

## RECLAMATION EXTENSION ACT

An act extending the period of payment under reclamation projects, and for other purposes.  
(Act of August 13, 1914, ch. 247, 38 Stat. 686)

[**Sec. 1. Payments of construction charges under future rights—Entry subject to announcement.**]—Any person whose lands hereafter become subject to the terms and conditions of the act approved June seventeenth, nineteen hundred and two, entitled “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,” and acts amendatory thereof or supplementary thereto, hereafter to be referred to as the reclamation law, and any person who hereafter makes entry thereunder shall at the time of making water-right application or entry, as the case may be, pay into the reclamation fund five per centum of the construction charge fixed for his land as an initial installment, and shall pay the balance of said charge in fifteen annual installments, the first five of which shall each be five per centum of the construction charge and the remainder shall each be seven per centum until the whole amount shall have been paid. The first of the annual installments shall become due and payable on December first of the fifth calendar year after the initial installment: *Provided*, That any water-right applicant or entryman may, if he so elects, pay the whole or any part of the construction charges owing by him within any shorter period: *Provided further*, That entry may be made whenever water is available, as announced by the Secretary of the Interior, and the initial payment be made when the charge per acre is established. (38 Stat. 686; 43 U.S.C. §§ 471, 472)

### EXPLANATORY NOTES

**Codification.** The substance of this section is codified as sections 471 and 472, title 43, U.S. Code, but the language is revised to give effect to subsection F of the Fact Finders' Act, which changed the method for paying annual installments after December 5, 1924.

**1922 Modification.** The Act of May 15, 1922, 42 Stat. 541, authorizes the Secretary of the Interior to enter into contract with any legally organized irrigation district whereby the irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners

and entrymen, in the discretion of the Secretary, may be dispensed with. In the event of such contract being made, the Secretary in his discretion, may contract for repayment as will best conform to the district and taxation laws of the respective States under which the district is formed and he may contract for penalties and interest charges in case of delinquency in payments as he may deem proper and consistent with such State laws, notwithstanding sections 1, 2, 3, 4, 5 and 6 of this act. The 1922 Act appears herein in chronological order.

### NOTE OF OPINION

#### 1. Lands affected

Upon acceptance of the Extension Act by the filing of a water-right application, or otherwise, the following described lands become subject to the provisions of section 1 of said act, to wit: (a) Land in private ownership which was not made subject to

the reclamation law prior to August 13, 1914; (b) public land entered not subject to the reclamation law and not subjected to said law after entry and before August 13, 1914. Such land is not considered public land in respect to water-right applications, Form B of the application being used; (c)

public land entered subject to the reclamation law on or after August 13, 1914. As a general rule, for land of this class, both entry and water-right application are initiated simultaneously. Sometimes, however, entries are permitted under the last proviso of section 1 before public notice is issued, in which event, the order opening the lands should specify a reasonable time after date of public notice within which water-right application must be made and the initial installment paid. In each of the above cases,

the initial installment of the construction charge is payable at the time of filing water-right application, and the second on December 1 of the fifth calendar year. For example, if the initial payment was made December 2, 1914, the second installment would be payable on December 1, 1919. There can be no accumulation of either construction or operation and maintenance charges prior to filing water-right application in these cases. Instructions, 47 L.D. 285 (1919).

**Sec. 2. [Payments of construction charges under existing rights.]**—Any person whose land or entry has heretofore become subject to the terms and conditions of the reclamation law shall pay the construction charge, or the portion of the construction charge remaining unpaid, in twenty annual installments, the first of which shall become due and payable on December first of the year in which the public notice affecting his land is issued under this act, and subsequent installments on December first of each year thereafter. The first four of such installments shall each be two per centum, the next two installments shall each be four per centum, and the next fourteen each six per centum of the total construction charge, or the portion of the construction charge unpaid at the beginning of such installments. (38 Stat. 687; 43 U.S.C. § 475)

#### EXPLANATORY NOTES

**Codification.** Section 475 of title 43, U.S. Code, also includes section 14 of this Act.

**1922 Modification.** The Act of May 15, 1922, 42 Stat. 541, authorizes the Secretary of the Interior to enter into contract with any legally organized irrigation district whereby the irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners and entrymen, in the discretion of the Secretary, may be dispensed with. In the

event of such contract being made, the Secretary in his discretion, may contract for repayment as will best conform to the district and taxation laws of the respective States under which the district is formed and he may contract for penalties and interest charges in case of delinquency in payments as he may deem proper and consistent with such State laws, notwithstanding sections 1, 2, 3, 4, 5 and 6 of this Act. The 1922 Act appears herein in chronological order.

#### NOTES OF OPINIONS

Construction charge installments not  
cumulative 4  
Lands affected 1  
Lands not affected 2  
Non-residents 5  
Water charges 3

##### 1. Lands affected

All persons whose land was, prior to August 13, 1914, subscribed to any reclamation project through the medium of a water-users' association, an irrigation district, a trust deed, a water-right application, a homestead entry, or any form of contract or agreement with the United States under the terms of which the United States may at any time be required to deliver water to said land, were subject to the terms and

conditions of the reclamation law within the meaning of this section. Departmental decision, October 17, 1914.

Lands of the State of Idaho and of other States having similar laws prior to August 13, 1914, in reference to the Federal reclamation law, are subject to the terms and conditions of the reclamation law within the meaning of this section. Departmental decisions, February 8, 1918, and April 1, 1918, overruling departmental decisions, October 17, 1914, and January 14, 1915; C.L. 745 and C.L. 751.

##### 2. Lands not affected

The following-named lands are not subject to the terms and conditions of the reclamation law within the meaning of this



section: (a) Railroad lands unsold on or before August 13, 1914, whether or not affected by a declaration of the railroad company that purchasers shall comply with the terms of the reclamation law; and (b) railroad lands sold on or before August 13, 1914, which on that date had not been included in a water-right application duly accepted. Departmental decision, January 14, 1915.

