individual Indians whose repayments are returned to the fund and are available for further loans.[134]

Under the Act of May 10, 1939,[135] Congress authorized transfer of tribal revolving funds to the revolving credit funds of organized tribes to supplement credit funds and to be administered under the rules and regulations applicable thereto. In the case Of organized tribes, tribal consent is necessary to authorize use of tribal funds for loans or other purposes.[136]

Federal credit to the Indians was greatly extended by the establishment of revolving credit funds under the Acts of June 18, 1934,[137] and June 26, 1936.[138] These statutes authorized the establishment of a revolving fund totaling $12,000,000, from which the Secretary of the Interior may make loans to incorporated tribes, and in the State of Oklahoma to cooperatives,[139] credit associations,[140] and individuals [141] for economic development. Loans as repaid are credited to the revolving fund and reports are made annually to Congress of transactions under this authorization.

Regulations governing loans from revolving credit funds to a tribal corporation, cooperative, credit association. or an individual provide that the tribal application must be accompanied by an economic program.[142] Security or other guarantee of repayment, terms of payment, and plans for managing credit operations must be included in the application. Upon approval of the application a commitment order covering the terms and conditions for making advances of funds is prepared. Any changes to be made in the application or any additional conditions are incorporated in the commitment order, which is then returned to the applicant for acceptance. Advances are made contingent upon accomplishment of certain features of the program. Failure to carry out these provisions is ground for refusing further advances. The tribe, if the loan contract so provides, may relend funds to individuals, partnerships, and to cooperatives, and may use funds for the development and operation of corporate (tribal) enterprises. Credit associations may lend only to individuals.[143]

Definite plans for the use of funds likewise are required of any individual or association of individuals borrowing from the tribe or credit association. These loans may not extend for a greater period than the duration of the agreement of the tribe or credit association with the government. This period varies ranging from short-term crop loans and intermediate-term loans for livestock products. to long-term loans for permanent improvements. Loans for permanent improvements are made only in exceptional circumstances, preference being given to income-producing enterprises. As a matter of policy loans are not made for land purchases under the revolving fund except in very unusual cases and then in small amounts.[144]

Final approval of all loans made by corporations, or credit associations, is vested in representatives of the Indian Service at the present time.

Legislation authorizing revolving credit fund loans to incorporated tribes has been construed in the light of the avowed purpose of increasing tribal control over tribal resources.

In discussing this legislation the Solicitor of the Interior Department [145] pointed out:

> Money from the revolving credit fund may not be loaned to individual Indians directly. In relation to this fund the Secretary Of the Interior can deal only With the tribal corporations representing the interests of all the Indians who are members of the tribes. In this respect the loans contemplated * * . are in distinct contrast to those heretofore authorized by Congress. Under reimbursable appropriations loans have been made to the Indians for designated purposes, * * * are carried on by the Government with individual Indians. * * * The tribal bodies, where such exist, have no responsibility in the administration of such funds.

Under section 10 of the Wheeler-Howard Act,[146] governing the revolving credit fund the Government can deal only with the tribal authorities, and these are charged with the responsibility for making such loans to their members, or for using the funds in such ways as will enable them to create a basis for expanding self-sufficiency. In accordance with the purpose expressed in sections 16 and 17 of the act, by which a large and increasing responsibility for taking care of their own welfare is placed upon the various tribes, organized for local self-government and economic activity, section 10 contemplates that funds loaned to the tribes will be, in large measure, subject to their disposition. consistent with the terms of said provision.

This section was construed by the Solicitor:

> Under section 10 the Secretary of the Interior may determine the conditions upon which he will make loans to Indian corporations. He may prescribe such rules and regulations as are reasonably appropriate to this purpose. He may require reasonable guarantees by the borrowing corporation that the money loaned to it will be used for specified purposes and handled in specified ways. If the Secretary is to exercise any control over money already loaned to the corporation it must be a control which is authorized by mutual agreement, and is designed to enforce the terms of such agreement. The strictly regulatory power of the Secretary, conferred by section 10, ceases when the loan to the tribe is completed. Thereafter the powers of the Department are limited to enforcement of the terms of the tribal loan agreement. The Indian corporation, upon which responsibility is placed for the repayment of the loan, may properly expect, under the terms of section 10, that moneys will not be disbursed to individual members of the tribe in the discretion of the Interior Department, on behalf of the corporation, but that the money will actually be loaned to the corporation to be used or disbursed by the duly elected officers of the corporation in accordance with the terms of a loan agreement and in accordance with the mandates given these officers in tribal constitutions, bylaws and charters.[147]

In view of these purposes, the Solicitor of the Interior Department held, any arrangement placing upon Indian Service officials primary responsibility for the administration of loans from the tribe to the individual would be " a serious invasion of tribal responsibility and initiative" and would "nullify in large measure the promises contained in other sections of the Act." Equally inconsistent with the purposes of the act and with the terms of constitutions and charters adopted thereunder. the Solicitor held, would be any arrangement whereby the tribal authorities administering such loans were subjected to the control of Indian Servi officials. Any such arrangement would constitute an assumption of "political control of matters internal to the tribe."

[134] See for example 25 C. F. R. 28.1–28.56, governing administration of Klamath Tribal Loan had. created by Act of August 28, 1937, 50 Stat. 872, 25 U. S. C. 530–535.

[135] Public Act No. 66. 76th Cong., 1st sess.

[136] Act of June 18. 1934, sec. 16. 48 Stat. 984. 987. 25 U. S. C. 476, giving such tribe power to veto unauthorized use of tribal assets. And see Memo. Sol. I. D. October 18. 1932.

[137] Sec. 10, 48 Stat. 984, 986. 25 U. S. C!. 470. For regulations governing loans to Indian chartered corporations, see 25 c. F. R. 21.1–21.49.

[138] 49 Stat. 1967.

[139] For regulations governing loans to Indian cooperatives in Oklaboms, see 25 C. F. R. 23.1–23.27.

[140] See ibid., 24 1–24.15. For regulations governing loans by Indian credit associations in Oklahoma, see 25 C. F. R. 25.1–25.26.

[141] For regulations governing loans by the United States to individual Indians in Oklahoma, see *ibid.*. 26.1-26.26.

[142] 25 C. F. R.. subchapter E.

[143] *Ibid.*

[144] *Ibid., part 27.*

[145] Memo. Sol I. D.. December 5. 1935.

[146] Act of June 18. 1934. 48 Stat. 984. 986. 25 U. S. C. 470.

[147] Memo. Sol. I. D., December 5. 1935.

Safeguards against, improper disposition of funds by the borrowing tribe must be set forth in the loan agreements between the tribe and the Secretary of the Interior.[148]

The Oklahoma Welfare Act [149] made funds appropriated for loans under the Indian Reorganization Act available for loans to Oklahoma tribes, individual Indians, and cooperatives for land management, credit, administration, consumers' protection, production, and marketing purposes. The act also authorized additional appropriations of an additional $2,000,000 for loans.

