee (not easement) right-of-way to canal and ditch companies for irrigation purposes. This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792).

August 18, 1894, Chapter 301, 28 Stat., 372-423.

"An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes."

"SEC. 4. ... and the Secretary of the Interior may make necessary regulations for the reservation of the lands applied for by the States to date from the date of filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved."

Note: Portions of this act, commonly known as the Carey Act, allowed Desert Land Entry. The States were required to submit plans for irrigation to be approved by the Secretary of the Interior before lands were conveyed.

January 21, 1895, Chapter 37, 28 Stat. 635; 43 U.S.C. 956.

"An Act To permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes."

Note: Permitted rights-of-way for tramways, canals, or reservoirs. This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792).

May 14, 1896, Chapter 179, 29 Stat., 120.

"An Act To amend the Act approved March third, eighteen hundred and ninety-one, granting the right of way upon the public lands for reservoir and canal purposes."

Note: Amended the Act of January 21, 1895 (28 Stat. 635; 43 U.S.C. 956) to include generating, manufacturing, or distributing electric power. This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792).

February 18, 1897, No. 13, 29 Stat. 701; 43 U.S.C. 42.

"Joint Resolution Providing for the distribution of the maps and atlases of the United States Geological Survey."

Note: Director of the Geological Survey is authorized and directed to distribute topographic and geologic maps and atlases of the United States. Copies of maps and atlases are to be sent to Senators, Representatives, and Delegates (43 U.S.C. 43).

February 26, 1897, Chapter 335, 29 Stat. 599; 43 U.S.C. 664.

"An Act to provide for the use and occupation of reservoir sites reserved."

Note: All reservoir sites shall be open to use and occupation under the Right-of-Way Act of March 3, 1891. This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792).

June 4, 1897, Chapter 2, 30 Stat. 11-62.

"An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes."

Note: Provided for the survey of the public lands that have been or may hereafter be designated as forest reserves. The surveys shall be made under the supervision of the Director of the Geological Survey. All waters of the forest reserves may be used for domestic, mining, milling, or irrigation purposes.

May 11, 1898, Chapter 292, 30 Stat. 404.

"An Act To amend an Act to permit the use of the right of way through public lands for tramroads, canals, and reservoirs, and for other purposes."

"SEC. 2. That the rights of way for ditches, canals, or reservoirs hereto fore or hereafter approved under the provisions of sections eighteen; nineteen, and twenty-one of the Act entitled 'An Act to repeal timber-culture laws, and for other purposes,' approved March third, eighteen hundred and ninety-one, may be used for purposes of water transportation, for domestic purposes, or for the development of power, as subsidiary to the main purpose of irrigation."

Note: Amended the Act of January 21, 1895 (Chapter 37, 28 Stat. 635, 43 U.S.C. 956) to allow rights-of-way for domestic, public, and other beneficial uses. Amended the Act of March 3, 1891 (Chapter 561, 26 Stat. 1101), to allow rights-of-way for purposes of water transportation, domestic purposes, development of power as subsidiary to the main purpose

of irrigation. This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792).

March 3, 1899, Chapter 427, 30 Stat. 1233; 43 U.S.C. 665; 16 U.S.C. 525.

"An Act Making appropriations to supply deficiencies in the appropriations for the physical year ending June thirtieth, eighteen hundred and ninety-nine, and for prior years, and for other purposes."

Note: Secretary of the Interior may approve surveys, etc., of rights-of-way across reservoir sites. This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792).

February 15, 1901, Chapter 372, 31 Stat. 790; 43 U.S.C. 959.

"An Act Relating to rights of way through certain parks, reservations, and other public lands."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant National Parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: Provided, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the Department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: Provided further, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: *And provided further*, That any permission even by the Secretary of the Interior under the provisions of this Act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation, or park."

Note: This act, in general terms, authorized the Secretary of the Interior under regulations to be fixed by him, to grant permission to use rights-of-way through the public lands, forests, and other reservations of the United States, and the Yosemite, Sequoia, and General Grant

National Parks in California, for every purpose contemplated by Sections 18 to 21 of the Act of March 3, 1891 (26 Stat. 1095, 1101), and by the Acts of January 21, 1895 (28 Stat. 635), May 14, 1896 (29 Stat. 120), and May 11, 1898 (30 Stat. 404), and for other purposes additional thereto. The Bureau of Land Management issues such rights-of-way, except for National Forest lands, for which the Forest Service issues the permit. This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792).

May 16, 1902, No. 22, 32 Stat. 741; 43 U.S.C. 41.

"Joint Resolution Relating to publications of the Geological Survey."

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter the publications of the Geological Survey shall consist of ...professional papers,...bulletins,...water-supply and irrigation papers,...and such maps, folios, and atlases as may be required by existing law."

June 17, 1902, Chapter 1093, 32 Stat. 388-391.

"An Act Appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands."

Note: The Secretary of the Interior shall withdraw from public entry the land required for any irrigation works. Withdrawals were initiated, which became the responsibility of the Bureau of Reclamation. (The BLM may need Geological Survey records to verify these withdrawals.)

April 23, 1904, Chapter 1495, 33 Stat. 302-306.

"An Act For the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment."

"SEC. 5. That said commissioners shall then proceed to personally inspect and classify and appraise, by smallest legal subdivisions of forty acres each, all of the remaining lands embraced within said reservation." [33 Stat. 302-306]

Note: McDonald Lake and St. Mary's Lake were withdrawn by this authority as amended (Sec. 22, as added by Act of March 3, 1909, Chapter 263, 35 Stat. 796). The withdrawal made utilizing this authority is titled an Indian Reservoir Site Reserve (IRSR) (see Secretarial Order of June 29, 1908).

February 1, 1905, Chapter 288, 33 Stat. 628; 16 U.S.C. 524.

"An Act Providing for the transfer of forest reserves from the Department of the Interior to the Department of Agriculture."

Note: The Secretary of the Department of Agriculture shall execute all laws affecting the public lands heretofore or hereafter reserved under the provisions of section twenty-four of the Act entitled "An act to repeal timber-culture laws, and for other purposes..." Rights-of-ways for construction of dams, reservoirs, etc., within and across forest reserves are granted

under such rules and regulations as may be prescribed by the Secretary of the Interior. This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792).

June 21, 1906, Public, No. 258, Chapter 3504, 34 Stat. 325-384.

"An Act Making appropriations for the current and contingent expenses of the Indian department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven."

"SEC. 18. That the Secretary of the Interior is hereby authorized and directed to reserve and set aside one hundred and sixty acres of land at and surrounding the present hot springs, situated on said reservation near the settlement of Camas." [34 Stat. 355]

"That the Secretary of the Interior be, and he is hereby, authorized in his discretion, to sell and convey by patent with such reservations as to flowage rights, dam sites, and mill sites appurtenant to water powers, as he may prescribe..." [34 Stat. 377]

Note: Camas Hot Springs were withdrawn under this authority. The same order contained reservations for McDonald Lake and St. Mary's Lake under the authority of the Act of April 23, 1904 (33 Stat. 302). The withdrawal made utilizing this authority is titled an Indian Reservoir Site Reserve (IRSR) (see Secretarial Order of June 29, 1908).

June 30, 1906, Public, No. 383, Chapter 3914, 34 Stat. 727; 43 U.S.C. 44.

"An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and seven, and for other purposes."

Note: Provided for furnishing transfers or copies of cartographic or other engraved or lithographic data for the cost thereof with 10 percent added.

March 3, 1909, Public, No. 316, Chapter 263, 35 Stat. 781-815.

"An Act Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and ten."

"That the Act of April twenty-third, nineteen hundred and four (Thirty-third Statutes at Large, page three hundred and two) entitled "An Act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment," as amended by the Act of June twenty-first, nineteen hundred and six, and the Act of May twenty-ninth, nineteen hundred and eight, be amended by adding thereto the following sections:"

"SEC. 22. That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to reserve from location, entry, sale, or other appropriation all lands within said Flathead Indian Reservation chiefly valuable for power sites or reservoir sites, and he shall report to Congress such reservations." [35 Stat. 796]

Note: The withdrawal made utilizing this authority is titled an Indian Lands Power Site Reserve (IPSR).

March 4, 1909, Public, No. 328, Chapter 299, 35 Stat. 989; 43 U.S.C. 45.

"An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and ten, and for other purposes."

"For the purchase of necessary books for the library, including directories and professional and scientific periodicals needed..."

May 13, 1910, Public, No. 175, Chapter 233, 36 Stat. 367-368.

"An Act To authorize the sale of certain lands belonging to the Indians on the Siletz Indian Reservation, in the State of Oregon."

"Provided, That he shall reserve from sale any water-power sites that may be located on the lands so reserved..."

Note: The withdrawal made utilizing this authority is titled an Indian Lands Power Site Reserve (IPSR).

June 1, 1910, Public, No. 197, Chapter 264, 36 Stat., 456.

"An Act To authorize the survey and allotment of lands embraced within the limits of the Fort Berthold Indian Reservation, in the State of North Dakota, and the sale and disposition of a certain portion of the surplus lands after allotment, and making appropriation and provision to carry the same into effect."

"SEC. 5. That the Secretary of the Interior is hereby authorized to set aside and reserve from location, entry, sale, allotment, or other appropriation such tracts as are found to be chiefly valuable for power sites or reservoir sites..."

Note: The withdrawal made utilizing this authority is titled Reservoir Site Reserve (RSR).

June 20, 1910, Public, No. 219; Chapter 310, 36 Stat. 557-578.

"An Act To enable the people of New Mexico to form a constitution and state Government and be admitted into the Union on an equal footing with the original States; and to enable the people of Arizona to form a constitution and state Government and be admitted into the Union on an equal footing with the original States."

"There is hereby reserved to the United States and exempted from the operation of any and all grants made or confirmed by this Act to said proposed State all land actually or prospectively valuable for the development of water powers or power for hydroelectric use or transmission and which shall be ascertained and designated by the Secretary of the Interior within 5 years after the proclamation of the President declaring the admission of the State..." [36 Stat. 564]

Note: Withdrawals made utilizing this authority were titled Waterpower Designations (WPD).

June 25, 1910, Chapter 421, 36 Stat. 847-848; 16 U.S.C. 471, 43 U.S.C. 141.

"An Act To authorize the President of the United States to make withdrawals of public lands in certain cases."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress.

"SEC. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates..."

Note: Withdrawals made utilizing this authority were titled Power Site Reserves (PSR) and Reservoir Site Reserves (RSR). This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792); however, remaining withdrawals remain intact.

June 25, 1910, Public, No. 313, Chapter 431, 36 Stat. 855-863; 43 U.S.C. 148.

"An Act To provide for determining the heirs of deceased Indians, for the disposition and sale of allotments of deceased Indians, for leasing of allotments, and for other purposes."

*"SEC. 13. That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to reserve from location, entry, sale, allotment, or other appropriation any lands within any Indian reservation, valuable for power or reservoir sites, or which may be necessary for use in connection with any irrigation project heretofore or hereafter to be authorized by Congress: *Provided*, That if no irrigation project shall be authorized prior to the opening of any Indian reservation containing such power or reservoir sites the Secretary of the Interior may, in his discretion, reserve such sites pending future legislation by Congress for their disposition, and he shall report to Congress all reservations made in conformity with this Act." [36 Stat. 858]*

Note: Withdrawals made utilizing this authority were titled Indian Power Site Reserves (IPSR). This act was repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792); however, remaining withdrawals remain intact.

February 25, 1911, Public, No. 423, Chapter 164, 36 Stat. 932.

"An Act To restore to the public domain certain lands withdrawn for reservoir purposes in Millard County, Utah."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may, in his discretion, restore to the public domain, subject to entry under the public land laws of the United States, such

portions of the lands withdrawn under the Act of October second, eighteen hundred and eighty-eight, for a United States reservoir site, in Millard County, Utah, not necessary for reservoir purposes, as he may designate."

March 3, 1911, Chapter 210, 36 Stat. 1058-1077.

"An Act Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and twelve."

"Provided further, That nothing herein contained shall be construed to prohibit reasonable expenditures from this appropriation for preliminary surveys and investigations to determine the feasibility and estimated cost of new projects, for investigations and surveys for power and reservoir sites on Indian reservations in accordance with the provisions of section thirteen of the Act of June twenty-fifth, nineteen hundred and ten..." [36 Stat. 1059].

"Provided, That the Secretary of the Interior is authorized in his discretion to reserve from sale or other disposition any part of said reservation chiefly valuable for power sites and reservoir sites and land valuable for minerals..." [36 Stat. 1075]

Note: The withdrawal made utilizing this authority is titled a Power Site Reserve (PSR).

March 4, 1911, Public, No. 478, Chapter 238, 36 Stat. 1253; 43 U.S.C. 961.

"An Act Making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and twelve."

Note: Authorizes and empowers the head of the departments having jurisdiction over the lands to grant easements for rights-of-way for electrical poles and lines. The Bureau of Land Management issues such rights-of-way for land administering agencies in Interior; for all others, the grants are issued by the Heads of Departments having jurisdiction.

August 24, 1912, Public, No. 316, Chapter 369, 37 Stat. 497; 43 U.S.C. 142.

"An Act To amend section two of an act to authorize the President of the United States to make withdrawals of public lands in certain cases, approved June twenty-fifth, nineteen hundred and ten."

Note: Amends the Act of June 25, 1910 (Chapter 421, 36 Stat. 847) to permit exploration, discovery, occupation, and purchase under mining laws, for metalliferous minerals only.

January 27, 1913, Public, No. 351; Chapter 14; 37 Stat. 651.

"An Act To subject lands of former Fort Niobrara Military Reservation and other lands to homestead entry."

"Provided further, That the Secretary of the Interior is authorized, in his discretion, to reserve from sale or disposition any lands chiefly valuable for power purposes."

Note: Withdrawals made utilizing this authority were titled Power Site Reserves (PSR).

March 4, 1915, Public, No. 293, Chapter 144; 38 Stat. 1100.

"An Act Making appropriations for the Department of Agriculture for the fiscal year ending June thirteenth, nineteen hundred and sixteen."

Note: Under Departmental instructions of January 13, 1916 (44 L.D. 513), Federal agencies may appropriate rights-of-way across Federal lands, with concurrence of the agency having jurisdiction or control, for trails, roads, bridges, fire lanes, telephone lines, and fences. On January 10, 1963, the Federal Power Commission (FPC) stated in a general Engineering Power Report (EPR) that it has no objection to the recordation of such rights-of-way across powersite lands without prior reference to the Commission, except that the Commission would appreciate the opportunity to appraise and report on the power potential of the powersite lands involved in instances where facilities would substantially increase costs of power development.

June 9, 1916, Public, No. 86, Chapter 137, 39 Stat. 218-223.

"An Act To alter and amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon,' approved July twenty-fifth, eighteen hundred and sixty-six, as amended by the Acts of eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, and to alter and amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,' approved May fourth, eighteen hundred and seventy, and for other purposes."

"SEC. 2. That the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, is hereby authorized and directed, after due examination in the field, to classify said lands by the smallest legal subdivisions thereof into three classes, as follows:

"Class one. Power-site lands, which shall include only such lands as are chiefly valuable for water-power sites, which lands shall be subject to withdrawal and such use and disposition as has been or may be provided by law for other public lands of like character."

Note: Withdrawals made utilizing this authority were titled Waterpower Designations (WPD). This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792).

February 26, 1919, Public, No. 219, Chapter 47, 40 Stat. 1179-1181.

"An Act To accept from the Southern Oregon Company, a corporation organized under the laws of the State of Oregon, a reconveyance of the lands granted to the State of Oregon by the Act approved March third, eighteen hundred and sixty-nine, entitled 'An Act granting lands to the State of Oregon to aid in the construction of a military wagon road from the navigable waters of Coos Bay to Roseburg, in said State,' commonly known as the Coos Bay Wagon Road grant, to provide for the disposition of said lands, and for other purposes."

"SEC. 2. That the said lands shall be classified and disposed of in the manner provided by the Act of June ninth, nineteen hundred and sixteen (Thirty-ninth Statues at Large, page two hundred and eighteen), for the classification and disposition of the Oregon and California railroad grant lands..." [40 Stat. 1180]

Note: Withdrawals made under this authority were titled Waterpower Designations (WPD).

February 25, 1920, Public, No. 146, Chapter 85, 41 Stat. 437-451; 30 U.S.C. 181.

"An Act To promote the mining of Coal, phosphate, oil, oil shale, gas, and sodium on public domain."

