

33 USC Ch. 36: WATER RESOURCES DEVELOPMENT
From Title 33—NAVIGATION AND NAVIGABLE WATERS

CHAPTER 36—WATER RESOURCES DEVELOPMENT

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§2201. "Secretary" defined

For purposes of this Act, the term "Secretary" means the Secretary of the Army.
(Pub. L. 99–662, §2, Nov. 17, 1986, 100 Stat. 4082.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99–662, Nov. 17, 1986, 100 Stat. 4082, as amended, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2022 AMENDMENT

Pub. L. 117–263, div. H, title LXXXI, §8001(a), Dec. 23, 2022, 136 Stat. 3691, provided that: "This title [see Tables for classification] may be cited as the 'Water Resources Development Act of 2022'."

SHORT TITLE OF 2020 AMENDMENT

Pub. L. 116–260, div. AA, §1(a), Dec. 27, 2020, 134 Stat. 2615, provided that: "This division [see Tables for classification] may be cited as the 'Water Resources Development Act of 2020'."

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115–270, §1(a), Oct. 23, 2018, 132 Stat. 3765, provided that: "This Act [see Tables for classification] may be cited as 'America's Water Infrastructure Act of 2018'."

Pub. L. 115–270, title I, §101, Oct. 23, 2018, 132 Stat. 3768, provided that: "This title [see Tables for classification] may be cited as the 'Water Resources Development Act of 2018'."

SHORT TITLE OF 2016 AMENDMENT

Pub. L. 114–322, §1(a), Dec. 16, 2016, 130 Stat. 1628, provided that: "This Act [see Tables for classification] may be cited as the 'Water Infrastructure Improvements for the Nation Act' or the 'WIIN Act'."

Pub. L. 114–322, title I, §1001, Dec. 16, 2016, 130 Stat. 1632, provided that: "This title [see Tables for classification] may be cited as the 'Water Resources Development Act of 2016'."

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113–121, §1(a), June 10, 2014, 128 Stat. 1193, provided that: "This Act [see Tables for classification] may be cited as the 'Water Resources Reform and Development Act of 2014'."

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–114, §1(a), Nov. 8, 2007, 121 Stat. 1041, provided that: "This Act [see Tables for classification] may be cited as the 'Water Resources Development Act of 2007'."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–541, §1(a), Dec. 11, 2000, 114 Stat. 2572, provided that: "This Act [see Tables for classification] may be cited as the 'Water Resources Development Act of 2000'."

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–53, §1(a), Aug. 17, 1999, 113 Stat. 269, provided that: "This Act [see Tables for classification] may be cited as the 'Water Resources Development Act of 1999'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–303, §1(a), Oct. 12, 1996, 110 Stat. 3658, provided that: "This Act [see Tables for classification] may be cited as the 'Water Resources Development Act of 1996'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–580, §1(a), Oct. 31, 1992, 106 Stat. 4797, provided that: "This Act [enacting sections 59gg, 426i–1, 569d to 569f, 653, 1271, 2268, and 2325 to 2329 of this title, amending sections 426j, 467f, 467j to 467l, 562, 652, 1342, 1412, 1413, 1414, 1415, 1416, 1420, 1421, 2211, 2213, 2283, and 2309a of this title, section 3036 of Title 10, Armed Forces, sections 460tt, 4702, and 4711 of Title 16, Conservation, and section 1962d–16 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and sections 541, 1271, 2211, 2239, 2267, and 2281 of this title, section 9505 of Title 26, Internal Revenue Code, and sections 390h–4 and 390h–5 of Title 43, Public Lands] may be cited as the 'Water Resources Development Act of 1992'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–640, §1(a), Nov. 28, 1990, 104 Stat. 4604, provided that: "This Act [enacting sections 59bb and 2316 to 2324 of this title, amending sections 579a, 652, 701n, 709a, 2213, 2215, 2232, 2238, 2281, 2309a, and 2314a of this title, section 460tt of Title 16, Conservation, and section 1962d–16 of Title 42, The Public Health and Welfare, repealing sections 579 and 2239 of this title, enacting provisions set out as notes under this section, sections 426e, 1252, 1268, 2213, 2232, 2239, 2313, and 2317 of this title, and section 1405c of Title 48, Territories and Insular Possessions, and amending provisions set out as notes under sections 2294 and 2314 of this title and section 460d of Title 16] may be cited as the 'Water Resources Development Act of 1990'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–676, §1(a), Nov. 17, 1988, 102 Stat. 4012, provided that: "This Act [enacting sections 59j–1, 59y, 59z, and 2312 to 2315 of this title, amending sections 426j, 701b–12, 1293a, 2211, 2239, 2280, and 2291 of this title and section 1962d–5a of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section, sections 579a, 988, 2211, 2294, 2300, and 2314 of this title, and section 1962d–5g of Title 42, and amending provisions set out as a note under section 2294 of this title] may be cited as the 'Water Resources Development Act of 1988'."

SHORT TITLE

Pub. L. 99–662, §1(a), Nov. 17, 1986, 100 Stat. 4082, provided that: "This Act [enacting this chapter and sections 59n–1, 59v, 59w, 403b, 426n, 426o, 467f to 467n, 555a, 579a, 652, 701b–12, 709b, 988a, and 1414a of this title, sections 460tt of Title 16, Conservation, sections 4461, 4462, 9505, and 9506 of Title 26, Internal Revenue Code, section 483d of former Title 40, Public Buildings, Property, and Works, and sections 1962d–11b and 1962d–20 of Title 42, The Public Health and Welfare, amending sections 409, 414, 415, 426g, 426i, 426j, 426m, 467, 467b, 555, 557, 603a, 610, 701a–1, 701g, 701n, 701r, 701s, 984, and 1804 of this title, section 3036 of Title 10, Armed Forces, sections 460ee and 1002 of Title 16, section 4042 of Title 26, sections 1962d–5a, 1962d–5b, 1962d–5d, 1962d–5f, and 1962d–16 of Title 42, sections 390 and 390b of Title 43, Public Lands, and section 1121–1 of Title 46, Appendix, Shipping, repealing sections 1801 and 1802 of this title, enacting provisions set out as notes under this section, sections 426, 426g, 467, 661, 984, 988, 1414a, and 2294 of this title, sections 460d and 1004 of Title 16, sections 1, 4042, 4461, 9505, and 9506 of Title 26, sections 1962d–5b, 1962d–20, and 10301 of Title 42, and section 390b of Title 43, and amending provisions set out as a note under section 1962b–3 of Title 42] may be cited as the 'Water Resources Development Act of 1986'."

Pub. L. 99–662, title II, §215, Nov. 17, 1986, 100 Stat. 4109, provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'Harbor Development and Navigation Improvement Act of 1986'."

PILOT PROGRAMS ON THE FORMULATION OF CORPS OF ENGINEERS PROJECTS IN RURAL COMMUNITIES AND ECONOMICALLY DISADVANTAGED COMMUNITIES

Pub. L. 116–260, div. AA, title I, §118, Dec. 27, 2020, 134 Stat. 2629, as amended by Pub. L. 117–263, div. H, title LXXXI, §8118(a), Dec. 23, 2022, 136 Stat. 3710, provided that:
"(a) IN GENERAL.—The Secretary [of the Army] shall establish and implement pilot programs, in accordance with this section, to evaluate opportunities to address the flood risk management and hurricane and storm damage risk reduction needs of rural communities and economically disadvantaged communities.

"(b) ECONOMICALLY DISADVANTAGED COMMUNITY FLOOD PROTECTION AND HURRICANE AND STORM DAMAGE REDUCTION STUDY PILOT PROGRAM.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 27, 2020], the Secretary shall establish and implement a pilot program to carry out feasibility studies, in accordance with this subsection, for flood risk management and hurricane and storm damage risk reduction projects for economically disadvantaged communities, in coordination with non-Federal interests.

"(2) PARTICIPATION IN PILOT PROGRAM.—In carrying out paragraph (1), the Secretary shall—

"(A) annually publish a notice in the Federal Register that requests from non-Federal interests proposals for the potential feasibility study of a flood risk management project or hurricane and storm damage risk reduction project for an economically disadvantaged community;

"(B) upon request of a non-Federal interest for such a project, provide technical assistance to such non-Federal interest in the formulation of a proposal for a potential feasibility study to be submitted to the Secretary under the pilot program; and

"(C) review such proposals and, subject to the availability of appropriations, annually select 10 feasibility studies for such projects to be carried out by the Secretary, in coordination with the non-Federal interest, under this pilot program.