### 3. Water charges

Section 2 of the Extension Act specifically provides that the first installment of the construction charge "shall become due on December 1 of the year in which public notice \* \* \* is issued." The subjecting of his land to the reclamation law is an agreement on the part of the owner or entryman to abide by the laws and regulations issued thereunder. Such owner or entryman therefore has no right, after the issuance of public notice, to defer the filing of water-right application or to postpone the payment of installments of water-right charges. Congress evidently had this thought in mind in fixing the date so definitely. This construction charge is due and payable on December 1, as stated in the law, without reference to whether a water-right application is filed, and if payment is not made on that due date the penalties pro-

vided by section 3 of the Extension Act become effective. Public notices covering lands subject to section 2 will not be issued, as a rule, in the month of December. Section 9 of the Extension Act does not apply to lands subject to section 2. Instructions, 47 L.D. 285 (1919).

### 4. Construction charge installments not cumulative

The Reclamation Extension Act taken as a whole does not require that installments of the construction charge, prior to water-right application for either private or public lands, be cumulative. Therefore, the first installment upon a water-right application made under section 2 of the act will fall due on December 1 of the year in which application is made. (Circular letter No. 516, September 2, 1915.) See circular letter No. 595, September 21, 1915, and paragraph 4, circular letter No. 603, October 7, 1916.

### 5. Non-residents

Members of a water users association who do not comply with the residence requirements of section 5 of the Reclamation Act of 1902 may accept the extension act and make payments thereunder, thereby avoiding the penalties provided therein, but may not receive water for their lands. Departmental decision, May 5, 1915; C.L. 497.

**Sec. 3. [Penalties for nonpayment of construction charges—Cancellation and forfeiture—Action for recovery.]**—If any water-right applicant or entryman shall fail to pay any installment of his construction charges when due, there shall be added to the amount unpaid a penalty of one per centum thereof, and there shall be added a like penalty of one per centum of the amount unpaid on the first day of each month thereafter so long as such default shall continue. If any such applicant or entryman shall be one year in default in the payment of any installment of the construction charges and penalties, or any part thereof, his water-right application, and if he be a homestead entryman his entry also, shall be subject to cancellation, and all payments made by him forfeited to the reclamation fund, but no homestead entry shall be subject to contest because of such default: *Provided*, That if the Secretary of the Interior shall so elect, he may cause suit or action to be brought for the recovery of the amount in default and penalties; but if suit or action be brought, the right to declare a cancellation and forfeiture shall be suspended pending such suit or action. (38 Stat. 687; 43 U.S.C. §§ 478, 480, 481)

#### EXPLANATORY NOTES

**Codification.** The first sentence of this section is codified in section 478, title 43, U.S. Code, with a sentence added to reflect the amendment in subsection H of the Fact Finders' Act reducing the penalty to one-half per centum for installments com-

ing due after December 5, 1924. The second sentence is codified in section 480, and the proviso in section 481.

**1924 Modification.** Subsection H, section 4 of the Act of December 5, 1924, reduces the penalty of 1 per centum per



month provided for herein to one-half of 1 per centum per month, as to all installments which may thereafter become due. The Act appears herein in chronological order.

**1922 Modification.** The Act of May 15, 1922, 42 Stat. 541, authorizes the Secretary of the Interior to enter into contract with any legally organized irrigation district whereby the irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners and

entrymen, in the discretion of the Secretary, may be dispensed with. In the event of such contract being made, the Secretary in his discretion, may contract for repayment as will best conform to the district and taxation laws of the respective States under which the district is formed and he may contract for penalties and interest charges in case of delinquency in payments as he may deem proper and consistent with such State laws, notwithstanding sections 1, 2, 3, 4, 5 and 6 of this Act. The 1922 Act appears herein in chronological order.

#### NOTES OF OPINIONS

Right to declare forfeiture 3  
 Suit for water charges 2  
 When construction charges become due 1

#### 1. When construction charges become due

Construction charges against lands subject to section 1 of this Act cannot become due until after water-right application has been made; as to lands subject to section 2 of this Act, construction charges against same become due on December 1 of the year in which public notice affecting the land is issued, and if not paid they accumulate against the land. Departmental decision October 18, 1919; C. L. 852. C. L. 862 outlines the accounting procedure under C. L. 852.

#### 2. Suit for water charges

The provisions of sections 3 and 6 of the Extension Act in reference to one year of grace for the payment of overdue water charges refer only to drastic remedies of cancellation and forfeiture, and not to the right to bring suit in a court for collection of a water charge past due and unpaid. Reclamation decision, December 4, 1917, *U. S. v. Edison E. Kilgore*.

#### 3. Right to declare forfeiture

Inasmuch as Acts of June 17, 1902, and August 13, 1914, did not peremptorily declare in mandatory language that forfeitures must be declared, or that they will necessarily result by operation of law as soon as defaults in payments by water users on reclamation projects have occurred, it rests within the sound discretion of the Secretary of the Interior to determine whether an entryman may thereafter be permitted to cure the default by payment of the charges. Departmental opinion, 50 L. D. 223 (1923).

The Secretary of the Interior, in his discretion, may follow the procedure outlined in sections 3 and 6 of the Extension Act of August 13, 1914, with respect to construction and operation and maintenance charges more than one year in arrears, rather than apply to the courts under the forfeiture provisions of the Act of August 9, 1912 (37 Stat. 265); i.e., the Secretary may cancel the water rights in such cases and declare a forfeiture of the reclamation charges theretofore paid, at the same time allowing title to the lands to remain in the patentee or his successor. Departmental decision, January 16, 1928, Tieton division, Yakima project. C. L. 1689.

