

AMERICAN FALLS DAM REPLACEMENT

An act to authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the existing American Falls Dam, Minidoka project, Idaho, and for other purposes. (Act of December 28, 1973, Public Law 93-206, 87 Stat. 904)

[Sec. 1. Constructing agency to finance replacement of dam—United States to take title—Dam a feature of the Minidoka project—Water level maintained—Prevention of erosion.]—The Secretary of the Interior (hereinafter called the Secretary) is authorized to negotiate and enter into agreements with the American Falls Reservoir District or other appropriate agency representing the present spaceholders (hereinafter called the constructing agency), which agreements shall authorize the constructing agency to finance and provide for the construction of a dam and related facilities to replace the existing American Falls Dam of the Minidoka project, Idaho-Wyoming. The United States shall take title to the dam upon a determination by the Secretary that construction of the dam is substantially completed, and the dam shall be a feature of the Minidoka reclamation project and shall be considered to be a "Government dam" as defined by the Federal Power Act (Act of June 10, 1920, 41 Stat. 1063, as amended). The Secretary shall operate and maintain the replacement dam as a feature of the Minidoka project. The construction and operation of the replacement dam shall not result in an increase in the elevation of the reservoir water surface above that maintained for the original dam, and provision shall be made for the correction and prevention of erosion related to the reservoir or for the full and adequate compensation of adjacent landowners (including owners of land subject to a flowage easement for the reservoir) if such erosion cannot be corrected or prevented. (87 Stat. 904)

EXPLANATORY NOTES

Supplementary Provision: District Bonds Tax-Exempt. Section 7 of the Act of December 23, 1975 (Public Law 94-164, 26 U.S.C. §103(d)) provides that bonds to finance a dam for furnishing water for irrigation with the generation of electric energy as a subordinate use, such as those issued by the American Falls Reservoir District to finance replacement of American Falls Dam, are tax-exempt. The 1975 Act does not appear herein. For legislative history of the Act see H.R. Rept. No.

94-581 and S. Rept. No 94-570 on H.R. 9968, 94th Cong., 1st Sess.

Reference in the Text. Section 3 (10) of the Federal Power Act (41 Stat. 1063, as amended), referred to in the text, defines "Government dam" as a dam or other work constructed or owned by the United States for Government purposes with or without contributions from others. Section 3(10) appears in Volume I at page 265.

Sec. 2. (a) [Reaffirmation of existing contract rights.]—Replacement of the existing dam as authorized in section 1 hereof shall in no way alter or change the present proportionate storage rights of present spaceholders in the American Falls Reservoir and shall constitute a reaffirmation of existing contract rights between the Secretary and the spaceholders except as otherwise provided in this Act.

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(b) **[Construction of highway.]**—The constructing agency shall: (1) include as a part of the project, a river crossing meeting the then current Department of Transportation standards for Federal-aid secondary highway two-lane traffic, which crossing shall be located on top of the replacement dam or immediately downstream from the dam, and which crossing shall be financed by State, Federal, and constructing agency funds, or any combination thereof as the parties deem appropriate; and (ii) design and construct an additional two lanes on top of the replacement dam, which additional two lanes may be funded with State, Federal, or constructing agency funds, or any combination thereof. For the purposes of subpart (ii) of this subsection, the constructing agency shall be considered an “agency” within the meaning of section 320(a) of title 23, United States Code.

(c) **[Highway to be maintained during dam construction.]**—The plans and specifications for the construction of the dam shall require that an adequate two-lane, two-way crossing shall be maintained at or near the site of the dam during construction. (87 Stat. 904)

EXPLANATORY NOTE

Reference in the Text. Section 320(a) of title 23, United States Code, referred to in section 2(b) of the text, authorizes only an “agency” to design and construct a public highway bridge across a Federal dam. For the purposes of section 320, an “agency” means each executive department, independent es-

tablishment, office, board, bureau, commission, authority, administration, corporation wholly owned or controlled by the United States, or other agency of the Government of the United States. The section appears in Volume II at page 1448.

Sec. 3. [Repayment contracts for replacement dam.]—The constructing agency may enter into repayment contracts with the spaceholders in the existing American Falls Reservoir providing for the repayment by the spaceholders of proportionate shares of the total project costs incurred by the constructing agency for engineering, financing, designing, and constructing the replacement dam, and the Secretary shall be a party to said contracts and the delivery of water to the spaceholders shall be contingent upon the execution of such contracts and the fulfillment of the obligations thereunder: *Provided*, That said contracts shall be consistent with the terms of existing contracts between the Secretary and the spaceholders for repayment of the costs of the existing American Falls Dam. (87 Stat. 905)

NOTE OF OPINION

1. **Repayment contracts**

The execution, pursuant to the Act of December 28, 1973, of new contracts between the American Falls Reservoir District, the Federal Government, and irrigation districts holding rights to storage space in the American Falls Reservoir for the repayment of the District's proportionate share of the construction cost of the replacement of the American

Falls Dam, Minidoka Reclamation Project, does not divest landowners who voted against the contract but who live in a participating irrigation district of any property rights under existing reclamation repayment contracts. It is the irrigation districts, and not the landowners, which are the parties to the existing repayment contracts. *Kerner v. Johnson*, 99 Idaho 433, 583 P. 2d 360 (1978).