"(3) SELECTION CRITERIA.—In selecting a feasibility study under paragraph (2)(C), the Secretary shall consider whether—

"(A) the percentage of people living in poverty in the county or counties (or county-equivalent entity or entities) in which the project is located is greater than the percentage of people living in poverty in the State, based on census bureau data;

"(B) the percentage of families with income above the poverty threshold but below the average household income in the county or counties (or county-equivalent entity or entities) in which the project is located is greater than such percentage for the State, based on census bureau data;

"(C) the percentage of the population that identifies as belonging to a minority or indigenous group in the county or counties (or county-equivalent entity or entities) in which the project is located is greater than the average such percentage in the State, based on census bureau data; and

"(D) the project is addressing flooding or hurricane or storm damage effects that have a disproportionate impact on a rural community, a minority community, or an Indian Tribe.

"(4) ADMINISTRATION.—Notwithstanding the requirements of section 105(a)(1)(A) of the Water Resources Development Act of 1986 (33 U.S.C. 2215), the Federal share of the cost of a feasibility study carried out under the pilot program shall be 100 percent.

"(5) STUDY REQUIREMENTS.—Feasibility studies carried out under this subsection shall, to the maximum extent practicable, incorporate natural features or nature-based features (as such terms are defined in section 1184 of the Water Resources Development Act of 2016 (33 U.S.C. 2289a)), or a combination of such features and nonstructural features, that avoid or reduce at least 50 percent of flood or storm damages in one or more of the alternatives included in the final alternatives evaluated.

"(6) NOTIFICATION.—The Secretary shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate of the selection of each feasibility study under the pilot program.

"(7) COMPLETION.—Upon completion of a feasibility report for a feasibility study selected to be carried out under this subsection, the Secretary shall transmit the report to Congress for authorization, and shall include the report in the next annual report submitted under section 7001 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d).

"(c) PILOT PROGRAM FOR THE RECOMMENDATION OF FLOOD PROTECTION AND HURRICANE AND STORM DAMAGE REDUCTION PROJECTS IN RURAL COMMUNITIES AND ECONOMICALLY DISADVANTAGED COMMUNITIES.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish and implement a pilot program to evaluate, and make recommendations to Congress on, flood risk management projects and hurricane and storm damage risk reduction projects in rural communities or economically disadvantaged communities, without demonstrating that each project is justified solely by national economic development benefits.

"(2) CONSIDERATIONS.—In carrying out this subsection, the Secretary may make a recommendation to Congress on up to 10 projects annually, without demonstrating that the project is justified solely by national economic development benefits, if the Secretary determines that—

"(A) the community to be served by the project is an economically disadvantaged community or a rural community;

"(B) the long-term life safety, economic viability, and environmental sustainability of the community would be threatened without the project; and

"(C) the project is consistent with the requirements of section 1 of the Flood Control Act of 1936 (33 U.S.C. 701a).

"(3) CONSISTENCY.—In carrying out this subsection, the Secretary shall ensure that project recommendations are consistent with the principles and requirements and the interagency guidelines, as such terms are defined in section 110 of this Act [42 U.S.C. 1962–4], including the consideration of quantifiable monetary and nonmonetary benefits of the project.

"(4) PRIORITIZATION.—The Secretary may give equivalent budgetary consideration and priority to projects recommended under this subsection.

"(d) GEOGRAPHIC DIVERSITY.—In selecting feasibility studies under subsection (b)(2)(C) or in making project recommendations under subsection (c), the Secretary shall consider the geographic diversity among proposed projects.

"(e) REPORT.—Not later than 5 years and 10 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, and make publicly available, a report detailing the results of the pilot programs carried out under this section, including—

"(1) a description of proposals received from non-Federal interests pursuant to subsection (b)(2)(A);

"(2) a description of technical assistance provided to non-Federal interests under subsection (b)(2)(B);

"(3) a description of proposals selected under subsection (b)(2)(C) and criteria used to select such proposals;

"(4) a description of the projects evaluated or recommended by the Secretary under subsection (c);

"(5) a description of the quantifiable monetary and nonmonetary benefits associated with the projects recommended under subsection (c); and

"(6) any recommendations to Congress on how the Secretary can address the flood risk management and hurricane and storm damage risk reduction needs of economically disadvantaged communities.

"(f) STATE DEFINED.—In this section, the term 'State' means each of the several States, the District of Columbia, and each of the commonwealths, territories, and possessions of the United States.

"(g) SUNSET.—The authority to commence a feasibility study under subsection (b), and the authority make a recommendation under subsection (c), shall terminate on the date that is 10 years after the date of enactment of this Act."

[For definition of "economically disadvantaged community" as used in section 118 of div. AA of Pub. L. 116–260, set out above, see section 160 of div. AA of Pub. L. 116–260, set out as a note below.]

NON-FEDERAL PROJECT IMPLEMENTATION FOR COMPREHENSIVE EVERGLADES RESTORATION PLAN PROJECTS

Pub. L. 116–260, div. AA, title I, §134(b), Dec. 27, 2020, 134 Stat. 2649, provided that:

"(1) IN GENERAL.—In carrying out the pilot program authorized under section 1043(b) of the Water Resources Reform and Development Act of 2014 [Pub. L. 113–121] (33 U.S.C. 2201 note), the Secretary [of the Army] is authorized to include a project authorized to be implemented by, or in accordance with, section 601 of the Water Resources Development Act of 2000 [Pub. L. 106–541, 114 Stat. 2680], in accordance with such section 1043(b).

"(2) ELIGIBILITY.—In the case of a project described in paragraph (1) for which the non-Federal interest has initiated construction in compliance with authorities governing the provision of in-kind contributions for such project, the Secretary shall take into account the value of any in-kind contributions carried out by the non-Federal interest for such project prior to the date of execution of the project partnership agreement under section 1043(b) of the Water Resources Reform and Development Act of 2014 when determining the non-Federal share of the costs to complete construction of the project.

"(3) GUIDANCE.—Not later than 180 days after the date of enactment of this subsection [Dec. 27, 2020], and in accordance with the guidance issued under section 1043(b)(9) of the Water Resources Reform and Development Act of 2014 (as added by this section), the Secretary shall issue any additional guidance that the Secretary determines necessary for the implementation of this subsection."

UNIFORMITY OF NOTIFICATION SYSTEMS

Pub. L. 116–260, div. AA, title I, §139, Dec. 27, 2020, 134 Stat. 2651, provided that:

"(a) INVENTORY.—Not later than 180 days after the date of enactment of this Act [Dec. 27, 2020], the Secretary [of the Army] shall complete an inventory of all systems used by the Corps of Engineers for external communication and notification with respect to projects, initiatives, and facilities of the Corps of Engineers.

"(b) UNIFORM PLAN.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall develop a plan for the uniformity of such communication and notification systems for projects, initiatives, and facilities of the Corps of Engineers.

"(2) INCLUSIONS.—The plan developed under paragraph (1) shall—

"(A) provide access to information in all forms practicable, including through email, text messages, news programs and websites, radio, and other forms of notification;

"(B) establish a notification system for any projects, initiatives, or facilities of the Corps of Engineers that do not have a notification system;

"(C) streamline existing communication and notification systems to improve the strength and uniformity of those systems; and

"(D) emphasize the necessity of timeliness in notification systems and ensure that the methods of notification can transmit information in a timely manner.

"(3) IMPLEMENTATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 2 years after the date of enactment of this Act, the Secretary shall complete the implementation of the plan developed under paragraph (1).

"(B) EMERGENCY MANAGEMENT NOTIFICATION.—Not later than 18 months after the date of enactment of this Act, the Secretary shall implement the provisions of the plan developed under paragraph (1) relating to emergency management notifications.

"(4) SAVINGS PROVISION.—Nothing in this section authorizes the elimination of any existing communication or notification system used by the Corps of Engineers."

CONTINUING AUTHORITY PROGRAMS

Pub. L. 116–260, div. AA, title I, §165, Dec. 27, 2020, 134 Stat. 2668, as amended by Pub. L. 117–263, div. H, title LXXXI, §8118(b), Dec. 23, 2022, 136 Stat. 3711, provided that:

"(a) PILOT PROGRAM FOR CONTINUING AUTHORITY PROJECTS IN SMALL OR DISADVANTAGED COMMUNITIES.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 27, 2020], the Secretary [of the Army] shall implement a pilot program, in accordance with this subsection, for carrying out a project under a continuing authority program for an economically disadvantaged community.

"(2) PARTICIPATION IN PILOT PROGRAM.—In carrying out paragraph (1), the Secretary shall—

"(A) publish a notice in the Federal Register that requests non-Federal interest proposals for a project under a continuing authority program for an economically disadvantaged community; and

"(B) review such proposals and select a total of 20 projects, taking into consideration geographic diversity among the selected projects.

"(3) COST SHARE.—Notwithstanding the cost share authorized for the applicable continuing authority program, the Federal share of the cost of a project selected under paragraph (2) shall be 100 percent.