**Sec. 4. [Restriction on increasing construction charges—Time for paying increase—Charges subject to certain conditions.]—**No increase in the construction charges shall hereafter be made, after the same have been fixed by public notice, except by agreement between the Secretary of the Interior and a majority of the water-right applicants and entrymen to be affected by such increase, whereupon all water-right applicants and entrymen in the area proposed to be affected by the increased charge shall become subject thereto. Such increased charge shall be added to the construction charge and payment thereof distributed over the remaining unpaid installments of construction charges: *Provided*, That the Secretary of the Interior, in his discretion, may agree that such increased construction charge shall be paid in additional annual installments, each of which shall be at least equal to the amount of the largest install-



ment as fixed for the project by the public notice theretofore issued. And such additional installments of the increased construction charge, as so agreed upon, shall become due and payable on December first of each year subsequent to the year when the final installment of the construction charge under such public notice is due and payable: *Provided further*, That all such increased construction charges shall be subject to the same conditions, penalties, and suit or action as provided in section three of this act. (38 Stat. 687; 43 U.S.C. § 469)

## EXPLANATORY NOTES

**1922 Modification.** The Act of May 15, 1922, 42 Stat. 541, authorizes the Secretary of the Interior to enter into contract with any legally organized irrigation district whereby the irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners and entrymen, in the discretion of the Secretary, may be dispensed with. In the event of such contract being made, the Secretary in his discretion, may contract for repayment as will best conform to the district and taxation laws of the respective States under which the district is formed and he

may contract for penalties and interest charges in case of delinquency in payments as he may deem proper and consistent with such State laws, notwithstanding sections 1, 2, 3, 4, 5 and 6 of this Act. The 1922 Act appears herein in chronological order.

**Supplementary Provision.** The Act of March 3, 1915, 38 Stat. 861, 43 U.S.C. § 470, provides that no work shall be undertaken or expenditure made which will increase an announced construction charge until an agreement to repay the cost shall have been made in accordance with the provisions of this section. Extracts from the Act appear herein in chronological order.

## NOTES OF OPINIONS

Change of payment date 3  
Construction v. operation costs 1  
Increase of costs 2

## 1. Construction v. operation costs

Expenditures are properly chargeable to "construction" when they (1) are incurred to construct an irrigation system and put it in condition to furnish and properly distribute water, (2) are made necessary by faulty original construction in violation of contract and statutory requirements, or (3) are for the purpose of increasing the capacity of the original system. On the other hand, expenditures are properly chargeable to "operation and maintenance" when they are required to remedy conditions brought about by the use of a completed system or to maintain and operate it effectively for the end to which it is designed. *U.S. v. Fort Belknap Irr. Dist.*, 197 F. Supp. 812, 819 (D. Mont. 1961).

The cost of raising a dike to cut off a spillway that was never completed and never used for 40 years is a "construction" expense and may not be charged to defendant irrigation districts without their consent. *U.S. v. Fort Belknap Irr. Dist.*, 197 F. Supp. 812, 821 (D. Mont. 1961).

When an irrigation system has been completed under the Reclamation Act, subsequent construction of a drainage system to remove injurious consequences of its normal

operation on the lands included is chargeable to maintenance and operation rather than to construction and section 4 of the Reclamation Extension Act, preventing increase of construction charges when once fixed except by agreement between the Secretary of the Interior and a majority of water-right applicants and entrymen affected, does not apply. *Nampa & Meridian Irr. Dist. v. Bond*, 268 U.S. 50 (1925) affirming 288 Fed. 541 (9th Cir. 1923), 283 Fed. 569 (D. Idaho 1922).

## 2. Increase of costs

Notice issued by the Secretary of the Interior expressly limiting measure of water right of water users in Sunnyside division of Yakima reclamation project to 3 acre-feet and providing that water in excess of 3 acre-feet might be rented by water users and money collected applied to payment of unsecured portion of reservoir system of Yakima project was a nullity, as unauthorized and constituting an attempt to destroy vested rights. *Lawrence v. Southard*, 73 P. 2d 722, 192 Wash. 287 (1937).

In a suit to determine whether an increase in the construction charges, such increase having been agreed to by a majority of the water users, was a lien upon the land, the court held that the lien extended to the increased charges (Orland project). *United*

*States v. Chas. L. Donohoe Co.*, 33 F. 2d 362 (N.D. Cal. 1929).

Where a contract between the United States and a water users' association provided that the latter should promptly collect such charges as should be apportioned to its shareholders, the fact that the cost was greater than expected cannot be urged as a ground for equitable relief. *Yuma County Water Users' Assn. v. Schlecht*, 275 Fed. 885 (9th Cir. 1921), *affirmed* 262 U.S. 138 (1923).

### 3. Change of payment date

The Act of August 13, 1914, provided for the payment of irrigation construction charges upon a specified date, the only authority for change of which is contained in the Act of May 15, 1922, and where the latter act is invoked to change the date of payment under a prior contract, the procedure prescribed therein must be followed in order to give validity to the amended contract. Solicitor Edwards Opinion, 56 L.D. 142 (1923).

**Sec. 5. [Operation and maintenance charges—Basis therefor—Minimum charge—Secretary may transfer care and operation of project—Reduction or increase of charges.]**—In addition to the construction charge, every water-right applicant, entryman, or landowner under or upon a reclamation project shall also pay, whenever water service is available for the irrigation of his land, an operation and maintenance charge based upon the total cost of operation and maintenance of the project, or each separate unit thereof; and such charge shall be made for each acre-foot of water delivered; but each acre of irrigable land, whether irrigated or not, shall be charged with a minimum operation and maintenance charge based upon the charge for delivery of not less than one acre-foot of water: *Provided*, That, whenever any legally organized water users' association or irrigation district shall so request, the Secretary of the Interior is hereby authorized, in his discretion, to transfer to such water users' association or irrigation district the care, operation, and maintenance of all or any part of the project works, subject to such rules and regulations as he may prescribe. If the total amount of operation and maintenance charges and penalties collected for any one irrigation season on any project shall exceed the cost of operation and maintenance of the project during that irrigation season, the balance shall be applied to a reduction of the charge on the project for the next irrigation season, and any deficit incurred may likewise be added to the charge for the next irrigation season. (38 Stat. 687; 43 U.S.C. §§ 492, 499)

#### EXPLANATORY NOTES

**Codification.** The proviso in the first sentence is codified in section 499, title 43, U.S. Code. The remainder of the section is codified in section 492.

