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## H.R.429

Reclamation Projects Authorization and Adjustment Act of 1992 (Enrolled as Agreed to or Passed by Both House and Senate)

>

### TITLE XXVIII--RECLAMATION RECREATION MANAGEMENT ACT

#### SEC. 2801. SHORT TITLE.

This title may be cited as the `Reclamation Recreation Management Act of 1992'.

#### SEC. 2802. FINDINGS.

The Congress finds and declares the following:

[+]  
FEEDBACK

- (1) There is a Federal responsibility to provide opportunities for public recreation at Federal water projects.
- (2) Some provisions of the Federal Water Project Recreation Act are outdated because of increases in demand for outdoor recreation and changes in the economic climate for recreation managing entities.
- (3) Provisions of such Act relating to non-Federal responsibility for all costs of operation, maintenance, and replacement of recreation facilities result in an unfair burden, especially in cases where the facilities are old or underdesigned.
- (4) Provisions of such Act that limit the Federal share of recreation facility development at water projects completed before 1965 to \$100,000 preclude a responsible Federal share in providing adequate opportunities for safe outdoor recreation.
- (5) There should be Federal authority to expand existing recreation facilities to meet public demand, in partnership with non-Federal interests.
- (6) Nothing in this title changes the responsibility of the Bureau to meet the purposes for which Federal Reclamation projects were initially authorized and constructed.
- (7) It is therefore in the best interest of the people of this Nation to amend the Federal Water Project Recreation Act to remove outdated restrictions and authorize the Secretary of the Interior to undertake specific measures for the management of Reclamation lands.

#### SEC. 2803. DEFINITIONS.

For the purposes of this title:

- (1) The term `Reclamation lands' means real property administered by the Secretary, acting through the Commissioner of Reclamation, and includes all acquired and withdrawn lands and water areas under jurisdiction of the Bureau.
- (2) The term `Reclamation program' means any activity authorized under the Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 371)), and Acts supplementary thereto and amendatory thereof).
- (3) The term `Reclamation project' means any water supply or water delivery project constructed or administered by the Bureau of Reclamation under the Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 371), and Acts supplementary thereto and amendatory thereof).
- (4) The term `Secretary' means the Secretary of the Interior.

SEC. 2804. AMENDMENTS TO THE FEDERAL WATER PROJECT RECREATION ACT.

(a) ALLOCATION OF COSTS- Section 2(a) of the Federal Water Project Recreation Act (16 U.S.C. 460I-13(a)) is amended, in the matter preceding paragraph (1), by striking 'all the costs of operation, maintenance, and replacement' and inserting 'not less than one-half the costs of operation, maintenance, and replacement'.

(b) RECREATION AND FISH AND WILDLIFE ENHANCEMENT- Section 3(b)(1) of the Federal Water Project Recreation Act (16 U.S.C. 460I-14(b)(1)) is amended--

(1) by striking 'within ten years'; and

(2) by striking 'all costs of operation, maintenance, and replacement attributable' and inserting 'not less than one-half the costs of planning studies, and the costs of operation, maintenance, and replacement attributable'.

(c) LEASE OF FACILITIES- Section 4 of the Federal Water Project Recreation Act (16 U.S.C. 460I-15) is amended by striking 'costs of operation, maintenance, and replacement of existing' and inserting 'not less than one-half the costs of operation, maintenance, and replacement of existing'.

(d) EXPANSION OR MODIFICATION OF EXISTING FACILITIES- Section 3 of the Federal Water Project Recreation Act (16 U.S.C. 460I-14) is amended by adding at the end the following new subsection:

'(c)(1) Any recreation facility constructed under this Act may be expanded or modified if--

'(A) the facility is inadequate to meet recreational demands; and

'(B) a non-Federal public body executes an agreement which provides that such public body--

'(i) will administer the expanded or modified facilities pursuant to a plan for development for the project that is approved by the agency with administrative jurisdiction over the project; and

'(ii) will bear not less than one-half of the planning and capital costs of such expansion or modification and not less than one-half of the costs of the operation, maintenance, and replacement attributable to the expansion of the facility.