"(4) SUNSET.—The authority to commence pursuant to this subsection a project selected under paragraph (2) shall terminate on the date that is 10 years after the date of enactment of this Act.

"(5) CONTINUING AUTHORITY PROGRAM DEFINED.—In this subsection, the term 'continuing authority program' has the meaning given that term in section 7001(c)(1)(D) of [the] Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d[(c)(1)(D)]).

"(b) AUTHORIZATIONS OF APPROPRIATIONS.—

"(1) EMERGENCY STREAMBANK AND SHORELINE PROTECTION.—Notwithstanding section 14 of the Flood Control Act of 1946 (33 U.S.C. 701r), there is authorized to be appropriated to carry out such section \$25,500,000 for each of fiscal years 2021 through 2024.

"(2) STORM AND HURRICANE RESTORATION AND IMPACT MINIMIZATION PROGRAM.—Notwithstanding section 3(c) of the Act of August 13, 1946 (33 U.S.C. 426g(c)), there is authorized to be appropriated to carry out such section \$38,000,000 for each of fiscal years 2021 through 2024.

"(3) SMALL RIVER AND HARBOR IMPROVEMENT PROJECTS.—Notwithstanding section 107(a) of the River and Harbor Act of 1960 (33 U.S.C. 577(a)), there is authorized to be appropriated to carry out such section \$63,000,000 for each of fiscal years 2021 through 2024.

"(4) REGIONAL SEDIMENT MANAGEMENT.—Notwithstanding section 204(g) of the Water Resources Development Act of 1992 (33 U.S.C. 2326(g)), there is authorized to be appropriated to carry out such section \$63,000,000 for each of fiscal years 2021 through 2024.

"(5) SMALL FLOOD CONTROL PROJECTS.—Notwithstanding section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), there is authorized to be appropriated to carry out such section \$69,250,000 for each of fiscal years 2021 through 2024.

"(6) AQUATIC ECOSYSTEM RESTORATION.—Notwithstanding section 206(f) of the Water Resources Development Act of 1996 (33 U.S.C. 2330(f)), there is authorized to be appropriated to carry out such section \$63,000,000 for each of fiscal years 2021 through 2024.

"(7) REMOVAL OF OBSTRUCTIONS; CLEARING CHANNELS.—Notwithstanding section 2 of the Act of August 28, 1937 (33 U.S.C. 701g), there is authorized to be appropriated to carry out such section \$8,000,000 for each of fiscal years 2021 through 2024.

"(8) PROJECT MODIFICATIONS FOR IMPROVEMENT OF ENVIRONMENT.—Notwithstanding section 1135(h) of the Water Resources Development Act of 1986 (33 U.S.C. 2309a(h)), there is authorized to be appropriated to carry out such section \$50,500,000 for each of fiscal years 2021 through 2024."

[For definition of "economically disadvantaged community" as used in section 165 of div. AA of Pub. L. 116–260, set out above, see section 160 of div. AA of Pub. L. 116–260, set out as a note below.]

REPORTS TO CONGRESS

Pub. L. 113–121, title I, §1042, June 10, 2014, 128 Stat. 1243, provided that:

"(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary [of the Army] shall complete and submit to Congress by the applicable date required the reports that address public safety and enhanced local participation in project delivery described in subsection (b).

"(b) REPORTS.—The reports referred to in subsection (a) are the reports required under—

"(1) subparagraphs (A) and (B) of section 1043(a)(5) [33 U.S.C. 2201 note];

"(2) section 1046(a)(2)(B) [33 U.S.C. 2319 note];

"(3) section 210(e)(3) of the Water Resources Development Act of 1986 (33 U.S.C. 2238(e)(3)) (as amended by section 2102(a)); and

"(4) section 7001 [33 U.S.C. 2282d].

"(c) FAILURE TO PROVIDE A COMPLETED REPORT.—

"(1) IN GENERAL.—Subject to subsection (d), if the Secretary fails to provide a report listed under subsection (b) by the date that is 180 days after the applicable date required for that report, \$5,000 shall be reprogrammed from the General Expenses account of the civil works program of the Army Corps of Engineers into the account of the division of the Army Corps of Engineers with responsibility for completing that report.

"(2) SUBSEQUENT REPROGRAMMING.—Subject to subsection (d), for each additional week after the date described in paragraph (1) in which a report described in that paragraph remains uncompleted and unsubmitted to Congress, \$5,000 shall be reprogrammed from the General Expenses account of the civil works program of the Army Corps of Engineers into the account of the division of the Secretary of the Army with responsibility for completing that report.

"(d) LIMITATIONS.—

"(1) IN GENERAL.—For each report, the total amounts reprogrammed under subsection (c) shall not exceed, in any fiscal year, \$50,000.

"(2) AGGREGATE LIMITATION.—The total amount reprogrammed under subsection (c) in a fiscal year shall not exceed \$200,000.

"(e) NO FAULT OF THE SECRETARY.—Amounts shall not be reprogrammed under subsection (c) if the Secretary certifies in a letter to the applicable committees of Congress that—

"(1) a major modification has been made to the content of the report that requires additional analysis for the Secretary to make a final decision on the report;

"(2) amounts have not been appropriated to the agency under this Act or any other Act to carry out the report; or

"(3) additional information is required from an entity other than the Corps of Engineers and is not available in a timely manner to complete the report by the deadline.

"(f) LIMITATION.—The Secretary shall not reprogram funds to the General Expenses account of the civil works program of the Corps of Engineers for the loss of the funds."

NON-FEDERAL IMPLEMENTATION PILOT PROGRAM

Pub. L. 113–121, title I, §1043, June 10, 2014, 128 Stat. 1244, as amended by Pub. L. 115–270, title I, §1137, Oct. 23, 2018, 132 Stat. 3783; Pub. L. 116–260, div. AA, title I, §134(a), Dec. 27, 2020, 134 Stat. 2648, provided that:

"(a) NON-FEDERAL IMPLEMENTATION OF FEASIBILITY STUDIES.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [June 10, 2014], the Secretary [of the Army] shall establish and implement a pilot program to evaluate the cost-effectiveness and project delivery efficiency of allowing non-Federal interests to carry out feasibility studies for flood risk management, hurricane and storm damage reduction, aquatic ecosystem restoration, and coastal harbor and channel and inland navigation.

"(2) PURPOSES.—The purposes of the pilot program are—

"(A) to identify project delivery and cost-saving alternatives to the existing feasibility study process;

"(B) to evaluate the technical, financial, and organizational efficiencies of a non-Federal interest carrying out a feasibility study of 1 or more projects; and

"(C) to evaluate alternatives for the decentralization of the project planning, management, and operational decisionmaking process of the Corps of Engineers.

"(3) ADMINISTRATION.—

"(A) IN GENERAL.—On the request of a non-Federal interest, the Secretary may enter into an agreement with the non-Federal interest for the non-Federal interest to provide full project management control of a feasibility study for a project for—

"(i) flood risk management;

"(ii) hurricane and storm damage reduction, including levees, floodwalls, flood control channels, and water control structures;

"(iii) coastal harbor and channel and inland navigation; and

"(iv) aquatic ecosystem restoration.

"(B) USE OF NON-FEDERAL FUNDS.—

"(i) IN GENERAL.—A non-Federal interest that has entered into an agreement with the Secretary pursuant to subparagraph (A) may use non-Federal funds to carry out the feasibility study.

"(ii) CREDIT.—The Secretary shall credit towards the non-Federal share of the cost of construction of a project for which a feasibility study is carried out under this subsection an amount equal to the portion of the cost of developing the study that would have been the responsibility of the Secretary, if the study were carried out by the Secretary, subject to the conditions that—

"(I) non-Federal funds were used to carry out the activities that would have been the responsibility of the Secretary;

"(II) the Secretary determines that the feasibility study complies with all applicable Federal laws and regulations; and

"(III) the project is authorized by any provision of Federal law enacted after the date on which an agreement is entered into under subparagraph (A).

"(C) TRANSFER OF FUNDS.—

"(i) IN GENERAL.—After the date on which an agreement is executed pursuant to subparagraph (A), the Secretary may transfer to the non-Federal interest to carry out the feasibility study—

"(I) if applicable, the balance of any unobligated amounts appropriated for the study, except that the Secretary shall retain sufficient amounts for the Corps of Engineers to carry out any responsibilities of the Corps of Engineers relating to the project and pilot program; and

"(II) additional amounts, as determined by the Secretary, from amounts made available under paragraph (8), except that the total amount transferred to the non-Federal interest shall not exceed the updated estimate of the Federal share of the cost of the feasibility study.

