individual Indians whose repayments are returned to the fund and are available for further loans.\footnote{134}

Under the Act of May 10, 1939,\footnote{134} 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.\footnote{134}

Federal credit to the Indians was greatly extended by the establishment of revolving credit funds under the Acts of June 18, 1934,\footnote{135} and June 26, 1936.\footnote{136} 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, credit associations,\footnote{137} and individuals\footnote{138} 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.\footnote{134} 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 refund 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.\footnote{134}

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 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.\footnote{134}

Final approval of all loans made by corporations, or credit associations, is vested in representatives of the Indian Service at the present time.\footnote{139}

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\footnote{140} 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 tribal corporations representing the interests of all the Indians who are members of the tribes. In this respect the loans contemplated \textit{**} \textit{**} are in distinct contrast to those herefore authorized by Congress. Under reimbursable appropriations loans have been made to the Indians for designated purposes, \textit{**} \textit{**} are carried on by the Government with individual Indians. \textit{**} \textit{**} The tribal bodies, where such exist, have no responsibility in the administration of such funds.

Under section 10 of the Wheeler-Howard Act,\footnote{141} 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 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 strict 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.

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 Service officials. Any such arrangement would constitute an assumption of "political control of matters internal to the tribe."\footnote{142}


\footnote{135} Public Act No. 66, 76th Cong., 1st sess.


\footnote{137} For regulations governing loans to Indian chartered corporations, see 25 C. F. R. 21.1-21.49.

\footnote{138} 49 Stat. 1967.

\footnote{139} For regulations governing loans to Indian cooperatives in Oklahoma, see 25 C. F. R. 23.1-23.27.


\footnote{140} See ibid., part 27.

\footnote{141} 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.\footnote{124}

The Oklahoma Welfare Act \footnote{125} 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 Alaskans by the Act of May 1, 1939.\footnote{126}

\section*{B. LOANS UNDER GENERAL LEGISLATION}

Under various acts making appropriations for rural rehabilitation and relief,\footnote{127} 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.\footnote{128} Thus funds for rehabilitation were granted to various tribes under agreements \footnote{129} 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.\footnote{130}

The tribal programs of rehabilitation were first financed out of appropriations under the Joint Resolution of April 8, 1935,\footnote{131} allocated to the Office of Indian Affairs by a Presidential letter of January 11, 1936.\footnote{132} This work was continued under the Emergency Relief Appropriation Act of 1935 and 1936.\footnote{133} The Emergency Relief Appropriation Act of 1939\footnote{134} 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 or individual rehabilitation loans.\footnote{135}

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,\footnote{136} Indian tribes are eligible to apply for loans under such legislation for the general welfare as that


\footnote{125}49 Stat. 135. This act appropriated for rural rehabilitation and relief of stricken agricultural areas.


\footnote{127}See secs. 5 and 6, supra.

\footnote{128}Solicitor for the Department of Agriculture thereon ruled:


\footnote{130}See secs. 5 and 6, supra.

\footnote{131}50 Stat. 1027, 1038.

\footnote{132}Solicitor for the Department of Agriculture thereon ruled:


\footnote{134}1038.

\footnote{135}50 Stat. 252, 353. This act appropriated for expenditure by the Resettlement Administration for rehabilitation of needy persons as the President may direct.

\footnote{136}Joint Resolution of June 21, 1935, 52 Stat. 809. Under this act any Indians are eligible to positions on Indian work relief projects until those needs have been met. Memo. Sol. I. D., December 13, 1938.
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.  

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.  

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.  

Until 1902 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, 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, 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 in Arizona. In 1924, 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 in 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 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. 

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 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 was provided for by an appropriation of $50,000 for the expense of collecting and locating the Colorado River Indians in Arizona and the expense of constructing a canal for irrigating said reservation.” The work was finally completed, under supplementary appropriations, only to be abandoned, however, after several unsuccessful attempts at operation and maintenance. In 1884, 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, and beginning with 1893, Congress annually made general appropriations 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, no new irrigation project on any Indian reservation or land could be undertaken without 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, 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. 

San Carlos Project. See subsec. I, infra.  

Act of March 2, 1867, 14 Stat. 492. 514.  


Act of July 4, 1884. 23 Stat. 76. 94.  

Act of July 13, 1892. 27 Stat. 120, 137.  


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, no new irrigation project on any Indian reservation or land could be undertaken without
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. 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.

For the most part reimbursement was provided for by these special acts.

Until 1914, costs of irrigation works on Indian reservations under general appropriations since 1884 were borne by the United States. Appropriations for this purpose were considered gratuities. Also, 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, 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 uncompacted state of numerous projects. 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, 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 held that reimbursement could not be enforced where vested rights had been acquired. Regulations 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 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. To facilitate collection of reimbursement charges generally by the Act of March 7, 1928, 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 and 1920 acts were paid by white landowners on Indian projects. In 1932 a statute known as the Leavitt Act provided:

- All money expended herefore or hereafter under this provision shall be reimbursable where the Indians have adequate funds to repay the Government, such reimbursements to be made under each rule and regulation 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 and such 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 stipulated as to reimbursement. The Ceded Blackfeet, Flathead, Fort Peck, Fort Belknap, Fort Hall, and Yakima projects were in this class. Hearsings, 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.