The benefit of the revolving credit fund was extended to Alaska by the Act of May 1, 1936.[150]

B. LOANS UNDER GENERAL LEGISLATION

Under various acts making appropriations for rural rehabilitation, and relief,[151] Indians, like other citizens, have received loans and grants. At the same time certain Indian tribes have undertaken to handle their own rehabilitation and relief problems, with federal aid. Thus funds for rehabilitation were granted to various tribes under agreements [152] executed by the Commissioner of Indian Affairs for, and on behalf of, the United States. Agreements on behalf of organized tribes are signed by tribal officers. Unorganized tribes are represented by trustees. Submission of programs approved by such officers or trustees is required as a condition precedent to the execution of a trust agreement. The funds may be set up by the tribe as a revolving fund and money may be advanced. by the tribe to individual Indians, all contracts with individuals being executed by the tribes.

In some cases, the tribe, instead of loaning money, uses rehabilitation funds to improve tribal land, and then assigns the use of the land to members. Improvements on tribal land remain the property of the tribe, individual Indians paying fees for the, use of the improvements. These payments are, in most cases, to be collected until the original value, or partial value at least, of the improvement has been collected. Payments are placed in a tribal revolving fund.

Property improved under rehabilitation loans is ordinarily held under revocable assignments, subject to revocation upon failure to pay. The assignee may ordinarily designate a successor subject to joint approval of the tribal officers or trustees and superintendent.

Another phase of rehabilitation involves self-help projects. Money is advanced to the tribes for community buildings, in which Indians are engaged in sewing, canning, weaving, and handicrafts. Machine sheds, storehouses, shearing sheds, smithies, shops, grist mills, tanneries have been constructed. Water development and irrigation projects have been financed. Frequently materials are supplied at tribal expense and the workers are paid wages, the products being property of the tribe. By these activities not only have numerous Indian workers received wages but thousands of Indian families have been more adequately fed and clothed.[153]

The tribal programs of rehabilitation were first financed out of appropriations under the Joint Resolution of April 8, 1935,[154] allocated to the Office of Indian Affairs by a Presidential letter of January 11, 1936,[155] This work was continued under the Emergency Relief Acts of 1937 [156] and 1938.[157] The Emergency Relief Appropriation Act of 1939 [158] made a special appropriation direct to the Office of Indian Affairs.

Those Indians whose needs are not met by the tribal rehabilitation program are entitled to treatment on a parity with other citizens when they apply to the Farm Security Administration for individual rehabilitation loans.[159]

Under the same principle that prompted the holding that individual Indians are eligible to receive assistance under the Social Security Act and from the Farm Security Administration for rehabilitation loans,[160] Indian tribes are eligible to apply for loans under such legislation for the general welfare as that

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[148] *Ibid.* In this memorandum the Solicitor declared:

> * * * If the loan agreement is to be regarded as a contract, observance of which by the corporation is a prerequisite to the obtaining and the continued use of funds from the revolving fund, then such contract should be equally binding on the Government. The Secretary of the Interior has no authority, under the power to make rules and regulations contained in section 10 of the Act, to require that the Indians shall observe such agreements on pain of drastic penalties, while the Government is free to change its policies in such ways as it deems best, and to force new terms upon the Indians which were not included in the original agreements. Such an illusory agreement is clearly not justified as a matter of law.
>
> I believe that the rules and regulations should state clearly the minimum terms and conditions which must be inserted in every agreement for a loan from the revolving fund, and further that this agreement should be binding, not only upon the Indians, but also upon the Government. If the Secretary of the Interior and the Indians of a particular tribe agree upon a credit program and upon plans for the economic development of such tribe, and of its members, I do not believe that a subsequent Secretary should have the power at a later date to change the terms of that agreement.

[149] Act of June 26. 1936. 49 Stat. 1967. 25 U. S. C. et *seq.* For regulations. governing loans by United States to individual Indians in Oklahoma, see 25 C. F. R. 26.1–26.26.

[150] 49 Stat. 1250, 48 U. S. C. See Chapter 21, sec. 9.

[151] Joint Resolution of April 8, 1935, 49 Stat. 115: Joint Resolution of June 29, 1937. 50 Stat. 352; Joint Resolution of June 21, 1938, 52 stat. 809.

[152] Under these agreements, the United States grants to the tribe all of the allocation of emergency funds required to cover the cost of the approved projects, excepting such part of the cost as represents necessary administrative and supervisory expenses. The grant is made subject to the condition that it will be used for approved objects.

[153] Hearings H. Subcomm. of Comm. on Appropriations, Interior Dept., 76th Cong., 3d sess., pt. II, p. 461.

[154] 49 Stat. 115. This act appropriated for rural rehabilitation and relief of stricken agricultural areas.

[155] Presidential letter No. 1323, January 11, 1936.

[156] Joint Resolution of June 29, 1937, 50 Stat. 352, 353. This act appropriated for expenditure by the Resettlement Administration for rehabilitation of needy persons as the President may direct.

[157] Joint Resolution of June 21, 1938, 52 Stat. 809. Under this act only Indians are eligible to positions on Indian work relief projects until these needs have been met. Memo. Sol. I. D., December 13, 1938.

[158] Public Res. No. 24, 76th Cong., 1st sess., 252.

> SEC. 5. (a) In order to continue to provide relief and rural rehabilitation for needy Indians in the United States, there is hereby appropriated to the Bureau of Indian Affairs, Department of the Interior, out of any money in the Treasury not otherwise appropriated for the fiscal year ending June 30, 1940, $1,350,000.
>
> (b) The funds provided in this section shall be available for (1) administration, not to exceed $67,500; (2) loans; (3) relief; (4) the prosecution of projects approved by the President for the Farm Security Administration for the benefit of Indians under the provisions of the Emergency Relief Appropriation Act of 1938; and (5) subject to the approval of the President, for projects involving rural rehabilitation of needy Indians.

[159] The argument that Indians should be excluded from benefits available to other needy persons under the appropriations to the Farm Security Administration, because of the special appropdation to the Office of Indian Affairs, was considered and rejected by the Solicitor for the Department of Agriculture, in view of the ruling of the Solicitor for the Interior Department that the appropriation to the Office of Indian Affairs

> * * * should be narrowly construed in such a manner as to limit expenditures by the Indian Service to those purposes for which expenditures were made during the fiscal year 1939 out of the fund transferred in that year to the Indian Service by the Farm Security Administration. These purposes are, in substance: (1) grants to Indian tribes for the benefit of Indians through a program of tribal or community projects for the construction of buildings and other tribal and community enterprises; and (2) administrative expenses, loans, and relief payments incidental to the foregoing primary purpose or otherwise affecting Indians who are ineligible to receive benefits under section 3 of the act. (Memo. Sol. I. D., December 14, 1939.)

The Solicitor for the Department of Agriculture thereupon ruled:

> * * * there is no occasion for applying the rule that an appropriation for a specific purpose cannot be augmented by the use of funds appropriated in more general terms. * * * funds appropriated to that [Farm Security] Administration under the current [Emergency] Relief Act [of 1939] may be used for loans and grants to Indians, except those Indians who are receiving aid directly from the Indian Office under Section 5 of the Act. (Letter Sol. Dept. of Agriculture, December 22, 1939.)