"(ii) ADMINISTRATION.—The Secretary shall include such provisions as the Secretary determines to be necessary in an agreement under subparagraph (A) to ensure that a non-Federal interest receiving Federal funds under this paragraph—

"(I) has the necessary qualifications to administer those funds; and

"(II) will comply with all applicable Federal laws (including regulations) relating to the use of those funds.

"(D) NOTIFICATION.—The Secretary shall notify the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the initiation of each feasibility study under the pilot program.

"(E) AUDITING.—The Secretary shall regularly monitor and audit each feasibility study carried out by a non-Federal interest under this section to ensure that the use of any funds transferred under subparagraph (C) are used in compliance with the agreement signed under subparagraph (A).

"(F) TECHNICAL ASSISTANCE.—On the request of a non-Federal interest, the Secretary may provide technical assistance to the non-Federal interest relating to any aspect of the feasibility study, if the non-Federal interest contracts with the Secretary for the technical assistance and compensates the Secretary for the technical assistance.

"(G) DETAILED PROJECT SCHEDULE.—Not later than 180 days after entering into an agreement under subparagraph (A), each non-Federal interest, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule, based on full funding capability, that lists all deadlines for milestones relating to the feasibility study.

"(4) COST SHARE.—Nothing in this subsection affects the cost-sharing requirement applicable on the day before the date of enactment of this Act to a feasibility study carried out under this subsection.

"(5) REPORT.—

"(A) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report detailing the results of the pilot program carried out under this section, including—

"(i) a description of the progress of the non-Federal interests in meeting milestones in detailed project schedules developed pursuant to paragraph (3)(G); and

"(ii) any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.

"(B) UPDATE.—Not later than 5 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an update of the report described in subparagraph (A).

"(C) FAILURE TO MEET DEADLINE.—If the Secretary fails to submit a report by the required deadline under this paragraph, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a detailed explanation of why the deadline was missed and a projected date for submission of the report.

"(6) ADMINISTRATION.—All laws and regulations that would apply to the Secretary if the Secretary were carrying out the feasibility study shall apply to a non-Federal interest carrying out a feasibility study under this subsection.

"(7) TERMINATION OF AUTHORITY.—The authority to commence a feasibility study under this subsection terminates on the date that is 5 years after the date of enactment of this Act.

"(8) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts appropriated for a specific project, there is authorized to be appropriated to the Secretary to carry out the pilot program under this subsection, including the costs of administration of the Secretary, \$25,000,000 for each of fiscal years 2015 through 2019.

"(b) NON-FEDERAL PROJECT IMPLEMENTATION PILOT PROGRAM.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish and implement a pilot program to evaluate the cost-effectiveness and project delivery efficiency of allowing non-Federal interests to carry out flood risk management, hurricane and storm damage reduction, coastal harbor and channel inland navigation, and aquatic ecosystem restoration projects.

"(2) PURPOSES.—The purposes of the pilot program are—

"(A) to identify project delivery and cost-saving alternatives that reduce the backlog of authorized Corps of Engineers projects;

"(B) to evaluate the technical, financial, and organizational efficiencies of a non-Federal interest carrying out the design, execution, management, and construction of 1 or more projects; and

"(C) to evaluate alternatives for the decentralization of the project management, design, and construction for authorized Corps of Engineers water resources projects.

"(3) ADMINISTRATION.—

"(A) IN GENERAL.—In carrying out the pilot program, the Secretary shall—

"(i) identify a total of not more than 20 projects for flood risk management, hurricane and storm damage reduction (including levees, floodwalls, flood control channels, and water control structures), coastal harbor and channels, inland navigation, and aquatic ecosystem restoration that have been authorized for construction, including—

"(I) not more than 12 projects that have been authorized for construction prior to the date of enactment of this Act and that—

"(aa)(AA) have received Federal funds prior to the date of enactment of this Act; or

"(BB) for more than 2 consecutive fiscal years, have an unobligated funding balance for that project in the Corps of Engineers construction account; and

"(bb) to the maximum extent practicable, are located in each of the divisions of the Corps of Engineers;

"(II) not more than 3 projects that have been authorized for construction prior to the date of enactment of this Act and that have not received Federal funds in the period beginning on the date on which the project was authorized and ending on the date of enactment of this Act; and

"(III) not more than 5 projects that have been authorized for construction, but did not receive the authorization prior to the date of enactment of this Act;

"(ii) notify the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the identification of each project under the pilot program;

"(iii) in collaboration with the non-Federal interest, develop a detailed project management plan for each identified project that outlines the scope, budget, design, and construction resource requirements necessary for the non-Federal interest to execute the project, or a separable element of the project;

"(iv) on the request of the non-Federal interest, enter into a project partnership agreement with the non-Federal interest for the non-Federal interest to provide full project management control for construction of the project, or a separable element of the project, in accordance with plans approved by the Secretary;

"(v) following execution of the project partnership agreement, transfer to the non-Federal interest to carry out construction of the project, or a separable element of the project—

"(i) if applicable, the balance of the unobligated amounts appropriated for the project, except that the Secretary shall retain sufficient amounts for the Corps of Engineers to carry out any responsibilities of the Corps of Engineers relating to the project and pilot program; and

"(II) additional amounts, as determined by the Secretary, from amounts made available under paragraph (8), except that the total amount transferred to the non-Federal interest shall not exceed the updated estimate of the Federal share of the cost of construction, including any required design; and

"(vi) regularly monitor and audit each project being constructed by a non-Federal interest under this section to ensure that the construction activities are carried out in compliance with the plans approved by the Secretary and that the construction costs are reasonable.

"(B) DETAILED PROJECT SCHEDULE.—Not later than 180 days after entering into an agreement under subparagraph (A)(iv), each non-Federal interest, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule, based on estimated funding levels, that lists all deadlines for each milestone in the construction of the project.

"(C) TECHNICAL ASSISTANCE.—On the request of a non-Federal interest, the Secretary may provide technical assistance to the non-Federal interest, if the non-Federal interest contracts with and compensates the Secretary for the technical assistance relating to—

"(i) any study, engineering activity, and design activity for construction carried out by the non-Federal interest under this subsection; and

"(ii) expeditiously obtaining any permits necessary for the project.

"(4) COST SHARE.—Nothing in this subsection affects the cost-sharing requirement applicable on the day before the date of enactment of this Act to a project carried out under this subsection.

"(5) REPORT.—

"(A) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report detailing the results of the pilot program carried out under this subsection, including—

"(i) a description of the progress of non-Federal interests in meeting milestones in detailed project schedules developed pursuant to paragraph (2)(B); and

"(ii) any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.

"(B) UPDATE.—Not later than 5 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an update of the report described in subparagraph (A).

"(C) FAILURE TO MEET DEADLINE.—If the Secretary fails to submit a report by the required deadline under this paragraph, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a detailed explanation of why the deadline was missed and a projected date for submission of the report.

"(6) ADMINISTRATION.—All laws and regulations that would apply to the Secretary if the Secretary were carrying out the project shall apply to a non-Federal interest carrying out a project under this subsection.

"(7) TERMINATION OF AUTHORITY.—The authority to commence a project under this subsection terminates on September 30, 2026.

"(8) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts appropriated for a specific project, there is authorized to be appropriated to the Secretary to carry out the pilot program under this subsection, including the costs of administration of the Secretary, \$25,000,000 for each of fiscal years 2019 through 2026.

"(9) IMPLEMENTATION GUIDANCE.—

"(A) IN GENERAL.—Not later than 120 days after the date of enactment of this paragraph [Dec. 27, 2020], the Secretary shall issue guidance for the implementation of the pilot program that, to the extent practicable, identifies—

"(i) the metrics for measuring the success of the pilot program;

"(ii) a process for identifying future projects to participate in the pilot program;

"(iii) measures to address the risks of a non-Federal interest constructing projects under the pilot program, including which entity bears the risk for projects that fail to meet the Corps of Engineers standards for design or quality;

"(iv) the laws and regulations that a non-Federal interest must follow in carrying out a project under the pilot program; and

"(v) which entity bears the risk in the event that a project carried out under the pilot program fails to be carried out in accordance with the project authorization or this subsection.

"(B) NEW PROJECT PARTNERSHIP AGREEMENTS.—The Secretary may not enter into a project partnership agreement under this subsection during the period beginning on the date of enactment of this paragraph and ending on the date on which the Secretary issues the guidance under subparagraph (A)."

WATER INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM

Pub. L. 113–121, title V, §5014, June 10, 2014, 128 Stat. 1329, as amended by Pub. L. 117–263, div. H, title LXXXI, §8147, Dec. 23, 2022, 136 Stat. 3730, provided that:

"(a) IN GENERAL.—The Secretary [of the Army] shall establish a pilot program to evaluate the cost effectiveness and project delivery efficiency of allowing non-Federal pilot applicants to carry out authorized water resources development projects for coastal harbor improvement, channel improvement, inland navigation, flood damage reduction, ecosystem restoration, and hurricane and storm damage reduction.

