

We offer the following comments specifically with respect to circular No. 1130-2-25. The fees it specifies are to be applicable to the described facilities at any "water resource development project". This is a term which could apply with equal propriety to a channel deepening project, a harbor improvement or a navigation dam, as well as to a multipurpose reservoir. The fees proposed, therefore, could be applied not only to recreational but to industrial and commercial docks and other facilities in navigable waters. So applied they would constitute a thinly disguised toll or user charge, conflicting with the intent, if not the letter of section 5 of Title 33 U.S.C., which prohibits "tolls or operating charges" upon "any vessel, dredge or other water craft for passing through any lock, canal, canalized river, or other work for the use and benefit of navigation \* \* \*".

A similar possibility of conflict with the Navigation Clause of the Northwest Ordinance is also presented, since it is hardly consistent with the central concept of free use of the navigable waters ("without any tax, impost or duty therefor") to burden navigation with fees levied on docking and mooring facilities, without which navigation would be drastically curtailed, if not entirely prevented.

The foregoing argues at the very least for a clear cut definition sharply limiting the scope of the permit fee system to avoid any erosion of the basic national free waterways policy, if indeed such a definition is conceivable. Our opposition to the permit fee system, however, is based not only on our dedication to the preservation of the long-established, toll-free waterways policy but also on the same considerations now to be developed which, in our judgment, justify prohibition of fees for entrance, admission or access to Corps of Engineer project areas or for use of minimum recreational facilities at such areas.

The pending Bill would prohibit fees under the Land and Water Conservation Fund Act, or any other provision of law, for entrance, admission or access to the project area, or for use of minimum recreational facilities at such an area, or any project administered by the Secretary of the Army acting through the Chief of Engineers. It would also prohibit fees or charges for issuance of any permit or license for any "boat mooring or docking facility, duck blind, ski-jump float, swimming or diving platform or raft or any similar floating facility on any of the waters of any project administered by the Secretary of the Army acting through the Chief of Engineers".

The prohibitions set forth in the pending legislation are, we submit, clearly in the public interest. We are convinced that imposition of fees and charges of the types falling under the ban of this legislation would discourage public recreational use. Such diminished use would tend to defeat the very purpose of the Land and Water Conservation Fund Act and other Federal legislation to expand outdoor recreational opportunities in line with increased public need resulting from rapid population growth, increased leisure time and greater mobility. Imposition of such fees and charges would reverse our long established policy of water resource development for the benefit of all the people and would place the Federal Government in the business of selling the privilege of using facilities and resources owned by all the people to those who could afford to pay for them. Such charges would restrict access and use by those most in need of the opportunities afforded by such facilities.

The prospects of these impositions is particularly alarming since no meaningful guidelines or limitations are provided by statute for determination of the amounts of the fees under either the Act of August 31, 1951, or the Land and Water Conservation Fund Act, except only the provision of the latter for a seven-dollar ceiling for annual motor vehicle stickers. No significant limitations on Executive discretionary power are to be found in the exhortation of these Acts that the fees are to be "fair and equitable, taking into consideration direct and indirect costs to the Government benefits to the recipient, public policy or interest served, and other pertinent factors". (The above quoted language is taken from Section 2(a) of the Land and Water Conservation Fund Act. The Act of August 31, 1951 is substantially identical in this regard except that it speaks of "cost" to the Government and "value" to the recipient and "other pertinent facts".)

Thus no adequate statutory safeguards are provided against arbitrary and capricious action in fee determination. This vice of vagueness in the statutory standards for fee determination is especially acute with respect to charges authorized by the Land and Water Conservation Fund Act since criminal penalties are prescribed by that Act for violations of regulations established for collection of such charges. [See Section 2(a)]

Imposition of the fees in question would have grave implications also for water resource development for flood control, water quality control, navigation and other purposes. Recreational benefits are becoming an increasingly important