**1922 Modification.** The Act of May 15, 1922, 42 Stat. 541, authorizes the Secretary of the Interior to enter into contract with any legally organized irrigation district whereby the irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners and entrymen, in the discretion of the Secre-

tary, may be dispensed with. In the event of such contract being made, the Secretary in his discretion, may contract for repayment as will best conform to the district and taxation laws of the respective States under which the district is formed and he may contract for penalties and interest charges in case of delinquency in payments as he may deem proper and consistent with such State laws, notwithstanding sections 1, 2, 3, 4, 5 and 6 of this Act. The 1922 Act appears herein in chronological order.

#### NOTES OF OPINIONS

Operation and maintenance charges 1  
Transfer of care and maintenance 2  
Water users associations 3

#### 1. Operation and maintenance charges

Expenditures are properly chargeable to "construction" when they (1) are incurred



to construct an irrigation system and put it in condition to furnish and properly distribute water, (2) are made necessary by faulty original construction in violation of contract and statutory requirements, or (3) are for the purpose of increasing the capacity of the original system. On the other hand, expenditures are properly chargeable to "operation and maintenance" when they are required to remedy conditions brought about by the use of a completed system or to maintain and operate it effectively for the end to which it is designed. *U.S. v. Fort Belknap Irr. Dist.*, 197 F. Supp. 812, 819 (D. Mont. 1961).

In making repairs and replacements chargeable to "operation and maintenance" the government is not limited to preserving the status quo, but may, in the exercise of sound discretion, utilize materials or equipment of an improved type or design. *U.S. v. Fort Belknap Irr. Dist.*, 197 F. Supp. 812 (D. Mont. 1961).

After the passage of Section 5 of the Reclamation Extension Act, the Secretary did not have the right to contract to deliver water for a fixed charge not to exceed a certain amount per acre. *Carruthers v. Sunnyside Valley Irrigation Dist.*, 29 Wash. 2d 530, 188 P. 2d 136 (1947).

Reclamation law before passage of the Reclamation Extension Act did not require that the charge for operation and maintenance be based upon beneficial use as a measure of the value of the service rendered, consequently prior contracts made by the Secretary to deliver water at a fixed charge were valid. *Id.*

Where water service is not available for lands—as the trial court found to be the case with respect to the right-of-way of the Oregon Short Line Railroad Company through lands of the Minidoka Irrigation District, Minidoka project—an assessment against such lands is invalid. *Oregon Short Line R.R. Co. v. Minidoka Irr. Dist.*, 283 Pac. 614 (Idaho 1929).

Where lands of an Idaho irrigation district were included in a Federal reclamation project under a contract obliging the Government to furnish water and construct drainage works within the district, which was done and the cost assessed as a construction charge against all the project water users, the district agreeing that the project lands in the district should pay the same operation and maintenance charge per acre as announced by the Secretary of the Interior for similar lands of the project, held that the project lands within the district were liable with the other project lands to bear, as an operation and maintenance charge, the cost of providing drainage for project lands outside the district which

were being ruined by seepage water from the operation of the irrigation system. *Nampa & Meridian Irr. Dist. v. Bond*, 268 U.S. 50 (1925), affirming 288 Fed. 541, 283 Fed. 569.

The operation and maintenance deficit arising on the Belle Fourche project, South Dakota, prior to the enactment of the Extension Act of August 13, 1914, was not extinguished by that Act and is collectible. Solicitors Opinion, December 16, 1920, reprinted in Reclamation Record of February, 1921, p. 75.

Against lands subject to section 1 of this Act, operation and maintenance charges cannot become due until after water-right application has been made; against lands subject to section 2 of this Act these charges may accrue before making of water-right application, and accumulate against the land. Instructions, 47 L.D. 285 (1919).

Operation and maintenance charges follow the same rule as construction charges and do not accumulate against lands for which water-right application has not been made. C.L. No. 622, December 16, 1916.

The word "year" used in connection with the operation and maintenance costs is the 12 months ending with December 31. C.L. No. 555, April 17, 1916.

## 2. Transfer of care and maintenance

The Secretary is authorized to transfer without charge to the Coachella Valley County Water District the care and maintenance of 25 permanent-type houses erected by the United States on land donated by the District. The houses were used by construction workers in connection with the construction of irrigation works and are no longer needed for that purpose. In view of the fact that the land was donated and the permanent-type housing was constructed with the understanding that the houses would subsequently be used by District personnel when the District assumed the responsibility for operation and maintenance of the project, the houses may properly be considered part of "project works" within the meaning of Section 5 of the Reclamation Extension Act of 1914. Disposition under section 203 of the Federal Property and Administrative Services Act of 1949 is not required. 35 Comp. Gen. 287 (1955), reversing 34 Comp. Gen. 374 (1955).

The relationship of creditor and debtor between the United States and individual water users continues to exist after the care, operation and maintenance of a project has been transferred to a water users association or an irrigation district under the authority of section 5 of the Reclamation Extension Act of 1914, but is terminated where



contracts or amended contracts have been entered into with an irrigation district pursuant to the Act of May 15, 1922. Solicitor Edwards Opinions, M-11120 and M-12181 (April 17, 1924).

