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HISTORY OF LAND CLASSIFICATION
RELATING TO WATERPOWER
AND STORAGE SITES

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TO WATERPOWER AND STORAGE SITES

By F. F. Lawrence, C. E. Nordeen, and H. L. Pumphrey

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United States Department of the Interior

STEWART L. UDALL, SECRETARY



Geological Survey

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Free on application to the U.S. Geological Survey, Washington 25, D. C.

HISTORY OF LAND CLASSIFICATION RELATING TO WATERPOWER AND STORAGE SITES

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ABSTRACT

Segregation of lands having value for development of water resources was first undertaken following the act of October 2, 1888 which provided for the withdrawal of reservoir sites and lands adjacent, or near, which would be susceptible of irrigation. This activity was curtailed by the act of August 30, 1890 which repealed the act of October 2, 1888 to the extent that only actual sites of reservoirs were retained in a withdrawn status. The act of March 3, 1891 was designed to reduce lands in withdrawal to the minimum required for storage purposes, and insofar as practical to exclude lands occupied by settlers on the date of the withdrawal of the reservoir site.

Segregation of lands into reserves as a means of protecting their water resources values was again undertaken in 1909 with the reservation of nearly 1½ million acres in temporary power site withdrawals. These withdrawals were confirmed under the authority of an act of June 25, 1910, and were made permanent power site reserves by executive orders of July 2, 1910. Lands valuable for waterpower were withdrawn as power site reserves under this act until 1920. Another act of June 25, 1910 provides the authority for withdrawal of Indian lands for power site purposes.

Valuable power sites in Arizona and New Mexico were so designated by the Geological Survey for the Secretary of the Interior as required by Congress in the Statehood Enabling Act of June 20, 1910. Similar "designations" were made for the revested and reconveyed lands of the Oregon and California Railroad Company and the Coos Bay Wagon Road as required by the acts of June 9, 1916 and February 26, 1919.

Section 24 of the Federal Water Power Act of 1920, as amended by the Federal Power Act of 1935, provides a means whereby lands withdrawn because of their potential waterpower value can be made available for other uses, with the power rights retained by the Government, until such time as they are re-

quired for waterpower development. Since passage of this act, public domain lands, with few exceptions, have been classified for power purposes by orders of Power Site Classification under the Organic Act of the Geological Survey which gives them the protection of the full force and effect of Section 24 of the Federal Power Act. These orders are initiated by the Director of the Geological Survey and approved by the Secretary of the Interior.

Lands which are within a reservoir site which can potentially contribute to waterpower development may be classified as a power site. Where potential power value is clearly subordinate to flood control, irrigation, or other storage values and development would not be justified for waterpower alone, the lands may be withdrawn in a Reservoir Site Reserve under the act of June 25, 1910.

Withdrawals and classifications of public land for waterpower purposes are revoked by the Secretary of the Interior, on the recommendation of the Geological Survey, through the medium of Public Land Orders.

INTRODUCTION

The authorities providing the basis for withdrawal or classification of the public domain of the United States for waterpower and reservoir sites were designed to meet the requirements of certain stages in the growth of the electric power industry and the expanding needs for water conservation. As a result of this narrow approach to the problem of protecting this portion of our natural resources, various acts were passed by Congress which were designed to reserve such lands, each of which was a product of the specific need at the time at which it was enacted.

This report summarizes the laws and directives which have been used in the past, and are now being used, to effect the withdrawal or classification of public lands for waterpower and reservoir purposes.

The purpose of this report is to present these in such a manner that the history of land classification for water resources values will be clear to those who have a responsibility for administration of the public lands.

DISCUSSION

The act of March 3, 1879 which created the Geological Survey charged the Director with the task of classifying the public lands. The first classifications of lands for water resources values were made after passage of the act of October 2, 1888 which reads in part as follows:

"Storage reservoirs in arid regions.

"Investigation.

"For the purpose of investigating the extent to which the arid region of the United States can be redeemed by irrigation, and the segregation of the irrigable lands in such arid region, and for the selection of sites for reservoirs and other hydraulic works necessary for the storage and utilization of water for irrigation and the prevention of floods and overflows,***. And all the lands which may hereafter be designated or selected by such United States surveys for sites for reservoirs, ditches, or canals for irrigation purposes and all the lands made susceptible of irrigation by such reservoirs, ditches, or canals are from this time henceforth hereby reserved from sale as the property of the United States, and shall not be subject after the passage of this act, to entry, settlement, or occupation until further provided by law".