"(b) PURPOSES.—The purposes of the pilot program established under subsection (a) are—

"(1) to identify cost-saving project delivery alternatives that reduce the backlog of authorized Corps of Engineers projects; and

"(2) to evaluate the technical, financial, and organizational benefits of allowing a non-Federal pilot applicant to carry out and manage the design or construction (or both) of 1 or more of such projects.

"(c) SUBSEQUENT APPROPRIATIONS.—Any activity undertaken under this section is authorized only to the extent specifically provided for in subsequent appropriations Acts.

"(d) ADMINISTRATION.—In carrying out the pilot program established under subsection (a), the Secretary shall—

"(1) identify for inclusion in the program at least 15 projects that are authorized for construction for coastal harbor improvement, channel improvement, inland navigation, flood damage reduction, ecosystem restoration, or hurricane and storm damage reduction;

"(2) notify in writing the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of each project identified under paragraph (1);

"(3) in consultation with the non-Federal pilot applicant associated with each project identified under paragraph (1), develop a detailed project management plan for the project that outlines the scope, financing, budget, design, and construction resource requirements necessary for the non-Federal pilot applicant to execute the project, or a separable element of the project;

"(4) at the request of the non-Federal pilot applicant associated with each project identified under paragraph (1), enter into a project partnership agreement with the non-Federal pilot applicant under which the non-Federal pilot applicant is provided full project management control for the financing, design, or construction (or any combination thereof) of the project, or a separable element of the project, in accordance with plans approved by the Secretary;

"(5) following execution of a project partnership agreement under paragraph (4) and completion of all work under the agreement, issue payment, in accordance with subsection (g), to the relevant non-Federal pilot applicant for that work; and

"(6) regularly monitor and audit each project carried out under the program to ensure that all activities related to the project are carried out in compliance with plans approved by the Secretary and that construction costs are reasonable.

"(e) SELECTION CRITERIA.—In identifying projects under subsection (d)(1), the Secretary shall consider the extent to which the project—

"(1) is significant to the economy of the United States;

- "(2) leverages Federal investment by encouraging non-Federal contributions to the project;
- "(3) employs innovative project delivery and cost-saving methods;
- "(4) received Federal funds in the past and experienced delays or missed scheduled deadlines;
- "(5) has unobligated Corps of Engineers funding balances; and
- "(6) has not received Federal funding for recapitalization and modernization since the project was authorized.
- "(f) DETAILED PROJECT SCHEDULE.—Not later than 180 days after entering into a project partnership agreement under subsection (d)(4), a non-Federal pilot applicant, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule for the relevant project, based on estimated funding levels, that specifies deadlines for each milestone with respect to the project.
- "(g) PAYMENT.—Payment to the non-Federal pilot applicant for work completed pursuant to a project partnership agreement under subsection (d)(4) may be made from—
- "(1) if applicable, the balance of the unobligated amounts appropriated for the project; and
- "(2) other amounts appropriated to the Corps of Engineers, subject to the condition that the total amount transferred to the non-Federal pilot applicant may not exceed the estimate of the Federal share of the cost of construction, including any required design.
- "(h) TECHNICAL ASSISTANCE.—At the request of a non-Federal pilot applicant participating in the pilot program established under subsection (a), the Secretary may provide to the non-Federal pilot applicant, if the non-Federal pilot applicant contracts with and compensates the Secretary, technical assistance with respect to—
- "(1) a study, engineering activity, or design activity related to a project carried out by the non-Federal pilot applicant under the program; and
- "(2) obtaining permits necessary for such a project.
- "(i) IDENTIFICATION OF IMPEDIMENTS.—
- "(1) IN GENERAL.—The Secretary shall—
- "(A) except as provided in paragraph (2), identify any procedural requirements under the authority of the Secretary that impede greater use of public-private partnerships and private investment in water resources development projects;
- "(B) develop and implement, on a project-by-project basis, procedures and approaches that—
- "(i) address such impediments; and
- "(ii) protect the public interest and any public investment in water resources development projects that involve public-private partnerships or private investment in water resources development projects; and
- "(C) not later than 1 year after the date of enactment of this section [June 10, 2014], issue rules to carry out the procedures and approaches developed under subparagraph (B).
- "(2) RULE OF CONSTRUCTION.—Nothing in this section allows the Secretary to waive any requirement under—
- "(A) sections 3141 through 3148 and sections 3701 through 3708 of title 40, United States Code;
- "(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or
- "(C) any other provision of Federal law.
- "(j) PUBLIC BENEFIT STUDIES.—
- "(1) IN GENERAL.—Before entering into a project partnership agreement under subsection (d)(4), the Secretary shall conduct an assessment of whether, and provide justification in writing to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that, the proposed agreement provides better public and financial benefits than a similar transaction using public funding or financing.
- "(2) REQUIREMENTS.—An assessment under paragraph (1) shall—
- "(A) be completed in a period of not more than 90 days;
- "(B) take into consideration any supporting materials and data submitted by the relevant non-Federal pilot applicant and other stakeholders; and
- "(C) determine whether the proposed project partnership agreement is in the public interest by determining whether the agreement will provide public and financial benefits, including expedited project delivery and savings for taxpayers.
- "(k) NON-FEDERAL FUNDING.—The non-Federal pilot applicant may finance the non-Federal share of a project carried out under the pilot program established under subsection (a).
- "(l) APPLICABILITY OF FEDERAL LAW.—Any provision of Federal law that would apply to the Secretary if the Secretary were carrying out a project shall apply to a non-Federal pilot applicant carrying out a project under this section.
- "(m) COST SHARE.—Nothing in this section affects a cost-sharing requirement under Federal law that is applicable to a project carried out under the pilot program established under subsection (a).
- "(n) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report describing the results of the pilot program established under subsection (a), including any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.
- "(o) NON-FEDERAL PILOT APPLICANT DEFINED.—In this section, the term 'non-Federal pilot applicant' means—
- "(1) the non-Federal sponsor of the water resources development project;
- "(2) a non-Federal interest, as defined in section 221 of the Flood Control Act of 1970 (42 U.S.C. 1982d–5b [1962d–5b]); or
- "(3) a private entity with the consent of the local government in which the project is located or that is otherwise affected by the project."

FUNDING TO PROCESS PERMITS

Pub. L. 106–541, title II, §214, Dec. 11, 2000, 114 Stat. 2594, as amended by Pub. L. 108–137, title I, §114, Dec. 1, 2003, 117 Stat. 1836; Pub. L. 109–99, §1, Nov. 11, 2005, 119 Stat. 2169; Pub. L. 109–209, §1, Mar. 24, 2006, 120 Stat. 318; Pub. L. 109–434, §1, Dec. 20, 2006, 120 Stat. 3197; Pub. L. 110–114, title II, §2002, Nov. 8, 2007, 121 Stat. 1067; Pub. L. 111–120, §1, Dec. 22, 2009, 123 Stat. 3478; Pub. L. 111–315, §1, Dec. 18, 2010, 124 Stat. 3450; Pub. L. 113–121, title I, §1006, June 10, 2014, 128 Stat. 1212, which related to funding to process permits and was formerly set out as a note under this section, was transferred to section 2352 of this title.

MONITORING

Pub. L. 106–541, title II, §223, Dec. 11, 2000, 114 Stat. 2597, provided that:

- "(a) IN GENERAL.—The Secretary shall conduct a monitoring program of the economic and environmental results of up to 5 eligible projects selected by the Secretary.
- "(b) DURATION.—The monitoring of a project selected by the Secretary under this section shall be for a period of not less than 12 years beginning on the date of its selection.
- "(c) REPORTS.—The Secretary shall transmit to Congress every 3 years a report on the performance of each project selected under this section.
- "(d) ELIGIBLE PROJECT DEFINED.—In this section, the term 'eligible project' means a water resources project, or separable element thereof—
- "(1) for which a contract for physical construction has not been awarded before the date of enactment of this Act [Dec. 11, 2000];
- "(2) that has a total cost of more than \$25,000,000; and
- "(3)(A) that has as a benefit-to-cost ratio of less than 1.5 to 1; or
- "(B) that has significant environmental benefits or significant environmental mitigation components.
- "(e) COSTS.—The cost of conducting monitoring under this section shall be a Federal expense."