Note: Provided for the leasing of certain minerals on Federal lands under regulations which require consent to inclusion therein of stipulations issued by BLM with the advice and consent of the FERC. The act (41 Stat. 449) also grants rights-of-way for oil and natural gas pipelines and pumping plant sites.

June 10, 1920, Chapter 285, 41 Stat. 1063-1077; 16 U.S.C. 791-823).

"An Act To create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto, and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Power Commission (hereafter referred to as the commission), which shall be composed of the Secretary of War, the Secretary of the Interior, and the Secretary of Agriculture." [41 Stat. 1063]

"The work of the commission shall be performed by and through the Departments of War, Interior, and Agriculture and their engineering, technical, clerical, and other personnel except as may be otherwise provided by law." [41 Stat. 1063]

"SEC. 4. That the commission is hereby authorized and empowered--"

*"(d)¹ To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State, or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation, and for the development, transmission, and utilization of power across, along, from or in any of the navigable waters of the United States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided*, That licenses shall be issued within any reservation only after a finding by the commission that the license will not interfere or be [41 Stat. 1965] inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation..." [41 Stat. 1066]*

Subsequent modifications to the Act have made this (e).

"SEC. 10. That all licenses issued under this Act shall be on the following conditions:

"(a) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgement of the commission will be best adapted to a comprehensive scheme of improvement and utilization for the purposes of navigation, of waterpower development, and of other beneficial uses; and if necessary in order to secure such scheme the commission shall have the authority to require the modification of any project and of the plans and specifications of the project works before approval." [41 Stat. 1068]

"(e) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the commission for the purpose of reimbursing the United States for the cost of the administration of this Act; for recompensing it for the use, occupancy, and enjoyment of its lands or other property..." [41 Stat. 1068]

"SEC. 24. Any lands of the United States included in any proposed project under the provisions of this Part shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located. Whenever the Commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, for such purpose or purposes and under such restrictions as the Commission may determine, subject to and with a reservation of the right of the United States or its permittee or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the commission, for the purposes of this Part, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Part upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the Commission: *Provided*, That locations, entries, selection, or filings heretofore made for lands reserved as water power sites, or in connection with water power development, or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained."

"SEC. 30. That the short title of this Act shall be 'The Federal Water Power Act' (FWPA). "

"*Provided further*, That before any lands applied for, or heretofore or hereafter reserved, or classified as power sites, are declared open to location, entry, or selection by the Secretary of the Interior, notice of intention to make such declaration shall be given to

the Governor of the State within which such lands are located, and such State shall have ninety days from the date of such notice within which to file, under any statute or regulation applicable thereto, an application for the reservation to the State, or any political subdivision thereof, of any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways, and a copy of such application shall be filed with the Federal Power Commission; and any location, entry, or selection of such lands, or subsequent patent thereof, shall be subject to any rights granted the State pursuant to such application."

Note: Provided that the Secretary of the Interior would open land after the Federal Power Commission (FPC) determined that the value of land reserved or classified will not be injured or destroyed for the purposes of power development. Centralized the Federal WRR licensing authority, with provisions for Secretarial stipulations. It requires planning for the development, transmission and utilization of electric power best adapted to any existing comprehensive plans. It provides withdrawals for developers upon application.

March 3, 1921, Public, No. 369, Chapter 129, 41 Stat. 1353; 16 U.S.C. 797a.

"An Act To amend an Act entitled 'An Act To create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto, and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes,' approved June 10, 1920."

Note: Disallowed permits, license, lease, or authorization for dams, conduits, reservoirs, power houses, transmission lines, or other works in national parks or national monuments without specific authority of congress.

November 9, 1921, Public, No. 87, Chapter 119, 42 Stat. 212-216, 23 U.S.C. 18.

"An Act To amend the Act entitled 'An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes,' approved July 11, 1916, as amended and supplemented and for other purposes." The Federal Highway Act.

Note: Provided for the Secretary of Agriculture to appropriate land and materials for highways, and transfer the same to State Highway Departments.

June 7, 1924, Public, No. 225, Chapter 303, 43 Stat. 592; 43 U.S.C. 42.

"An Act Making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1925, and for other purposes."

Note: Provided monies for supplying books to depository libraries, and stopped distribution of geological publications to libraries designated as special depositories.

June 14, 1926, Public, No. 386 Chapter 578, 44 Stat. 741.

"An Act To authorize acquisition or use of public lands by States, counties, or municipalities for recreational purposes."

Note: Allowed purchase or leasing of land for recreational purposes. They may be purchases, subject to the same provision for reversion of title as are prescribed for conveyances to the States in consummation of exchanges.

May 24, 1928, Public, No. 499, Chapter 728, 45 Stat. 728-729; 49 U.S.C. 211-214.

"An Act To authorize the leasing of public lands for use as public aviation fields."

Note: Amended by the Act of August 16, 1941 (Chapter 354, 55 Stat. 621) authorizes the lease for use as a public airport any contiguous, unreserved, and unappropriated public lands. Only special cases referred to Geological Survey. Process through Federal Power Commission suggesting stipulations if any seem required.

December 22, 1928, Public, No. 645, Chapter 47, 45 Stat. 1069.

"An Act To authorize the Secretary of the Interior to issue patents for lands held under color of title."

Note: When it shall be shown to the satisfaction of the Secretary, patent may be issued upon payment.

June 23, 1930, Public, No. 412, Chapter 572, 46 Stat. 797; 16 U.S.C. 792.

"An Act To reorganize the Federal Power Commission."

Note: Changed the Commission to five commissioners appointed by the President.

August 26, 1935, Public, No. 333, Chapter 687, 49 Stat. 838; 16 U.S.C. 791a-825.

"An Act To provide for control and regulation of public-utility holding companies, and for other purposes." Public Utility Act of 1935.

Note: Amended the Act of June 10, 1920 (Chapter 285, 41 Stat. 791-823) including the short title, "Federal Power Act" (FPA).

May 14, 1940, Public, No. 509, Chapter 190, 54 Stat. 212, 43 U.S.C. 36a.

"An Act To authorize the Director of the Geological Survey, under the general supervision of the Secretary of the Interior, to acquire certain collections for the United States."

Note: Provided for the acquisition of Scientific or Technical books, maps, etc.

August 16, 1941, Public Law 205, Chapter 354, 55 Stat. 621.

"An Act To amend the Act entitled "An Act To authorize the leasing of public lands for use as public aviation fields", approved May 24, 1928, as amended."

Note: This act increased the allowable acreage.

August 7, 1946, Public Law 615, Chapter 770, § 10, 60 Stat. 867; 43 U.S.C. 41.

"An Act To discontinue certain reports now required by law."

Note: Repealed acts requiring the submission of annual reports or statements to the extent of such requirement [this affects the Act of March 3, 1879 (Chapter 182, 20 Stat. 395) referenced on page 4]. This discontinued the requirement for an annual report by the Geological Survey.

July 21, 1947, Public Law 206, Chapter 273; 61 Stat. 398; 43 U.S.C. 450.

"An Act To authorize the Director of the United States Geological Survey to produce and sell copies of aerial or other photographs and mosaics, and photographic or photostatic reproductions of records, on a reimbursement of appropriations basis."

Note: Production and sale of copies of photographs and records; disposition of receipts.

February 5, 1948, Public Law 407, Chapter 45, 62 Stat. 17; 25 U.S.C. 323-328.

"An Act To empower the Secretary of the Interior to Grant rights-of-way for various purposes across lands of individual Indians or Indian tribes, communities, bands or nations."

Note: The Secretary is empowered to grant rights-of-way for various purposes over Indian lands. Such rights-of-way are issued by the Bureau of Indian Affairs.

May 28, 1948, Public Law 559, Chapter 351, 62 Stat. 275-276; 16 U.S.C. 818.

"An Act To amend section 24 of the Federal Power Act so as to provide that the States may apply for reservations of portions of power sites released for entry, location, or selection to the States for Highway purposes."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 24 of the Federal Power Act, as amended, is amended by inserting before the period at the end of the first proviso thereof a colon and the following new proviso: 'Provided further, That before any lands applied for or heretofore or hereafter reserved, or classified as power sites, are declared open to location, entry, or selection by the Secretary of the Interior, notice of intention to make such declaration shall be given to the governor of the State within which such lands are located, and such State shall have ninety days from the date of such notice within which to file, under any statute or regulation applicable thereto, an application for the reservation to the State, or any political subdivision thereof, of any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways and a copy of such application shall be filed with the Federal Power Commission; and any location, entry, or selection of such lands, or subsequent patent thereof, shall be subject to any rights granted the State pursuant to such application.'"

Note: Prior to the Secretary opening lands reserved for WRR sites, notice shall be given to the Governor of the State, who may file for the reservation of land to the state.

June 20, 1949, Public Law 109, Chapter 226, 63 Stat. 203-207.

"An Act To provide for the reorganization of Government agencies, and for other purposes."
Reorganization Act of 1949.

Note: Provided for the reorganization of government agencies. The resulting Interior's Reorganization Plan No. 3 of 1950, was effective May 24, 1950 (64 Stat. 1262). It transferred to the Secretary all functions of other officers of the Department and all functions of all agencies and employees of the Department.

June 4, 1954, Public Law 387, Chapter 263, 68 Stat. 173-175; 43 U.S.C. 869-1.

"An Act To amend the Recreation Act of June 14, 1926, to include other public purposes and to permit nonprofit organizations to purchase or lease public lands for certain purposes."

Note: The Secretary of Interior, after due consideration as to the power value of the land, whether or not withdrawn therefore, may sell or lease such land.

August 13, 1954, Public Law 585, Chapter 730, 68 Stat. 708 - 717.

"An Act To amend the mineral leasing laws and the mining laws to provide for multiple mineral development of the same tracts of the public lands, and for other purposes."

September 3, 1954, Public Law 771, Chapter 1255, 68 Stat. 1146; 43 U.S.C. 931c, 931d.

"An Act To provide authorization for certain uses of public lands."

Note: This allows for grants leases, permits, and easements for public works to public agencies. BLM issues the rights-of-way for Interior agencies having jurisdiction; all others are issued by Heads of Departments having jurisdiction. This act was partially repealed by the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2792).

August 9, 1955, Public Law 322, Chapter 682, 69 Stat. 618.

"An Act To authorize the Secretary of the Interior to investigate and report to the Congress on projects for the conservation, development, and utilization of the water resources of Alaska." Alaska Water Resources Act.

Note: For the purpose of encouraging and promoting the development in Alaska, the act authorized the Secretary of the Interior to make investigations of projects for the conservation, development, and utilization of the water resources of Alaska. The unique planning and development of water resources in Alaska led to this act and the eventual establishment of the Alaska Power Administration, Department of the Interior.

August 11, 1955, Public Law 359, Chapter 797, 69 Stat. 681-683.

"An Act To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, and for other purposes."
Mining Claims Rights Restoration Act of 1955.

Note: Provided for opening of powersite lands to mineral entry provided that power rights to the land shall be retained by the United States.

August 27, 1958, Public Law 85-767, 72 Stat. 893-916; 23 U.S.C. 317.

"An Act To revise, codify, and enact into law, title 23 of the United States Code, entitled 'Highways.'"

Note: Granted rights-of-way for interstate highways including control of access on the national system of interstate and defense highways and the right to use materials for such highways from lands owned by the United States. This act is a modification with minor deletions from and major additions to the Act of November 9, 1921 (Chapter 119, 42 Stat. 212-216). Under conditions deemed necessary for the adequate protection and utilization of reserved lands or materials, lands and materials may be transferred to the appropriate State highway department or its nominee subject to specified conditions. When waterpower withdrawals are affected, an application under this act is referred to the Federal Power Commission for a determination under Section 24 of the Federal Power Act. BLM issues these rights-of-way subject to clearance with the agency having jurisdiction.

June 29, 1960, Public Law 86-533, 74 Stat. 248.

"An Act To repeal certain provisions of law requiring the submission of certain reports to congress, and for other purposes."

Note: Repealed acts requiring reporting on Indian Power Site Reserves (IPSR).

September 3, 1964, Public Law 88-577, 78 Stat. 890.

"An Act To establish a National Wilderness Preservation System for the permanent good of the whole people, and for other purposes." Wilderness Act.

Note: The President may authorize "prospecting for water resources, the establishment of reservoirs, power projects, transmission lines, and other facilities needed in the public interest. Wilderness and WRR values are not incompatible.

July 9, 1965, Public Law 89-72, 79 Stat. 213-218.

"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." Federal Water Project Recreation Act.

Note: It is the policy of the Congress and the intent of this act that in investigating and planning any Federal navigation, flood control, reclamation, hydroelectric, or multiple-purpose water resource project, consideration shall be given to opportunities for recreation, fish, and wildlife enhancement.

July 22, 1965, Public Law 89-80, 79 Stat. 244-254.

"An Act To provide for the optimum development of the Nation's natural resources through the coordinated planning of a water resources council and river basin commissions, and by providing financial assistance to the States in order to increase State participation in such planning." Water Resource Planning Act.

"In order to meet the rapidly expanding demands for water throughout the Nation, it is hereby declared to be the policy of the Congress to encourage the conservation, development, and utilization of water and related land resources of the United States on a

comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and others concerned."

Note: That the act:

- a. Created a Water Resources Council, composed of the Secretaries of Interior; Agriculture; Army;² and Health, Education, and Welfare; and the Chairman of the Federal Power Commission (FPC)[now FERC] to:
 - (1) Prepare biennial assessments of the adequacy of water supplies to meet water requirements.
 - (2) Make recommendations to the President of policies, plans, and programs for requirements, coordination, of larger regions of the Nation.
 - (3) Establish principles, standards, and procedures for preparation of regional or river basin plans for formulation and evaluation of Federal water and land resources projects.
 - (4) Review such plans with regard to achieving optimum use of the water and related land resources, the effect of the plan on the achievement of other programs, and the contributions it will make in obtaining the Nation's economic and social goals.
- b. Allowed the President to establish river basin water and related land resources commissions. These commissions were to submit comprehensive, coordinated, joint plans for water and related land resources development in the area, river basin, or group of river basins for which the commission was established.
- c. In recognition of the need for increased participation by the states in water and related land resources planning, the act provided appropriations for grants to States to assist them in developing and participating in the development of comprehensive water and related land resources plans.

Note: This act was an attempt to remove the "pork barrel" approach to WRR development by forcing a systematic planning process.

October 2, 1968, Public Law 90-542, 82 Stat. 906.

"An Act To provide for a National Wild and Scenic Rivers System, and for other purposes."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Wild and Scenic Rivers Act.

"(b) It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections

Note: Does this sound familiar? These three Secretaries formed the original Federal Power Commission!

thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes." [82 Stat. 906]

"SEC. 4. (a) The Secretary of the Interior or, where national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and from time to time submit to the President and the Congress proposals for the addition to the national wild and scenic rivers system of rivers which are designated herein or hereafter by the Congress as potential additions to such system; which, in his or their judgment, fall within one or more of the classes set out in section 2, subsection (b), of this Act; and which are proposed to be administered, wholly or partially, by an agency of the United States. Every such study and plan shall be coordinated with any water resources planning involving the same river which is being conducted pursuant to the Water Resources Planning Act (79 Stat. 44; 42 U.S.C. 1962 *et seq.*).

"Each proposal shall be accompanied by a report, including maps and illustrations showing among other things the area included within the proposal; the characteristics which make the area a worthy addition to system; the current status of landownership and use in the area; the reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed, or curtailed if the area were included in the national wild and scenic rivers system; the Federal agency (which in the case of a river which is wholly or substantially within a national forest, shall be the Department of Agriculture) by which it is proposed the area be administered; the extent to which it is proposed that administration, including the costs thereof, be shared by State and local agencies; and the estimated cost to the United States of acquiring necessary lands and interests in land and of administering the area as a component of the system. Each such report shall be printed as a Senate or House document.

"(b) Before submitting any such report to the President and the Congress, copies of the proposed report shall, unless it was prepared jointly by the Secretary of the Interior and the Secretary of Agriculture, be submitted by the Secretary of the Interior to the Secretary of Agriculture to the Secretary of the Interior, as the case may be, and to the Secretary of the Army, the Chairman of the Federal Power Commission, the head of any other affected Federal department or agency and, unless the lands proposed to be included in the area are already owned by the United States or have already been authorized for acquisition by Act of Congress, the Governor of the State or States in which they are located or an officer designated by the Governor to receive the same. Any recommendations or comments on the proposal which the said officials furnish the Secretary or Secretaries who prepared the report within ninety days of the date on which the report is submitted to them, together with the Secretary's or Secretaries' comments thereon, shall be included with the transmittal to the President and the Congress. No river or portion of any river shall be added to the national wild and scenic rivers system subsequent to enactment of this Act until the close of the next full session of the State legislature, or legislatures in case more than one [82 Stat. 909] State is involved, which begins following the submission of any recommendation to the President with respect to such addition as herein provided." [82 Stat. 910]

"SEC. 5. ... (d) In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potentials. The

Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States shall be evaluated in planning reports by all Federal agencies as potential alternative uses of the water and related land resources involved."