A number of withdrawals were made under this act shortly after its passage, but considerable resistance soon arose because large areas adjacent to the reservoir sites were withdrawn for irrigation projects and were no longer available for settlement. These were often the best farmlands and there was no legal method of permitting their use for farming or other purposes pending construction of the prospective project. As a result of dissatisfaction with these withdrawals, Congress in the Sundry Civil Appropriation Act of August 30, 1890 made the following provision in the Section on Topographic Survey:

"Topographic Surveys.

"For topographic surveys in various portions of the United States, three hundred and twenty-five thousand dollars, one-half of which sum shall be expended west of the one hundredth meridian; and so much of the act of October second, eighteen hundred and eighty-eight, entitled 'An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes,' as provides for the withdrawal of the public lands from entry, occupation and settlement, is hereby repealed, and all entries made or claims initiated in good faith and valid but for said act, shall be recognized and may be perfected in the same manner as if said law had not been enacted, except that reservoir sites heretofore located or selected shall remain segregated and reserved from entry or settlement, as provided by said act, until otherwise provided by law, and reservoir sites hereafter located or selected on public lands shall in like

manner be reserved from the date of the location or selection thereof."

The withdrawals under the act of October 2, 1888 were further limited by an act approved March 3, 1891 entitled "An act to repeal the timber culture laws and for other purposes." One section of this act reads in part as follows:

"Limit on reservoir sites.

"Sec. 17. That reservoir sites located or selected and to be located and selected under the provisions of 'An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes,' and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs, excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs."

Lands withdrawn under the act of October 2, 1888 which remained in withdrawal after the adjustments resulting from the acts of August 30, 1890 and March 3, 1891 and subsequent executive orders are still withdrawn.

By 1909 it became apparent that many of the best hydroelectric power sites were being transferred from the public domain to private individuals and corporations through the use of land script, homesteads, and by other means. In a letter dated April 23, 1909, the Secretary of the Interior instructed the Director of the Geological Survey to investigate waterpower sites on the public domain and to recommend their temporary withdrawal pending legislative action by the Congress. This letter is quoted as follows:

"You will please immediately detail such employee or employees of your service as are available to make an investigation of water-power sites on the public domain, outside of national forests, which are not included within withdrawals for reclamation purposes, with the view of securing at the next session of Congress legislation to control and regulate their dispositions.

"You will please have your report with regard to such lands available as early as possible in order that any necessary withdrawals may be made to protect such power sites pending the securing of such proposed legislation as may be recommended by the President.

"All withdrawals made for the purpose herein mentioned will be of a temporary nature to allow the securing of such legislation as will permit of the disposition of the lands in question.

"The Reclamation Service will cooperate with you in order to secure the necessary data."

By July 1, 1910, nearly 1.5 million acres had been included in Temporary Power Site Withdrawals and on July 2, 1910, these withdrawals were confirmed and continued as Power Site Reserves by Executive Orders under an act of June 25, 1910. Actually there

are two acts of June 25, 1910, which are pertinent to power site segregations. One provides:

"That the President may at any time, in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including the District of Alaska, and reserve the same for waterpower sites, irrigation, classification of the lands or other purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an act of Congress."

The other provides:

"Sec. 13. That the Secretary of the Interior be, and he is hereby, authorized in his discretion, to reserve from location, entry, sale, allotment, or other appropriation any lands within any Indian reservation, valuable for power or reservoir sites, or which may be necessary for use in connection with any irrigation project heretofore or hereafter to be authorized by Congress."

Section 2 of the first act provided that the withdrawn lands should "be open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to minerals other than coal, oil, gas, and phosphates." This provision permitted inferior locations, such as building stone quarries of little value, on valuable power site lands. The act of August 24, 1912, changed this provision to permit exploration and purchase under the mining laws for metalliferous minerals only.

The act of June 20, 1910, which enabled the people of Arizona and New Mexico to prepare constitutions for admission to the Union, provided that lands valuable for water power should be designated by the Secretary of the Interior within five years after approval of the act. The Secretary, acting on the advice of the Geological Survey, designated considerable areas along the streams of those states as being valuable for power sites. These withdrawals were termed "Water Power Designations."

The acts of June 9, 1916, February 26, 1919, and August 28, 1937, provided for the classification of the reverted lands of the Oregon and California Railroad Company and the reconveyed lands of the Coos Bay Wagon Road grant in Oregon and the withdrawal of any of the lands valuable for waterpower purposes. These withdrawals were also known as Water Power Designations. Lands included in Water Power Designations are regarded as having the same status as lands in Power Site Reserves.