[160] See secs. 5 and 6, *supra.*

providing for low-rent housing development, when they are otherwise qualified under the terms of the legislation. The United States Housing Act of 1937 [161] authorizes loans to "public housing agencies," which are defined to include a "governmental entity or public body * * * which is authorized to engage in the development or administration of low-rent housing or slum clearance."[162] In an opinion of the Solicitor,[163] the Interior Department has held that Indian tribes are governmental entities capable of undertaking housing enterprises and that, where a tribe is incorporated under the Act of June 18, 1934,[164] it may be said to be authorized to engage in the low-rent housing and slum clearance projects contemplated by the United States Housing Act of 1937 and it is, therefore, eligible to apply for a loan under that act.

[161] Act of September 1. 1937, 50 Stat. 888. 42 U. S. C. chap. 8.
[162] Sec. 2 (11), Act of September 1, 1937, 50 Stat 888.,
[163] Op. Sol. I. D., M. 30807, August 6, 1940.
[164] 48 Stat 984.

SECTION 7. RECLAMATION AND IRRIGATION

Evidence of ancient irrigation works abounds in the more arid regions of the western part of the United States, indicating that irrigation was practiced by the Indian in prehistoric times. Without irrigation, much of this land is unproductive and unsuited to human life. When Indian reservations were established in this country, the Federal Government, in order to make it possible for the Indian to become self-supporting, embarked on a program of irrigation development.[165]

At the present time, the Irrigation Division of the Bureau of Indian Affairs is responsible for the administration of over 100 individual irrigation projects embracing approximately 1,250,000 acres, of which some 800,000 acres are under constructed works. The total investment in these projects exceeds $51,000,000. The area under constructed works is being increased each year. The annual operation and maintenance expenditures average about $1,500,000, and the construction expenditures vary from $3,000,000 to $7,000,000 annually.[165]

The field administration is handled from four offices: The assistant director's office in Los Angeles; the supervising engineer's offices In San Francisco and Billings, and a district office in Oklahoma City. There is also maintained a chief counsel's office in Los Angeles and a district counsel's office in Billings. On each of the projects a local operating force is maintained.[167]

Until 1902 [168] irrigation construction, maintenance. and operation were carried on under the direction of the reservation superintendents, with occasional assistance from local engineers temporarily employed.

In 1906,[169] a chief engineer was appointed and gradually since that time a technical staff and organization has been developed to supervise and carry on Indian irrigation.

In. 1907,[170] a plan contemplating close cooperation between the Bureau of Reclamation and the Indian Service was formulated. Some of the Indian projects were transferred to the Bureau of Reclamation. Under this agreement construction was carried on by the Reclamation Service on the Flathead. Fort Peck, and Blackfeet projects in Montana and on the Pima and Yuma reservations iu Arizona. In 1924,[171] these projects were returned to the Indian Service. In the past few years the Bureau of Reclamation and the Office of Indian Affairs frequently have cooperated on engineering features of various irrigation projects.

The irrigable land on Indian reservations in the Northwest, in almost every instance, is allotted. In the Southwest a few allotments of irrigable land have been made, but on most of the reservations in that area the Indians occupy and use certain small tracts so long as the individual makes beneficial use of the land and irrigation facilities, the ownership remaining in a tribal status. This condition applies to practically all the projects in the Navajo and Hopi country and also to the Pueblo projects.

In the North and Northwest the. allotments range from 20 acres to 80 acres, the average being about 40 acres of irrigable land per individual. The southern projects are subdivided into small tracts, the majority being about 10 acres. In areas where fruit or garden is the prevailing crop, individual tracts are frequently as small as 2 acres.[172]

In addition to construction, operation, and maintenance of systems of canals and ditches the Indian irrigation service has supervised the construction and operation and maintenance of numerous drainage systems, pumping plants, storage and flood control dams, and miscellaneous irrigation developments in connection with subsistence gardens or homesteads. Hydroelectric and Diesel engine power generating plants [173] have been constructed in some instances with transmission lines supplying power to neighboring communities, factories, farms, and mining operations.

The government's first venture in irrigation construction in 1867 [174] was provided for by an appropriation of $50,000 for the "expense of collecting and locating the Colorado River Indians in Arizona * * * including the expense of constructing a canal for irrigating said reservation." The work was finally completed, under supplementary appropriations,[175] only to be abandoned, however. after several unsuccessful attempts at operation and maintenance. In 1884,[176] a general appropriation of $50,000 for Irrigation was to be spent for irrigation in the discretion of the Secretary of the Interior. A similar appropriation followed in 1892,[177] and beginning with 1893.[178] Congress annually made general appropriations [179] under the description "Irrigation, Indian Reservations" for use on such reservations or for such purposes as were not provided for by specific appropriation. By the Act of April 4, 1910,[180] no new irrigation project on any Indian reservation or laud could be undertaken without

[165] The extent to which water rights have been reserved is coustderd in Chapter 15.
[166] Annual statement of "Costs. Cancellations, and Miscellaneou Irrigation Data of. Indian Irrigation Projects. Fiscal year 1939." Interior Department.
[167] Ibid.
[168] By the Act of June 17. 1902. 32 Stat. 388. the Secretary was authorized to contract for construction of projects.
[169] Act of June 21. 1906. 34 Stat. 386.
[170] Hearings, Sen. Subcomm. of Comm. on Ind. Aff., Survey of Conditions of the Indians in the United States, 71st Cong., 2d sess., pt. 6, Engle report. January 21, 1930. p. 2259.
[171] Act of June 5. 1924. 43 Stat. 390. 402.
[172] Data to support Request for Public Works Funds. The Indian Service, August 31, 1933.
[173] San Carlos Project. See subsec. I. *infra.*
[174] Act of March 2, 1867. 14 Stat. 492. 514.
[175] Act of July 27, 1868, 15 Stat. 198. 222: Act of May 29. 1872, 17 stat. 165, 188.
[176] Act of July 4. 1884. 23 Stat. 76. 94.
[177] Act of July 13. 1892. 27 Stat. 120. 137.
[178] Act of March 3. 1893. 27 Stat. 612, 631.
[179] Appropriation acts: Act of March 2, 1867. 14 Stat. 492. 514 : Act of July 27. 1868. 15 Stat. 198. 222: Act of May 29. 1872. 17 Stat. 165. 188: Act of July 4. 1884, 23 Stat 76, 94; Act of March 3. 1891, 26 Stat. 989. 1011.
[180] 36 Stat. 269. 270. 272. 25 U. S. C. 383.

express authorization by Congress upon presentation of an estimate of the cost of the work to be constructed.

Basic authorization for expenditures for irrigation purposes was conferred by the Act of November 2, 1921.[181] After 1933, emergency funds were allocated for irrigation purposes.

For projects involving a large expenditure from the United States Treasury or from tribal funds and benefiting, in many instances, both white and Indian water users, it has been customary for Congress to pass special, acts of authorization.[182] For the most part reimbursement was provided for by these special acts.

Until 1914,[183] costs of irrigation Work on Indian reservations under general appropriations since 1884 were borne by the United States. Appropriations for this purpose were' considered gratuities. Also, until that year, projects reimbursable from tribal funds were operated on the theory that. irrigation conferred collective tribal benefit. In effect, all members of the tribe were required to pay an equal part of the cost regardless of whether or not their lands were irrigated.

By the Act of August 1, 1914,[184] Congress changed its legislative policy as to reimbursable appropriations for specific projects, and thereafter required reimbursement of construction charges on the basis of individual benefits received. It provided also for reimbursement, under the direction of the Secretary of the interior, of general appropriations, hitherto considered as gratuities and gifts. Maintenance and operation charges were to be fixed upon the same basis.