January 1, 1970, Public Law 91-190, 83 Stat. 852-856, 42 U.S.C. 4321-4347.

"An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the 'National Environmental Policy Act of 1969.'"

"SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality."

"TITLE I - DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

"SEC. 101. (a) The Congress recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

"(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may-

"(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

"(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

"(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

"(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

"(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and [83 Stat. 853]

"(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

"SEC. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall-

"(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

"(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

"(C) ...Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;"

"(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;"

"(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment; [83 Stat. 854]

"(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

"(I) assist the Council on Environmental Quality established by title II of this Act.

"SEC. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

"SEC. 104. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

"SEC. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies." [83 Stat. 854]

December 18, 1971, Public Law 92-203, 85 Stat. 688.

"An Act To provide for the settlement of certain land claims of Alaska Natives, and for other purposes." Alaska Native Claims Settlement Act.

Note: Provides for the settlement of all Natives' and Native groups' claims including conveyance of land. The deficiency lands and native allotments are subject to waterpower withdrawals.

August 17, 1974, Public Law 93-378, 88 Stat. 476-480.

"An Act To provide for the Forest Service, Department of Agriculture, to protect, develop, and enhance the productivity and other values of certain of the Nation's lands and resources, and for other purposes." Forest and Rangeland Renewable Resources Planning Act of 1974.

Note: The Secretary of Agriculture shall prepare a Renewable Resource Assessment, a comprehensive and appropriately detailed inventory of renewable resources, and develop land management plans.

October 21, 1976, Public Law 94-579, 90 Stat. 2743-2794.

"An Act To establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes." Federal Land Policy and Management Act of 1976.

"SEC. 102. (a) The Congress declares that it is the policy of the United States that--

"(1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;

"(2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;

"(3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before the date of enactment of this Act be reviewed in accordance with the provisions of this Act;" [90 Stat. 2744]

"SEC. 201. (a) The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. [90 Stat. 2747]

"SEC. 202. (a) The Secretary shall, with public involvement and consistent with terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans

shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses." [90 Stat. 2747]

"SEC. 204. (a) On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section." [90 Stat. 2751]

"(l)(1) The Secretary shall, within fifteen years of the date of enactment of this Act, review withdrawals existing on the date of approval of this Act, in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming of (1) all Federal lands other than withdrawals of the public lands administered by the Bureau of Land Management and of lands which, on the date of approval of this Act, were part of Indian reservations and other Indian holdings, the National Forest System, the National Park System, the National Wildlife Refuge System, other lands administered by the Fish and Wildlife Service or the Secretary through the Fish and Wildlife Service, the National Wild and Scenic Rivers System, and the National System of Trails; and (2) all public lands administered by the Bureau of Land Management and all lands in the National Forest System (except those in wilderness areas, and those areas formally identified as primitive or natural areas or designated as national recreation areas which closed the lands to appropriation under the Mining Law of 1872 (17 Stat. 91, as amended; 30 U.S.C. 22 *et seq.*) or to leasing under the Mineral Leasing Act of 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 *et seq.*)." [90 Stat. 2754]

"SEC. 501. (a) The Secretary, with respect to the public lands and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for --

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

"(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791);" [90 Stat. 2776]

"SEC. 701. (a) Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act."

"(c) All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law." [90 Stat. 2786]

"SEC. 704. (a) Effective on and after the date of approval of this Act, the implied authority of the President to make withdrawals and reservations resulting from acquiescence of the Congress (U.S. v. Midwest Oil Co., 236 U.S. 459) and the following statutes and parts of statutes are repealed:"

Note: Repealed some of the above Acts, provides the authority for the Secretary of the Interior to make, modify, revoke, review, and extend withdrawals, and precludes delegation of this authority to heads of bureaus and offices.

November 9, 1978, Public Law 95-617, 92 Stat. 3117.

"An Act To suspend until the close of June 30, 1980, the duty on certain doxorubicin Hydrochloride antibiotics."

"SEC 1. Short Title.-This Act may be cited as the "Public Utility Regulatory Policies Act of 1978'." (PURPA)

"SEC. 210. Cogeneration and Small Power Production.

"(a) Cogeneration and Small Power Production Rules.- Not later than 1 year after the date of enactment of this Act, the commission shall prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage cogeneration and small power production which rules require electric utilities to offer to -"

"(2) purchase electric energy from such facilities."

December 2, 1980, Public Law 96-487, 94 Stat. 2371.

"An Act To provide for the designation and conservation of certain public lands in the State of Alaska, including the designation of units of the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic Rivers, and National Wilderness Preservation Systems, and for other purposes." Alaska National Interest Lands Conservation Act.

Note: Assigned Federal land in the State of Alaska to several different land management agencies. The waterpower or reservoir withdrawals are not affected; however, new land managers need to be aware of, understand, and accept their responsibilities.

October 6, 1986, Public Law 99-495, 100 Stat. 1243.

"An Act To amend the Federal Power Act to provide for more protection to electric consumers."

"(a) Short Title.-This Act may be cited as the 'Electric Consumer Protection Act of 1986.'" (ECPA)

November 17, 1986, Public Law 99-662, 100 Stat. 4082-4273.

"An Act To provide for the conservation and development of water and related resources and the improvement and rehabilitation of the nation's water resources infrastructure."

October 24, 1992, Public Law 102-486, 106 Stat. 2776-3133.

"An Act To provide for improved energy efficiency." Energy Policy Act of 1992.

"TITLE XXIV--NON-FEDERAL POWER ACT HYDROPOWER PROVISIONS.
SEC. 2401. RIGHTS-OF-WAY ON CERTAIN FEDERAL LANDS. Section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761) is amended--(1) by inserting in subsection (a) after "public lands" the following: "(including public lands, as defined in section 103(e) of this act, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. 818))"; (2) in paragraph (4) of subsection (a), by striking "Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791) and inserting in lieu thereof "Federal Energy Regulatory Commission under the Federal Power Act, including part 1 thereof (41 Stat. 1063, 16 U.S.C. 791a-825r)."; and (3) by adding the following new subsection at the end thereof:"

"(d) With respect to any project or portion thereof that was licensed pursuant to, or granted an exemption from, part I of the Federal Power Act which is located on lands subject to a reservation under section 24 of the Federal Power Act and which did not receive a permit, right-of-way or other approval under this section prior to enactment of this subsection, no such permit, right-of-way, or other approval shall be required for continued operation pursuant to section 15 of the Federal Power Act, of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest lands not subject to such reservation."

October 30, 1992, Public Law 102-575, 106 Stat. 4600-4769.

"An Act To authorize additional appropriations for the construction of the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming."
Reclamation Projects Authorization and Adjustment Act of 1992.

"TITLE XXX--WESTERN WATER POLICY REVIEW.

"SEC. 3001. SHORT TITLE.

"This title may be cited as the "*Western Water Policy Review Act of 1992.*"
[106 Stat. 4693]

"SEC. 3002. CONGRESSIONAL FINDINGS. The Congress finds that--

"(1) the Nation needs an adequate water supply for all states at a reasonable cost;

"(2) the demands on the Nation's finite water supply are increasing;

"(3) coordination on both the Federal level and the local level is needed to achieve water policy objectives;

"(4) not less than fourteen agencies of the Federal Government are currently charged with functions relating to the oversight of water policy;

"(5) the diverse authority over Federal water policy has resulted in unclear goals and an inefficient handling of the Nation's water policy;

"(6) the conflict between competing goals and objectives by Federal, State, and local agencies as well as by private water users is particularly acute in the nineteen Western States which have arid climates which include the seventeen reclamation States, Hawaii, and Alaska;

"(7) the appropriations doctrine of water allocation which characterizes most western water management regimes varies from State to State, and result in many instances in increased competition for limited resources;

"(8) the Federal Government has recognized and continues to recognize the primary jurisdiction of the several States over the allocation, priority, and use of water resources of the States, except to the extent such jurisdiction has been preempted in whole or in part by the Federal Government, including, but not limited to, express or implied Federal reserved water rights either for itself or for the benefit of Indian Tribes, and that the Federal Government will, in exercising its authorities, comply with applicable State laws;

"(9) the Federal Government recognizes its trust responsibilities to protect Indian water rights and assist Tribes in the wise use of the resources;

"(10) Federal agencies, such as the Bureau of Reclamation, have had, and will continue to have major responsibilities in assisting States in the wise management and allocation of scarce water resources; and

"(11) the Secretary of the Interior, given his responsibilities for management of public land, trust responsibilities for Indians, administration of the reclamation program, investigations and reviews into ground water resources through the Geologic Survey [now United States Geological Survey], and the Secretary of the Army, given his responsibilities for flood control, water supply, hydroelectric power, recreation, and fish and wildlife enhancement, have the resources to assist in a comprehensive review, in consultation with appropriate officials from the nineteen Western States, into the problems and potential solutions facing the nineteen Western States and the Federal Government in the increase in competition for the scarce water resources of the Western states.

"SEC. 3003. PRESIDENTIAL REVIEW.

"(a) The President is directed to undertake comprehensive review of Federal activities in the nineteen Western States which directly or indirectly affect the allocation and use of water resources, [106 Stat. 4694] whether surface or subsurface and to submit a report on the President's findings, together with recommendations, if any, to the Committees on Energy and Natural Resource, Environment and Public Works and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Public Works and Transportation, Merchant Marine and Fisheries and Appropriations of the House of Representatives.

"(b) Such report shall be submitted within three years from the date of enactment of this Act.

"(c) In conducting the review and preparing the report, the President is directed to consult with the Advisory Commission established under section 3004 of this title, and may request the Secretary of the Interior and the Secretary of the Army or other Federal officials or the Commission to undertake such studies or other analyses as the President determines would assist in the review.

"(d) The President shall consult periodically with the Commission, and upon the request of the President, the heads of other Federal agencies are directed to cooperate with and assist the Commission in its activities.

"SEC. 3004. The ADVISORY COMMISSION.

"(a) The President shall appoint an Advisory Commission (hereafter in this title referred to as the 'Commission') to assist in the preparation and review of the report required under this title.

"(b) The Commission shall be composed of eighteen members as follows:

"(1) Ten members appointed by the President including:

"(A) the Secretary of the Interior or his designee;

"(B) the Secretary of the Army or his designee;

"(C) at least one representative chosen from a list submitted by the Western Governors Association; and

"(D) at least one representative chosen from a list submitted by Tribal governments located in the Western States.

"(2) In addition to the ten members appointed by the President, twelve Members from the United States Congress shall serve as ex officio members of the Commission. For the United States Senate: the Chairmen and the Ranking Minority Member of the Committee on Energy and Natural Resources, and Appropriations, and the Subcommittee of the Committee on Energy and Natural resources which has jurisdiction over the Bureau of Reclamation. For the United States House of Representatives: the Chairman and Ranking Minority Members of the Committees on Interior and Insular Affairs, Public Works and Transportation, and Appropriations.

"(c) The President shall appoint one member of the Commission to serve as Chairman.

"(d) Any vacancy which may occur on the Commission shall be filled in the same manner in which the original appointment was made.

"(e) Members of the Commission shall serve without compensation but shall be reimbursed for travel, substance, and other necessary expenses incurred by them in the performance of their duties.

"SEC. 3005. DUTIES OF THIS COMMISSION.

"The Commission shall--[106 Stat. 4695]

"(1) review present and anticipated water resource problems affecting the nineteen Western States, making such projections of water supply requirements as may be necessary and identifying alternative ways of meeting these requirements--giving considerations, among other things, to conservation and more efficient use of existing supplies, innovations encourage the most beneficial use of water and recent technological advances;

"(2) examine the current and proposed Federal Programs affecting such States and recommend to the President whether they should be continued or adopted and, if so, how they should be managed for the next twenty years, including the possible reorganization or consolidation of the current water resources development and management agencies;

"(3) review the problems of rural communities relating to water supply, potable water treatment, and wastewater treatment;

"(4) review the need and opportunities for additional storage or other arrangements to augment existing water supplies including, but not limited to, conservation;

"(5) review the history, use, and effectiveness of various institutional arrangements to address problems of water allocation, water quality, planning, flood control and other aspects of water development and use, including, but not limited to, interstate water compact, Federal-State regional corporations, river basin commissions, the activities of the Water Resources Council, municipal and irrigation district and other similar entities with specific attention to the

authorities of the Bureau of Reclamation under reclamation law and the Secretary of the Army under water resource law;

"(6) review the legal regime governing the development and use of water and the respective roles of both the Federal Government and the States over the allocation and use of water, including an examination of riparian zones, appropriation and mixed systems, market transfers, administrative allocations, ground water management, interbasin transfers, recordation of rights, Federal-State relations including the various doctrines of Federal reserved water rights (including Indian water rights and the development in several States of the concept of a public trust doctrine); and

"(7) review the activities, authorities, and responsibilities of the various Federal agencies with direct water resources management responsibility, including but not limited to the Bureau of Reclamation, the Department of the Army, and those agencies whose decision would impact on water resource availability and allocation, including, but not limited to, The Federal Energy Regulatory Commission.

"SEC. 3006. REPRESENTATIVES.

"(a) The Chairman of the Commission shall invite the Governor of each Western State to designate a representative to work closely with the Commission and its staff in matters pertaining to this title.

"(b) The Commission, at its discretion, may invite appropriate public or private interest groups including, but not limited to, Indian and Tribal organizations to designate a representative to work closely with the Commission and its staff in matters pertaining to this title. [106 Stat. 4696]

"SEC. 3007. POWERS OF THE COMMISSION.

"(a) The Commission may--

"(1) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as may deem advisable:

"(2) use the United States mail in the same manner and upon the same conditions as other departments and agencies of the United States;

"(3) enter into contracts or agreements for studies and surveys with public and private organizations and transfer funds to Federal agencies to carry out such aspect of the Commission's functions as the Commission determines can best be carried out in that manner; and

"(4) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required to perform its functions under this title.

"(b) Any member of the Commission is authorized to administer oaths when it is determined by a majority of the Commission that testimony shall be taken or evidence received under oath.

"(c) The Commission shall have a Director who shall be appointed by the Commission and who shall be paid at a rate not to exceed the maximum rate of basic pay payable for level II of the Executive Schedule.

"(1) With the approval of the Commission, the Director may appoint and fix the pay of such personnel as the Director considers appropriate but only to the extent that such personnel cannot be obtained from the Secretary of the Interior or by detail from other Federal agencies. Such personnel may be appointed without regard to the

provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such Title relating to classification and General schedule pay rates.

"(2) With the approval of the Commission, the Director may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individually not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

"(d) The Secretary of the Interior and the Secretary of the Army shall provide such office space, furnishings and equipment as may be required to enable the Commission to perform its functions. The Secretary shall also furnish the Commission with such staff, including clerical support, as the Commission may require.

"SEC. 3008. POWERS AND DUTIES OF THE CHAIRMAN.

"(a) Subject to general policies adopted by the Commission, the Chairman shall be the chief executive of the Commission and shall exercise its executive and administrative powers as set forth in paragraphs (2) through (4) of section 3007(a).

"(b) The Chairman may make such provisions as he shall deem appropriate authorizing the performance of any of his executive and administrative functions by the Director or other Personnel of the Commission. [106 Stat. 4697]

"SEC. 3009. OTHER FEDERAL AGENCIES.

"(a) The Commission shall, to the extent practicable, utilize the service of the Federal water resource agencies.

"(b) Upon request of the Commission, the President may direct the head of any other Federal department or agency to assist the Commission and such head of any Federal department or agency is authorized--

"(1) to furnish to the Commission, to the extent permitted by law and within the limits of available funds, including funds transferred for that purpose pursuant to section 3007(a)(7) of this title, such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and

"(2) to detail to temporary duty with the Commission on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its function, each such detail to be without loss of seniority, pay, or other employee status.

"(c) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the Secretary of the Interior.

"SEC. 3010. APPROPRIATIONS.

"There are hereby authorized to be appropriated not to exceed \$10,000,000 to carry out the purposes of sections 3001 through 3009 of this title." [106 Stat. 4698]

Code of Federal Regulations (CFR)

Note that the following citations pertain to Interim Use.