'(2) The Federal share of the cost of expanding or modifying a recreational facility described in paragraph (1) may not exceed 50 percent of the total cost of expanding or modifying the facility.'

(e) LIMITATION- Section 7(a) of the Federal Water Project Recreation Act (16 U.S.C. 460I-18(a)) is amended--

(1) by striking 'purposes: *Provided,*' and all that follows through the end of the sentence and inserting 'purposes'; and

(2) by striking 'subsection 3(b)' and inserting 'subsection (b) or (c) of section 3'.

## SEC. 2805. MANAGEMENT OF RECLAMATION LANDS.

(a) ADMINISTRATION- (1) Upon a determination that any such fee, charge, or commission is reasonable and appropriate, the Secretary acting through the Commissioner of Reclamation, is authorized to establish--

(A) filing fees for applications and other documents concerning entry upon and use of Reclamation lands;

(B) recreation user fees; and

(C) charges or commissions for the use of Reclamation lands.

(2) The Secretary, acting through the Commissioner of Reclamation, shall promulgate such regulations as the Secretary determines to be necessary--

(A) to carry out the provisions of this section and section 2806;

(B) to ensure the protection, comfort, and well-being of the public (including the protection of public safety) with respect to the use of Reclamation lands; and

(C) to ensure the protection of resource values.

(b) INVENTORY- The Secretary, acting through the Commissioner of Reclamation, is authorized to--

(1) prepare and maintain on a continuing basis an inventory of resources and uses made of Reclamation lands and resources, keep records of such inventory, and make such records available to the public; and

(2) ascertain the boundaries of Reclamation lands and provide a means for public identification (including, where appropriate, providing signs and maps).

(c) PLANNING- (1)(A) The Secretary, acting through the Commissioner of Reclamation, is authorized to develop, maintain, and revise resource management plans for Reclamation lands.

(B) Each plan described in subparagraph (A)--

(i) shall be consistent with applicable laws (including any applicable statute, regulation, or Executive order);

(ii) shall be developed in consultation with--

(I) such heads of Federal and non-Federal departments or agencies as the Secretary determines to be appropriate; and

(II) the authorized beneficiaries (as determined by the Secretary) of any Reclamation project included in the plan; and

(iii) shall be developed with appropriate public participation.

(C) Each plan described in subparagraph (A) shall provide for the development, use, conservation, protection, enhancement, and management of resources of Reclamation lands in a manner that is compatible with the authorized purposes of the Reclamation project associated with the Reclamation lands.

(d) NONREIMBURSABLE FUNDS- Funds expended by the Secretary in carrying out the provisions of this title shall be nonreimbursable under the Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 371), and Acts supplementary thereto and amendatory thereof).

#### SEC. 2806. PROTECTION OF AUTHORIZED PURPOSES OF RECLAMATION PROJECTS.

(a) Nothing in this title shall be construed to change, modify, or expand the authorized purposes of any Reclamation project.

(b) The expansion or modification of a recreational facility constructed under this title shall not increase the capital repayment responsibilities or operation and maintenance expenses of the beneficiaries of authorized purposes of the associated Reclamation project. The term `beneficiaries' does not include those entities who sign agreements or enter into contracts for recreation facilities pursuant to the Federal Water Project Recreation Act.

### TITLE XXIX--SAN JUAN SUBURBAN WATER DISTRICT

#### SEC. 2901. REPAYMENT OF WATER PUMPS, SAN JUAN SUBURBAN WATER DISTRICT, CENTRAL VALLEY PROJECT, CALIFORNIA.

(a) WATER PUMP REPAYMENT- The Secretary shall credit to the unpaid capital obligation of the San Juan Suburban Water District (District), as calculated in accordance with the Central Valley Project ratesetting policy, an amount equal to the documented price paid by the District for pumps and motors provided by the District to the Bureau of Reclamation, in 1991 and 1992, for installation at Folsom Dam, Central Valley Project, California.