Enforcement of this act proved difficult. One reason given was that computation of construction charges was impossible in the uncompleted state of numerous projects.[185] Furthermore, reimbursement in the discretion of the Secretary of the Interior by the Act of August 1, 1914, was made dependent upon ability of the Indians to pay assessments. In 1920,[186] when Congress made it mandatory that the Secretary of the Interior begin to enforce at least partial reimbursement, the retroactive provision of the reimbursement act was strenuously opposed. Some of the projects included Ceded tribal lands which had been appraised and open to entry; the entryman paying the appraised price which apparently included water rights. Numerous individual allotments had been sold under Indian agency advertisements with the understanding that water rights were included in the conveyance. An opinion by the Attorney General [187] held that reimbursement could not be enforced where vested rights had been acquired. Regulations [188] were issued requiring that in all future contracts for the purchase of Indian allotments, the purchaser assume accrued irrigation charges and undertake to pay future charges until the total assessable costs had been paid. Likewise many Indians had received fee patents containing affirmations that their lands were free of all encumbrances and these lands later had been sold under warranty deed. The Solicitor of the Department of the Interior [189] held that where no specific lien was created by act of Congress for repayment of irrigation charges, the obligation was personal against the individual Indian and the land was not subject to construction charges accrued prior to the issuance of the fee patent.

Unpaid charges were made liens on the land under the Blackfeet, Fort Peck, Flathead, Crow, Wahpeto, Fort Hall, Fort Belknap, and Gila River (or San Carlos) projects by specific acts.[190] To facilitate collection of reimbursement charges generally by the Act of March 7, 1928,[191] all unpaid apportioned construction and maintenance costs were made a lien on land in all irrigation projects.

Practically all assessments that were collected under the 1914 [192] and 1920 [193] acts were paid by white landowners on Indian projects. In 1932 a statute known as the Leavitt Act [194]

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[181] *42* Stat. 208, *25* U. S. C. 13.

[182] See statutes relating to the more important projects in subsections A through L of this section. The major projects in the Indian Service such as the San Carlos, Ariz., the Wapato and Yakima in Washington the Flathead, Fort Belknap, and Crow in Montana, and the Wind River in Wyoming, were constructed under specific acts of Congress.

[183] Act of August 1, 1914, 38 Stat. 582, 583, 25 U. S. C. 385. This act provided:

> * * * That all moneys expended heretofore or hereafter under this provision shall be reimbursable where the Indians have adequate funds to repay the Government, such reimbursements to be made under such rules and regulations as the Secretary of the Interior may prescribe: *Provided further*, That the Secretary of the Interior is hereby authorized and directed to apportion the cost of any irrigation project constructed for Indians and made reimbursable out of tribal funds of said Indians in accordance with the benefits received by each individual Indian so far as practicable from said irrigation project, said cost to be apportioned against such individual Indian under such rules, regulations, and conditions as the Secretary of the Interior may prescribe. * * *

Prior to the year 1914 there were two classes of funds utilized: (1) Funds specified as reimbursable in the legislative act making appropriation and in most cases reimbursable from tribal funds. (2) Funds concerning which nothing was Stipuiated as to reimbursement. The Crow, Blackfeet, Flathead. Fort Peck, Fort Belknap, Fort Hail. and Yakima projects were in this class. Hearings. Sen. Subcomm. of Comm. on Ind. Aff., Survey of Conditions of the Indians in the United States, 71st Cong., 2nd sess., pt. 6, Engle report, January 21, 1930, p. 2285.

[184] 38 Stat; *582. 683.*

[185] See fn. 183. *supra.*

[186] Act of February 14, 1920, 41 Stat. 408, 409. 25 U.S.C. 386. This act provided:

> The Secretary of the Interior is hereby authorized and directed to require the owners of irrigable land under any irrigation system heretofore or hereafter constructed for the benefit of Indians and to which water for irrigation purposes can be delivered to begin partial reimbursement of the construction charges. where reimbursement is required by law. at such times and in such amounts as hi may deem 'best; all payments hereunder to be credited on h-per acre basis in favor of the land in behalf of which such payments shall ba ve been made and to be deducted from the total per acre charge assessable against said land. *

OP. Sol. I. D., M.6376, November 15. 1921. held no interest charge could be assessed for overdue charges under the Act of February 14, 1920. 41 Stat. 408. 409.

[187] *33 Op. A. G. 25* (1921).

[188] Office of Indian Affairs. Circular No. 1677, May 12. 1921.

[189] *52* L. D. 709 (1929).

[190] Acts creating liens against lands for repayment of irrigation charges are: Act Of March 3. 1911, 36 Stat. 1058. 1063. Puma Reservation: Act of March 3. 1911, 36 Stat. 1058, 1663, Colorado. River Reservation; Act of August 24. 1912, 37 Stat. 518, 522. Gila River Reservation: *Act of* May 18, 1916. 39 Stat. 123, 140, Flatbead Reservation; Act of May 18. 1916. 39 Stat. 123, 140, etc., Blackfeet Reservation, discussed in 45 L. D. 600 (1917); Act of May 18, 1916. 39 Stat. 123, 154. Yakima Reservation: Act of May 18, 1916. 39 Stat. 123. 156, West Okanogan Irrigation District, Colville Reservation; Act of June 4. 1920. 41 Stat. 751, Crow Reservation: Act of March 3, 1921. 41 Stat. 1355, Fort Belknap Reservation: Act of May 24. 1922. 42 Stat. 552, 568. Fort Hall Reservation: Act of June 7, 1924, 43 Stat. 475, Gila River Reservation, San Carlos Project.

[191] 45 Stat. 200. 210.

[192] Act of August 1. 1914. 38 Stat. 582, 583.

[193] Act of February 14, 1920, 41 Stat. 408.

[194] Act of July 1. 1932, 47 Stat. 564. The House Committee on Indian Affairs in recommending the passage of this law said:

> * * * The progress of many Indians is retarded by old debts held against them by the Government and incurred under circumstances which dictate adjustment as a matter of simple justice. There is at the present time no authority to make any such adjustments. As a consequence. while the Indian Bureau has been liberal in making collections. these accumulated debts. many of long years standing. *exist* against lands. against restricted funds of individual Indians. and against some tribal funds. This decreases the value of lands and interferes with the credit necessary to make Indiana self-supporting through farming, livestock raising, etc.
>
> "It is not the purpose of this measure to wipe out any just or proper debts. The record of the Indians in making repayment of revolving funds and proper obligations Is worthy of emulation by our citizens generally. It is intended to enable the Secretary of the Interior to do justice in connection with ill-founded or unjust obligations. (House Report No. 951, 72d Cong., 1st sess. p. 1.)

For an analysis of the legislative history of this act leading to the conclusion that it applies to Indian lands subsequently acquired, see Op. Sol. I. D., M.30133. April 13. 1939.

