

ENTRANCE FEES

The Congress enacted the Land and Water Conservation Fund Act of 1965 (Public Law 88-578) approved September 3, 1964. The purpose of the act was to improve outdoor recreation resources by providing funds for, and authorizing Federal assistance to, the States in planning, acquisition, and development of needed land and water areas and facilities, as well as providing funds for the Federal acquisition and development of certain lands and other areas.

The ordinance for the government of the territory of the United States northwest of the Ohio River enacted in 1787 provided:

The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other states that may be admitted into the Confederacy, without any tax, import or duty therefor.

This remains the national policy today and fees for the use of federally developed and operated recreation facilities do not violate this policy.

During the period 1944 to 1965 access to and use of the reservoirs and attendant facilities under the jurisdiction of the Department of the Army was granted to the public without charge by the authority of section 4 of the Flood Control Act of 1944, as amended, which provided:

The water areas of all such projects shall be open to public use generally, without charge for boating, swimming, bathing, fishing and other recreation purposes.

The Land and Water Conservation Fund Act of 1965 specifically modified this authority by deleting the words "without charge," which had the effect of eliminating any contention that this language excluded Corps of Engineers projects from the entrance fee provisions of the act.

This act was supplemented by Executive Order 11200, which authorized the Federal agency heads to impose entrance and user charges beginning April 1, 1965.

The President delegated to the Secretary of the Interior the responsibility for establishing a recreation user fee schedule and to fix specific charges at each designated area.

Regulations for this purpose have been promulgated by the Secretary under title 43, subtitle A, part 18, Recreation Fees, C.F.R., which provides:

Fees shall be charged if the following conditions are found to exist concurrently:

- (1) The area is administered by any of the eight agencies specified in 18.1 hereof;
- (2) the area is administered primarily for scenic, scientific, historical, cultural or recreational purposes;
- (3) the area has recreation facilities or services provided at Federal expense; and
- (4) the nature of the area is such that fee collection is administratively and economically practical.

An "area," as covered by this Executive order and as applicable to Corps of Engineers projects, has been assumed to be a location adjacent to the water where sufficient lands are available for concentrated public use. Such areas are normally spaced around a reservoir with fre-