(b) CONDITIONS- (1) The amount credited shall not include any indirect or overhead costs associated with the acquisition of the pumps and motors, such as those associated with the negotiation of a sales price or procurement contract, inspection, and delivery of the pumps and motors from the seller to the Bureau of Reclamation.

(2) The credit is effective on the dates the pumps and motors were delivered to the Bureau of Reclamation for installation at Folsom Dam.

### TITLE XXX--WESTERN WATER POLICY REVIEW

#### SEC. 3001. SHORT TITLE.

This title may be cited as the `Western Water Policy Review Act of 1992.'

#### 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 results 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 those 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, 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 increasing competition for the scarce water resources of the Western States.

### **SEC. 3003. PRESIDENTIAL REVIEW.**

(a) The President is directed to undertake a comprehensive review of Federal activities in the nineteen Western States which directly or indirectly affect the allocation and use of water resources, 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 Resources, 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 Members of the Committees 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, subsistence, and other necessary expenses incurred by them in the performance of their duties.

**SEC. 3005. DUTIES OF THE COMMISSION.**

The Commission shall--

- (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 to 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 compacts, Federal-State regional corporations, river basin commissions, the activities of the Water Resources Council, municipal and irrigation districts 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 resources 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 decisions 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.

**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 it 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 aspects 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 individuals 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.

#### **SEC. 3009. OTHER FEDERAL AGENCIES.**

(a) The Commission shall, to the extent practicable, utilize the services 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 functions, 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.

### **TITLE XXXI--MOUNTAIN PARK MASTER CONSERVANCY DISTRICT, OKLAHOMA**

#### **SEC. 3101. PAYMENT BY MOUNTAIN PARK MASTER CONSERVANCY DISTRICT.**

(a) IN GENERAL- The Secretary shall conduct appropriate investigations regarding, and is authorized to accept prepayment of, the repayment obligation of the District for the reimbursable construction costs of the project allocated to municipal and industrial water supply for the city, and, upon receipt of such prepayment, the District's obligation to the United States shall be reduced by the amount of such costs.

(b) PAYMENT AMOUNT- Any prepayment made pursuant to subsection (a) shall realize an amount to the Federal Government calculated by discounting the remaining repayment obligation by the interest rate determined according to this section.

(c) INTEREST RATE- The Secretary shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget concerning loan sales and prepayment of loans.

(d) INVESTIGATIONS- In determining the interest rate, the Secretary--

(1) shall not equate an appropriate amount of prepayment with the price of the loan if it were to be sold on the open market to a third party, and

(2) shall, in following the guidelines set forth in Circular A-129 regarding an allowance for administrative expenses and possible losses, make such an allowance from the perspective of the Federal Government as lender and not from the perspective of a third party purchasing the loan on the open market.

(e) TAX-EXEMPT FINANCING- If the borrower or purchaser of the loan has access to tax-exempt financing (including, but not limited to, tax-exempt bonds, tax-exempt cash reserves, and cash and loans of any kind from any tax-exempt entity) to finance the transaction, and if the Office of Management and Budget grants the Secretary the right to conduct such a transaction, then the interest rate by which the Secretary discounts the remaining payments due on the loan shall be adjusted by an amount that compensates the Federal Government for the direct or indirect loss of future tax revenues.

(f) LIMIT ON INTEREST RATE- Notwithstanding any other provision in this title, the interest rate shall not exceed a composite interest rate consisting of the current market yield on Treasury securities of comparable maturities.

(g) APPROVAL- The Secretary shall obtain approval from the Secretary of the Treasury and the Director of the Office of Management and Budget of the final terms of any prepayment made pursuant to this title.