Cf. Letter of Secretary of the Interior to Comptroller General, September 28. 1932. with regard to availability after Passage of the

was enacted. Under this act, the Secretary of the Interior was given authority to adjust and eliminate reimbursable charges due from Indians or tribes of Indians, taking into consideration the equities existing at the time of the expenditure. It was specifically provided with respect to irrigation that all uncollected construction assessments theretofore levied were cancelled and that no more assessments of construction charges should be made as long as lands remain in Indian ownership. This act in effect recognized the need for and provided a subsidy in favor of the Indians to the extent of construction costs.

A. OPERATION AND MAINTENANCE CHARGES

Although the Leavitt Act [195] relieved the Indian of liability for future construction charges, he remained liable for the current assessments for operation and maintenance charges. However, as the Act of August 1, 1914, made reimbursement of all, charges dependent upon ability of the Indian to pay.[196] when an agency superintendent certifies as to the indigent circumstances of an Indian, payments of current operation and maintenance charges are also deferred and remain charges against the land. In such cases a reimbursable appropriation is secured. to defray the Indian's share of such costs.

Land of non-Indian owners on Indian projects continued liable for irrigation construction charges. Several moratorium acts[197] have been enacted for their relief. In 1936 [198] Congress authorized an investigation and adjustment of irrigation charges on non-Indian lands. A survey is now in process. Under this act, costs which are found improper upon investigation under direction of the Secretary of the Interior may be adjusted. subject to report of the proposed adjustments to Congress for approval. Further, the Secretary is authorized to declare land nonirrigable for a period not exceeding 5 years. which could not be properly irrigated with existing facilities and no charges may be assessed during that period. He may, also. cancel all charges. construction and operation and maintenance, which remained unpaid at the time Indian title was extinguished which were not a lien against the land.

Regulations relative to time of payment, delivery, penalties for nonpayment. both as to fine and stoppage of water upon failure to pay. apportionment of water and other distinctions as to various classes of water users, Indians. Indian lessees, and non-Indians, and the effect of contracts with state or local water users' projects are in force.[199]

The various irrigation projects were instituted and are operated under. dissimilar conditions and different statutory authority, and consequently regulations are not uniform.

General statutory provisions dealing with irrigation are noted below.[200]

The more important pertinent legislation of the several more important irrigation projects are enumerated subsequently.

B. BLACKFEET PROJECT [201]

Under an agreement of June 10, 1896,[202] upon cession of Indian land, the United States was committed to irrigate the farms of the Blackfeet Tribe of Indians. Their reservation consisting of 1,492,042 acres inhabited by approximately 4,500 Indians is located in the northwestern part of Montana. In connection with the livestock industry, the basis upon which the Blackfeet Indians expect to attain a sustaining economy, irrigation is necessary to raise winter feed for cattle. Operation costs were apportioned to the land irrigated,[203] and Indian landowners, when self-supporting, were to repay construction charges over and above the amount paid from tribal funds.

C. COLORADO RIVER PROJECT [204]

The Colorado River project irrigates 6,500 acres on the Colorado River Reservation in Arizona. In 1916, a policy of leasing was

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Leavitt Act of funds appropriated for irrigation projects without conSent of Indian owners to pay construction costs.

After an assessment has accrued. the Secretary of the Interior is without authority to extend time of payment in the absence of specific enactment of Congress. except as modified by the Leavitt Act. Op. Sol. I. D.. M.26034. July 3. 1930; 50 L. D. 223.

[195] Act of July 1, 1932. 47 Stat. 564.

[196] See quotation of act. fn. 186. *supra*.

[197] Act of February 14. 1931. 46 Stat. 1115. 1127: Act of June 1. 1932. 47 Stat. 564: Act of January 26. 1933. 47 Stat. 776: Act of March 3. 1933. 47 Stat. 1427: Act of May 9. 1935. 49 Stat. 176. 187: Act of June 13. 1935. 49 Stat. 337; Act of April 14. 1936. 49 Stat. 1206: Act of May 31. 1939. Pub. No. 97. 76th Cong., 1st sess.: Pub. Res. No. 40 of August 5. 1939. 76th Cong., 1st sess. These moratorium acts deferred only construction charges and not assessment for operation and maintenance. For regulations. see 25 C F R 130.1-130.100 and 151.1–151.4 and 154.1

[198] Act of June 22. 1936. 49 Stat. 1803.

[199] 25 C. F. R.. subchaps. L. M. N. 0.

[200] Act of February 8. 1887. 24 Stat. 388. 390 (Secretary of the Interior authorized to provide for equal distribution of water supply among the Indians on any reservation); Act of March 3, 1891, 26 Stat. 1095, 1101 (rights-of-way to public land and reservations were granted the canal and ditch companies under certain rules and regulations); Act of February 26, 1897, 29 Stat. 599 (opened reservoir sites on reservations); Act of May 11, 1898, 30 Stat. 404 (authorized rights-of-way for ditches, canals, reservoirs, and other purposes subsidiary to irrigation); Act of February 15, 1901, 31 Stat. 790 (required the approval of the Secretary of the Interior and the chief officer of the department in charge of the reservation for right-of-way for ditches, canals, and reservoirs through reservations. No easements were conferred by grants of the right-of-way): Act of June 21, 1906, 34 Stat. 325, 327 (provided for the sale of any allotted land within a reclamation project with the approval of the Secretary of the Interior, compensation to be used first to pay construction charges); Act of April 4, 1910, 36 Stat. 269, 270 (provided for express authorization of Congress of any irrigation Project and then only after estimation of probable cost of undertaking): Act of June 25. 1910. 36 Stat. 855. 858 (provided for the reservation of power sites on Indian irrigation projects); Act of August 1, 1914. 38 Stat. 582. 583 (made irrigation expenditures reimbursable and apportionate costs to benefits received); Act of February 14, 1920, 41 Stat. 408 (made mandatory that the Secretary of the Interior begin collection of at least partial reimbursement of construction costs); for regulations issued in pursuance of this act, see 25 U. S. C. 141.1-141.7; Act of March 7. 1928. 45 Stat. 200. 210 (provided that all unpaid charges reimbursable by law become a first lien against the land): Act of July 1, 1932. 47 Stat. 564 (provided that no construction assessments be levied against Indian lands until Indian title thereto bad been extinguished); Act of June 22. 1936. 49 Stat. 1803 (provided for the investigation and adjustment Of irrigation charges subject to the approval of Congress); moratorium acts. see fn. 197.

[201] Principal statutory provisions, other than appropriation acts, or acts generally applicable to all projects, which relate specifically to the Blackfeet project are: Act of March 1, 1907, 34 Stat. 1015, 1035 (authorized construction); Act of May 18, 1916, 39 Stat. 123, 140 (irrigation charges were made a lien on the lands); Act of June 30, 1919, 41 Stat. 3, 16 (replaced provisions of the Act of March 1, 1907. 34 Stat. 1015, 1035, relating to the disposal of allotted land and provided for further allotment to tribal members; Act of April 1, 1920, 41 Stat. 549 (authorized the Secretary of the Interior to acquire land for reservoir purposes); Act of February 26, 1923, 42 Stat. 1289 (authorized the Secretary of the Interior to enter into an agreement with Toole County irrigation district to settle water rights of the Blackfeet Indians): Act of February 13, 1931. 46 Stat. 1093 (authorized the Secretary of the Interior to adjust payment of charges on Blackfeet Indian irrigation projects); Act of August 28. 1937. 50 Stat. 864. 865 (provided that the Secretary Of the Interior release to the Blackfeet Tribe the interest in certain lands acquired by the United States under reclamation law.. land to be held in trust for the Indians by the Secretary of the Interior) For discussion of Act of May 1. 1888. 25 stat. 113. as affecting water rights of Blackfeet Indians. see op. Sol. I. D.. M.15849. May 12. 1925. For regulations, see 25 C. F. R. 91.1-91.22.

