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STATUTES-APPROVAL OF PUBLIC WORKS PROJECTS UNDER NIRA

STATUTES — APPROVAL OF PUBLIC WORKS PROJECTS UNDER NIRA — Acting under approval and order of the Federal Emergency Public Works Administrator, the United States commenced construction of the Parker Dam across the Colorado River over the objection of the state of Arizona, which was not a party to the Colorado River Compact. Arizona interfered forcibly. A bill was brought by the United States to secure a perpetual injunction against such interference. In response to an argument by Arizona that the dam was not properly authorized, the United States attempted to justify under a recommendation of the chief of engineers as sufficient authorization under section 202 of the National Industrial Recovery Act.[1] *Held,* that the Act of March 3, 1899,[2] prohibits the construction of dams across navigable streams until both the consent of Congress has been obtained and the plans approved by the chief of engineers; that it has been the uniform practice of Congress to base its authorization upon the recommendation of the chief of engineers; that such officer makes his recommendation to Congress only after examinations and surveys; [3] that the effect of the National Industrial Recovery Act is merely to require *either* the consent of Congress *or* the recommendation of the chief of engineers; that it must be read in the light of the established policy of Congress; and, therefore, that the recommendation of the officer must still be *to* Congress and based on examinations and surveys. Since this was not shown, the recommendation of the chief of engineers in this case was insufficient. *United States v. Arizona,* 295 U. S. 174, 55 S. Ct. 666 (1935).

The rule in this case is that "where the legislation dealing with a particular

[1] The statute declares that the Administrator shall prepare a program including the construction of river improvements "*Provided,* That no river or harbor improvements shall be carried out unless they shall have heretofore or hereafter been adopted by the Congress or are recommended by the Chief of Engineers of the United States Army. . . ." 48 Stat. L. 201, 40 U. S. C., § 402 (b) (1933).

[2] To the effect that it shall not be lawful to construct any dam across any navigable river "until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War." 30 Stat. L. 1151, 33 U. S. C., § 401 (1899).

[3] See text and notes of principal case, 295 U. S. at 189-191, setting out the various Rivers and Harbors Acts embodying this practice.

subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, excepting as a different purpose is plainly shown." [4] The "fragmentary" law will not be interpreted to effect a repeal by implication of policy and procedure evidenced by the existing system.[5] The rule is neither new nor unusual. It was early applied to fragmentary enactments concerning the enforcement and collection of import duties.[6] Later it was held to govern interpretation of tax laws with regard to enforcement provisions [7] as well as the method of recovering taxes paid under protest.[8] It has been applied to effect reservation of mineral lands out of general land grants by Congress,[9] and also to give supervision of a land grant to the usual administrative officer although no specific reference to his authority was included in the grant.[10] The case is interesting and important, however, in that it sounds a note of warning to the Public Works Administrator and others in his position. Where Congress has established a system for the approval and authorization of public works, the Public Works Administrator is denied a free hand and must observe the established procedure unless Congress has expressly excepted that procedure in its grant of authority to him.

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[4] United States v. Jefferson Electric Mfg. Co., 291 U. S. 386 at 396, 54 S. Ct. 443 (1934).

[5] Wood v. United States, 16 Pet. (41 U. S.) 342 at 363 (1842): "But there must be a positive repugnancy between the provisions of the new law, and those of the old; and even then, the old law is repealed by implication, only *pro tanto*, to the extent of the repugnancy."

[6] Wood v. United States, 16 Pet. (41 U. S.) 342 (1842); Saxonville Mills v. Russell, 116 U. S. 13, 6 S. Ct. 237 (1885).

[7] United States v. Barnes, 222 U. S. 513, 32 S. Ct. 117 (1912).

[8] United States v. Jefferson Electric Mfg. Co., 291 U. S. 386, 54 S. Ct. 443 (1934).

[9] United States v. Sweet, 245 U. S. 563, 38 S. Ct. 193 (1918); Mining Co. v. Consolidated Mining Co., 102 U. S. 167 (1880); Mullan v. United States, 118 U. S. 271, 6 S. Ct. 1041 (1886) (with respect to the grant of school sections to the states); McLaughlin v. United States, 107 U. S. 526, 2 S. Ct. 802 (1882) (concerning grant to western railroads of alternate sections along their right of way). See also United States v. Gear, 3 How. (44 U. S.) 120 (1845), and Morton v. Nebraska, 21 Wall. (88 U. S.) 660 (1874), with respect to the exception of mineral lands out of statutes providing for general *sale* of lands.

[10] Where the Secretary of the Interior generally had power to determine facts and supervise public business relating to land grants, he had this power with respect to land granted by Congress even though the granting statute made no express reference to his exercise of this power. Catholic Bishop of Nesqually v. Gibbon, 158 U. S. 155, 15 S. Ct. 779 (1895).