(h) TERMINATION OF AUTHORITY- The authority granted by this title to sell loans shall terminate two years after the date of enactment of this Act: *Provided*, That the borrower shall have at least sixty days to respond to any prepayment offer made by the Secretary.

(i) TITLE TO PROJECT FACILITIES- Notwithstanding any payments made by the District pursuant to this section or pursuant to any contract with the Secretary, title to the project facilities shall remain with the United States.

(j) DEFINITIONS- For the purposes of this section--

(1) the term `city' means the city of Frederick, Oklahoma; the city of Snyder, Oklahoma; or the city of Altus, Oklahoma;

(2) the term `District' means the Mountain Park Master Conservancy District of Mountain Park, Oklahoma;

(3) the term `project' means the Mountain Park Project, Oklahoma; and

(4) the term `Secretary' means the Secretary of the Interior.

## **SEC. 3102. RESCHEDULE OF REPAYMENT OBLIGATION.**

(a) The Secretary shall conduct appropriate investigations regarding the ability of the District to meet its repayment obligation.

(b) If the Secretary finds that the District does not have the ability to pay its repayment obligation, then the Secretary shall offer the District a revised schedule of payments for purposes of meeting the repayment obligation of the District: *Provided*, That such schedule of payments shall--

(1) be consistent with the ability to pay of the District, and

(2) have the same discounted present value as the repayment obligation of the District.

(c) The Secretary shall conduct the investigations and make any offer of a revised schedule of payments pursuant to this section no later than twelve months after the date of enactment of this section.

## **TITLE XXXII--SOUTH DAKOTA PRESERVATION AND RESTORATION TRUST**

### **Subpart A--Biological Diversity Trust**

#### **SEC. 3201. SOUTH DAKOTA BIOLOGICAL DIVERSITY TRUST.**

(a) The Secretary, subject to the provisions of subsection (d) of this section, shall make an annual Federal contribution to a South Dakota Biological Diversity Trust established in accordance with subsection (b) of this section and operated in accordance with subsection (c) of this section. Contributions from the State of South Dakota may be paid to the Trust in such amounts and in such manner as may be agreed upon by the Governor and the Secretary. The total Federal contribution pursuant to this section, including subsection (d), shall not exceed \$12,000,000.

(b) A South Dakota Biological Diversity Trust shall be eligible to receive Federal contributions pursuant to subsection (a) of this section if it complies with each of the following requirements:

(1) The Trust is established by non-Federal interests as a nonprofit corporation under the laws of South Dakota with its principal office in South Dakota.

(2) The Trust is under the direction of a Board of Trustees which has the power to manage all affairs of the corporation, including administration, data collection, and implementation of the purposes of the Trust.

(3) The Board is comprised of five persons appointed as follows, each for a term of five years:

(A) 1 person appointed by the Governor of South Dakota;

(B) 1 person appointed by each United States Senator from South Dakota;

(C) 1 person appointed by the United States Representative from South Dakota; and

(D) 1 person appointed by the South Dakota Academy of Science.

(4) Vacancies on the Board are filled in the manner in which the original appointments were made. Any member of the

Board is eligible for reappointment for successive terms. Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed is appointed only for the remainder of such term. A member may serve after the expiration of his or her term until his or her successor has taken office. Members of the Board shall serve without compensation.

(5) The corporate purposes of the Trust are to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity, its rare species, exemplary examples of plant and animal communities and large-scale natural ecosystems.

(c) A South Dakota Biological Diversity Trust established by non-Federal interests as provided in subsection (b) shall be deemed to be operating in accordance with this subsection if, in the opinion of the Secretary, each of the following requirements are met:

(1) the Trust is operated to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity; its rare species, extraordinary examples of plant and animal communities and large-scale natural ecosystems in accordance with its corporate purpose; and

(2) the Trust is managed in a fiscally responsible fashion by investing in private and public financial vehicles with the goal of producing income and preserving principal. The principal will be inviolate, but income will be used to accomplish the goals of the trust.