18 CFR 25.1	Applications for determination under Section 24, Act of June 10, 1920
25 CFR 161	Rights-of-way on Indian lands
40 CFR 1500-1508	NEPA planning requirements
43 CFR 9.1	Rights-of-way by Department Heads
43 CFR 2091.5-4	Water power withdrawals
43 CFR 2234.2-2(a)	Railroad rights-of-way
43 CFR 2234.2-3(a)	Tramways, canals, reservoirs
43 CFR 2234.3-1(a)	Ditches and canals
43 CFR 2234.4-1(a)(4)	Through parks, reservations
43 CFR 2320.1	Power site reserves, powersite classifications, Indian powersite reserves, and waterpower designations
43 CFR 2800.0-1(b)	Trails, roads, bridges, fences
43 CFR 2801.1-5(m)	FPC stipulations for aviation fields
43 CFR 2802.1-6	Indian lands
43 CFR 2811.0-3(a)	Tramways, canals, reservoirs
43 CFR 2811.0-3(b)	Tramways, canals, reservoirs
43 CFR 2811.0-5	Tramways, canals, reservoirs
43 CFR 2811.1	Tramways, canals, reservoirs
43 CFR 2821.03	Interstate and defense highways
43 CFR 2821.6-2	Federal highways
43 CFR 2822.1-1	R.S. 2477 highways
43 CFR 2822.1-2(a)	R.S. 2477 highways
43 CFR 2822.1-2(b)	R.S. 2477 highways
43 CFR 2822.1-2(c)	R.S. 2477 highways
43 CFR 2822.2-1	R.S. 2477 highways
43 CFR 2822.2-2	R.S. 2477 highways
43 CFR 2822.2-2(b)	R.S. 2477 highways
43 CFR 2840.0-3	Railroad rights-of-way; by Heads of Departments
43 CFR 2850.0-3(b)	Railroad rights-of-way; by Heads of Departments
43 CFR 2861.0-3	Railroad rights-of-way; by Heads of Departments
43 CFR 2862.0-3(b)	Railroad rights-of-way; by Heads of Departments
43 CFR 2871.0-3	Ditches and canals
43 CFR 2881.0-3(a)	Oil & gas pipelines
43 CFR 2881.0-3(b)	Oil & gas pipelines
43 CFR 2881.0-8	Oil & gas pipelines
43 CFR 2911	Public aviation fields
43 CFR 2920.0-2(a)	Special use permits
43 CFR 3103	Leasing stipulations
43 CFR 3109.4-1	Leasing stipulations
43 CFR 3109.4-2	Leasing stipulations
43 CFR 3501.3-2(b)	Leasing stipulations
43 CFR 3501.3-2(c)	Leasing stipulations

Executive Orders

The following Executive Orders provide the authority for the WRR program and withdrawals for the protection of the resources.

July 2, 1910, Executive Orders (unnumbered).

"It is hereby ordered that those certain orders of withdrawal made heretofore:
On May 4, 1909, described as Temporary Power-site Withdrawal No. 1;
On May 15, 1909, described as Temporary Power-site Withdrawal No. 2;
On May 24, 1909, described as Temporary Power-site Withdrawal No. 3;
On May 25, 1909, described as Temporary Power-site Withdrawal No. 4;
and including the lands more particularly described and set forth below, be, and the same are hereby ratified, confirmed, and continued in full force and effect, and the lands reserved for water-power sites, subject to all of the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled 'An Act to authorize the President of the United States to make withdrawals of public lands in certain cases,' approved June 25, 1910:"

Note: Executive Orders of this date confirmed and continued the Temporary Power Site Reserves (TPSR) made by the Secretary of the Interior. They were continued as Power Site Reserves (PSR) by Presidential Orders, under the Act of June 25, 1910 (Chapter 421, 36 Stat. 847). Eleven Executive Orders continued over 1,454,000 acres.

Another Executive Order of this date created Power Site Reserve No. 147, which withdrew 5,100 acres along the Cache la Poudre River, Colorado. It was the first of 748 such Executive Orders that continued until November 22, 1924 (PSR 759).

"It is hereby ordered that the following described lands be, and the same are hereby withdrawn from settlement, location, sale, or entry, and reserved for water-power sites, subject to all the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled 'An Act to authorize the President of the United States to make withdrawals of public lands in certain cases,' approved June 25, 1910:"

August 8, 1910, Executive Orders (unnumbered).

"So much of the order of withdrawal made heretofore for the purpose of reserving water power sites, as affects the lands hereinafter described, is hereby revoked for the reason that the Director of the Geological Survey reports that field examination shows these lands not to be valuable for waterpower purposes."

Note: The Executive Order signed this date was an Order of Restoration revoking Power Site Reserve No. 69, made under the provisions of the Act of June 25, 1910 (Public, No. 303, Chapter 421, 36 Stat. 847). This was the first of at least 486 Executive Orders, revoking XX,XXX acres of Power Site Reserves made under the provisions of this same act. The subsequent orders revoking withdrawals under this authority are not included at this time.

January 13, 1911, Executive Orders (unnumbered).

"It is hereby ordered that the following described lands be, and the same are hereby withdrawn from settlement, location, sale, or entry and reserved for use as a reservoir in connection with irrigation, subject to all the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled, 'An Act to authorize the President of the United States to make withdrawals of public lands in certain cases,' approved June 25, 1910 and subject to the allowance of right of way applications for the purpose of irrigation approved under the provisions of the Act of March 3, 1891, (26 Stat. 1095)."

Note: Created Reservoir Site Reserve (RSR) No. 1, under the authority of the Act of June 25, 1910 (Chapter 421, 36 Stat. 847). This was the first of 21 Executive Orders through November 18, 1938. The subsequent orders withdrawing land under this authority are not included at this time.

March 31, 1911, Executive Orders (unnumbered).

"It is hereby ordered that order of withdrawal made heretofore for the purpose of reserving reservoir sites from sale as the property of the United States under the provisions of the Act of October 2, 1888 (25 Stat. 527) and continued in force by order of the Secretary of the Interior of August 18, 1894, be revoked, by authority of the Act of Congress entitled 'An Act to restore to the public domain certain lands withdrawn for reservoir purposes in Millard County, Utah', and approved February 25, 1911, in so far as it affects Utah Reservoir No. 5, including the following legal subdivisions:"

Note: The Executive Order signed this date was an Order of Restoration under the provisions of the Act of February 25, 1911 (Chapter 164, 36 Stat. 932). It restored the Order of Withdrawal made by the Director of the Geological Survey that was continued in force by Secretarial Order of August 18, 1894, for Reservoir Site No. 5, Utah. This Executive Order is considered the first of several Executive Orders restoring Reservoir Sites. The subsequent orders revoking withdrawals under this authority are not included at this time.

June 9, 1913, Executive Order (unnumbered).

"So much of the orders of withdrawal made heretofore for the purposes of reserving reservoir sites, as affects the lands hereinafter described, is hereby revoked."

"And it is further ordered that all such lands not otherwise reserved or withdrawn, are hereby restored to the public domain and shall become subject to settlement and entry under the laws applicable thereto upon such date and after such notice as may be determined upon by the Secretary of the Interior."

Note: The Executive Order signed this date was an Order of Restoration revoking Reservoir Site Reserve No. 2, made under the provisions of the Act of June 25, 1910 (Public, No. 303, Chapter 421, 36 Stat. 847). This was the first of 17 Executive Orders, revoking XX,XXX acres of Reservoir Site Reserves. The subsequent orders revoking withdrawals under this authority are not included at this time.

April 24, 1942, Executive Order No. 9146, Authorizing the Secretary of the Interior to Withdraw and Reserve Public Lands.

"By virtue of the authority vested in me by the Act of June 25, 1910, c. 421, 36 Stat. 847, and as President of the United States, I hereby authorize the Secretary of the Interior to sign all orders withdrawing or reserving public lands of the United States, and all orders revoking or modifying such orders:"

"Provided further, that no such order which affects lands under the jurisdiction of any executive department or agency of the Government, other than the Department of the Interior, shall be signed by the Secretary of the Interior without the prior concurrence of the head of the department or agency concerned.

Note: This was the initial written delegation of an administration practice whereby the Secretary of the Interior exercised the power of withdrawal. It authorized the Secretary to sign all orders withdrawing or reserving public lands of the United States.

April 12, 1943, Executive Order No. 9337, Authorizing the Secretary of the Interior to Withdraw and Reserve Lands of the Public Domain and Other Lands Owned or Controlled by the United States.

"By virtue of the authority vested in me by the Act of June 25, 1910, ch. 421, 36 Stat. 847, and as President of the United States, it is ordered as follows:

"Section 1. The Secretary of the Interior is hereby authorized to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States to the same extent that such lands might be withdrawn or reserved by the President, and also, to the same extent, to modify or revoke withdrawals or reservations of such lands."

"Provided further, that no such order which affects lands under the administrative jurisdiction of any executive department or agency of the Government, other than the Department of the Interior, shall be issued by the Secretary of the Interior without the prior concurrence of the head of the department or agency concerned."

"Section 2. This order supersedes Executive Order No. 9146 of April 24, 1942, entitled 'Authorizing the Secretary of the Interior to Withdraw and Reserve Public Lands.'"

Note: This order confirmed the delegation authority and expanded the authority to all lands that might be withdrawn by the President.

May 26, 1952, Executive Order No. 10355.

Note: This order delegated the President's authority to withdraw or restore lands of the public domain to the Secretary of the Interior (17 F.R. 4831). It requires the approval of the head of any other Department or Agency having administrative jurisdiction over the affected lands before withdrawal can be approved.

Secretarial Orders

For this document, all formal Numbered Orders, Secretarial delegations, approvals, instructions, letters, and Departmental Orders are called Secretarial Orders. The following Secretarial Orders provide the authority for the WRR program and withdrawals for the protection of the resources.

July 26, 1889, Secretarial Orders (unnumbered).

Note: The Secretary of the Interior directed the General Land Office (GLO) not to allow further entries or filings on land valuable for Reservoir Sites. This was in response to two letters from the USGS Director (July 13, 1889, and July 31, 1889), notifying the Secretary of potential Reservoir Sites, identified under the authority of the Act of October 2, 1888 (Chapter 1069, 25 Stat. 526; 43 U.S.C. 662). This was the first of several such letters directing GLO's response to the USGS Reservoir Sites.

August 18, 1894, Secretarial Orders (unnumbered).

Note: Secretary of the Interior Hoke Smith issued a series of letters to the Commissioner of the General Land Office regarding the Reservoir Sites. These letters directed that "all lands covered by these sites, which are legally subject to reservation, continue withdrawn from disposition to await further action by Congress in the matter of these reservoir sites." The letters further list the sites to remain withdrawn.

June 29, 1908, Secretarial Order (unnumbered).

Note: By Secretarial Order, an Indian Reservoir Site Reserve No. 0 was created under the provisions of the Act of June 21, 1906 (Chapter 3504, 34 Stat. 355). Records indicate the withdrawal of 2,524 acres in the Flathead Indian Reservation, Montana.

March 2, 1909, Secretarial Order (unnumbered).

Dear Sir:

I attach a list of lands containing sites more valuable for reservoir and power purposes under the various right of way laws than for disposal under any of the other public land laws now applicable thereto. You are directed to instruct registers and receivers of the respective land districts in which these lands are situated that they are hereby withdrawn from disposal under any of the public land laws excepts the various right of way acts.

This withdrawal is made under the general supervisory authority of the Executive in order to make certain that these lands shall not be acquired wrongfully under other laws than the right of way acts, thus defeating the purpose of Congress, and also to give Congress opportunity to so amend or modify the public land laws that these particular lands may be devoted to their best use.

Very respectfully,

/s/ James Rudolph Garfield
Secretary.

The Commissioner of the General Land Office.
Encl.

Note: This order was the last withdrawal by Secretary Garfield and was made in the final days of his administration. In all, over 3,928,780 acres were withdrawn in this manner.³ Most all of these withdrawals were revoked, but there are some lands in Utah and Colorado that remain in this withdrawal.

April 23, 1909, Secretarial Order (unnumbered).

Dear Sir:

You will please immediately detail such employee or employees of your service as are available to make an investigation of water-power sites on the public domain, outside of national forests, which are not included within withdrawals for reclamation purposes, with the view of securing at the next session of Congress legislation to control and regulate their disposition.

You will please have your report with regard to such lands available as early as possible in order that any necessary withdrawals may be made to protect such power sites pending the securing of such proposed legislation as may be recommended by the President.

All withdrawals made for the purpose herein mentioned will be of a temporary nature to allow the securing of such legislation as will permit of the disposition of the lands in question.

The Reclamation Service will cooperate with you in order to secure the necessary data.

Very truly yours,

/s/ R A Ballinger
Secretary.

Hon. Geo. Otis Smith.

Director of the Geological Survey.

Note: Secretary R.A. Ballinger instructed the Geological Survey (USGS) to make a study of waterpower sites on the public domain outside the national forests and not included in Reclamation withdrawals, with a view to securing legislation to control and regulate their disposition.

May 4, 1909, Secretarial Order (unnumbered).

Note: On this date, Secretary of the Interior R.A. Ballinger began approving withdrawals submitted by USGS. Between May 4, 1909 and May 17, 1910, 146 of these unnumbered orders were signed and 1,454,000 acres were set aside as Temporary Power Site Reserves (TPSR). These temporary withdrawals were confirmed and continued as Power Site Reserves by Executive Orders.

May 25, 1909, Secretary Ballinger's letter to the Honorable Robert M. LaFollette, United States Senate:

Dear Senator:

In reply to your letter of May 22, 1909, relative to "water conservation" withdrawals in the States of Montana, Utah, Oregon, and Idaho, which were revoked except as to Utah; also

³ Rabbitt, Mary, 1986, Minerals, Lands and Geology for the Common Defense and General Welfare. Volume 3, 1904-1939, United States Geological Survey, United States Printing Office, page 88.

to my letter to you of May 13, informing you that steps were being taken to temporarily withdraw lands probably valuable for power sites pending submission of the matter to Congress for such action as it might deem advisable, I note that you fear that the sites may be obtained by private corporations before the lands are segregated; also, that you are reliably informed that the Geological Survey has not sufficient funds with which to make an adequate investigation of the subject, and that you fear, even if it has, that the appearance of its engineers in the field will result in a rush by the public to obtain the sites before they can be withdrawn.

I have to advise you that the withdrawal of the lands in Utah was not revoked because it was found to be approximately accurate upon investigation of the matter by the Geological Survey. It will, however, be modified so as to include only the lands probably valuable for the purpose, and to exclude land chiefly valuable for agriculture or other purposes. The Owyhee River, Oregon, withdrawal, which was revoked April 10, 1909, has been carefully gone over by the officers of the Geological Survey in connection with their records, and a withdrawal made which includes not only the probable power sites included in the said withdrawal of January 18, 1909, but sites in two additional townships, and this withdrawal only includes 60,000 acres of land as against 387,400 acres included in the former withdrawal. The same course is being followed with reference to the lands in Montana and Idaho. Furthermore, the system inaugurated by me is of vastly wider scope than the former withdrawals, and I have already withdrawn many thousand acres of land not included in the withdrawals originally made, and will continue to do so within the next few days as fast as data is secured. The difference between the method of withdrawal is that the latter withdrawals are based upon facts actually ascertained by surveys and examination, and are confined strictly to legal subdivisions, or sections containing the possible power sites, and do not, as did the original withdrawals, include large areas of no possible value for power sites, but possessing value for agriculture and properly subject to disposition under the general land laws of the United States. The form of withdrawal being used is substantially as follows:

“(Duchesne River and Tributaries, Utah.)

In aid of proposed legislation affecting the disposal of the water-power sites on the public domain, all public lands in the following list are temporarily withdrawn from all forms of entry, selection, disposal, settlement, or location, and all existing claims, filings and entries are temporarily suspended. All valid entries heretofore made may proceed up to and include the submission of final proof, but no purchase money will be received or final certificates of entry issued until further orders.”

With reference to the ability of the Geological Survey to do this work, I have to advise you that in the exercise of its regular duties for the past thirty years, the Geological Survey has been making field examinations of the streams, the waters therein, and the formation and topography of the country, and has collected as a result of these operations a vast amount of accurate and valuable information upon the subject. The possession of this information enables the Survey to furnish the data for these temporary withdrawals as to all areas covered by its previous investigations without further examination in the field. As to areas that have not been covered by that Bureau in its field work, I have already directed that temporary withdrawals be made along the streams containing possible power sites pending field investigation this summer.

In view of the information already on hand upon the subject, it is believed that the appropriation made by Congress to the Geological Survey for investigation of the water resources, etc., of the country, will be ample for the purpose.