WATER CONTROL MANAGEMENT

Pub. L. 106–53, title V, §511, Aug. 17, 1999, 113 Stat. 341, provided that:

- "(a) IN GENERAL.—In evaluating potential improvements for water control management activities and consolidation of water control management centers, the Secretary may consider a regionalized water control management plan but may not implement such a plan until the date on which a report is submitted under subsection (b).
- "(b) REPORT.—Not later than 180 days after the date of enactment of this Act [Aug. 17, 1999], the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives and the Committee on Environment and Public Works and the Committee on Appropriations of the Senate a report containing—
- "(1) a description of the primary objectives of streamlining water control management activities;
- "(2) a description of the benefits provided by streamlining water control management activities through consolidation of centers for those activities;
- "(3) a determination whether the benefits to users of establishing regional water control management centers will be retained in each district office of the Corps of Engineers that does not have a regional center;
- "(4) a determination whether users of regional centers will receive a higher level of benefits from streamlining water control management activities; and
- "(5) a list of the members of Congress who represent a district that includes a water control management center that is to be eliminated under a proposed regionalized plan."

BUY AMERICAN; SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE

Pub. L. 106–53, title II, §222, Aug. 17, 1999, 113 Stat. 295, provided that:

- "(a) IN GENERAL.—It is the sense of Congress that, to the extent practicable, all equipment and products purchased with funds made available under this Act [see Tables for classification] should be American-made.
- "(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the Secretary, to the greatest extent practicable, shall provide to each recipient of the assistance a notice describing the statement made in subsection (a)."
- Pub. L. 104–303, title II, §235, Oct. 12, 1996, 110 Stat. 3704, provided that:
- "(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Act [see Tables for classification] should be American-made.
- "(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the Secretary, to the greatest extent practicable, shall provide to each recipient of the assistance a notice describing the statement made in subsection (a)."

BUDGET ACT REQUIREMENTS

Pub. L. 99–662, title IX, §948, Nov. 17, 1986, 100 Stat. 4201, provided that: "Any spending authority under this Act [see Short Title note above] shall be effective only to such extent and in such amounts as are provided in appropriation Acts. For purposes of this Act, the term 'spending authority' has the meaning provided in section 401(c)(2) of the Congressional Budget Act of 1974 [2 U.S.C. 651(c)(2)], except that such term does not include spending authority for which an exception is made under section 401(d) of such Act."

DEFINITION OF ECONOMICALLY DISADVANTAGED COMMUNITY

Pub. L. 116–260, div. AA, title I, §160, Dec. 27, 2020, 134 Stat. 2665, provided that:

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 27, 2020], the Secretary [of the Army] shall issue guidance defining the term 'economically disadvantaged community' for the purposes of this Act [div. AA of Pub. L. 116–260, see Short Title of 2020 Amendment note above] and the amendments made by this Act.

"(b) CONSIDERATIONS.—In defining the term 'economically disadvantaged community' under subsection (a), the Secretary shall, to the maximum extent practicable, utilize the criteria under paragraph (1) or (2) of section 301(a) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161), to the extent that such criteria are applicable in relation to the development of water resources development projects.

"(c) PUBLIC COMMENT.—In developing the guidance under subsection (a), the Secretary shall provide notice and an opportunity for public comment."

"SECRETARY" DEFINED

Pub. L. 117–263, div. H, title LXXXI, §8002, Dec. 23, 2022, 136 Stat. 3694, provided that: "In this title [see Tables for classification], the term 'Secretary' means the Secretary of the Army."

Pub. L. 116–260, div. AA, §2, Dec. 27, 2020, 134 Stat. 2618, provided that: "In this Act [div. AA of Pub. L. 116–260, see Tables for classification], the term 'Secretary' means the Secretary of the Army."

Pub. L. 115–270, title I, §102, Oct. 23, 2018, 132 Stat. 3768, provided that: "In this title [see Tables for classification], the term 'Secretary' means the Secretary of the Army."

Pub. L. 114–322, title I, §1002, Dec. 16, 2016, 130 Stat. 1632, provided that: "In this title [see Tables for classification], the term 'Secretary' means the Secretary of the Army."

Pub. L. 113–121, §2, June 10, 2014, 128 Stat. 1195, provided that: "In this Act [see Tables for classification], the term 'Secretary' means the Secretary of the Army."

Pub. L. 110–114, §2, Nov. 8, 2007, 121 Stat. 1049, provided that: "In this Act [see Tables for classification], the term 'Secretary' means the Secretary of the Army."

Pub. L. 106–541, §2, Dec. 11, 2000, 114 Stat. 2575, provided that: "In this Act [see Tables for classification], the term 'Secretary' means the Secretary of the Army."

Pub. L. 106–53, §2, Aug. 17, 1999, 113 Stat. 273, provided that: "In this Act [see Tables for classification], the term 'Secretary' means the Secretary of the Army."

Pub. L. 104–303, §2, Oct. 12, 1996, 110 Stat. 3662, provided that: "In this Act [see Tables for classification], the term 'Secretary' means the Secretary of the Army."

Pub. L. 102–580, §3, Oct. 31, 1992, 106 Stat. 4801, provided that: "For purposes of this Act [see Short Title of 1992 Amendment note above], the term 'Secretary' means the Secretary of the Army."

Pub. L. 101–640, §2, Nov. 28, 1990, 104 Stat. 4605, provided that: "For purposes of this Act [see Short Title of 1990 Amendment note above], the term 'Secretary' means the Secretary of the Army."

Pub. L. 100–676, §2, Nov. 17, 1988, 102 Stat. 4013, provided that: "For purposes of this Act [see Short Title of 1988 Amendment note above], the term 'Secretary' means the Secretary of the Army."

EXECUTIVE DOCUMENTS

PROMOTING THE RELIABLE SUPPLY AND DELIVERY OF WATER IN THE WEST

Memorandum of President of the United States, Oct. 19, 2018, 83 F.R. 53961, which related to water infrastructure throughout the western United States, was revoked by Ex. Ord. No. 13990, §7(d), Jan. 20, 2021, 86 F.R. 7042, set out in a note under section 4321 of Title 42, The Public Health and Welfare.

§2202. Non-Federal engagement and review

(a) Issuance

The Secretary shall expeditiously issue guidance to implement each covered provision of law in accordance with this section.

(b) Public notice

(1) In general

Prior to developing and issuing any new or revised implementation guidance for a covered water resources development law, the Secretary shall issue a public notice that—

(A) informs potentially interested non-Federal stakeholders of the Secretary's intent to develop and issue such guidance; and

(B) provides an opportunity for interested non-Federal stakeholders to engage with, and provide input and recommendations to, the Secretary on the development and issuance of such guidance.

(2) Issuance of notice

The Secretary shall issue the notice under paragraph (1) through a posting on a publicly accessible website dedicated to providing notice on the development and issuance of implementation guidance for a covered water resources development law.

(c) Stakeholder engagement

(1) Input

The Secretary shall allow a minimum of 60 days after issuance of the public notice under subsection (b) for non-Federal stakeholders to provide input and recommendations to the Secretary, prior to finalizing implementation guidance for a covered water resources development law.

(2) Outreach

The Secretary may, as appropriate (as determined by the Secretary), reach out to non-Federal stakeholders and circulate drafts of implementation guidance for a covered water resources development law for informal input and recommendations.

(d) Submission

The Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a copy of all input and recommendations received pursuant to subsection (c) and a description of any consideration of such input and recommendations.

(e) Development of guidance

When developing implementation guidance for a covered water resources development law, the Secretary shall take into consideration the input and recommendations received from non-Federal stakeholders, and make the final guidance available to the public on the publicly accessible website described in subsection (b)(2).

(f) Definitions

In this section:

(1) Covered provision of law

The term "covered provision of law" means a provision of law under the jurisdiction of the Secretary contained in, or amended by, a covered water resources development law, with respect to which—

(A) the Secretary determines guidance is necessary in order to implement the provision; and

(B) no such guidance has been issued as of October 23, 2018.

(2) Covered water resources development law

The term "covered water resources development law" means—

(A) the Water Resources Reform and Development Act of 2014;

(B) the Water Resources Development Act of 2016;

(C) this Act; and

(D) any Federal water resources development law enacted after October 23, 2018.

(Pub. L. 115–270, title I, §1105, Oct. 23, 2018, 132 Stat. 3772.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Water Resources Reform and Development Act of 2014, referred to in subsec. (f)(2)(A), is Pub. L. 113–121, June 10, 2014, 128 Stat. 1193. For complete classification of this Act to the Code, see Short Title of 2014 Amendment note set out under section 2201 of this title and Tables.

The Water Resources Development Act of 2016, referred to in subsec. (f)(2)(B), is title I of Pub. L. 114–322, Dec. 16, 2016, 130 Stat. 1632. For complete classification of this Act to the Code, see Short Title of 2016 Amendment note set out under section 2201 of this title and Tables.