(3) Proceeds from the Trust are used for the following purposes:

(A) \$10,000 per year or 5 percent of the total funds expended by the Trust (whichever is larger) will be provided to the South Dakota Natural Heritage Program (currently as part of the South Dakota Game, Fish, and Parks Departments), in order to do the following:

(i) maintain and update the South Dakota Biodiversity Priority Site List;

(ii) conduct inventory to discover and survey new sites for the Priority Site List; and

(iii) manage data to maintain the Natural Heritage Databases needed to produce and document the Priority Site List.

(B) Up to 5 percent of the costs of each project are used for preserve design or site planning to ensure that sites are selected for funding which are well-designed to maintain the long-term viability of the significant species and communities found at the site.

(C) Proceeds from the Trust may be used to complete land protection projects designed to protect biological diversity.

(D) Projects may include acquisition of land, water rights or other partial interests from willing sellers only, or arranging management agreements, registry and other techniques to protect significant sites.

(E) Ownership of land acquired with Trust proceeds will be held by the public agency or private non-profit organization which proposed and completed the project, or another conservation owner with the approval of the Board. The land will be managed and used for the protection of biological diversity. If the property is used or managed otherwise, title will revert to the Trust for disposition.

(F) Projects eligible for funding must be included on the South Dakota Biodiversity Priority List and located within the borders of South Dakota.

(G) At the discretion of the Board, Trust proceeds may be used for direct project costs including direct expenses incurred during project completion. Land project funding may also include the creation of a stewardship endowment subject to the following terms:

(i) Up to 25 percent of the total fair market value of the project may be placed in a separate endowment.

(ii) The proceeds from the endowment will be used for the ongoing management costs of maintaining the biological integrity and viability of the significant biological features of the site.

(iii) Endowment funds may not be used for activities which primarily promote recreational or economic use of the site.

(iv) The endowment for each site will be held in a separate account from the body of the Trust and other endowments. The endowments will be managed by the Trust Board but the owner or manager of the site may draw upon the proceeds of the stewardship endowment to fund management activities with approval of the Board. Additional management funds may be secured from other public and private sources.

(H) Should the biological significance of a site be destroyed or greatly reduced, the land may be disposed of but the proceeds and any stewardship endowment will revert to the Trust for use in other projects.

(I) Proceeds from the Trust may be used for management of public or private lands, including but not restricted to



lands purchased with Trust funds, except that only those management projects that result in the maintenance or restoration of statewide biological diversity are eligible for consideration.

(d) For each fiscal year after 1992, 2 percent of the Federal contributions for the same fiscal year, determined pursuant to subsection (a) of this section, shall be used by the Secretary in order to do the following:

- (1) restore damaged natural ecosystems on public lands and waterways affected by the Reclamation program outside South Dakota;
- (2) acquire from willing sellers only other lands and properties or appropriate interests therein outside South Dakota with restorable damaged natural ecosystems and restore such ecosystems;
- (3) provide jobs and suitable economic development in a manner that carries out the other purposes of this subsection;
- (4) provide expanded recreational opportunities; and
- (5) support and encourage research, training and education in methods and technologies of ecosystem restoration.

(e) In implementing subsection (d), the Secretary shall give priority to restoration and acquisition of lands and properties (or appropriate interests therein) where repair of compositional, structural and functional values will do the following:

- (1) reconstitute natural biological diversity that has been diminished;
- (2) assist the recovery of species populations, communities and ecosystems that are unable to survive onsite without intervention;
- (3) allow reintroduction and reoccupation by native flora and fauna;
- (4) control or eliminate exotic flora and fauna which are damaging natural ecosystems;
- (5) restore natural habitat for the recruitment and survival of fish, waterfowl and other wildlife;
- (6) provide additional conservation values to state and local government lands;
- (7) add to structural and compositional values of existing preserves or enhance the viability, defensibility and manageability of preserves; and
- (8) restore natural hydrological effects including sediment and erosion control, drainage, percolation and other water quality improvement capacity.