[202] 29 Stat. 321. 354.

[203] Act of March 1, 1907. 34 Stat. 1015. 1035.

[204] Principal statutory provisions. other than those relating to appropriations or those generally applicable to all projects, which relate specifically to the Colorado River project are: Act of March 2, 1867, 14 Stat. 492. 514 (appropriated for construction of canal); Act of July

instituted whereby. lessees in consideration of clearing and improving the land received the use of it for from 3 to 7 years, operations and maintenance charges being paid by lessee. Since 1925 the lessee has paid construction charges. Crop returns from this project have in the past been as high as $500,000 and it is expected that the land of this reservation properly drained will produce profitably. A diversion dam is under construction in the Colorado River near Parker, which will divert water for 100,000 acres of Indian-owned land.

D. CROW IRRIGATION PROJECT [205]

Construction of the present irrigation system on the Crow Indian Reservation [206] in southeastern Montana was begun in 1885.

Under the agreement with the Crow Tribe [207] the United States agreed to construct an irrigation project, and facilities were extended more or less continuously until 1925. Many private systems are operated from the streams supplying the Indian project. To provide a sufficient water supply for the area now under cultivation a storage dam is being constructed.

All money expended for irrigation, both construction and operation and maintenance, were from tribal funds until 1924. Beginning with 1918,[208] these funds were made reimbursable.

E. FLATHEAD IRRIGATION PROJECT [209]

The Flathead project [210] on the Flathead Reservation in western Montana irrigates approximately 105,000 acres. Less than one-fourth of the land is owned by Indians. Repayment contracts providing for payment of construction and operation and maintenance costs have been executed by non-Indian owners. A power system is operated in connection with the irrigation project.

Tribal money was expended for a part of the construction. By the Act of May 18, 1916,[211] these funds were -refunded and placed to the credi t o f the tribe.

F. FORT BELKNAP PROJECT [212]

The Fort Belknap project, on the reservation of that name, in north central Montana, has been in operation about 40 years. The irrigated land is all Indian owned. Tribal money has been used extensively in the construction of this project. All construction appropriations were made reimbursable but water, users on this project have not -had sufficient income to pay charges.

G. FORT HALL PROJECT [213]

The Fort Hall project 'on the Fort Hall Reservation in 'the southeastern part of Idaho contains a total irrigable area of 90,000 acres of which 60,000 acres ate under constructed works. Additional storage on Snake River will be necessary to provide a water supply for the remaining 30,000 acres of irrigable land. Irrigation on this reservation is vital as the key to the agricultural enterprises by which the Indians expect to become self-sustaining. In the agreement of the United States with this tribe [214] it was provided "that water rights are to be without cost to the Indians so long as title remained in said Indians or tribe." The white-owned lands pay both construction and operation and maintenance charges. A nonreimbursable appropriation has been made each year to cover the Indian share of the costs.

H. FORT PECK RESERVATION [215]

By the Act of May 30, 1908, under the direction of the Reclamation Service, irrigation projects were built on Fort Peck

27, 1868, 15 Stat. 198, 222 (provided further for irrigation canals); Act of April 21, 1904, 33 Stat. 189, 224 (authorized irrigation under Reclamation Act); Act of April 4, 1910, 36 Stat. 269, 273 (authorized further construction funds to be reimbursed from the sale of lands); Act of March 3, 1911, 36 Stat. 1058, 1063, (made construction charges a lien on the land, not to he enforced as long as original allottee occupied land as a homestead).

[205] Principal statutory provisions, Other than those relating to appropriations or those generally applicable to all projects. which relate specifically to the Crow Reservation are: Act of April 27, 1904, 33 Stat. 352, 367 (agreement by which proceeds from ceded lands were to be used in irrigation); Act of, March 3, 1909, 35 Stat. 781, 797 (extended provisions for entry upon ceded lands); Act of May 25, 1918, 40 Stat. 561, 574 (made reimbursable appropriation from tribal funds); Act of June 4, 1920, 41 Stat. 751 (made, irrigation charges a lien on the land. Since that year funds have been appropriated from. the United States Treasury; Act of May 26, 1926, 44 Stat. 658 (amends the Act of June 4, 1920, 41 Stat. 751, by providing previous expenditure of. tribal funds not approved by the tribal council be reimbursed to the tribe). For regulations see 25 C. F. R. 94.1–94.22.

[206] See *United States* v. *Powers*, 305 U. S. 581 (1938); Anderson v. *Spear Morgan Livestock Co.*, 79 P. 2d 667 (1938).

[207] Act Of March 3, 1909, 35 Stat. 781, 797.

[208] Act of May 25. 1918, 40 Stat. 561, 574.

[209] Principal statutory provisions, other than those relating to appropriations or, those generally applicable. to all projects. which relate specifically to the Flathead project are: Act of April 23, 1904. 33 Stat. 302, 305 (authorized survey- for irrigation, purposes); Act of June 21. 1906, 34 Stat. 325, 354, and Act of April 30, 1908, 35 Stat. 70, 83 (amended and extended Act of April 23, 1904, 33 Stat. 302. 305); Act of May 29, 1908, 35 Stat. 444, 448 (provided. that entrymen on the portion of reservation pay proportionate cost of irrigation construction Allotted Indian lands were relieved of construction costs): Act of April 4, 1910, 36 Stat. 269, 277 (authorized construction); Act of August 24, 1912, 37 Stat. 518, 526 (related to the disposal of allotted land); Act of July 17, 1914, 38 Stat. 510 (provided for reimbursement of funds spent for irrigation); Act of May 18, 1916, 39 Stat. 123, 139 (provided for operation and maintenance charges and amended the Act of May 29, 1908. 35 Stat. 444, 448. so that purchasers of allotted Indian Lands were liable for construction charges: refunded. money spent from tribal funds for irrigation); Act of June 5, 1924, 43 Stat. 390. 402 (transferred the Flathead reservation from the Bureau of Reclamation to the Indian Service). For regulations see. 25 C. F. R. 97.1-100.10. For regulations relating to electric power system see ibid.. 131.1-131.52.

[210] *Moody* v. *Johnston*, 66 F. 2d 999 (C. C. A. 9, '1933) and' United *States* v. *McIntire*, 101 F. 2d 650 (C. C. A. 10. 1939) relate to water rights of this tribe.

[211] 39 Stat. 123, 141.

[212] Principal statutory provisions, other than those relating to appropriations or those generally applicable to all projects. which relate specifically to the Fort Belknap project are: Act of June 10. 1896, 29 Stat. 321, 351 (agreement of the United States to irrigate lands on Fort Belknap Reservation); Act of April 4, 1910, 36 Stat. 269, 277 (provided that costs of irrigation be reimbursed from tribal funds); Act of March 3, 1911, 36 Stat. 1058, 1066, provided charges become a first lien when land ceases to be used as a homestead); Act of March 3, 1921, 41 Stat. 1355, 1357 (provided all charges become a lien on the land). For regulations see 25 C. F. R. 103.1–103.22.