### 3. Water users associations

A contract made under the reclamation act between the United States and an irrigation company on behalf of its stockholders for the furnishing of additional water to the lands of such stockholders from the Government reservoir, construed, and held valid, and to authorize the charges made against the company for maintenance and operation. *New York Canal Co. v. Bond*, 265 Fed. 228 (9th Cir. 1920).

Where irrigation districts subscribed for stock in an association of water users on a reclamation project entitling them to water, the board of directors and the Secretary of the Interior held authorized to release the

irrigation districts from their subscriptions and obligations to take water. *Payette-Boise Water Users' Association v. Cole*, 263 Fed. 734 (D. Idaho 1919).

Where an irrigation district subscribing to stock in an association of water users on a reclamation project was released from its obligations by the association's board of directors, and though the other subscribers learned thereof within a reasonable time, no action to set aside the release was brought for several years during which the district landowners ceased to exercise any rights as stockholders and were not recognized as such, and the district issued bonds by means of which it procured other water, and lands in the district were bought and sold and transfers thereof made, the members of the association were chargeable with laches preventing them from attacking the release in equity. *Ibid.*

**Sec. 6. [Date when charges become due fixed by the Secretary—Discount for prompt payment—Penalty for nonpayment—Cancellation for continued arrears—Actions for recovery.]**—All operation and maintenance charges shall become due and payable on the date fixed for each project by the Secretary of the Interior, and if such charge is paid on or before the date when due there shall be a discount of five per centum of such charge; but if such charge is unpaid on the first day of the third calendar month thereafter, a penalty of one per centum of the amount unpaid shall be added thereto, and thereafter an additional penalty of one per centum of the amount unpaid shall be added on the first day of each calendar month if such charge and penalties shall remain unpaid, and no water shall be delivered to the lands of any water-right applicant or entryman who shall be in arrears for more than one calendar year for the payment of any charge for operation and maintenance or any annual construction charge and penalties. If any water-right applicant or entryman shall be one year in arrears in the payment of any charge for operation and maintenance and penalties, or any part thereof, his water-right application, and if he be a homestead entryman his entry also, shall be subject to cancellation, and all payments made by him forfeited to the reclamation fund, but no homestead entry shall be subject to contest because of such arrears. In the discretion of the Secretary of the Interior suit or action may be brought for the amounts in default and penalties in like manner as provided in section three of this act. (38 Stat. 688; 43 U.S.C. §§ 479, 493-97)

#### EXPLANATORY NOTES

**Codification.** The provision that no water shall be delivered where an applicant or entryman is in arrears more than one calendar year in payment of annual construction charge and penalties is codified in section 479, title 43, U.S. Code. The remainder of the section is codified in sections 493-97.

**1924 Modification.** Subsection H, sec-

tion 4 of the Act of December 5, 1924, 43 Stat. 703, reduces the penalty provided for herein from 1 per cent per month to one-half of 1 per cent per month, as to all installments which may thereafter become due. The Act appears herein in chronological order.

**1922 Modification.** The Act of May 15, 1922, 42 Stat. 541, authorizes the Secretary



of the Interior to enter into contract with any legally organized irrigation district whereby the irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners and entrymen, in the discretion of the Secretary, may be dispensed with. In the event of such contract being made, the Secretary in his discretion, may contract for repayment as will best conform to the district and taxation laws of the respective States under which the district is formed and he may contract for penalties and interest charges in case of delinquency in payments as he may deem proper and con-

sistent with such State laws, notwithstanding sections 1, 2, 3, 4, 5 and 6 of this Act. The 1922 Act appears herein in chronological order.

**Cross References, Relief to Water Users.** Temporary provisions authorizing the furnishing of water to landowners or entrymen in arrears more than one calendar year, notwithstanding the provisions of this section, were contained in Public Resolution No. 3 of May 17, 1921, 42 Stat. 4, and in section 2 of the Act of March 31, 1922, 42 Stat. 490, as amended by section 4 of the Act of February 28, 1923, 42 Stat. 1325. Each of these Acts appears herein in chronological order.

#### NOTES OF OPINIONS

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##### 1. Calendar year

The term "calendar year" as used in this section refers to a period from January 1 to December 31, inclusive. Secretary's decision, May 24, 1916; C.L. 564, June 6, 1916.

##### 2. When charges due

A suit was brought by landowners to restrain the Board of Directors of the Elephant Butte Irrigation District from including in its budget for the 1927 tax rolls the estimated cost of operation and maintenance for the ensuing year on the ground that the district would not disburse such amounts to the United States, under its contracts and annual notices, until the year following that in which the charges were incurred, or the second ensuing year from the one in which the budget in question was made. The court sustained the action of the Board and denied a motion for rehearing upon the District's contention that it was deemed sound business practice at the time to anticipate the estimated operation and maintenance cost for the ensuing year even though, under the practice then prevailing, such amount would not necessarily be disbursed by the district during that year. *Sperry v. Elephant Butte Irr. Dist.*, 270 Pac. 889, 33 N. Mex. 482 (1928).

##### 3. Military service

Under section 501, Act of March 8, 1918 (40 Stat. 440), penalties arising under this section upon prior defaulted construction or operation and maintenance charges will not run during the period of the military service. Departmental decision, 47 L.D. 167 (1919).

##### 4. Withholding water delivery

Even if the Federal Government and its agents must conform to the State laws in the matter of initiating and perfecting appropriations from the nonnavigable stream in Idaho, for an irrigation system constructed and maintained under the reclamation act, the manager of such Government project may, as authorized by section 6, act of August 13, 1914, withhold water from land within the project where owner is in arrears for year for maintenance charge, though under the general State rule, held applicable to Carey Act companies and other quasipublic corporations appropriating water for sale, water may be refused only in respect to charges for current expenses, after demanding payment in advance. *Mower v. Bond*, 8 F.2d 518 (D. Idaho 1925).