Sec. 4. [Construction of non-Federal hydroelectric facilities.]—The constructing agency may contract with an appropriate non-Federal entity for the use of the falling water leaving the dam for power generation, which contract shall provide for a monetary return to the constructing agency to defray the costs of construction of the replacement dam. The constructing agency may enter into agreements with an appropriate non-Federal entity to coordinate the construction of hydroelectric power facilities with the construction of the replacement dam. The contract and agreements for use of the falling water shall not be subject to the limitations of section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), or any similar limitations in any other applicable Acts of Congress: *Provided*. That said contract for falling water shall be approved by the Secretary and shall not impair the efficiency of the project to serve the other purposes of the Minidoka project. (87 Stat. 905)

EXPLANATORY NOTE

Reference in the Text. Section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), referred to in the text, provides among other things for the lease of power privileges or sale of electric power produced by a project, at certain rates, for periods not to exceed forty years. Preference in such lease or sale is

given to municipalities, public corporations or agencies, and cooperatives and other non-profit organizations financed by loans made pursuant to the Rural Electrification Act of 1936 (49 Stat. 1363), as amended (7 U.S.C. §901 *et seq.*). Section 9(c) of the 1939 Act appears in Volume I at page 647.

Sec. 5. [Approval of designs and specifications by Secretary—Costs reimbursable to Secretary.]—Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications of the dam and the plan of construction of the dam and of the proposed operation of the dam and reservoir. Construction of each related facility shall not be initiated until the Secretary has approved the designs and specifications thereof. Costs incurred by the Secretary in reviewing such designs, specifications, plans, and construction shall be included as project costs allocated to beneficiaries of the replacement dam and shall be reimbursable to the Secretary. (87 Stat. 905)

Sec. 6. [Public recreation—Fish and wildlife enhancement.]—The Secretary is authorized to provide specific facilities for public recreation and fish and wildlife enhancement in connection with the replacement dam, and the costs of such facilities shall be repaid in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). In addition, specific facilities for public recreation may also be provided in accordance with the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), as amended (16 U.S.C. 460, *et seq.*). (87 Stat. 905)

EXPLANATORY NOTE

References in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72, 79 Stat. 213) and the Land and Water Conservation Fund Act (Act of

September 3, 1964, Public Law 88-578, 78 Stat. 897), referred to in the text, appear in Volume III at pages 1820 and 1785, respectively.

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Sec. 7. [Appropriations authorized.]—There is hereby authorized to be appropriated for construction of specific facilities for public recreation and fish and wildlife enhancement the sum of \$400,000 (July 1972 prices) plus or minus such amounts, if any, as may be required by reason of the changes in the cost of construction work of the type involved therein as shown by engineering cost indices. There are also authorized to be appropriated such funds as may be necessary to meet the prorated construction cost apportionable to the irrigation storage rights of the Michaud Division of the Fort Hall Indian Reservation for space in the reservoir behind the American Falls Replacement Dam and such cost shall be subject to the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 368a). There are also authorized to be appropriated such funds as are required for the operation and maintenance of the dam and related facilities. (87 Stat. 905)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Background. The American Falls Dam was constructed in 1925-27 as a feature of the Minidoka project, Idaho-Wyoming. Replacement of the Dam was necessitated by a chemical reaction between the aggregate and the cement which led to a gradual deterioration of the structure.

Reference in the Text. The Act of July 1, 1932 (47 Stat. 564), referred to in the text, is the so-called Leavitt Act, which provides among other things that the collection of all construction costs against Indian-owned lands within a Government irrigation project be deferred, and no assessments be made on behalf

of such charges against such lands, until the Indian title thereto shall have been extinguished, and further provides for the cancellation of certain construction assessments previously levied. The 1932 Act appears in Volume I at page 504.

Legislative History. S. 1529, Public Law 93-206 in the 93d Congress. Reported in Senate from Interior and Insular Affairs June 15, 1973; S. Rept. No. 93-223. Passed Senate June 19, 1973. Reported in House from Interior and Insular Affairs December 6, 1973; H.R. Rept. No. 93-701. Passed House, amended, December 17, 1973. Senate agrees to House amendments December 18, 1973.