On April 24, 1942, the President, by Executive Order No. 9146 delegated to the Secretary of the Interior authority to make or revoke Power Site Reserves other than those on Indian lands. The Secretary already had this authority in regard to Indian lands by virtue of an act of Congress of June 25, 1910. Executive Order No. 9146 was superseded by Executive Order No. 9337 dated April 24, 1943, which authorized the Secretary of the Interior to withdraw or reserve lands of the public domain or other lands owned or controlled

by the United States to the same extent that such lands might be withdrawn or reserved by the President and also to modify or revoke withdrawals or reservations of such lands, provided that the Secretary should have prior approval of the Director of the Bureau of the Budget and the Attorney General and the head of any department or agency outside of the Department of the Interior having jurisdiction over the lands. Executive Order No. 9337, in turn, was superseded by Executive Order No. 10355 dated May 26, 1952. In this order the requirement that approval of the Director of the Bureau of the Budget and Attorney General be obtained before a withdrawal was made was omitted; however, it provided for the reference of disputes to the Director of the Bureau of the Budget and, if necessary, to the President.

The Federal Power Act was originally enacted as the Federal Water Power Act and approved June 10, 1920. On March 3, 1921, it was amended to exclude any authority to license water power projects in national parks or national monuments. The Federal Power Commission, originally composed of the Secretaries of Interior, War (Army), and Agriculture, was reorganized as an independent Commission under the act approved June 23, 1930. The original Federal Water Power Act was made Part I of the Federal Power Act by Title II of the Public Utility Act of 1935 approved August 26, 1935.

Section 24 of the Federal Power Act specifies the procedures for acquisition or use of lands classified as valuable for power sites before or after passage of the act. This gave the Federal Power Commission control of the disposition of all lands which might at any time be classified as valuable for water power purposes. This authority made it possible for the Secretary of the Interior, through the Geological Survey, to effectively protect power site lands by merely classifying them as such under the authority provided by the act of March 3, 1879. Prior to passage of the Federal Power Act, lands could be classified as power sites by the Geological Survey, but this had no protective effect unless they were also withdrawn by the President or by the Secretary of the Interior under one of the special withdrawal acts such as that of October 2, 1888, or of June 25, 1910.

Power Site Classifications were first made by the Director of the Geological Survey and, when approved by the Secretary of the Interior, had full force and effect under the Federal Power Act. Departmental Order No. 2333 of June 10, 1947, authorized the Director of the Geological Survey "without prior secretarial approval, to classify public domain lands as power sites and to modify or revoke such classifications." A Secretarial order of December 22, 1958, revoked Departmental Order No. 2333 and Power Site Classifications are currently initiated by the Director, Geological Survey for approval by the Secretary of the Interior.

Section 24 of the Federal Power Act provides for another type of waterpower withdrawal. This provides that:

"Any lands of the United States included in any proposed project under the provisions of this Part (Part I) shall from the date of filing an application for permit or license therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress."

The lands withdrawn as a result of the filing of an application for permit or license remain withdrawn, even though the permit or license is revoked or allowed to lapse, until such time as the withdrawal is officially vacated by the Federal Power Commission.

Section 24 of the Federal Power Act made all Power Site Reserves, Water Power Designations, and subsequent Power Site Classifications secure against alienation under any law. The act of August 11, 1955 modified the laws governing power site withdrawals to permit acquisition for mining purposes of lands in such withdrawals subject to the provision that:

"The United States, its Permittees and Licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the Authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its Permittees or Licensees."

Lands within Indian Reservations classified as valuable for power by the Geological Survey, if approved by the Commissioner of Indian Affairs, are reserved by the Secretary of the Interior under the pertinent act of June 25, 1910, described earlier. If Indian land and other public domain land lies in the same power site area two separate orders of withdrawal are required.

Prior to April 24, 1942, Power Site Reserves were revoked by Executive Order. On that date, the President delegated this authority to the Secretary of the Interior in Executive Order No. 9146. Subsequent revisions of this delegated authority have been made as described earlier, but the basic delegation of the President's authority to the Secretary is still in force. Water Power Designations and Power Site Reserves on Indian lands are revoked by Departmental Order. Revocations of Power Site Reserves or Water Power Designations usually result from recommendations by the Geological Survey with concurrence by the Federal Power Commission.