A lien on the crops of a landowner who is delinquent in payment of charges is required as a condition to right to continue to use water from the project. *Ibid.*

Where water is rented under a regulation that the unpaid rentals upon the same land for previous years must be paid, before water is furnished, the regulation will be enforced even after a change of ownership, the new owner being required to pay up the water rental charges incurred by the previous owner before water will be delivered. Decision of First Assistant Secretary, June 18, 1935.

##### 5. Suit for water charges

The provisions of sections 3 and 6 of the Extension Act, in reference to one year of grace for the payment of overdue water charges, refer only to the drastic remedies of cancellation and forfeiture and not to the right to bring suit in a court for collection of a water charge past due and unpaid. Reclamation decision, December 4, 1917. *U.S. v. Edison E. Kilgore.*



**6. Relief act**

The provisions of the Act of March 31, 1922, 42 Stat. 489, which affords relief to settlers on reclamation projects with reference to operation and maintenance charges, simply relax the requirements of section 6 of the Act of August 13, 1914, by permitting the Secretary of the Interior, in

his discretion, to furnish irrigation water, during the time specified therein, to land-owners or entrymen who are in arrears for more than one calendar year, and nothing contained therein authorizes the extension of time for the payment of such charges. *Lower Yellowstone Irrigation Districts Nos. 1 and 2*, 49 L. D. 301 (1922).

**Sec. 7. [Local association may be appointed fiscal agent for the United States to collect charges—Official receipt.]**—The Secretary of the Interior is hereby authorized, in his discretion, to designate and appoint, under such rules and regulations as he may prescribe, the legally organized water users' association or irrigation district, under any reclamation project, as the fiscal agent of the United States to collect the annual payments on the construction charge of the project and the annual charges for operation and maintenance and all penalties: *Provided*, That no water-right applicant or entryman shall be entitled to credit for any payment thus made until the same shall have been paid over to an officer designated by the Secretary of the Interior to receive the same. (38 Stat. 688; 43 U.S.C. § 477)

## NOTES OF OPINIONS

**1. Contract**

The Secretary of the Interior is authorized by the Reclamation Act of 1902 alone, and certainly by the Warren Act of 1911, and section 7 of the Reclamation Extension Act of 1914, to enter into a contract with an irrigation district to furnish water and to join in the construction of a drainage system. *Nampa & Meridian Irr. Dist. v. Petrie*, 28 Idaho 227, 153 Pac. 425, 428 (1915).

Where a contract between the United States and a water users' association provided that the latter should promptly collect such charges as should be apportioned to its shareholders, the fact that the cost was greater than expected cannot be urged as a ground for equitable relief. *Yuma County Water Users' Assn. v. Schlecht*, 275 Fed. 885 (9th Cir. 1921), *affirmed* 262 U.S. 138 (1923).

**Sec. 8. [Authority to make regulations governing use of water, reclamation, and cultivation—Penalty for noncompliance with regulations.]**—The Secretary of the Interior is hereby authorized to make general rules and regulations governing the use of water in the irrigation of the lands within any project, and may require the reclamation for agricultural purposes and the cultivation of one-fourth the irrigable area under each water-right application or entry within three full irrigation seasons after the filing of water-right application or entry, and the reclamation for agricultural purposes and the cultivation of one-half the irrigable area within five full irrigation seasons after the filing of the water-right application or entry, and shall provide for continued compliance with such requirements. Failure on the part of any water-right applicant or entryman to comply with such requirements shall render his application or entry subject to cancellation. (38 Stat. 688; 43 U.S.C. § 440)

**Sec. 9. [Additional construction charges for certain lands.]**—In all cases where application for water right for lands in private ownership or lands held under entries not subject to the reclamation law shall not be made within one year after the passage of this act, or within one year after notice issued in pursuance of section four of the reclamation act, in cases where such notice has not



heretofore been issued, the construction charges for such land shall be increased five per centum each year until such application is made and an initial installment is paid. (38 Stat. 689; 43 U.S.C. § 464)

## NOTES OF OPINIONS

Date when increase attaches 2  
 Date when increase ceases 3  
 Purpose of section and lands affected 1  
 Status of State lands 4

**1. Purpose of section and lands affected**

Section 9 of the Extension Act is intended to encourage the early filing of water-right applications for land which has not been subjected to the reclamation law. In the Extension Act, Congress kept clear the distinction between the two classes of land involved, one subjected to the reclamation law and one not subjected to that law. In the former case Congress fixed a definite rate when the first installment of the construction charge should become due and provided a penalty of 1 per cent a month for nonpayment. In the latter case, where the lands were not bound by any prior agreement, Congress provided the 5 per cent increase in section 9 to induce early application. From a careful survey of the entire law it appears evident that the application of section 9 is limited to lands in private ownership not subject to the reclamation law and to entries not subject to the reclamation law. Section 9, therefore, does not apply to any lands under section 2, which section deals exclusively with lands "subject to the terms and conditions of the reclamation

law." Instructions, 47 L.D. 285 (1919); C.L. 862, December 19, 1919.

**2. Date when increase attaches**

The date on which the increase in construction charges provided by this section first becomes effective is the day next following the expiration of one year after date of approval of the act, or one year after date of public notice, as the case may be. In the former instance the increases accrue on August 14. Reclamation decision, October 18, 1917, C.L. 704, supplementing C.L. 516.

**3. Date when increase ceases**

In the case of lands for which water-right application is made under section 2 of this act the 5 per cent increase in construction charges provided for by this section ceases when the water-right application is made; but in cases where water-right application is made for lands under section 1, said increase does not cease until both the application is made and the initial installment is paid. Reclamation commission decision, March 17, 1917, C.L. 640.

**4. Status of State lands**

School lands in private ownership as the result of purchase from the State are not subject to the penalty provided in section 9 of the Act of August 13, 1914. *Benjamin F. Newkirk*, 46 L.D. 400 (1918).