[213] Principal statutory provisions, other than those relating to appropriations or those generally applicable to all projects, which relate specifically to the Fort Hall project are: Act of March 1, 1907. 34 Stat. 1015, 1024 (instituted construction); Act of April 4. 1910, 36 Stat. 269. 274 (provided for the payment of construction charges on lands in private ownership); Act of March 3, 1911, 36 Stat. 1058. 1063 (provided for the completion of the project and that charges should be a lien on land not used as Indian homestead); Act of May 24, 1922, 42 Stat. 552. 568 (provided that the cost of rehabilitation to be paid by both Indian and non-Indian owners, making proportionate reimbursable expenditures a lien on Indian lands); Act of March 3. 1927. 44 Stat. 1398 (required contracts for the repayment of further charges by white owners and created a lien on Indian lands. This applied to the Gibson unit only). For regulations see 25 C. F. R. 106.1–106.25.

[214] Op. Sol. I. D., M.5386, June 19, 1923 (authority of the Secretary of the Interior to appropriate land in Fort Hall Reservation as a reservoir site without consent of the Indians).

[215] Principal statutory provisions, other than those relating to appropriations or those generally applicable to all projects which relate specifically to the Fort Peck Reservation are. Act of May 30. 1908. 35 Stat. 558 (authorized construction); Act of May 18, 1916. 39 Stat 123. 140 (provided that a lien was to be recited in patents for unpaid charges; that tribal funds hitherto used for construction be returned to the tribal account); Act of June 5, 1924, 43 Stat. 390, 402 (transferred jurisdiction from the Bureau of Reclamation to the Indian Service).

Reservation, Mont., into which both white and Indian interests entered. The proceeds of the sale of surplus land were used for original construction.

I. SAN CARLOS PROJECT[216]

The San Carlos irrigation project,[217] was designed to irrigate 100,000 acres of which 50,000 are owned by whites and 50,000 acres on the Gila River Indian Reservation owned in part by individual Indians and in part by the Gila River Pima-Maricopa Indian Community.[218] The project has a hydroelectric plant at Coolidge Dam and a Diesel electric plant located near the town of Coolidge, with high voltage and low voltage lines to carry power to project irrigation wells nearby towns, mining camps, and rural farm consumers.

J. UINTAH[219]

On the Uintah Reservation in Utah an irrigation project was constructed over a period of years, from 1906 to 1912. A systematic program of replacement is now in process.

This project is designed to irrigate 77,194 acres of project land and to carry water to approximately 28,000 acres of private lands through carrying capacity granted to companies and individuals who pay a proportionate share in the operation and maintenance of the project.

[216] Principal statutory provisions, other than appropriations or those generally applicable to all projects, which relate specifically to the San Carlos project are: Act of March 3, 1905, 33 Stat. 1048. 1081 (authorized construction and provided that costs of the project for the Pima Indians be repaid within 30 years after the Indians have become supporting); Act of August 24. 1912. 37 Stat. 518. 522 (provided that the cost of the irrigation work be reimbursable and created a lien upon Indian lands); Act of May 18. 1916, 39 Stat. 123. 129 (provided for the construction of a dam to irrigate white- and Indian-owned lands. Costs of this construction made reimbursable with respect to Indian lands under the Act of August 24. 1912. Costs of non-Indian-owned land were to be paid in accordance with the Act of August 13. 1914, 38 Stat. 686); Act of June 7, 1924, 43 Stat. 475, 476 (enabling act for the San Carlos project provided for contract6 for irrigation of the Gila River Reservation and of white-owned land).

[217] Preference of Indians to waters stored by Coolidge Dam. Memo. 801. I. D.; February 19, 1933.

[218] Memo. Sol. I. D., August 25. 1936 (collection of charges).

[219] Principal statutory provisions, other than those relating to appropriations or those generally applicable to all projects, which relate specifically to the Uintah irrigation projects are: Act of June 21. 1906. 34 Stat. 325, 375 (authorized the project and provided that the cost should be repaid within 30 years after becoming self-supporting); Act of April 30. 1908, 35 Stat. 70, 95 (provided for the leasing of allotted irrigated lands with the consent of the allottee with' the approval of the Secretary of the Interior); Act of May 24. 1922. 42 Stat. 552. 578 (provided for extension and rehabilitation of this project. repaid from the principal funds held in trust for the Confederated Band of Ute Indians). For. regulations see 25 C. F. R. 121.1-121.23.

K. WIND RIVER[220]

The Wind River irrigation project includes the diminished and ceded portions of the Wind River Reservation, Wyoming. The project consists of five systems embracing irrigable areas of approximately 65,000 acres. The funds furnished for this project were made reimbursable. Assessments of operation and maintenance costs are made against all land to which water can be delivered except tribal lands not farmed. Regulations covering the first sale of the irrigated land provided for paid-up water rights. These lands are not charged with construction costs.[221]

L. YAKIMA[222]

The Yakima Reservation irrigation projects in the State of Washington include the Wapato, Toppenish-Simcoe, Satus, and Ahtanum units containing a total irrigable area of 170,000 acres, of which 120,000 acres are in Indian ownership and 50,000 acres in private ownership. Of this area some 128,000 acres are supplied with irrigation facilities.

[220] Principal statutory provisions, other than appropriations or acts generally applicable to all irrigation projects, which relate specifically to the Wind River project are: Act of March 3, 1905, 33 Stat. 1016 (provided for the construction of the project from proceed6 of sale of ceded lands); Act of April 30, 1908, 35 Stat. 70, 9 7 (appropriations with provision for reimbursement of funds appropriated by this act); Act of May 25, 1918, 40 Stat. 561, 590 (provided that private lands under this project pay their pro rata share of the cost of construction). For regulations see 25 C. F. R. 127.1–127.22.

[221] Op. Sol. I. D., M.14051, July 8, 1925.

[222] Principal statutory provisions, other than those relating to appropriations or those generally applicable to all projects, which relate specifically to the Yakima project are: Acts of December 21, 1904, 33 Stat. 595 (provided for the construction of irrigation works on the Yakima Indian Reservation, such benefit to compensate the Indians for any valid right hitherto acquired by settlers. This act provided that the proceeds of the sale of land be used in the construction of the project); Act of June 21, 1906, 34 Stat, 325 (appropriated reimbursable funds); Act of April 4, 1910, 36 Stat. 269, 286 (provided for the construction of a drainage system for the Wapato project); Act of June 30, 1913. 38 Stat. 77, 100 (provided for the appointment of a Joint congressional committee to report on the feasibility of constructing irrigation systems on this reservation); Act of August 1, 1914, 38 Stat. 582. 604 (provided that the Indians who had been unjustly deprived of the Yakima River be entitled to 147 cubic feet per second in perpetuity); Act of August 1. 1914. 38 Stat. 582, 604 (construed in Op. Sol. I. D., M.3403, April 14, 1921. holding that no penalty could be charged on delinquency. This applied to the Wapato and Satus unit only); Act of May 18. 1916. 39 Stat. 123. 153, 154 (provided costs in extension of project be reimbursed in 20 annual installments and created a first lien on Indian lands in the Wapato and Satus unit; authorized the Secretary of the Interior to fix operation and maintenance charges, construed in Ind. Off. Memo., June 12, 1933); Act of June 30, 1919, 41 Stat. 3, 28 (made uncollected charges liens on land under the Toppenish-Simcoe units); Act of February 14, 1920, 41 Stat. 408, 431 (provided that landowners under the Wapato and Satus units repay construction costs of land at $5 per acre per year); Act of May 25, 1922, 42 Stat. 595 (reduced annual construction payment from $5 to $2.50 per acre on the Wapato and Satus units). For regulations regarding the Wapato irrigation project. Washington. see 25 C. F. R. 124.1–124.19.