Land in a Power Site Classification which is found to have no power value is eliminated from a classification by a Power Site Cancellation signed by the Secretary of the Interior.

The order, signed by the Secretary, revoking a Power Site Reserve, a Water Power Designation, or a Power Site Classification, provides for the restoration of the lands to disposition under the public land laws. Such orders are published in the Federal Register.

Nearly 2.6 million acres of land had been segregated into Power Site Reserves by June 1920. Much of this land was valuable for other purposes, such as agriculture, but there was no legal way for the Government to dispose of the land and still retain the power rights. Power Site Reserves could be modified but such modification, while satisfactory for a right-of-way, did not answer the demand for use of all the land until such time as it would be required for power development. The Federal Water Power Act of June 10, 1920, remedied this to a great extent through the provisions of Section 24. This section, as amended in 1935, provides in part:

"Whenever the Commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, for such purpose or purposes and under such restrictions as the Commission may determine, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgement of the Commission, for the purposes of this Part, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Part, upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the Commission."

Restorations under Section 24 of the Federal Power Act are made by the Secretary of the Interior by means of Public Land Orders prepared for him in the Bureau of Land Management. These Opening or Restoration Orders are prepared following no-injury determinations by the Federal Power Commission acting on the advice and recommendations of the Geological Survey and other interested agencies through the familiar "DA" (Application for Determination) orders of the Federal Power Commission.

The need for the Federal Power Commission to make determinations concerning applications for entry, location, and patent for mining purposes was eliminated by the passage of the act of August 11, 1955. (The Mining Claims Restoration Act).

Sites which are primarily valuable as reservoir sites are withdrawn in Power Site Classifications if they have value for development of waterpower either at the sites or through regulation affecting downstream power sites, developed or undeveloped. However, if power development is not feasible, lands in reservoir sites can be withdrawn as Reservoir Site Reserves under the broad authority given the President by the

act of June 25, 1910. As with Power Site Reserves, the authority to make and revoke Reservoir Site Reserves was delegates to the Secretary of the Interior by Executive Order No. 9146 and subsequent delegation orders. Lands in Reservoir Site Reserves are subject to entry under the mining laws as they apply to metalliferous minerals but are not subject to disposal under Section 24 of the Federal Power Act.

The area withdrawn for waterpower purposes, as of June 30, 1960, totaled 9,600,000 acres of which 2,400,000 had been restored to entry. The following table gives the net withdrawn area, at 5-year intervals, since 1910:

Year ending June 30	Net area withdrawn for waterpower (thousands of acres)
1910	1,454
1915	2,228
1920	2,588
1925	5,247
1930	6,588
1935	6,465
1940	6,685
1945	6,774
1950	6,848
1955	7,104
1960	7,206

The pronounced increase in the withdrawn area between 1920 and 1925 was due to the withdrawals made as a result of filing of applications with the Federal Power Commission for permits or licenses for power projects, in addition to the withdrawals initiated by the Geological Survey.

ANNOTATED CHRONOLOGICAL LIST
OF WATERPOWER AND RESERVOIR CLASSIFICATION LAWS AND EXECUTIVE ORDERS,
AND DEPARTMENTAL ORDERS

Act of March 3, 1879 (20 Stat. 394; 43 USC 31)

Act creating the Geological Survey and the one under which Power Site Classifications are made.

Act of October 2, 1888 (25 Stat. 527)

Provided for the withdrawal of irrigable lands and the sites for reservoirs and other hydraulic works necessary for the storage and utilization of water for irrigation and the prevention of floods and overflows.

Act of August 30, 1890 (26 Stat. 391)

Repealed the act of October 2, 1888, except as it applied to actual sites.

Act of March 3, 1891 (26 Stat. 1101; 43 USC 663)

Excluded from reserve all lands except those actually necessary for construction and maintenance of reservoirs.

Act of June 20, 1910
(36 Stat. 557, 564) (for New Mexico)
(36 Stat. 557, 575) (for Arizona)

This is the New Mexico and Arizona Enabling Act under which Waterpower Designations were made withdrawing all public land having power value in New Mexico and Arizona.

Act of June 25, 1910 (36 Stat. 847, Chap. 421; 43 U.S.C. 141-143)
Amended by the Act of August 24, 1912, (37 Stat. 497) and by the Act of June 10, 1920, as amended (41 Stat. 1075; 40 Stat. 846; 16 USC 818)

Provides for temporary withdrawals of waterpower sites and other public purposes. Power Site Reserves and Reservoir Site Reserves can be made under this act.