**Sec. 10. [Entries prior to June 25, 1910—Disposal of relinquished lands.]—**The act of Congress approved February eighteenth, nineteen hundred and eleven, entitled "An act to amend section five of the act of Congress of June twenty-fifth, nineteen hundred and ten, entitled 'An act to authorize advances to the reclamation fund and for the issuance and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes,'" be, and the same hereby is amended so as to read as follows:

"Sec. 5. No entry shall be hereafter made and no entryman shall be permitted to go upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry, and water is ready to be delivered for the land in such unit or some part thereof and such fact has been announced by the Secretary of the Interior: *Provided*, That where entries made prior to June twenty-fifth, nineteen hundred and ten, have been or may be relinquished, in whole or in part, the lands so relinquished shall be subject to settlement and entry under the reclamation law." (38 Stat. 689; 43 U.S.C. §§ 436, 437)

## EXPLANATORY NOTE

**Editor's Note, Annotations.** Annotations found under section 5 of the Act of June 25, 1910, of opinions for this section, if any, are 1910.

**Sec. 11. [Furnishing water before regular rates are fixed.]**—Whenever water is available and it is impracticable to apportion operation and maintenance charges as provided in section five of this act, the Secretary of the Interior may, prior to giving public notice of the construction charge per acre upon land under any project, furnish water to any entryman or private landowner thereunder until such notice is given, making a reasonable charge therefor, and such charges shall be subject to the same penalties and to the provisions for cancellation and collection as herein provided for other operation and maintenance charges. (38 Stat. 689; 43 U.S.C. § 465)

## NOTE OF OPINION

**1. Reduction of penalty**

Subsection H of the Fact Finders' Act, which reduces from one to one-half per cent per month the delinquency penalty

on all charges coming due thereafter, also applies to rental charges fixed under section 11 of the Reclamation Extension Act of 1914. Instructions, 51 L.D. 218 (1925).

**Sec. 12. [Owners of private lands under new projects must dispose of excess area—Lands excluded upon refusal.]**—Before any contract is let or work begun for the construction of any reclamation project hereafter adopted the Secretary of the Interior shall require the owners of private lands thereunder to agree to dispose of all lands in excess of the area which he shall deem sufficient for the support of a family upon the land in question, upon such terms and at not to exceed such price as the Secretary of the Interior may designate; and if any landowner shall refuse to agree to the requirements fixed by the Secretary of the Interior, his land shall not be included within the projects if adopted for construction. (38 Stat. 689; 43 U.S.C. § 418)

## EXPLANATORY NOTE

**Cross Reference, Valid Recordable Contracts.** Section 46 of the Omnibus Adjustment Act of May 25, 1926, provides that no water shall be delivered to excess lands if the owners thereof shall refuse to execute valid recordable contracts for the sale of

such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those set by the Secretary. The 1926 Act appears herein in chronological order.

## NOTES OF OPINIONS

**Excess land laws 1—3**

Assessments 3

Generally 1

Pre-existing holdings 2

**1. Excess land laws—Generally**

The provisions of reclamation law of general application dealing with land limitations include section 5 of the Act of June 17, 1902, sections 1 and 2 of the Warren Act of 1911, section 3 of the Act of August 9, 1912, section 12 of the Reclamation Extension Act of 1914, and section 46 of the

Omnibus Adjustment Act of 1926. Solicitor Barry Opinion, 71 I.D. 496, 501 (1964), in re application of excess land laws to private lands in Imperial Irrigation District, Solicitor Harper Opinion, M-33902 (May 31, 1945), in re application of excess land laws to Coachella Valley.

Section 46 of the 1926 Act and section 12 of the 1914 Act deal specifically with the breakup of pre-existing holdings, while the 1902 and the 1912 Acts are relevant to the issue of the effect of excess land limitations on the coalescence of holdings. Sec-



tion 46 is an extension of the policy embodied in section 12. Solicitor Barry Opinion, 68 I.D. 372, 375, 376, 390, 404 (1961), in re proposed repayment contracts for Kings and Kern River projects.

## 2. —Pre-existing holdings

The preconstruction requirement of section 12 of the Reclamation Extension Act of 1914 that owners of private lands agree to dispose of all lands in excess of the area deemed sufficient for the support of a family, was designed specifically to cope with the special problem of initially breaking up excess holdings and of preventing owners of excess lands from profiting by the existence

of the project at the expense of purchasers. Solicitor Barry Opinion, 68 I.D. 372, 390 (1961), in re proposed repayment contracts for Kings and Kern River projects.

## 3. —Assessments

A corporate landowner which, as required by section 12 of the Reclamation Extension Act of 1914, agreed to dispose of its excess lands, could not, after construction of the project, escape assessment of such lands by an irrigation district under state law on the grounds that its lands were not benefited. *Lincoln Land Co. v. Goshen Irr. Dist.*, 42 Wyo. 229, 293 Pac. 373 (1930).

**Sec. 13. [Entries to be reduced to single farm units—Time for making proof—Cancellation of excess entries—Issue of patents—Assignments restricted.]—All entries under reclamation projects containing more than one farm unit shall be reduced in area and conformed to a single farm unit within two years after making proof of residence, improvement and cultivation, or within two years after the issuance of a farm-unit plat for the project, if the same issues subsequent to the making of such proof: *Provided*, That such proof is made within four years from the date as announced by the Secretary of the Interior that water is available for delivery for the land. Any entryman failing within the period herein provided to dispose of the excess of his entry above one farm unit, in the manner provided by law, and to conform his entry to a single farm unit shall render his entry subject to cancellation as to the excess above one farm unit: *Provided*, That upon compliance with the provisions of law such entryman shall be entitled to receive a patent for that part of his entry which conforms to one farm unit as established for the project: *Provided further*, That no person shall hold by assignment more than one farm unit prior to final payment of all charges for all the land held by him subject to the reclamation law, except operation and maintenance charges not then due. (38 Stat. 690; 43 U.S.C. §§ 435, 443)**

### EXPLANATORY NOTE

**Codification.** The last proviso is codified as section 443, title 43, U.S. Code. The rest

of the section is codified as section 435.