(f) The Secretary shall annually report on activities under this section to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate and the Committee on Interior and Insular Affairs and the Committee on Appropriations of the House of Representatives.

(g) There are authorized to be appropriated not to exceed \$12,000,000 for the purposes of this title.

## **Subpart B--Wetland Habitat Restoration Program**

### **SEC. 3202. DEFINITIONS.**

(1) The term 'Foundation' means the South Dakota Game, Fish and Parks Foundation, a nonprofit corporation under the laws of the State of South Dakota with its principal office in South Dakota.

(2) The term 'wetland trust' means a trust established in accordance with section 3602(b) and operated in accordance with section 3602(c).

### **SEC. 3203. WETLAND TRUST.**

(a) FEDERAL CONTRIBUTIONS- Subject to appropriations therefor, the Secretary shall make a Federal contribution to a wetland trust that is--

- (1) established in accordance with subsection (b); and
- (2) operated in accordance with subsection (c), in the amount of \$3,000,000 in the first year in which a contribution is made and \$1,000,000 in each of the following four years.

(b) ESTABLISHMENT OF WETLAND TRUST- A wetland trust is established in accordance with this subsection if--

- (1) the wetland trust is administered by the Foundation;
- (2) the Foundation is under the direction of a Board of Directors that has power to manage all affairs of the Foundation, including administration, data collection, and implementation of the purposes of the wetland trust;

- (3) members of the Board of Directors of the Foundation serve without compensation;
- (4) the corporate purposes of the Foundation in administering the wetland trust are to preserve, enhance, restore, and manage wetland and associated wildlife habitat in the State of South Dakota;
- (5) an advisory committee is created to provide the Board of Directors of the Foundation with necessary technical expertise and the benefit of a multiagency perspective;
- (6) the advisory committee described in paragraph (5) is composed of--
- (A) 1 member of the staff of the Wildlife Division of the South Dakota Department of Game, Fish and Parks, appointed by the Secretary of that department;
  - (B) 1 member of the United States Fish and Wildlife Service, appointed by the Director of Region 6 of the United States Fish and Wildlife Service;
  - (C) 1 representative from the Department of Agriculture, as determined by the Secretary of Agriculture; and
  - (D) 3 residents of the State of South Dakota who are members of wildlife or environmental organizations, appointed by the Governor of the State of South Dakota; and
- (7) the wetland trust is empowered to accept non-Federal donations, gifts, and grants.
- (c) OPERATION OF WETLAND TRUST- The wetland trust shall be considered to be operated in accordance with this subsection if--
- (1) the wetland trust is operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat in the State of South Dakota;
  - (2) under the corporate charter of the Foundation, the Board of Directors, acting on behalf of the Foundation, is empowered to--
    - (A) acquire lands and interests in land and power to acquire water rights (but only with the consent of the owner);
    - (B) acquire water rights; and
    - (C) finance wetland preservation, enhancement, and restoration programs;
  - (3)(A) all funds provided to the wetland trust under subsection (a) are to be invested in accordance with subsection (d);
  - (B) no part of the principal amount (including capital gains thereon) of such funds are to be expended for any purpose;
  - (C) the income received from the investment of such funds is to be used only for purposes and operations in accordance with this subsection or, to the extent not required for current operations, reinvested in accordance with subsection (d);
  - (D) income earned by the wetland trust (including income from investments made with funds other than those provided to the wetland trust under subsection (a)) is used to--
    - (i) enter into joint ventures, through the Division of Wildlife of the South Dakota Department of Game, Fish and Parks, with public and private entities or with private landowners to acquire easements or leases or to purchase wetland and adjoining upland; or
    - (ii) pay for operation and maintenance of the wetland component;
  - (E) when it is necessary to acquire land other than wetland and adjoining upland in connection with an acquisition of wetland and adjoining upland, wetland trust funds (including funds other than those provided to the wetland trust under subsection (a) and income from investments made with such funds) are to be used only for acquisition of the portions of land that contain wetland and adjoining upland that is beneficial to the wetland;
  - (F) all land purchased in fee simple with wetland trust funds shall be dedicated to wetland preservation and use; and
  - (G)(i) proceeds of the sale of land or any part thereof that was purchased with wetland trust funds are to be remitted to the wetland trust;
  - (ii) management, operation, development, and maintenance of lands on which leases or easements are acquired;
  - (iii) payment of annual lease fees, one-time easement costs, and taxes on land areas containing wetlands purchased in fee simple;
  - (iv) payment of personnel directly related to the operation of the wetland trust, including administration; and