Act of June 25, 1910 (36 Stat. 855, 858, 859; Chap. 431; 25 USC 331-336)

Power Site Reserves on Indian lands are made under Sections 13 and 14 of this act.

Act of August 24, 1912 (37 Stat. 497; 43 USC 142)

Amends act of June 25, 1910 to permit exploration, discovery, occupation and purchase under mining laws. Oil and gas rights and homestead entries in force at time of withdrawal remain in effect.

Act of June 9, 1916 (39 Stat. 218)

Provides for the classification and withdrawal of revested Oregon and California Railroad Company lands in Oregon valuable for waterpower purposes.

Act of February 26, 1919 (40 Stat. 1179)

Provides for the classification and withdrawal of reconveyed Coos Bay Wagon Road grant lands in Oregon valuable for waterpower purposes in the manner provided by the act of June 9, 1916.

Act of June 10, 1920 (41 Stat. 1063, 16 USC 791-823; March 3, 1921, 41 Stat. 1353; June 23, 1930, 46 Stat. 797; August 26, 1935, 49 Stat. 838, 16 USC 791a-825r as amended)

The Federal Waterpower Act changed to the Federal Power Act by amendment of August 26, 1935.

Under this act lands included in proposed projects are withdrawn from all forms of entry effective as of the date of the filing of the application for the project and lands reserved or classified as valuable for waterpower purposes are also withdrawn from all forms of entry. Cancellations or revocations of Federal Power Commission permits or licenses do not cancel the withdrawal. If the Federal Power Commission finds that land withdrawn by a filing for a Federal Power Project does not have power value, it will issue an order vacating the withdrawal. This vacating order does not affect Reserves or Classifi-

cations made by the Geological Survey, Separate action, restoration or cancellation, depending on the type of withdrawal, is required.

Section 24 of this act provides for the disposal of land withdrawn for power purposes under this or other acts with the Government retaining the power rights.

Act of August 28, 1937 (50 Stat. 874)

Provides for the disposition of revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in Oregon under the acts of June 9, 1916 (39 Stat. 218) and February 26, 1919 (40 Stat. 1179), respectively. About 60,000 acres of land in Oregon were classified as valuable for water-power and withdrawn in Waterpower Designations.

Executive Order No. 9146, April 24, 1942 (7 F.R. 3067)

Delegated authority to withdraw land to the Secretary of the Interior. Superseded by Executive Order No. 9337.

Departmental Order No. 1694, May 15, 1942

Revoked by Departmental Order No. 2511.

Executive Order No. 9337, April 24, 1943 (8 F.R. 5516)

Delegated authority to withdraw or reserve lands and to modify or revoke withdrawals to the Secretary of the Interior with the approval of the Director of the Bureau of the Budget and the Attorney General and the head of any department or agency under whose jurisdiction the land was held. Superseded by Executive Order No. 10355 (17 F.R. 4831; 43 U.S.C.A. Supp. 141).

Departmental Order 2331, June 5, 1947

Required that Land Orders signed by the Secretary must be cleared by all interested Bureaus by letter to the Secretary, through the Director, Bureau of Land Management.

Departmental Order No. 2333, June 10, 1947 (12 F.R. 4025)

Authorized the Director of the Geological Survey to classify public domain lands as power sites and to modify or revoke such classifications.

Executive Order No. 10355, May 26, 1952 (17 F.R. 4831; 43 U.S.C.A. Supp. 141)

Delegated authority to withdraw or restore lands of the public domain to the Secretary of the Interior. Does not require approval of the Director of the Bureau of the Budget or the Attorney General, but does require approval of the head of any department or agency under whose administrative jurisdiction the affected lands might lie. Provides for referring disputes to the Director of the Bureau of the Budget.

Departmental Order No. 2511, March 3, 1949

Departmental Order No. 2583, August 16, 1950 (15 F.R. 5643)

Departmental Order No. 2708, November 7, 1952

These three Departmental Orders prescribe the mechanics of preparing Public Land Orders in the Bureau of Land Management.

Act of August 11, 1955 (69 Stat. 681)

Mining Claims Rights Restoration Act of 1955. Eliminates need for Federal Power Commission to make a determination concerning applications for entry, location, and patent for mining purposes.

Departmental Order of December 22, 1958

Revoked Departmental Order No. 2333 which delegated to the Director, Geological Survey the authority to classify public domain lands as power sites and to modify or revoke such classifications. This authority reverted to the Secretary of the Interior.