SECTION 8. FEDERAL LEGAL SERVICES

The United States without specific statutory authority represents the Indian generally in legal matters in which the United States has an interest. Federal legal services, therefore, are available to the Indian in cases involving the protection of property allotted or furnished to the Indian by the Government in which an interest of the United States may he found. either in the fact that it holds such property in trust for the Indians or in the fact that the property may be held by the Indians subject to restrictions against alienation.[223]

The Federal Government, as a routine service to the Indian, brings actions to enforce terms of leases or other contracts arising in connection with restricted property. It institutes or defends litigation relating to oil royalties or other mineral rights and represents the Indians in suits involving federal and state taxes.[224]

The Department of Justice has, for the most part, followed the policy of representing Indians in matters relating to their allotments or reservations or to property of Indians over which

[223] See Chapter 19. sec. 2A(1).

[224] Justice Department File No. 90–2–012–1, Memo. of July 29, 1932.

Congress has provided that the United States maintain contral and supervision.[226]

Legal representation is also given the Indian in other cases involving interests of the United States, as expressed in treaty provisions or acts of Congress. These cases for the mostiDai;t relate to hunting and fishing privileges, water rights, suits for trespass, or other rights arising out of reservation property.[227]

A specific statutory duty to represent the Indian in all suits at law and inequity is found in section 175, title 25, of -the-Udited States Code. This section provides:

> In all States and Territories where there are reservations or allotted Indians the United States district attorney shall represent them in all suits at law and in equity.

The language of this provision is very broad, and this probably has been a factor in the failure of the Department of Justice to adopt a consistent policy as to when it will authorize or require the United States district attorneys to appear on behalf of the Indian.

The original enactment; as found in the Act of March 3, 1893,[228] is part of a paragraph which reads:

> To enable the Secretary of the Interior, in his discretion to pay the legal costs incurred by. Indians in contests initiated by or against them, to any entry, filing, or iXhe'r claims, under the laws of Congress relating to public lands, for any sufficient Cause affecting the legality or validity of the entry, filing or claim, five thousand dollars: *Provided;* That the fees to be paid by and on behalf of the Indian party in any case shall be one-half of the fees provided by law in such cases, and said fees shall be paid by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, on an account stated by the proper land officers through the Commissioner of the.General Land Office. In all states and Territories where there are reservations or allotted Indians the United States District Attorney shall represent them in all suits at law and in equity.

It may be argued that the last sentence of the paragraph should be construed as relating only to the first sentence, and the circumstance that the last sentence was introduced on the floor of the House in the course of a discussion of the first sentence may be thought to give support to this construction.[229] Such a construction, however, would subordinate the plain *language* of the statute to the form of paragraphing, and would ignore the long established custom of including items of permanent general legislation on Indian affairs in scattered paragraphs of appropriation acts. This narrow construction has never been adopted by the Attorney General, and it was rejected by the codifiers of the United States Code, who accepted the proviso in the first sentence, and the last sentence of the paragraph, as distinct statements of general and permanent legislation.

While rejecting the construction which would limit the duty of legal representation to public land contests, the Department of Justice has occasionally taken the view that the statute in question contains an implied proviso, and that the phrase "all suits at law and in equity" really means "all suits at law and in equity in which the United States has an interest."[230] The Department of Justice has not been consistent, however, in the use of this construction, and has on occasion given a less narrow interpretation to the words of Congress.[231] Carried out consistently, this narrow construction would nullify the statute, since, as we have noted, the United States has represented Indians in such cases without special statutory authorization.

In criminal prosecutions[232] for alleged violations of state laws committed outside the reservation, where the jurisdiction of the state is plenary and unquestionable, the United States has not represented the Indians in any such criminal prosecutions brought by state authorities, unless the Indian claims immunity from such state laws by reason of the status of the *locus in quo*, or because of some treaty stipulation or provision of a federal law affecting the act, the commission of which is regarded as a crime by the state law. Within this latter class of cases may be included, for instance, the defense of Indians who are prosecuted for alleged violations of 'the state fish and game laws,[233] the Indian claiming a right to fish or hunt in the particular place where the offense is alleged to have been committed, or prosecuted for the driving of a truck without a state license.

Special provision has been made by Congress to provide legal services for the Five Civilized Tribes,[234] the Osages,[235] and the Pueblo Indians.[236]

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[226] Justice Department File No. 90–2–012–1, Memo. of July 29, 1932.

[227] Where the State of Idaho prosecuted several Indians of the Coeur d'Alene Agency in that state for the killing of deer out of season in alleged violation of the state game laws, the Department of Justice took the position that. since the United States had the duty to protect the Indians in their treaty rights of fishing, it could maintain an action to restrain the state authorities from interfering with the exercise of such treaty: rights by the Indians, and the United States Attorney appeared for the purpose of protecting and defending the Indians. (Justice Department File No. 90-2-0-71.)

[228] 27 Stat. 612. 631. Compare the statute of September 6, 1563, embodied in the Laws of the Indies, requiring. the King's Solicitors to "be protectors of the Indians * * * and plead for them in all civil and criminal suits, whether official or between parties, with Spaniards demanding or defending." 2 White's Recopilacion (1839) 95.

[229] Cong. Rec., 52d Cong., 2d sess., February 24, 1893, p. 2132. This narrow view of the law is criticized in a memorandum of Assistant Attorney General Van Devanter, dated November 23, 1897, 25 L. D. 426.

[230] In the *Constitution* Indemnity *Company* case in California, no legal representation was furnished in a suit for negligence resulting in personal injuries or death of Indians, even though such Indians were still wards of the government (Justice Department File No: 90–2–0–63). And again representation was denied in suit to recover damages for the death of restricted Fort Peck Agency Indians from the Great Northern Railway (Justice Department File No. 90–2–0–135).

[231] On December 26, 1929. the Attorney General advised a United States Attorney to represent a Hopi Indian, Tom Pavatea, sued for accidental shooting of a white man off the reservation. See Ind. Off. Memo., May 20, 1930. In the case of the claim of the Indians of 'the Warm Springs Reservation against the Montana Horse Products Company, the United States Attorney brought suit in the name and behalf of the Indian to compel the said company to pay to individual Indians the stipulated consideration for catching a number of wild horses roaming on the reservation (Justice Department File No. 90–2–19–6).

[232] In the Jimerson murder case in New York the position was taken that section 175 has no relation to criminal prosecutions and had never been so construed (Justice Department File No. 90–2–7–42).

[233] See fn. 227, *supra.*

[234] See Chapter 23, sec. 9.

[235] See Chapter 23, sec. 12.

[236] See Chapter 20, sec. 3A.