(v) contractual and service costs related to the management of wetland trust funds, including audits.

(4) the Board of Directors of the Foundation agrees to provide such reports as may be required by the Secretary and makes its records available for audit by Federal agencies; and

(5) the advisory committee created under subsection (b)--

(A) recommends criteria for wetland evaluation and selection: *Provided*, That income earned from the Trust shall not be used to mitigate or compensate for wetland damage caused by Federal water projects;

(B) recommends wetland parcels for lease, easement, or purchase and states reasons for its recommendations; and

(C) recommends management and development plans for parcels of land that are purchased.

(d) INVESTMENT OF WETLAND TRUST FUNDS- (1) The Secretary, in consultation with the Secretary of the Treasury, shall establish requirements for the investment of all funds received by the wetland trust under subsection (a) or reinvested under subsection (c)(3).

(2) The requirements established under paragraph (1) shall ensure that--

(A) funds are invested in accordance with sound investment principles; and

(B) the Board of Directors of the Foundation manages such investments and exercises its fiduciary responsibilities in an appropriate manner.

(e) COORDINATION WITH THE SECRETARY OF AGRICULTURE- (1) The Secretary shall make the Federal contribution under subsection (a) after consulting with the Secretary of Agriculture to provide for the coordination of activities under the wetland trust established under subsection (b) with the water bank program, the wetlands reserve program, and any similar Department of Agriculture programs providing for the protection of wetlands.

(2) The Secretary of Agriculture shall take into consideration wetland protection activities under the wetland trust established under subsection (b) when considering whether to provide assistance under the water bank program, the wetlands reserve program, and any similar Department of Agriculture programs providing for the protection of wetlands.

## SEC. 3204. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary \$7,000,000 for the Federal contribution to the wetland trust established under section 3203.

## TITLE XXXIII--ELEPHANT BUTTE IRRIGATION DISTRICT, NEW MEXICO

### SEC. 3301. TRANSFER.

The Secretary is authorized to transfer to the Elephant Butte Irrigation District, New Mexico, and El Paso County Water Improvement District No. 1, Texas, without cost to the respective district, title to such easements, ditches, laterals, canals, drains, and other rights-of-way, which the United States has acquired on behalf of the project, that are used solely for the purpose of serving the respective district's lands and which the Secretary determines are necessary to enable the respective district to carry out operation and maintenance with respect to that portion of the Rio Grande project to be transferred. The transfer of the title to such easements, ditches, laterals, canals, drains, and other rights-of-way located in New Mexico, which the Secretary has, that are used for the purpose of jointly serving Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, may be transferred to Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, jointly, upon agreement by the Secretary and both districts. Any transfer under this section shall be subject to the condition that the respective district assume responsibility for operating and maintaining their portion of the project.

### SEC. 3302. LIMITATION.

Title to and responsibility for operation and maintenance of Elephant Butte and Caballo dams, and Percha, Leasburg, and Mesilla diversion dams and the works necessary for their protection and operation shall be unaffected by this title.

## SEC.

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