### NOTES OF OPINIONS

#### 1. Conformation of entry

Farm-unit plats are a part of the public notice affecting same, and where such plats are approved by the Secretary of the Interior prior to date of the public notice the latter date controls, and entrymen who submitted proof on or prior thereto will have two years from the date of notice within which to conform their entries and dispose of excess lands under this section. Where proof is submitted after date of public notice the two years begin to run from the date of such proof, provided that same is submitted within four years from the date fixed by the

Secretary when water will be available for irrigation of the lands in question. General Land Office decision, March 28, 1917, Salt River.

Where an entryman of lands within a reclamation project fails, after notice, to conform his entry to an established farm unit the Secretary of the Interior has the power to conform the entry. *Mangus Mickelson*, 43 L. D. 210 (1914).

Prior to the due establishment of farm units and the conformation of the particular entry to an approved unit, proof of reclamation of the land embraced within the rec-



lamation homestead entry under the national irrigation act of June 17, 1902, will not be accepted. *Charles A. Galusha*, 46 L. D. 417 (1918).

In this case an original reclamation entry was made in 1903 on lands embraced in a second-form reclamation withdrawal, the entry was relinquished in 1905 and reinstated in 1915, but the announcement of water availability was not made until 1947. Meanwhile, in 1943 and 1944 the Secretary

of the Interior granted permission to the Federal Public Housing Authority to use part of the land included in the entry for a war housing project. Under these circumstances, the Secretary may exclude the housing project lands in establishing the remainder of the entry as a farm unit where the remaining lands are adequate to support a family. *David C. Caylor*, A-25416, 60 I.D. 333 (1949).

**Sec. 14. [Acceptance of extension of payments to be made within six months—Upon showing, may be made later.]—**Any person whose land or entry has heretofore become subject to the reclamation law who desires to secure the benefits of the extension of the period of payments provided by this act shall, within six months after the issuance of the first public notice hereunder affecting his land or entry, notify the Secretary of the Interior in the manner to be prescribed by said Secretary, of his acceptance of all the terms and conditions of this act, and thereafter his lands or entry shall be subject to all of the provisions of this act: *Provided*, That upon sufficient showing the Secretary of the Interior may, in his discretion, permit notice of acceptance of all the terms and conditions of this act to be filed at any time after the time limit hereinbefore fixed for filing such acceptance shall have expired, conditioned, however, that where the applicant for such acceptance is in arrears on construction charges he shall at the time of acceptance pay such installments of the construction charge as he would have been required to pay had he accepted this act within the time limit hereinabove fixed plus the penalties that would have accrued had he so accepted, and such applicant shall thereafter be upon the same status that he would have been had he accepted the provisions of this act within the time limit hereinabove fixed, and thereafter the lands or entry of any such persons so filing such notice of acceptance shall be subject to all the provisions of this act. (38 Stat. 690; Proviso added by Act of July 26, 1916, 39 Stat. 390; 43 U.S.C. § 475)

#### EXPLANATORY NOTE

**1916 Amendment.** The Act of July 26, 1916, 39 Stat. 390, amended section 14 by adding to it the proviso that appears in the

section. The 1916 Act appears herein in chronological order.

**Sec. 15. [General authority.]—**The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this act into full force and effect. (38 Stat. 690; 43 U.S.C. § 373)

#### NOTE OF OPINION

##### 1. Suspension of public notices

The Secretary of the Interior has no general supervisory authority or authority under section 441, Revised Statutes, under section 10 of the Act of June 17, 1902,

or under section 15 of the Act of August 13, 1914, to suspend public notices issued under the reclamation law. *In re Shoshone Irrigation Project, etc.*, 50 L.D. 223 (1923).

**Sec. 16. [Expenditures after July 1, 1915, limited to specific appropriations—To be paid out of reclamation fund.]—**From and after July first, nineteen



hundred and fifteen, expenditures shall not be made for carrying out the purposes of the reclamation law except out of appropriations made annually by Congress therefor, and the Secretary of the Interior shall, for the fiscal year nineteen hundred and sixteen, and annually thereafter, in the regular Book of Estimates, submit to Congress estimates of the amount of money necessary to be expended for carrying out any or all of the purposes authorized by the reclamation law, including the extension and completion of existing projects and units thereof and the construction of new projects. The annual appropriations made hereunder by Congress for such purposes shall be paid out of the reclamation fund provided for by the reclamation law. (38 Stat. 690; 43 U.S.C. § 414)

## NOTES OF OPINIONS

**Practicability of project 2**  
**Use of reclamation fund 1**

**1. Use of reclamation fund**

Moneys in the reclamation fund arising from operation and maintenance charges, regardless of date of payment or collection thereof, can be made available for expenditure only in accordance with provisions of section 16 of the Act of August 13, 1914. 27 Comp. Dec. 849 (1921).

**2. Practicability of project**

Section 16 of the Act of August 13, 1914, did not relieve the Secretary of the Interior of the duty imposed by section 2 of the Act of June 17, 1902, to report at each session of Congress "all facts relative to the practicability of each irrigation project," nor did it relieve him of the duty imposed by section 4 of the Act of June 17, 1902, to determine the practicability of irrigation projects before the letting of contracts. 34 Op. Atty. Gen. 545 (1925).

## EXPLANATORY NOTE

**Legislative History.** S. 4628, Public Law 312. H.R. Rept. No. 505. H.R. Rept. No. 170 in the 63rd Congress. S. Rept. No. 1076 (conference report).