This Act, referred to in subsec. (f)(2)(C), probably means title I of Pub. L. 115–270, Oct. 23, 2018, 132 Stat. 3768, known as the Water Resources Development Act of 2018. For complete classification of this Act to the Code, see Short Title of 2018 Amendment note set out under section 2201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2018, and also as part of the America's Water Infrastructure Act of 2018, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

NON-FEDERAL INTEREST ADVISORY COMMITTEE

Pub. L. 117–263, div. H, title LXXXI, §8150, Dec. 23, 2022, 136 Stat. 3731, provided that:

"(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Dec. 23, 2022], the Secretary [of the Army] shall establish a committee, to be known as the 'Non-Federal Interest Advisory Committee' and referred to in this section as the 'Committee', to develop and make recommendations to the Secretary and the Chief of Engineers on

activities and actions that should be undertaken by the Corps of Engineers to ensure more effective and efficient delivery of water resources development projects, programs, and other assistance.

"(b) MEMBERSHIP.—

"(1) IN GENERAL.—The Committee shall be composed of the members described in paragraph (2), who shall—

"(A) be appointed by the Secretary; and

"(B) have the requisite experiential or technical knowledge needed to address issues related to water resources needs and challenges.

"(2) REPRESENTATIVES.—The members of the Committee shall include the following:

"(A) 1 representative of each of the following:

"(i) A non-Federal interest for a project for navigation for an inland harbor.

"(ii) A non-Federal interest for a project for navigation for a harbor.

"(iii) A non-Federal interest for a project for flood risk management.

"(iv) A non-Federal interest for a project for coastal storm risk management.

"(v) A non-Federal interest for a project for aquatic ecosystem restoration.

"(B) 1 representative of each of the following:

"(i) A non-Federal stakeholder with respect to inland waterborne transportation.

"(ii) A non-Federal stakeholder with respect to water supply.

"(iii) A non-Federal stakeholder with respect to recreation.

"(iv) A non-Federal stakeholder with respect to hydropower.

"(v) A non-Federal stakeholder with respect to emergency preparedness, including coastal protection.

"(C) 1 representative of each of the following:

"(i) An organization with expertise in conservation.

"(ii) An organization with expertise in environmental policy.

"(iii) An organization with expertise in rural water resources.

"(c) DUTIES.—

"(1) RECOMMENDATIONS.—The Committee shall provide advice and make recommendations to the Secretary and the Chief of Engineers to assist the Corps of Engineers in—

"(A) efficiently and effectively delivering water resources development projects;

"(B) improving the capability and capacity of the workforce of the Corps of Engineers to deliver such projects and other assistance;

"(C) improving the capacity and effectiveness of Corps of Engineers consultation and liaison roles in communicating water resources needs and solutions, including regionally specific recommendations; and

"(D) strengthening partnerships with non-Federal interests to advance water resources solutions.

"(2) MEETINGS.—The Committee shall meet as appropriate to develop and make recommendations under paragraph (1).

"(3) REPORT.—Recommendations made under paragraph (1) shall be—

"(A) included in a report submitted to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives; and

"(B) made publicly available, including on a publicly available website.

"(d) INDEPENDENT JUDGMENT.—Any recommendation made by the Committee to the Secretary and the Chief of Engineers under subsection (c)(1) shall reflect the independent judgment of the Committee.

"(e) ADMINISTRATION.—

"(1) COMPENSATION.—Except as provided in paragraph (2), the members of the Committee shall serve without compensation.

"(2) TRAVEL EXPENSES.—The members of the Committee shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

"(3) TREATMENT.—The members of the Committee shall not be considered to be Federal employees, and the meetings and reports of the Committee shall not be considered a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)."

IMPLEMENTATION GUIDANCE

Pub. L. 116–260, div. AA, title II, §223(d), Dec. 27, 2020, 134 Stat. 2696, provided that: "The Secretary [of the Army] shall expeditiously issue any guidance necessary to implement any provision of this Act [div. AA of Pub. L. 116–260, see Tables for classification], including any amendments made by this Act, in accordance with section 1105 of the Water Resources Development Act of 2018 (33 U.S.C. 2202)."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 102 of Pub. L. 115–270, set out as a note under section 2201 of this title.

§2203. Review of contracting policies

(a) Review of contractual agreements

(1) In general

Not later than 180 days after December 27, 2020, the Secretary shall complete a review of the policies, guidelines, and regulations of the Corps of Engineers for the development of contractual agreements between the Secretary and non-Federal interests and utilities associated with the construction of water resources development projects.

(2) Report

Not later than 90 days after completing the review under subsection (a)(1), the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, and make publicly available, a report that includes—

(A) a summary of the results of the review; and

(B) public guidance on best practices for a non-Federal interest to use when writing or developing contractual agreements with the Secretary and utilities.

(3) Provision of guidance

The Secretary shall provide the best practices guidance included under paragraph (2)(A) to non-Federal interests prior to the development of contractual agreements with such non-Federal interests.

(b) Sense of Congress

It is the sense of Congress that the Secretary should maximize use of nonprice tradeoff procedures in competitive acquisitions for carrying out emergency work in an area with respect to which the President has declared a major disaster under section 5170 of title 42.

(Pub. L. 116–260, div. AA, title I, §136, Dec. 27, 2020, 134 Stat. 2649.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

SUBCHAPTER I—COST SHARING

§2211. Harbors

(a) Construction

(1) Payments during construction

The non-Federal interests for a navigation project for a harbor or inland harbor, or any separable element thereof, on which a contract for physical construction has not been awarded before June 10, 2014, shall pay, during the period of construction of the project, the following costs associated with general navigation features:

(A) 10 percent of the cost of construction of the portion of the project which has a depth not in excess of 20 feet; plus

(B) 25 percent of the cost of construction of the portion of the project which has a depth in excess of 20 feet but not in excess of 50 feet; plus

(C) 50 percent of the cost of construction of the portion of the project which has a depth in excess of 50 feet.

(2) Additional 10 percent payment over 30 years

The non-Federal interests for a project to which paragraph (1) applies shall pay an additional 10 percent of the cost of the general navigation features of the project in cash over a period not to exceed 30 years, at an interest rate determined pursuant to section 2216 of this title. The value of lands, easements, rights-of-way, and relocations provided under paragraph (3) and the costs of relocations borne by the non-Federal interests under paragraph (4) shall be credited toward the payment required under this paragraph.

(3) Lands, easements, and rights-of-way

Except as provided under section 2283(c) of this title, the non-Federal interests for a project to which paragraph (1) applies shall provide the lands, easements, rights-of-way, and relocations (other than utility relocations under paragraph (4)) necessary for the project, including any lands, easements, rights-of-way, and relocations (other than utility relocations accomplished under paragraph (4)) that are necessary for dredged material disposal facilities.

(4) Utility relocations

The non-Federal interests for a project to which paragraph (1) applies shall perform or assure the performance of all relocations of utilities necessary to carry out the project, except that in the case of a project for a deep-draft harbor and in the case of a project constructed by non-Federal interests under section 2232 of this title, one-half of the cost of each such relocation shall be borne by the owner of the facility being relocated and one-half of the cost of each such relocation shall be borne by the non-Federal interests.

(5) Dredged material disposal facilities for project construction

In this subsection, the term "general navigation features" includes constructed land-based and aquatic dredged material disposal facilities that are necessary for the disposal of dredged material required for project construction and for which a contract for construction has not been awarded on or before October 12, 1996.

(b) Operation and maintenance

(1) In general

The Federal share of the cost of operation and maintenance of each navigation project for a harbor or inland harbor constructed by the Secretary pursuant to this Act or any other law approved after November 17, 1986, shall be 100 percent, except that in the case of a deep-draft harbor, the non-Federal interests shall be responsible for an amount equal to 50 percent of the excess of the cost of the operation and maintenance of such project over the cost which the Secretary determines would be incurred for operation and maintenance of such project if such project had a depth of 50 feet.

(2) Dredged material disposal facilities

The Federal share of the cost of constructing land-based and aquatic dredged material disposal facilities that are necessary for the disposal of dredged material required for the operation and maintenance of a project and for which a contract for construction has not been awarded on or before October 12, 1996, shall be determined in accordance with subsection (a). The Federal share of operating and maintaining such facilities shall be determined in accordance with paragraph (1).

(c) Erosion or shoaling attributable to Federal navigation works

Costs of constructing projects or measures for the prevention or mitigation of erosion or shoaling damages attributable to Federal navigation works shall be shared in the same proportion as the cost sharing provisions applicable to the project causing such erosion or shoaling. The non-Federal interests for the project causing the erosion or shoaling shall agree to operate and maintain such measures.

(d) Non-Federal payments during construction

The amount of any non-Federal share of the cost of any navigation project for a harbor or inland harbor shall be paid to the Secretary. Amounts required to be paid during construction shall be paid on an annual basis during the period of construction, beginning not later than one year after construction is initiated.