For an analysis of the legislative history of this act leading to the conclusion that it applies to Indian lands subsequently acquired, see Op. I. D., M.30133, April 13, 1939. Of 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 provided with 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 therefore 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 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, 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 have been enacted for their relief. In 1936 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 five 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. 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.

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

**B. BLACKFEET PROJECT**

Under an agreement of June 10, 1896, upon cession of Indian land, the United States 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 basin 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, and Indian landowners, when self-supporting, were to repay construction charges over and above the amount paid from tribal funds.

**C. COLORADO RIVER PROJECT**

The Colorado River project irrigates 6,500 acres on the Colorado River Reservation in Arizona. In 1918, a policy of leasing was 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 August 15, 1901, 31 Stat. 25 (repealed the need for 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, 1905, 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. 209, 210 (provided for express authorization of Congress of any irrigation Project and then on the determination of probable cost of undertaking); Act of June 25, 1910, 36 Stat. 855, 858 (provided for the determination of probable costs on Indian irrigation projects); Act of August 1, 1914, 38 Stat. 582, 583 (made irrigation expenditures reimbursable and apportionable 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, 141, 141, 141, 141; Act of March 7, 1928, 45 Stat. 200, 210 (provided that all unpaid charges reimbursable by law become a lien against the land); Act of July 1, 1932, 47 Stat. 564 (Act to provide for construction projects to be levied on Indian lands until Indian title thereto had been extinguished); Act of June 26, 1936, 49 Stat. 1803 (provided for the investigation and adjustment of irrigation charges subject to the approval of Congress); moratorium acts, see fn. 197.}

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, (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. 1290 (authorized the Secretary of the Interior to enter into an agreement with the State of Montana 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 charge on Blackfeet Indian irrigation projects); Act of August 28, 1937, 50 Stat. 864, 865 (providing that the Secretary of the Interior could acquire certain lands acquired by the United States under reclamation law, lands 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. R. 911.912. Act of March 1, 1907, 34 Stat. 321, 324. Act of March 1, 1907, 34 Stat. 1015, 1035. 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

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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

Construction of the present irrigation system on the Crow Indian Reservation in southern Montana was begun in 1888.

Under the agreement with the Crow Tribe 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 1925, these funds were made reimbursable.

E. FLATHEAD IRRIGATION PROJECT

The Flathead project on the Flathead Reservation in western Montana irrigates approximately 105,000 acres. Less than 27,1985, 15 Stat. 198, 222 (provided further for irrigation canals); Act of April 21, 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, the proceeds from the United States Treasury Act of May 20, 1928, 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.


39 Stat. 123, 141.

39 Stat. 123, 141.

39 Stat. 123, 141.

39 Stat. 123, 141.

39 Stat. 123, 141.

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39 Stat. 123, 141.
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 be found, either in the fact that the property may be held by the Indians subject to restrictions against alienation, or in the fact that the property may be held by the Indians in trust for the Indians for any valid right thereto acquired by settlers. This applied to the Indians who had been unjustly deprived of the Yakima River be entitled to 147 cubic feet per second in perpetuity; Act of August 11, 1914, 38 Stat. 582, 584 (provided for the sale 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 the reservation); Act of August 1, 1914, 38 Stat. 582, 584 (provided that the Secretary of the Interior shall be charged with the costs of the 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.

SECTION 8. FEDERAL LEGAL SERVICES

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. 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

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See Chapter 19, sec. 2A(1).
Congress has provided that the United States maintain control
and supervision. Legal representation is also given the Indian in other cases in-
volving interests of the United States, as expressed in treaty
provisions or acts of Congress. These cases for the most part
relate to hunting and fishing privileges, water rights, suits for
trespass, or other rights arising out of reservation property.

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

In all States and Territories where there are reservations
of land in the United States the United States District Attorneys
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, 1892, 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 other 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 suit shall be one-half of the fees pro-
vided 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 Gen-
eral Land Office. In all States and Territories where
there are reservations or allotted lands 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 cir-
cumstance 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. 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 appro-
priation 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 ques-
tion 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." The Department
of Justice has not been consistent, however, in the use of this
construction; and has on occasion given a less narrow interpre-
tation to the words of Congress. 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 for alleged violations of state laws
committed outside the reservation, where the jurisdiction of the
state is plenary and unquestioned, 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 prose-
icted for alleged violations of "the state fish and game laws," 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, the Osages, and the
Pueblo Indians.

25 Justice Department File No. 90-2-12-2, Memo. of July 29, 1932.
26 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. 90-2-70-71.)
27 Stat. 612. 631. Compare the statute of September 6, 1563, em-
bodying 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 Recapitulation (1839) 95.
28 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 Deaver, dated November 23, 1897, 25 L. D. 426.

29 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 wards of
the government (Justice Department File No.: 90-2-2-63). 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. 90-2-9-158).

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. 90-2-10-6).

30 In the Jemerson murder case in New York the position was taken
that section 175 has no relation to criminal prosecutions had never
been so construed (Justice Department File No. 90-2-7-42).

31 See fn. 227, supra.
32 See Chapter 23, sec. 0.
33 See Chapter 23, sec. 12.
34 See Chapter 20, sec. 2A.