In brief, the former withdrawals were made largely upon insufficient information and withheld from entry large areas of public lands of no possible value for power sites, while the withdrawals now being made are based upon information derived from actual, accurate field examination, and are confined to the actual tracts having a possible value for power sites.

Copies of the orders of withdrawal in Montana, Utah, Oregon, and Idaho, are enclosed, as requested.

Very respectfully,
/s/ R. A. Ballinger
Secretary.

Encl.

August 7, 1916, Secretarial Orders (unnumbered).

Note: On this date, Secretary of the Interior Franklin K. Lane began approving withdrawals submitted by the Geological Survey. Between August 7, 1916, (WPD 1), and February 9, 1917 (WPD 8), six of these unnumbered orders were signed and **XX,XXX** acres were set aside as Water Power Designations (WPD) in New Mexico and Arizona under the provisions of the Act of June 20, 1910 (Chapter 310, 36 Stat. 557-578).

January 19, 1917, Secretarial Orders (unnumbered).

Note: On this date, Secretary of the Interior Franklin K. Lane began approving withdrawals submitted by the Geological Survey. Between January 19, 1917, (WPD 3), and April 13, 1942 (WPD 18), 10 of these unnumbered orders were signed and **XX,XXX** acres were set aside as Water Power Designations (WPD) in California and Oregon under the provisions of the Act of June 9, 1916 (Chapter 137, 39 Stat. 218-223).

January 12, 1921, Secretarial Order (unnumbered).

Note: On this date, Secretary of the Interior John Barton Payne approved Water Power Designation (WPD) No. 17 in California and Oregon under the provisions of the Act of February 26, 1919 (Chapter 47, 40 Stat. 1179).

April 30, 1921, Secretarial Order (unnumbered).

Note: On this date, Secretary of the Interior Albert B. Fall began approving withdrawals submitted by the Geological Survey. Between April 30, 1921 (PSC 1), and November 25, 1946 (PSC 381), 381 of these unnumbered orders were signed and **XX,XXX** acres were set aside as Power Site Classifications (PSC) under the provisions of the Act of March 3, 1879 (Chapter 182, 20 Stat. 394; 43 U.S.C. 31).

June 10, 1930, Secretarial Order (unnumbered).

Note: On this date, the acting Secretary signed an Order of Withdrawal creating Power Site Reserve 760. The order refers to the provisions of the Act of June 25, 1910 (36 Stat. 855, 858), which is the authority for Indian Power Site Reserves.

February 13, 1936, Secretarial Order (unnumbered).

Note: On this date, the acting Secretary signed an Order of Withdrawal creating Power Site Reserve 761. The order refers to the provisions of the Act of June 25, 1910 (36 Stat. 855, 858) which is the authority for Indian Power Site Reserves. This involves 748 acres in the Colville Indian Reservation, Washington.

May 27, 1942, Secretarial Order (unnumbered).

Note: This approval of a memorandum (May 20, 1942) from the Director of the Geological Survey was in the nature of a restatement of policy reaffirming the procedure which was previously established separately for lands in various categories. All applications for alienation of lands, whether withdrawn or not, are submitted to the Geological Survey for report on mineral and water resources values. The procedure was approved following concurrence by the Commissioner of the General Land Office, May 21, 1942 (see conflict with letter of January 27, 1984).

July 23, 1942, Secretarial Order (unnumbered).

Note: On this date, the Assistant Secretary signed an Order of Withdrawal creating Power Site Reserve 763. The order refers to the provisions of the Act of June 25, 1910 (36 Stat. 858), which is the authority for Indian Power Site Reserves. This involves 400 acres in the Hualpai Indian Reservation, Arizona.

August 31, 1942, Secretarial Order (unnumbered).

Note: This letter discontinued the use of the term "interpretation" formerly applied to "conformance with plat of survey" actions. These reports are notices prepared by the BLM to inform agencies that an existing classification or withdrawal has been conformed to a new survey, or resurvey, because the original description is inadequate to relate the lands to the new plat. When BLM records of existing Waterpower and Reservoir Resources withdrawals and classifications are to be revised, BLM officials are to contact the WRR specialist regarding questions of intent as to which lands are affected.

January 15, 1945, Secretarial Order (unnumbered).

Note: On this date, the Assistant Secretary signed an Order of Withdrawal creating Power Site Reserve 764. The order refers to the provisions of the Act of June 25, 1910 (36 Stat. 858) which is the authority for Indian Power Site Reserves. This involves 3,005 acres in the Colville Indian Reservation, Washington.

Note that all of the Secretarial Orders creating PSR's listed from 1930 to 1945 have signatures by the Commissioners, General Land Office and Office of Indian Affairs.

July 24, 1946, Secretarial Order (unnumbered).

Note: Published as 11 F.R. 8168, this order establishes a public land withdrawal procedure involving public notices, hearings, and a 30-day waiting period for objections.

May 16, 1947, Secretarial Order (unnumbered).

Note: This approval of a memorandum (May 12, 1947) from the Committee to Investigate and Study Lands Reserved for Power Purposes contains several recommendations to assist in the classification of areas heretofore not covered, as well as for the reclassification and restorations of lands found having no power value.

June 5, 1947, Departmental Order No. 2331.

Note: This order required that land orders signed by the Secretary must be cleared by all interested Bureaus by letters to the Secretary through the Director, BLM. This was made mandatory by Executive order No. 10355, on May 26, 1952 (see Executive Order 10355).

June 10, 1947, Departmental Order No. 2333.

Note: Published as 12 F.R. 4025, this order authorized the Director, USGS, to withdraw powersites as Powersite Classifications and to modify or revoke such withdrawals without approval of the Secretary.

May 2, 1950, Departmental Order No. 2563.

Note: This order transfers functions formerly assigned to the Secretary of the Interior by Section 1 of Reorganization Plan No. 3 of 1950, May 24, 1950, to the officer, employee, or agency from whom or from which it was transferred. In section 2 it was stated, "This order will take effect immediately after Reorganization Plan No. 3 of 1950 becomes effective."

December 22, 1958, Departmental Order (unnumbered).

Note: This order was published as 23 F.R. 10571, notice of revocation of delegation of authority. The withdrawal authority delegated by Departmental Order No. 2333, June 10, 1947, to the Director, Geological Survey, to withdraw lands as Powersite Classifications was revised to provide recommendation authority only.

January 5, 1965, Secretarial Order (unnumbered).

Note: This order provides the Secretary of the Interior continued approving authority of withdrawals submitted by the USGS. Between January 5, 1965 (PSC 444), and October 22, 1971 (PSC 463), **XX,XXX** acres were set aside as Powersite Classifications.

June 16, 1967, Secretarial Order No. 2900.

Note: This order, issued pursuant to the authority of the Secretary of the Interior under Reorganization Plan No. 3 of 1950, establishes the Alaska Power Administration.

January 19, 1982, Secretarial Order No. 3071.

Note: Under this order, the Secretary of the Interior transferred the entire Conservation Division of the Geological Survey, including the Waterpower function, to the new Minerals Management Service (MMS).

December 3, 1982, Secretarial Order No. 3087.

Note: This order consolidates the Departmental's onshore minerals management functions, including those in the MMS, within the Bureau of Land Management. The waterpower program was organizationally in the onshore function, but not as a minerals management function. On February 7, 1983, BLM Director Robert Burford made a conscious decision to integrate the waterpower program into the BLM.

Director's Withdrawals

The Director, Geological Survey, has had the unique authority to make withdrawals since 1889.

July 13, 1889, Letter from the USGS Director to the Secretary of the Interior.

Note: This letter informed the Secretary that a site had been selected for an International dam or reservoir in New Mexico and requested that all public lands be reserved from entry and sale. The Secretary directed the General Land Office not to allow further entries or filings on the lands named. This was the initial letter setting the precedent for the withdrawal of Reservoir Sites under the provisions of the act of October 2, 1888 (Chapter 1069, 25 Stat. 526; 43 U.S.C. 662).

July 15, 1947, Approval of Power Site Classification (PSC) No. 382.

Note: USGS Director Thomas B. Nolan approved this PSC under the unique Secretarial delegation of authority, which authorized him to make classifications (Department Order 2333; unnumbered order of December 22, 1958; and Release No. 1317; and Release No. 2009). This classification was published as a Notice in the Federal Register without Secretarial approval, and without public notice prior to classification. During the next 10 years, the Director proceeded with 61 PSCs totaling some 590,000 acres of public land.

Departmental Manual

The Department of the Interior Manual, Delegation Series, Public Land Series, and Geological Survey Series are referenced containing Secretarial Policy for the WRR program. *Most of the references do not presently appear in the manuals, having been deleted during revisions. This historical referencing is necessary, because they are the most current guidance available, although the Public Land Series' objectives, policy, and guidance for the WRR program is dated April 13, 1976. The BLM must produce manuals that incorporate the delegated responsibilities dropped by other agencies.*

March 16, 1964, Departmental Manual, Public Land Series, Land Withdrawal Program, Part 603.1.2C (Release No. 658).

"The Geological Survey, having primary responsibility for mineral and water power classification, is responsible for continuing review of those classification programs and, in cooperation with the Bureau of Land Management, for initiating classifications, and restorations in whole or in part of previous classifications when available information and considered judgment indicate that the continuance of such classifications is no longer in the public interest."

May 24, 1964, Departmental Manual, Geological Survey Series, Part 120.4.2E (Release No. 668).

Note: This release stated that Federally owned lands are to be classified as to their waterpower and water storage possibilities, and the results of its investigations prepared for publication and administrative use maps and reports.

July 20, 1966, Departmental Manual, Department and Interagency Agreements, Part 500-504.

Note: *The following agreement does not appear in the Department Manual, but appeared in the BLM and the Geological Survey manuals. It is proposed that this agreement be placed in the Department Manual, and is referenced here in chronological order for the purpose of this document.*

The Memorandum of Understanding (MOU) of 1966, between the Department of the Interior and the Federal Power Commission (now FERC, Department of Energy). An agreement on the coordination of responsibilities for efficiency, serving the public interest. Reference BLM Manual 2022, Power, Appendix I, issued September 8, 1966, and USGS's Branch of Waterpower Classification Manual, Branch Program Series, Chapter 6, Interior Department - Federal Power Commission Understanding.

July 21, 1971, Departmental Manual, Public Lands Series, Land Withdrawal Program, Part 603.1.1.

Note: This manual release deletes detailed references to Power Site Classification procedures which shall be promulgated by the Director, Geological Survey, as provided in 120 DM 4.2D and E.

July 21, 1971, Departmental Manual, Delegation Series, Part 220.6 (Release No. 1317).

Note: This manual restores to the USGS Director, the authority formerly vested by Departmental Order 2333 June 10, 1947, and revoked December 22, 1958, to classify public domain lands as power sites (to withdraw powersites as Power Site Classifications and to modify or revoke such withdrawals without approval of the Secretary of the Interior).

April 13, 1976, Departmental Manual, Public Lands Series, Land Withdrawal Program, Part 603.1.1 (Release No. 1876 replaced Release No. 1316, July 21, 1971).

Note: The Secretary of the Interior is vested by statute and Executive Order with responsibility for the withdrawal of public domain or other lands owned or controlled by the United States for public purposes and for restoring these lands to unwithdrawn status when the need for the withdrawal has passed. In exercising this responsibility, the following policies shall be observed.

"All withdrawals of land shall be kept to a minimum consistent with the demonstrated needs of the agency requesting the withdrawal. ...This requirement does not revise procedures for the filing of withdrawal applications as prescribed in 43 CFR 2351.2 (2310 10/1/86). Classification of public lands for mineral or water power potential is not considered a withdrawal."

August 23, 1977, Departmental Manual, Delegation Series, Part 220 Geological Survey, 220 DM 6 (Release No. 2009, replaced Release No. 317, July 21, 1971).

Note: This released the delegation authority, reflected in the Act of October 21, 1976 (FLPMA, Public Law 94-579, 90 Stat. 2743, 43 U.S.C. 1714). The authority of the Director of the Geological Survey to classify, modify, or revoke power sites on public lands without prior Secretarial approval is revised to provide for recommendation authority only.

May 27, 1983, Departmental Manual, Delegation Series, Part 235 Bureau of Land Management, 235 DM 1.1N, (Release No. 2500, replaced Release No. 2311, January 5, 1981).

Note: The BLM Director is authorized to recommend the classification, modification, or termination/revocation of public domain lands as power sites. (Under this authority BLM could initiate Power Site Classifications and cancellations and recommend approval and publication as Notices in the Federal Register by the Secretary of the Interior.)

Of concern is that major influences in legislation, regulations, case law, and the MMS merger must be incorporated into the Departmental Manual at the prompting of the BLM.

Memorandum of Understanding

A significant Memorandum of Understanding between the Federal Power Commission and the Secretary of the Interior was formalized July 20, 1966. The agreement related to the interagency procedures concerning applications or petitions affecting lands previously classified for reservoir or waterpower purposes by the Branch of Waterpower Classification (BWC) or withdrawn for power purposes by virtue of Section 24 of the Federal Power Act. The Memorandum of Understanding is included in its entirety.

MEMORANDUM OF UNDERSTANDING (July 20, 1966)

Between

The Federal Power Commission and the Department of the Interior

WHEREAS, the Federal Power Commission (FPC) has jurisdiction over the power values in the public lands which are classified, withdrawn, or reserved for power purposes by virtue of Section 24 of the Federal Power Act of June 10, 1920; and

WHEREAS, the Geological Survey (GS) has authority to classify the public lands for power and certain other purposes by virtue of the Act of March 3, 1879 (43 U.S.C. 31), and delegation from the Secretary of the Interior; and

WHEREAS, the Bureau of Land Management (BLM) has certain management jurisdiction of the surface and subsurface resources, but not including the power values therein, in public lands classified, with drawn, or reserved for power purposes by delegation from the Secretary of the Interior; and

WHEREAS, the public interest will be served if these responsibilities are coordinated and efficiently executed;

NOW, THEREFORE, the Department of the Interior and the Federal Power Commission agree as follows:

I. PETITIONS FOR RESTORATION OR VACATION OF POWER WITHDRAWALS UNDER SECTION 24 OF THE FEDERAL POWER ACT.

A. After the effective date of this memorandum all petitions for restoration or vacation of power withdrawals under Section 24, shall be directed to the BLM. BLM will make a determination as to whether land disposal including exchanges and other transfers sought in petitions are consistent with proper land use. Where it is not consistent, the BLM will reject the petition (in accordance with Departmental procedures) without referral to other agencies. All other petitions, together with BLM findings, will be referred to the FPC, through the GS, for a determination pursuant to Section 24; the GS shall make such recommendations or comment as it deems appropriate.

B. Any petitions filed by Federal agencies and not acted upon by the FPC before the effective date of this memorandum may be referred to the BLM for processing as in paragraph A above.

C. The BLM shall incorporate into patents or other instruments of conveyance, such restrictions as shall be prescribed by the FPC under its determinations pursuant to Section 24 restoring withdrawn lands for location, entry or selection under the public land laws.

II. CANCELLATION OF POWERSITE CLASSIFICATIONS, DESIGNATIONS OR WITHDRAWALS OF PUBLIC LANDS.

When the Director, Geological Survey (or his delegate) recommends the revocation of a powersite classification, designation or withdrawal, he will do so by a memorandum to the Director, Bureau of Land Management, requesting the promulgation of a public land order to effect it and stating the reasons for the revocation. Except where such requests are not acceptable to the Bureau of Land Management, BLM shall transmit all such requests which shall include the technical information and data on which the recommendations are based, to FPC. The FPC will comment on the proposed revocation within 90 days or advise BLM of the need for additional time.

III. TRANSFERS NOT REQUIRING SECTION 24 DETERMINATIONS.

The BLM will refer to the FPC any allowable applications for lease or sale of powersite lands under the Recreation & Public Purposes Act (43 U.S.C. 869;1-3) for its concurrence and recommendations for special stipulations, if any. All transfers under that Act shall include the applicant's agreement:

That the U.S., its permittees, leasees, and licensees, shall not be responsible or held liable or incur any liability for the damage, destruction or loss of any land, crops, facility installed or erected, income, or other property or investments resulting from the use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States.

IV. LAND USE PERMITS NOT REQUIRING A DETERMINATION PURSUANT TO SECTION 24.

A. Grazing leases, licenses, and permits. Grazing privileges may be allowed by BLM without reference to FPC on lands within powersites which are not within a power project, in accordance with the Commission's determination of February 16, 1937.

B. Other nonmineral leases, licenses or permits. The BLM may issue, without reference to FPC, other nonmineral leases, licenses, or permits (but not rights-of-way) covering powersites which are not included within a power project, in accordance with the Commission's letter of September 29, 1950.

Any grazing privileges or any other leaser license, or permit covered by sub-paragraphs A and B above shall include the applicant's agreement as set forth in Paragraph III .

V. MINERAL LEASES, LICENSES AND PERMITS.

The Bureau of Land Management shall refer all mineral leases, licenses or permits to the FPC for its concurrence and recommendations for special stipulations, if any. All leases, licenses or permits shall contain the "powersite stipulation" in accordance with the FPC letter of April 3, 1957.

VI. MATERIALS, INCLUDING MINERAL MATERIALS AND FOREST PRODUCTS.

The BLM may sell or make other disposal of any timber, other forest vegetation, minerals or other materials from powersite lands so long as the lands involved are not within a power project, and where the contracts include the purchaser's agreement set forth in Paragraph III above. No disposal contract shall be issued for a term exceeding five years, except with prior consent of the FPC.

VII. RIGHTS-OF-WAY.

A. Transmission line powersite reserves. Pursuant to FPC determination of April 17, 1922 (43 CFR 2344.2) BLM may restore lands so classified subject to Section 24 without reference to FPC for determination.

B. Other rights-of-way. The Bureau of Land Management will transmit all right-of-way applications involving powersites to the FPC, through the GS, for recommendation concerning allowance, as well as for any special conditions or stipulations which FPC may deem necessary to protect the power values.

VIII. OTHER TRANSACTIONS.

Proposed grants, including leases, licenses, permits, or other uses not falling in the preceding categories, shall be referred to FPC, through the GS, for its recommendations.

IX. BLM CONSTRUCTION PROGRAM.

BLM will refer to the FPC, through the GS, its plans for construction of facilities (recreation, administrative, etc.) on powersite lands for advice and comment as to the consistency of the plans with the preservation of powersite values and reserves.

X. IMPLEMENTATION OF PROCEDURES.

The parties to this Memorandum of Understanding shall take necessary steps to implement the procedures established herein.

Branch of Waterpower Classification (BWC) Manual

Branch Program Series:

Part 636 Site Conservation

Chapter 1. General

- .1 Definition. In this part there are collected certain functions of the Branch which relate to site conservation--the preservation and the forestalling of economic encumbrance of power and reservoir sites. The duties set forth in this part relate to conditional disposal of withdrawn lands, allowance of interim uses of sites, adjustment of classified lands to new township surveys, and screening of Federal land prior to disposal.
- .2 Objectives. To the extent that it is in the public interest, the Branch aims to protect power and reservoir site potentialities, yet encourage interim uses of classified sites by placing as few restrictions as possible on such utilization in accordance with DM 603.1.1B.
- .3 Authority. Authority for functions of this part is contained in SM 631.2.
- .4 Geological Survey Position. Generally, site protection issues from operation of the public-land laws and regulations. The Geological Survey is an interested party to any action affecting use of the lands classified for their water storage and waterpower value, pointing out the site values and recommending measures which serve to forestall undesirable encumbrances of sites while allowing interim use of the lands. In the case of powersite classifications, the Geological Survey shares responsibility and interests with the Federal Power Commission.

It must be understood that the Survey's function is that of a fact finding and research organization engaged in collection and study. The Survey makes no recommendations for, and does not engage in the design of projects for specific water development.

- .5 Agency Jurisdiction of Classified Land. When Federal lands are classified and withdrawn for power or reservoir sites, the jurisdiction of the land administering agency is not lessened. That agency is merely alerted to a potential use of the land which should be considered in determining its highest use. There follows a discussion of the manner in which the major land management agencies deal with lands classified in Reservoir Site Reserves, Power Site Reserves and Classifications, Waterpower Designations, and Federal Power Projects, and the direct and indirect action taken by each.
 - A. Federal Power Commission. The Commission has exclusive jurisdiction over allowance of interim use of Federal lands, whether or not in a Geological Survey classification, if these lands are withdrawn in a Federal Power Project.

The Commission has made cooperative arrangements with such land-administering agencies as the Bureau of Land Management, Bureau of Indian Affairs, and Forest Service, which allow these agencies to continue management of such lands in power withdrawal until utilized for power purposes. Generally, temporary uses of limited scope are allowed without referral to the Commission, but long-term uses and those involving permanent structures are cleared with the Commission, usually in the form of Determination Actions or Rights-of-way (SM 636.2 and SM 636.5). Stipulations recommended or ordered by the Federal Power Commission are incorporated into all use permits and licenses issued by land management agencies. If an interim use applicant refuses to accept such conditions or terms the Commission may review its position if the facts are called to its attention. The Commission requests reports and recommendations from this Branch regarding all actions affecting lands in Geological Survey classifications.

- B. Bureau of Land Management. The Bureau of Land Management acts in a dual capacity, both as a land-administering agency, and as the official recording agency for Federal lands, and in the latter capacity exercises Secretarial authority to issue permits, leases, and licenses for other management agencies as provided in certain statutes just as it does for lands it manages. Whenever Federal lands are withdrawn in a Federal Power Project, the Federal Power Commission has exclusive jurisdiction but does not administer the lands actively until the project construction is undertaken. Until such time lands remain under management of the land-administering agency. Generally, the Bureau of Land Management clears all actions affecting Geological Survey reservoir and power classifications with this Branch unless such actions can be made by use of standard conditions or stipulations provided to speed such clearances. As the Federal Power Commission and this Branch often have joint responsibilities regarding particular interim uses of withdrawn lands, cooperative procedure provides for transmittal of specified cases through the Geological Survey to the Federal Power Commission for reports and recommendations of each agency.
- C. Forest Service. The Forest Service has jurisdiction over management and resources of National Forest lands, including those in Reservoir and Power Site Reserves, Waterpower Designations, and Power Site Classifications. If lands in the above Geological Survey classifications, or other National Forest lands, are also withdrawn in Federal Power Projects, these lands are then under the concurrent jurisdiction of the Federal Power Commission; however, even then the Forest Service issues permits and licenses based upon the following policy:

Forest Service Handbook (FSH), Land Uses Management, Forest Service Responsibilities 2761.51, Item 4. Power Withdrawals. "Lands withdrawn for power purposes under the various types of withdrawals, that is, power site and reservoir site reserves, waterpower designations, power site classifications, and FPC withdrawal, have power values which should be protected to the greatest extent possible consistent with other land-use requirements.

"Uses of a temporary nature or involving structure which can be readily removed and do not impair the value of the lands for power purposes, may be permitted with the stipulation that the use is subject to the prior reservation of the land for power purposes (FSH 2718.13, Item 5).

"Uses of a permanent nature and especially those involving a large investment of money, will be permitted only after the lands have been restored for such purposes in accordance with section 24 of the Federal Power Act. Procedure for requesting Section 24 restoration is explained in FSH 2762.48.

"Forest officers must exercise judgment in protecting the power values of withdrawn lands, particularly when the protection of such values may be in direct conflict with other Forest Service interests."

Many of the interim use permits and licenses on power and reservoir site withdrawals on National Forest lands are issued by the Bureau of Land Management after clearance by the Forest Service as the statutes provide for their issuance by only the Secretary of the Interior. (SM 636.5). The Geological Survey (this Branch) has no direct authority, and exercises responsibilities regarding reservoir and power classifications only indirectly, reporting and recommending actions regarding BLM Rights-of-Way and FPC Determination Actions.

- D. Bureau of Indian Affairs. The Bureau of Indian Affairs has jurisdiction over Indian lands, including those Indian Power Site Reserves, Power and Reservoir Site Reserves, and Power Site Classifications, of which there are only a few, all made before 1930. If the above Geological Survey classifications, or other Indian lands are also withdrawn in Federal Power Projects the Federal Power Commission assumes concurrent jurisdiction; however, the Bureau of Indian Affairs issues all permits and licenses for other uses of all Indian lands based upon regulations of 25 CFR and policies stated in its Program Series.
- .6 Delegation to Sign Correspondence. Delegation to sign "For the Director" routine memoranda, letters, or actions of essentially a stereotyped nature, primarily of interagency concern about conservation of reservoir and power sites, has been made to the Branch Chief or to professional employees of the Branch whom the Branch Chief may designate for special types of routine cases. Professional employees of Regional offices are delegated authority to sign right-of-way cases (SM 636.5) which may be disposed of by stamping standard replies. All other correspondence prepared for signature "For the Director" is forwarded to Branch headquarters for signature in the office of the Division chief.

Chapter 2. Section 24 Determinations

- .1 General. Section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818), as amended, provides a means for allowing interim use of powersite lands, as follows:

"Whenever the Commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, for such purpose or purposes and under such restrictions as the Commission may determine, subject to and with a reservation of the right of the United States or its permittee or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the commission, for the purposes of sections 791a-823 of this title, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of sections 791-823 of this title upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the Commission: Provided, That locations, entries, selection, or filings heretofore made for lands reserved as water power sites, or in connection with water power development, or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained."

- .2 Application for Determination. Petitions for Section 24 determinations are initiated according to regulations of 18 CFR 25.1, 43 CFR 2022.3, and 637.6.3-I-A of this manual.
- .3 Requests for Reports and Recommendations. Requests for reports on determination petitions are received directly from BLM and are forwarded to the Commission in accordance with Part 637.6.3-I-A of this manual. A sample request is shown in Exhibit 2. The Commission numbers all applications consecutively by States, as DA-1020-California, or DA-136-Utah. The common terminology is to refer to Determination Applications as "DA" cases. In certain instances the Geological Survey has initiated such determinations.
- .4 Reports of Other Agencies. As the Bureau of Land Management request and the Geological Survey report are intended to convey a Departmental position to the Federal Power Commission, the Regional office charged with preparation of the report and recommendations sends copies of the request by transmittal memorandum and request for comments to the proper Region office of the Bureau

of Reclamation, Bureau of Indian Affairs, or any other Department of the Interior agency that might be concerned. Positions of these agencies as regards the proposed land use, are included in the Geological Survey report (Exhibits 3 and 5).

- .5 Procedure. The Regional office assigns to a professional employee preparation of the DA report. This engineer examines all available material to establish present status of the subject lands as well as present and proposed developments in the river basin and their effect on the lands applied for. Agencies known to have developments under consideration will be contacted for the latest planning status, and field inspection will be conducted as required.

When considered in the public interest, the Geological Survey will expand the report to include contiguous lands which are similarly classified and subject to the same plans for development. If expanded, the Bureau of Reclamation and other interested agencies known to be preparing replies to FPC are informed of the additional lands to be considered.

- .6 Policy Regarding Recommendations. The Geological Survey policy in regard to Section 24 Determinations is (1) to recommend either that applications be denied or restrictive stipulations be imposed if the lands involved will be utilized for an imminent development which BWC defines as one likely to be constructed within 5 to 10 years, or if the proposed use would be injurious; (2) to recommend denial of applications affecting lands classified as potential damsites or powerhouse locations; (3) to recommend outright restoration of power classification or withdrawal when investigation indicates the lands to have negligible power value or value as possible conduit line only; (4) to recommend Section 24 restoration without stipulations where development is not imminent and interim use will not be injurious to the site.
- .7 Format of Report. A letter is prepared for signature at the Division level, "For the Director, Geological Survey." This letter, addressed to the Federal Power Commission, contains the identification of the DA, applicant's name, use applied for (if known), lands involved, power withdrawal history, location of the lands, summary of present and potential developments which affect the subject lands, and clearly substantiated recommendations of the Department of the Interior. (Exhibit 5 is a sample report.)
- .8 FPC Action. On the basis of information obtained from interested agencies and the conclusions of Commission engineers, a Section 24 Determination is formulated and distributed to the interested agencies. Favorable, "no injury", determinations are published in the Federal Register. The format of its determinations includes a discussion of the case at hand and the decision of the Commission in the form of findings, determinations, and orders. (Exhibit 6).
 - A. Findings. Under this heading are recommendations of the commission regarding actions under the jurisdiction of other agencies, as well as a statement of the general position taken by the Commission in regard to the

application. Commission concurrence in Survey recommendations of outright restoration of Geological Survey power classifications are made under this heading.

- B. Determination. Under this heading the Commission formally states its determination as to whether or not the power value of the subject lands will be "injured" by their being opened to entry under the provisions of Section 24. Additionally, the Commission, by means of stipulations, may impose further restrictions or conditions to use of the subject land.
 - C. Orders. Under this heading the Commission states those orders deemed necessary to carry out the "determination" such as an order denying the application, or an order vacating, in whole or in part, an FPC withdrawal.
- .9 Formal Opening of Section 24 Determinations. Section 24 of the Federal Power Act provides:

"That before any lands applied for...(in connection with a Power Project)...or heretofore or hereafter reserved, or classified as power sites, are declared open to location, entry, or selection by the Secretary of the Interior, notice of intention to make such declaration shall be given to the governor of the State within which such lands are located, and such State shall have ninety days from the date of such notice within which to file, under any statute or regulation applicable thereto, an application for the reservation to the State, or any political subdivision thereof, of any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways and a copy of such application shall be filed with the Federal Power Commission; and any location, entry, or selection of such lands, or subsequent patent thereof, shall be subject to any rights granted the State pursuant to such application."

Such formal openings are published by the Bureau of Land Management in the Federal Register (Exhibit 7), and are noted on official plats.

Case Law

Several significant judicial proceedings, opinions of the Attorney General, and decisions within the Department of the Interior have upheld the authorities used for conducting the WRR program and influenced policy. The more significant cases, opinions, and decisions are referenced here because of unusual case law precedent.

November 20, 1920, Decisions Relating to the Public Lands (47 L.D. 595-598).

"Applications of any sort filed subsequent to June 10, 1920, looking toward the acquisition of title to public or reserved lands, within, or in conflict with power projects under this act, or which shall have been 'reserved or classified as power sites,' will be governed by the following rules:

"ACTION TO BE TAKEN BY LOCAL OFFICERS.

"1. You will at once reject, subject to appeal, any application filed *subsequent* to June 10, 1920, which is wholly in conflict with lands reserved or classified as power sites, or covered by a power application under this act, except-

"4. Whenever you find it necessary to reject an application, in carrying out these instructions, you should inform the applicant that he is at liberty to file an application for the restoration of such withdrawn lands, under the provisions of section 24 of The Federal Water Power Act, but that favorable action upon such application will not give the applicant any preference right, or right to preferential treatment if or when the lands are finally restored. The lands will be so restored in strict accordance with Circular No. 324 of May 22, 1914 (43 L.D., 254), as modified by Circular No. 678 of March 3, 1920 (47 L.D. 346)."

September 2, 1921, Opinion of the Attorney General to the Secretary of the Interior (33 Opinions of the Attorney General pages 34-39).

RECLASSIFICATION OF POWER-SITE LANDS.

Lands erroneously classified as power-site lands under the Act of June 9, 1916 (39 Stat. 218, 219), revesting in the United States the unsold lands embraced in the former grant to the Oregon and California Railroad Company, may be reclassified as timberlands or agriculture lands by the Secretary of the Interior.

The President has authority to restore to the public domain free from power reservation such reclassified lands if withdrawn as power-site reserves by Executive order under the Act of June 25, 1910 (36 Stat. 847), in pursuance of the Act of June 9, 1916, *supra*.

The inclusion of lands in a proposed project under the provisions of the Federal Water Power Act of June 10, 1920 (41 Stat 1063, 1075), or the reservation or classification of lands as power sites, does not operate to prevent the patenting of such lands without power reservation, if it shall be found by the proper administrative officials that they are without power value and have been mistakenly included in a power project or erroneously reserved or classified as power sites.

While the Land Department has the power to correct mistakes in the classification of public lands, the power to revoke power-site withdrawals is vested in the President.

DEPARTMENT OF JUSTICE,
September 2, 1921.

Sir: I am in receipt of the letter of the Acting Secretary dated August 4, 1921, requesting my advice upon certain questions relating to the powers of your Department, of the President, and of the Federal Power Commission in respect to the reclassification of certain lands heretofore classified as power sites under the Act of June 9, 1916 (39 Stat. 218). That Act revested in the United States the unsold lands embraced in the grant to the Oregon & California Railroad Company and made, among others, the following provisions relating to the lands thus restored to the Government:

"SEC. 2. That the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, is hereby authorized and directed, after due examination in the field, to classify said lands by the smallest legal subdivisions thereof into three classes, as follows:

"Class one. Power-site lands, which shall include only such lands as are chiefly valuable for water-power sites, which lands shall be subject to withdrawal and such use and disposition as has been or may be provided by law for other public lands of like character.

"Class two. Timberlands, which shall include lands bearing a growth of timber not less than three hundred thousand feet board measure on each forty-acre subdivision.

"Class three. Agricultural lands, which shall include all lands not falling within either of the two other classes:

Provided, That any of said lands, however classified, may be reclassified, if, because of a change of conditions or other reasons, such action is required to denote properly the true character and class of such lands: *Provided further*, That all the general laws of the United States now existing, or hereafter enacted relating to the granting of rights of way over or permits for the use of public lands shall be applicable to all lands title to which is revested in the United States under the provisions of this Act. All lands disposed of under the provisions of this Act shall be subject to all rights of way which the Secretary of the Interior shall at any time deem necessary for the removal of the timber from any lands of class two" (39 Stat. 219).

It appears from your statements that the lands thus returned to the United States are estimated at about 2,300,000 acres, mainly rough and mountainous, and carrying a heavy growth of valuable timber; and that about 112,000 acres were classified as power-site lands and have been reserved as such by the President under the withdrawal Act of June 25, 1910 (36 Stat. 847). You further state, however, that owing to inadequate appropriations the work of classifying the power sites was done without sufficient field examination, and that recommendations and withdrawals were made with a view to the prompt protection of all possible water-power sites, having in mind, however, the authority given by the Act to reclassify so as to show "the true character and class of such lands."

It appears that under the Act of May 31, 1918 (40 Stat. 593), authorizing the Secretary of the Interior to exchange lands thus revested in the Government for privately owned lands, certain private parties sometime ago proposed to exchange lands owned by them for some of the lands included within these power-site withdrawals; that with a

view to making such an exchange your Department caused certain of the power-site lands to be reexamined and found that they were erroneously classified and should be classified as timberlands. It further appears that your Department recommended to the President the revocation of the power-site withdrawals as to the lands thus reclassified, but that the papers were returned from the White House without action. In the meantime Congress had passed the Federal Water Power Act of June 10, 1920 (41 Stat. 1063), and thereupon your predecessor transmitted the papers to the Federal Power Commission. That commission, adopting the opinion of its legal advisers, now holds that you have no authority to reclassify lands once classified and withdrawn as power sites, basing its conclusions on section 24 of the Federal Water Power Act taken in connection with section 29, which declares that "all Acts or parts of Acts inconsistent with this Act are hereby repealed."

Section 24 (41 Stat. 1075) reads as follows: [Section 24 of the Act is quoted in the reference, but has been omitted here].

Your Department does not agree with the conclusions of the Federal Power Commission, and you now request my opinion upon three questions which you state as follows:

1. Has the Secretary of the Interior authority to reclassify as lands of class 2 or class 3 under the Act of June 9, 1916, lands heretofore erroneously classified as of class 1?

2. If such authority exists, has the President authority to restore to the public domain free from power reservation such reclassified lands if withdrawn as power-site reserves by Executive order under the Act of June 25, 1910, in pursuance of the Act of June 9, 1916?

3. In general, does the inclusion of lands in a proposed project under the provisions of the Federal Water Power Act, or the reservation or classification of lands as power sites, operate to prevent the patenting of such lands without power reservation, if it shall be found by the proper administrative officials that they are without power value and have been mistakenly included in a power project or erroneously reserved or classified as power sites?

The power of the President in respect to the withdrawals made by him is based upon section 1 of the Act of June 25, 1910, *supra*, which reads as follows:

"That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska and reserve the same for waterpower sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress."

The President was thus expressly authorized to revoke power-site withdrawals made by him and he still has that power unless its retention is inconsistent with the provisions of section 24 of the Federal Water Power Act. The first two sentences of section 24 apparently deal with water-power sites automatically withdrawn from entry and disposal by the mere filing of an application for water-power privileges; and such power sites are to be reserved from disposal under other laws "until otherwise directed by the commission or by Congress." As to all other power-site reservations the only authority given to the commission is to make findings which will result in authorizing the disposal of the lands subject to their future possible use for water-power purposes upon making compensation for improvements, etc.

It is clear, therefore, that the Federal Power Commission is not given authority wholly to abolish water-power reservations made by the President. It is also clear that in respect to the final disposition of water-power sites withdrawn by the President, and not yet subject to any application for waterpower privileges, no provision whatever is made by the Water Power Act. In other words, this Act does not cover the whole subject or provide a complete system of law displacing all others. I am therefore led to the conclusion that there is no legal inconsistency between this Act and the provision of the Act of 1910 which expressly authorizes the President to revoke water-site withdrawals, or with the provision in the Act of 1916 expressly authorizing the Secretary, to reclassify the unsold lands formerly comprised in the grant to the Oregon & California Railroad Company.

The authority of the Land Department to correct errors and mistakes in the surveys of the public lands is not to be taken away by mere implication. *Michigan Land & Lumber Co. v. Rust*, 168 U. S. 589, 602; *Lee Wilson & Co. v. United States*, 245 U. S. 24. The same rule would seem to be applicable to mistakes in the classification of lands. I do not doubt, therefore, the power of your Department to reexamine these lands and determine that they should be reclassified as timberlands. In reality, however, the question here seems to be primarily one of the power of the President. The lands having been withdrawn by him, any reclassification made by your Department can not be effective until the President revokes the power-site withdrawals. The decision to revoke or not to revoke lies with him, and he no doubt may act either upon the recommendation of your Department alone or may also require a report and recommendation from the Power Commission.

With this understanding, I answer your first two questions in the affirmative and your third in the negative.

Respectfully,

HARRY M. DAUGHERTY.

To the SECRETARY OF THE INTERIOR.

Note: This opinion established the policy for revocation of power site withdrawals.

August 11, 1955, Decision of the Department of the Interior, 62 I.D. 305,
WEYERHAEUSER

TIMBER COMPANY, A-27137, 62 I.D. 305.

"Thus, since the specific words 'heretofore or hereafter' were used in section 24 of the act of June 10, 1920, as the date of its enactment, it would seem apparent that all withdrawals for power site purposes were on that date brought within the purview of the act regardless of the date upon which they were made. See E.J. Schneider, A-24691 (March 30 1948).

"In this connection the Department early issued instructions that applications for lands within a power site reserve must be rejected but that the applicants should be informed that they could apply for a restoration of the lands under section 24 of the 1920 act."

"Thus, the Attorney General, in holding that the President had the power to revoke the power site withdrawals made under the 1910 act, determined, in effect, that there were two alternative methods whereby lands in power site withdrawals could be restored

to disposition, i.e., either by revocation of the withdrawal under the act of June 25, 1910, or upon a determination by the Federal Power Commission under section 24 of the 1920 act."

"Obviously, if lands have no value as power sites there is no reason to impose a power site reservation upon them. This was pointed out shortly after the Attorney General's opinion in a letter dated July 13, 1922, from First Assistant Secretary Finney to Representative Sinnott..."

"From this information it is perhaps possible to conclude that the land involved is valueless for power site purposes, as the appellant company contends, or that the dam site in section 19 mentioned in the Director of the Geological Survey's memorandum of November 15, 1917, has proved to be infeasible. However, the true situation can be determined only by an actual field examination. Accordingly, an examination should be made by the Geological Survey, in cooperation with the Federal Power Commission, to determine if the lands applied for do have any power site possibilities. If it is determined that they do not have power site possibilities, then this Department will give consideration to a revocation of the power site withdrawal so far as the lands applied for are affected.

"However, in the event it is determined after a field examination that the lands applied for are chiefly valuable for power site purposes, then the appellant may proceed without prejudice through the Federal Power Commission in accordance with section 24 of the act of June 10, 1920."

Note: Where it appears from the records of the Department that lands embraced in a power site withdrawal created under the Act of June 25, 1910 (Chapter 421, 36 Stat. 847; 43 U.S.C. 141), may have been erroneously withdrawn or are without value for power site purposes, and an application for the public sale of such land is filed, a field examination of the land will be ordered to determine if such is the case, and, if so, consideration will be given to a revocation of the withdrawal so as to open the lands for disposal at public sale. If the land is determined to be valuable for a power site, the applicant can seek to have the land restored for disposition (lands opened) pursuant to section 24 of the Act of June 10, 1920 (Federal Power Act; Chapter 285, 41 Stat. 1063; 16 U.S.C. 791-823), subject to the conditions therein stated or determined.

May 15, 1984, Supreme Court decision concerning **ESCONDIDO MUTUAL WATER COMPANY, ET AL., PETITIONERS v. LA JOLLA, RINCON, SAN PASQUAL, PAUMA AND PALA BANDS OF MISSION INDIANS, ET AL.**

Note: Under the Act of June 10, 1920 (Federal Power Act; Chapter 285, 41 Stat. 1063; 16 U.S.C. 791-823), the Secretary of the Interior shall remain responsible for a major role in determining what conditions would be included in order to protect the resources under the respective jurisdictions. Under the provisions of Section 4(e) of the Federal Power Act, the Federal Energy Regulatory Commission shall include the conditions the Secretary deems necessary.

The May 15, 1984, Supreme Court decision has the following insight into the necessity of a new planning authority for WRR resources:

"In 1920, Congress passed the Federal Water Power Act [*June 10, 1920, Chapter 285, 41 Stat. 1063; 16 U.S.C. 791-823*] in order to eliminate the inefficiency and confusion caused by the 'piecemeal, restrictive, negative approach' to licensing prevailing under prior law. *First Hydro-Electric Cooperative v. FPC*, 328 U.S. 152, 180, 66 S.Ct. 906, 919, 90 L.Ed. 1143 (1946). See H.R. Rep. No. 61, 66th Cong. 1st Sess. 4-5 (1919). Prior to passage of the Act, the Secretaries of Interior, War, and Agriculture each had authority to issue licenses for hydroelectric projects on lands under their respective jurisdiction. The Act centralized that authority by creating a Commission, consisting of the three Secretaries, vested with exclusive authority to issue licenses" 52 LW 4590, Slip op. at 7.

"Congress was no doubt interested in centralizing federal licensing authority into one agency, but it is clear that it did not intend to relieve the Secretaries of all responsibility for ensuring that reservations under their respective supervision were adequately protected" 52 LW 4590, Slip op. at 7.

"Between 1914 and 1917, four bills dealing with the licensing of hydroelectric projects were introduced into Congress, none successfully. In 1918, a bill prepared by the Secretaries of War, Interior, and Agriculture, at the direction of President Wilson, was introduced. H.R. 8716, 65th Cong., 2d Sess. (1918). It contained the language of the section 4(e) proviso basically as it is now framed. Because of the press of World War I and other concerns, the legislation was not enacted until 1920" 52 LW 4590, Slip op. at 7, Footnote 15.

"It is thus clear enough that while Congress intended that the Commission would have exclusive authority to issue all licenses, it wanted the individual Secretaries to continue to play the major role in determining what conditions would be included in the license in order to protect the resources under their respective jurisdictions. The legislative history concerning section 4(e) plainly supports the conclusion that Congress meant what it said when it stated that the license 'shall...contain such conditions as the Secretary...shall deem necessary for the adequate protection and utilization of such reservations'" 52 LW 4591, Slip op. at 9.

"All parties agree that there are limits on the types of conditions that the Secretary can require to be included in the license: the Secretary has no power to veto the Commission's decision to issue a license and hence the conditions he insists upon must be reasonably related to the protection of the reservation and its people" 52 LW 4591, Slip op. at 11.

"...the Commission's authority and responsibility under section 10(a) to determine that 'the project adopted...will be best adapted to a **comprehensive plan**...for the improvement and utilization of water-power development, and for other beneficial uses.'" 16 U.S.C. 803(a)" 52 LW 4591, Slip op. at 12, Footnote 21.

"Even if the Commission is not required to comply with all of the requirements of section 4(e) when it issues such a license, it is still required to shape the license so that the project is best adapted, among other things, for the improvement and utilization of water-power development and for 'other beneficial purposes, including recreational purposes.' 16 U.S.C. 803(a). In complying with that duty, the Commission is clearly

entitled to consider how the project will affect any federal reservations and to require the licensee to structure the project so as to avoid any undue injury to those reservations." See *Udall v. FPC*, 387 U.S. 428, 450, 87 S.Ct. 1712, 1724, 18 L.Ed.2d 869 (1967) 52 LW 4593, Slip op. at 18.

"The Federal Power Act constitutes a complete and comprehensive plan...for the development, transmission and utilization of electric power in any streams or other bodies of water over which Congress has jurisdiction under its commerce powers, and upon the public lands and reservations of the United States under its property powers" 52 LW 4594, Slip op. at 20.

November 4, 1988, United States District Court for the District of Columbia, National Wildlife

Federation, plaintiff, v. Robert F. Burford, et al., defendants.

Note: The lawsuit, filed July 1985, challenged BLM's procedures for terminating land classifications and revoking withdrawals. It was dismissed for lack of standing; however, it prompted the BLM to reevaluate guidance and procedures.

April 3, 1992, United States Court of Appeals for the Ninth Circuit, STATE OF CALIFORNIA,

ex rel. State Water Resources Control Board; State of CALIFORNIA, ex rel. CALIFORNIA Department of Fish & Game; Edison Electric Institute; National Hydropower Association, Petitioners, V. FEDERAL ENERGY REGULATORY COMMISSION, Respondent. PACIFIC GAS AND ELECTRIC COMPANY, Petitioner, V. FEDERAL ENERGY REGULATORY COMMISSION, Respondent. HENWOOD ASSOCIATES, INC., Petitioner, V. FEDERAL ENERGY REGULATORY COMMISSION, Respondent. AMERICAN RIVERS, INC.; Friends of the River, Petitioners, V. FEDERAL ENERGY REGULATORY COMMISSION, Respondent. Argued and Submitted September 20, 1991 - Filed April 3, 1992 [1992 WL 65027 (9th Cir.)]

THE FEDERAL LAND POLICY AND MANAGEMENT ACT ISSUE

The Federal Water Power Act of 1920 (41 Stat. 1063), broadened into the Federal Power Act in 1935 (49 Stat. 847), followed years of frustration in trying to arrive at a mechanism for the development of the country's hydropower resources. The requirements of Congressional authorization of each project, together with uncertainty of the tenure that would be enjoyed by the developer, resulted in a minimum of successful efforts to develop hydropower as a source of electric power. The report of the House Committee on Water Power reviews the history of Congressional efforts dating back to President Theodore Roosevelt's vetoes of bills authorizing specific projects. It quotes from a report by Secretary of Agriculture Houston:

"(The bill) provides that the administration of water powers within Federal jurisdiction, which have hitherto been handled independently by three separate departments, shall be coordinated, through a commission composed of the heads of these departments, in order that duplication of work may be avoided, that a common

policy may be pursued, and that the combined efforts of the three agencies may be directed toward a constructive national program of intelligent, economical utilization of our power resources.⁴"

The executive branch recognized the exclusive authority of the Federal Power Commission very soon after the FWPA's enactment. (FN5)

The Public Utility Act of 1935 amended the Federal Water Power Act (FWPA) by adding parts II and III and changing its name to the Federal Power Act (FPA). More will be said about this later. It also amended part I (the original FWPA) in certain particulars not germane to this discussion. The Senate Report on the FPA contains language which reflects Congress' view of the breadth of FPC jurisdiction over water power projects:

"Two amendments are made to section 7 (of the FWPA) merely for the purpose of clarifying the broad objective of the act to secure (Federal Power) Commission control over all projects involving the development of the Nation's water resources.⁵"

In 1946, the Supreme Court rejected a challenge by the State of Iowa to the FPC's exclusive licensing authority. In doing so, the Court said:

"> *13 The inappropriateness of such interpretation is apparent in the light of the circumstances which culminated in the passage of the Federal Water Power Act in 1920. The purposes of the Act were then so generally known as to have made such a restrictive interpretation impossible and a denial of it unnecessary. It was the outgrowth of a widely supported effort of the conservationists to secure enactment of a complete scheme of national regulation which would promote the comprehensive development of the water resources of the Nation, in so far as it was within the reach of the federal power to do so, instead of the piecemeal, restrictive, negative approach of the River and Harbor Acts and other federal laws previously enacted.

"It was a major undertaking involving a major change of national policy. (Footnote omitted.) That it was the intention of Congress to secure a comprehensive development of national resources and not merely to prevent obstructions to navigation is apparent from the provisions of the Act, the statutory scheme of which has been several times reviewed and approved by the courts.⁶"

There can be little doubt that the Federal Power Commission, now the Federal Energy Regulatory Commission, was the federal agency exclusively empowered to authorize hydroelectric projects, at least until passage of the Federal Land Policy and Management Act (FLPMA) in 1976. 90 Stat. 2743.

Prior to the passage of FLPMA, the Bureau of Land Management and its predecessor agencies within the Department of the Interior had no general statutory guidance for the management of lands within their jurisdiction. FLPMA, also referred to as the BLM

H.R. REP. No. 61, 66th Cong., 1st Sess., at 5 (1919).

S. REP. No. 621, 74th Cong., 1st Session, at 44 (1935).

First Iowa Hydro-Elec. Coop. v. Federal Power Commission, 328 U.S. 152, 179-81 (1946).

Organic Act, addressed this lack of a comprehensive statutory mandate and also reflected the growing national concern for preservation of national lands rather than their disposal. In discussion on the Senate floor during consideration of the bill in 1976, Senator Haskell submitted an excerpt from the committee report on Senate Bill 507, which, as amended, became FLPMA. That report stated:

"The purpose of S. 507...is to provide the first comprehensive, statutory statement of purposes, goals, and authority for the use and management of about 448 million acres of federally-owned lands administered by the Secretary of the Interior through the Bureau of Land Management."

...
"...In comparison with the organic acts of the other Federal land management agencies, these laws are often conflicting, on occasion truly contradictory, and, to a serious extent, incomplete and inadequate. S. 507, as ordered reported, would consolidate these laws, remove conflicts, and provide missing authority. (FN6)"

As finally adopted, FLPMA defined "public lands" as follows:

"The term 'public lands' means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership...⁷"

The Secretary's authority to issue rights-of-way over the public lands for projects related to electricity is found in Section 501(a) as follows:

"The Secretary, with respect to the public lands and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for-...(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791).⁸"

Soon after enactment of FLPMA, the argument was made before FERC that rights-of-way under FLPMA were required for FERC licensed projects. The Commission flatly and unequivocally rejected the contention, saying:

"It is clear that the Federal Water Power Act since 1920, and Part I of the Federal Power Act since 1935, have given Commission licensees authority to occupy and utilize government non-Indian lands for the purpose of constructing, operating and maintaining licensed project works. It is equally clear that the Commission's authority to authorize the use, occupancy and enjoyment of such lands in conjunction

> *14 43 U.S.C. 1702(e).

43 U.S.C. 1761(a)(4).

with licensed water power projects has been exclusive and, therefore, it has not been necessary to include conditions in licenses requiring Commission licensees to obtain similar authority for such lands from the Secretaries of Agriculture or of the Interior.

"Sections 705 and 706 of the Land Policy Act repeal numerous laws relating to the administration of public lands and to rights-of-way, but the Federal Power Act is not listed among those laws. Indeed, the savings provision of the Land Policy Act (43 U.S.C. 1701(f)) expressly provides that 'Nothing in this Act shall be deemed to repeal any existing law by implication.' And it also provides (43 U.S.C. 1701(g)) that 'Nothing in this Act shall be construed-...(4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing law applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto.'

"It has always been understood that the principle purpose of the Federal Water Power Act of 1920 was to establish a national policy to promote the comprehensive development of water power on government lands and navigable waters other than by the government itself, and that such policy would be administered by abolishing the piecemeal authorities of the Secretaries of the Interior, Agriculture and War over the nation's hydroelectric resources and centralizing them in the Federal Power Commission. (Footnote omitted.)"

It is inconceivable that in 1976 Congress, sub silentio, reimposed a duplicate system of federal authority over water power development. 43 U.S.C. 1761(a)(4), which requires rights-of-way permittees of the Secretaries of Agriculture and the Interior to "also comply with all applicable requirements of the Federal Power Commission under the Federal Power Act of 1935" (emphasis added), should be construed as being limited to Part II of the Federal Power Act which was newly enacted in 1935.⁹

The Commission reaffirmed its position in several later cases [Camille E. Held, et al., 42 FERC 61,032, at 62,219 (1988); Thermalito Irr. Dist., et al., 39 FERC 61,270 at 62,883 (1987)], including twice in this one. (Order of July 18, 1986; Order of May 2, 1989.) In a third decision in this case, however, in 1990 the Commission reversed itself and held that the BLM had authority pursuant to FLPMA to issue permits for use of federal lands involved in hydroelectric projects licensed by the Commission. [50 FERC P 61,183 (1990).] It is therefore necessary to visit this issue in this appeal. This court has previously interpreted the meaning of "public lands" as that term is used in FLPMA. In the case of Columbia Basin Land Protection Ass'n v. Schlesinger, 643 F.2d 585 (9th Cir. 1981), landowners had filed suit against the Bonneville Power Administration seeking to enjoin the construction of a high voltage power transmission line over their lands. Among other issues raised on appeal, the landowners contended that since the United States had retained the mineral rights in their property over which the transmission line was to be constructed, those lands came within the terms of the definition of "public lands" in FLPMA and therefore a BLM right-of-way was required. In Columbia Basin, this court held that "public lands" was used in its traditional sense by

. > *15 Escondido Mutual Water Company, 9 FERC 61,241, at 61,519-520 (1979), .rev'd on other grounds, 692 F.2d 1223 (9th Cir. 1982), reh'g denied, 701 F.2d 826 (1983), rev'd in part, 466 U.S. 765 (1984).

Congress when it enacted FLPMA and therefore "public lands" meant those "subject to sale or other disposal under general laws." The court noted the conference committee report on S. 507 stated that the conferees had decided that the statute would retain the traditional use of the term "public lands." The court went on to say:

"The United States Supreme Court has consistently held that 'public lands' means lands which are subject to 'sale or other disposal under general laws,'...and does not include '(a)ll land, to which any claims or rights of others have attached.'¹⁰ The specific holding in that case was that the retention of mineral rights by the United States did not mean that the land to be traversed by the powerline was public land within the meaning of FLPMA."

It is argued here that the Columbia Basin case is factually distinguishable from the issue here because it did not involve subsection (4) of FLPMA Section 501, as it relates to the authority of FERC, since the transmission line at issue there was not a primary project line licensed by FERC. This contention does not take into account the structure of Section 501. The authority of the Secretary of the Interior to grant rights-of-way under that section extends only to the "public lands." Subsection (4) specifically provides authority for the issuance of rights-of-way over the public lands for the particular functions mentioned there. Unless a right-of-way for an electrical project as defined in that subsection is sought over the public lands, Section 501(a) provides no authority to the Secretary of the Interior to issue a right-of-way. Therefore, the holding in Columbia Basin does control on the interpretation of the term "public lands." as used in FLPMA. > *16 Section 24 of the FWPA (16 U.S.C. 818) provided that "any lands of the United States included in any proposed project under this (Part) shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States..." While that section was amended in some particulars later, it was and is clear that United States lands included within the boundaries of FERC projects are reserved from entry as of the date of the filing of the application with the Commission. As the Commission said in its first ruling on Henwood's notion for declaratory order:

"According to the United States Supreme Court, under the comprehensive licensing scheme of Part 1 of the FPA 'the Commission is plainly made the guardian of the public domain,'¹¹ and the authorization of hydroelectric projects using public lands of the United States 'is within the exclusive jurisdiction of' the Commission. FPC v. Oregon, 349 U.S. 435, 445-46 (1955).¹²"

BLM also argues that the Mining Claims Rights Restoration Act of 1955 makes all lands which are subject to FPA withdrawal "public lands," for purposes of FLPMA. The

643 F.2d at 602 (citations omitted).

FPC v. Idaho Power Co., 344 U.S. 17, 23 (1952).

44 FERC P 61,076 at 61,213 (1988).

section of the Mining Claims Restoration Act relied on by BLM provides, in pertinent part:

"All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location...of mining claims...¹³"

BLM's convoluted argument does not explain how a mining law which narrows the scope of the reservation from entry under the FPA operates to convert all lands reserved under the terms of the FPA back to "public lands" for all purposes. Moreover, BLM's argument also makes no sense as it would be applied to lands included in applications for license under Part I of the FPA.

The proviso following the above quoted portion of Section 621 excludes application of the Act to operating projects or projects under construction, and to projects under examination and survey by a prospective licensee holding a preliminary permit from FERC. Under BLM's view, apparently the land reserved from entry under the terms of the FPA remains "public lands" for all purposes pursuant to the Restoration Act after the application to FERC, in spite of the language of Section 24 (16 U.S.C. 818), until survey and examination starts under a preliminary permit, at which time it becomes reserved. When the survey is over, it once again becomes public lands and stays in that status until construction begins, when it is again reserved from entry. This interpretation of the effect of the Restoration Act is unsupported on its face, and is not required to give full effect to the terms of both the Restoration Act and the FPA. Congress' passage of the Restoration Act did no more than limit the scope of a withdrawal under the FPA, to permit entry for mining claim location in certain circumstances.

> *17 The specific terms of subsection (4) refute the further contention of BLM and the conservation groups that Congress specifically provided a system of dual authority by requiring that the applicant "also comply with all applicable requirements of the Federal Power Commission under the Federal Power Act of 1949 (49 Stat. 847; 16 U.S.C. 791)."

The forerunner of Section 501 of FLPMA in S. 507, as originally introduced, was Section 401, which provided in pertinent part:

"Section 401. Authorization to Grant Rights-of-Way.- (a) The Secretary is authorized to grant, issue, or renew rights-of-way over, upon, or through the national resource lands for-...(4) Systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Power Commission under the Act of June 10, 1920, as amended (16 U.S.C. 796, 797).¹⁴"

H.R. 13777 was the House counterpart to S. 507. Section 501 of that bill provided right-of-way authority very comparable to what is now found in Section 501, except that it required compliance with applicable requirements of the Federal Power Commission under "the Federal Power Act of 1935 (16 U.S.C. 791)." The House amended S. 507 by

30 U.S.C. 621.

Legislative History of FLPMA, at 194.

inserting the provisions of H.R. 13777, and the amendments went to conference. Committee staff prepared recommendations for use of the conference committee, which incorporated the provisions of H.R. 13777.¹⁵ The bill, as reported by the conference committee, was enacted with the language now found in Section 501(a)(4). The noteworthy change in conference was the addition of "49 Stat. 847." This specific reference is to the commencement of Part II of the Federal Power Act of 1935. This requires us to examine more closely the structure of that Act.

The general purposes of the Public Utility Act of 1935, which included what is now known as the Federal Power Act of 1935, were stated in the Senate Report:

"The Committee on Interstate Commerce, to whom was referred the bill (S. 2796) to provide (in title I) for the control and elimination of public-utility holding companies operating, or marketing securities, in interstate and foreign commerce and through the mails, and to provide (in title II) for the regulation of the transmission and sale of electric energy in interstate commerce, for the amendment of the Federal Water Power Act, and for other purposes...¹⁶"

The report went on to describe the general purposes of title II as follows:

"Title II of the bill repeals two sections and amends certain other sections of the present Federal Water Power Act, and the present act, as thus modified, is designated part 1. Two new parts are then added. Part 2 contains substantive provisions for the regulation of electric energy in interstate commerce. Part 3 contains procedural and administrative provisions applicable to the regulation of licensees under part 1 and interstate public utilities under part 2.¹⁷"

Part II, which is at issue here, is more fully described in the portion of the report describing Section 201.

The subsection declares that the business of generating, transmitting, and selling electric energy for ultimate public distribution is affected with a public interest and that Federal regulation of the transmission and sale of energy in interstate commerce and the generation of energy for such transmission and sale is necessary in the public interest...

...Jurisdiction is asserted also over all interstate transmission lines whether or not there is sale of the energy carried by those lines and over the generating facilities which produce energy for interstate transmission and sale. It is obvious that no steps can be taken to secure the planned coordination of this industry on a regional scale unless all of the facilities, other than those used solely for retail distribution, are made subject to the jurisdiction of the Commission.¹⁸

Legislative History of FLPMA, at 832.

S. REP. NO. 621, 74th Cong., 1st Sess. 1 (1935).

> *18 S. REP. No. 621, 74th Cong., 1st Sess. 17 (1935) (emphasis supplied).

S. REP. No. 621, 74th Cong., 1st Sess. 48 (1935) (emphasis supplied).

Part II of the Federal Power Act of 1935 had relation solely to extension of Commission jurisdiction over activities of public utilities engaged in interstate transmission of electric energy, whether or not such energy was generated from hydropower sources. Given the history of how the specific reference to Part II of the Federal Power Act came to be included in Section 501(a)(4), it is apparent that the reference to Part II was not accidental. If the reference had remained limited to 16 U.S.C. 791, as staff recommended, the subsection would have referred specifically to the entirety of FPA, which commences at Section 791a. The statutory citation of Part II of the Federal Power Act, instead of the Act generally, or of Part I, makes it clear that licensing activities of the Federal Energy Regulatory Commission under Part I of the Federal Power Act were not to be affected by the reference in Section 501(a)(4) of FLPMA.

In 1986, Part I of the Federal Power Act was substantially amended for the first time since the adoption of the Federal Water Power Act of 1920, by an act designated the Electric Consumers Protection Act of 1986 (ECPA).¹⁹ Congress accomplished a number of things in ECPA, most of which are not germane to our discussion here. We have already seen how fish and wildlife agencies were empowered to recommend conditions to be imposed on project operations which only could be discounted by FERC upon the making of specific findings. The Commission was commanded to give equal consideration to energy conservation, protection, mitigation and enhancement of fish and wildlife, protection of recreational opportunities, and the preservation of other aspects of environmental quality.²⁰

Conspicuously absent from the legislative history of ECPA is any discussion of the relationship between the new authority given the fish and wildlife agencies and any parallel authority in the Secretary of the Interior already existing under FLPMA. Such absence is even more marked when it is remembered that the USFWS is one of the agencies given authority to recommend conditions to FERC which can only be discounted by the Commission after specific findings, as discussed above. Presumably, the Secretary's right-of-way decisions under FLPMA would follow review by USFWS, which would have no less access to the Secretary in that process than it has to FERC under ECPA. While the USFWS is entitled to comment on proposed FERC project license conditions whether or not lands administered by BLM are included within the project, one would expect that the relationship between the authority now claimed by the BLM and the authority given to the USFWS under ECPA would have at least been mentioned in the extensive Congressional record generated by consideration and passage of ECPA.

> *19 BLM claims that its interpretation of FLPMA is entitled to deference, citing several Supreme Court cases. (FN7) However, in *Chevron USA v. NRDC*, the Court said that the judiciary is the final arbiter of issues of Statutory construction. If use of traditional tools of statutory construction discloses that Congress had a clear intent, then "that intention is the law and must be given effect."²¹ The meaning of "public lands" is

Act of October 16, 1989. Public Law 99-495, 100 Stat. 1243.

16 U.S.C. 797(e), as amended.

467 U.S. at 843, n.9.

clear as the above analysis and Columbia Basin point out. BLM has not pointed to any history which would indicate that Section 501(a)(4) was not limited to "public lands." (FN8)

Given the creation of the FWPA and the FPC in response to a perceived national need for unified administrative authority over hydropower licensing, and the reaffirmation of that policy in later years, we would not lightly imply a repeal of the exclusive nature of FERC's authority over the conditions of use of federal lands for hydropower projects. The Supreme Court, in a similar setting, refused to find congressional intent which would create an unreasonable result:

"We cannot ascribe to Congress a purpose of subjecting the concessionaire to these two separate masters, who show at the outset their inability to agree by their presence on the opposite sides of this lawsuit."²²

The prospective FERC licensee, like the shuttle operator in *Universal*, must dance to two fiddlers, according to BLM. One, FERC, has a long hydroelectric licensing history, with printed decisions comprising many volumes, with the respective roles of state, federal and Indian parties carefully spelled out in the statute. The other, BLM, has no licensing history, no hydro expertise, no statutory guidance on the participation of the same parties who will appear at FERC. This, we conclude, is an unreasonable result, and not one to be ascribed to Congress in the course of interpreting FLPMA. (FN9)

When the text and histories of the Federal Water Power Act of 1920, the Federal Power Act of 1935, the Federal Land Policy and Management Act of 1976 and the Electric Consumers Protection Act of 1986 are evaluated, it becomes clear that the exclusive jurisdiction of FERC over federal hydroelectric development first created in 1920 was reinforced in 1935 and remains unimpaired by the terms or any necessary inference of the Federal Land Policy and Management Act of 1976. Therefore, the Commission was in error when it held that BLM had authority to issue permits for Henwood's project. BLM right-of-way authority under FLPMA extends to non-hydro sources of generation, such as thermal, solar and wind, and to transmission facilities not licensed as part of a hydro project facility by FERC.

Universal Interpretive Shuttle Corp. v. Wash. Metropolitan Area Transit Comm'n, 393 U.S. 186, 191 (1968).

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