(e) Agreement

Before initiation of construction of a project to which this section applies, the Secretary and the non-Federal interests shall enter into a cooperative agreement according to the provisions of section 1962d–5b of title 42. The non-Federal interests shall agree to—

- (1) provide to the Federal Government lands, easements, and rights-of-way, including those necessary for dredged material disposal facilities, and perform the necessary relocations required for construction, operation, and maintenance of such project;
- (2) hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors;
- (3) provide to the Federal Government the non-Federal share of all other costs of construction of such project; and
- (4) in the case of a deep-draft harbor, be responsible for the non-Federal share of operation and maintenance required by subsection (b) of this section.

(f) Consideration of funding requirements and equitable apportionment

The Secretary shall ensure, to the extent practicable, that—

- (1) funding requirements for operation and maintenance dredging of commercial navigation harbors are considered before Federal funds are obligated for payment of the Federal share of costs associated with the construction of dredged material disposal facilities in accordance with subsections (a) and (b);
- (2) funds expended for such construction are apportioned equitably in accordance with regional needs; and
- (3) use of a dredged material disposal facility designed, constructed, managed, or operated by a private entity is not precluded if, consistent with economic and environmental considerations, the facility is the least-cost alternative.

(Pub. L. 99–662, title I, §101, Nov. 17, 1986, 100 Stat. 4082; Pub. L. 100–676, §13(a), Nov. 17, 1988, 102 Stat. 4025; Pub. L. 102–580, title III, §333(b)(1), Oct. 31, 1992, 106 Stat. 4852; Pub. L. 104–303, title II, §201(a)–(d), Oct. 12, 1996, 110 Stat. 3671, 3672; Pub. L. 113–121, title II, §2102(b), June 10, 2014, 128 Stat. 1278; Pub. L. 114–322, title I, §1111, Dec. 16, 2016, 130 Stat. 1636.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 99–662, Nov. 17, 1986, 100 Stat. 4082, as amended, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

AMENDMENTS

2016—Subsec. (a)(1). Pub. L. 114–322, §1111(1), substituted "June 10, 2014," for "November 17, 1986," in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 114–322, §1111(2), substituted "50 feet" for "45 feet".

Subsec. (a)(1)(C). Pub. L. 114–322, §1111(3), substituted "50 feet" for "45 feet".

2014—Subsec. (b)(1). Pub. L. 113–121 substituted "50 feet" for "45 feet".

1996—Subsec. (a)(2). Pub. L. 104–303, §201(a)(1), inserted last sentence and struck out former last sentence which read as follows: "The value of lands, easements, rights-of-way, relocations, and dredged material disposal areas provided under paragraph (3) and the costs of relocations borne by the non-Federal interests under paragraph (4) shall be credited toward the payment required under this paragraph."

Subsec. (a)(3). Pub. L. 104–303, §201(a)(2), inserted "and" after "rights-of-way," struck out ", and dredged material disposal areas" after "relocations under paragraph (4))", and inserted before period at end ", including any lands, easements, rights-of-way, and relocations (other than utility relocations accomplished under paragraph (4)) that are necessary for dredged material disposal facilities".

Subsec. (a)(5). Pub. L. 104–303, §201(a)(3), added par. (5).

Subsec. (b). Pub. L. 104–303, §201(b), designated existing provisions as par. (1), inserted heading, realigned margins, and substituted "by the Secretary pursuant to this Act or any other law approved after November 17, 1986" for "pursuant to this Act", and added par. (2).

Subsec. (e)(1). Pub. L. 104–303, §201(c), substituted "including those necessary for dredged material disposal facilities," for "and to provide dredged material disposal areas".

Subsec. (f). Pub. L. 104–303, §201(d), added subsec. (f).

1992—Subsec. (a)(3). Pub. L. 102–580 substituted "Except as provided under section 906(c), the non-Federal" for "The non-Federal".

1988—Subsec. (a)(2). Pub. L. 100–676 added par. (2) and struck out former par. (2) which read as follows: "The non-Federal interests for a project to which paragraph (1) applies shall pay an additional 10 percent of the cost of the general navigation features of the project in cash over a period not to exceed 30 years, at an interest rate determined pursuant to section 2216 of this title. The value of lands, easements, rights-of-way, relocations, and dredged material disposal areas provided under paragraph (3) shall be credited toward the payment required under this paragraph."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–676, §13(b), Nov. 17, 1988, 102 Stat. 4026, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on November 17, 1986."

DEEP DRAFT HARBOR COST SHARING

Pub. L. 106–53, title IV, §401, Aug. 17, 1999, 113 Stat. 322, provided that:

"(a) IN GENERAL.—The Secretary shall undertake a study of non-Federal cost-sharing requirements for the construction and operation and maintenance of deep draft harbor projects to determine whether—

- "(1) cost sharing adversely affects United States port development or domestic and international trade; and
- "(2) any revision of the cost-sharing requirements would benefit United States domestic and international trade.

"(b) RECOMMENDATIONS.—

"(1) IN GENERAL.—Not later than May 30, 2001, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives any recommendations that the Secretary may have in light of the study under subsection (a).

"(2) CONSIDERATIONS.—In making recommendations, the Secretary shall consider—

- "(A) the potential economic, environmental, and budgetary impacts of any proposed revision of the cost-sharing requirements; and
- "(B) the effect that any such revision would have on regional port competition."

AMENDMENT OF COOPERATION AGREEMENT

Pub. L. 104–303, [title II, §201\(f\), Oct. 12, 1996](#), 110 Stat. 3673, provided that: "If requested by the non-Federal interest, the Secretary shall amend a project cooperation agreement executed on or before the date of the enactment of this Act [Oct. 12, 1996] to reflect the application of the amendments made by this section [amending this section and section 2241 of this title] to any project for which a contract for construction has not been awarded on or before that date."

INCREASES IN NON-FEDERAL SHARE OF COSTS

Pub. L. 104–303, [title II, §201\(g\), Oct. 12, 1996](#), 110 Stat. 3673, provided that: "Nothing in this section [amending this section and section 2241 of this title and enacting provisions set out above] (including the amendments made by this section) shall increase, or result in the increase of, the non-Federal share of the costs of—

- "(1) expanding any confined dredged material disposal facility that is operated by the Secretary and that is authorized for cost recovery through the collection of tolls;
- "(2) any confined dredged material disposal facility for which the invitation for bids for construction was issued before the date of the enactment of this Act [Oct. 12, 1996]; and
- "(3) expanding any confined dredged material disposal facility constructed under section 123 of the River and Harbor Act of 1970 (33 U.S.C. 1293a) if the capacity of the confined dredged material disposal facility was exceeded in less than 6 years."

DREDGED MATERIAL DISPOSAL AREAS STUDY

Pub. L. 102–580, [title II, §216, Oct. 31, 1992](#), 106 Stat. 4832, directed Secretary to conduct a study on the need for changes in Federal law and policy with respect to dredged material disposal areas for construction and maintenance of harbors and inland harbors by Secretary and, not later than 18 months after Oct. 31, 1992, to transmit to Congress a report on the results of the study, together with recommendations of the Secretary.

§2211a. Preserving United States harbors

(a) In general

Upon a request from a non-Federal interest, the Secretary shall review a report developed by the non-Federal interest that provides an economic justification for Federal investment in the operation and maintenance of a federally authorized harbor or inland harbor (referred to in this section as a "federally authorized harbor").

(b) Justification of investment

A report submitted under subsection (a) may provide for an economic justification of Federal investment in the operation and maintenance of a federally authorized harbor based on—

- (1) the projected economic benefits, including transportation savings and job creation; and
- (2) other factors, including navigation safety, national security, and sustainability of subsistence harbors.

(c) Written response

Not later than 180 days after the date on which the Secretary receives a report under subsection (a), the Secretary shall provide to the non-Federal interest a written response to the report, including an assessment of the information provided by the non-Federal interest.

(d) Prioritization

As the Secretary determines to be appropriate, the Secretary may use the information provided in the report under subsection (a) to justify additional operation and maintenance funding for a federally authorized harbor in accordance with section 2211(b) of this title.

(e) Limitation on statutory construction

Nothing in this section may be construed to preclude the operation and maintenance of a federally authorized harbor under section 2211(b) of this title.

(Pub. L. 113–121, [title II, §2107, June 10, 2014](#), 128 Stat. 1281.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2212. Inland waterway transportation

(a) Construction

65 percent of the costs of construction—

- (1) of each project authorized by title III of this Act,
- (2) of the project authorized by section 652(j) of this title, and
- (3) allocated to inland navigation for the project authorized by section 844 of this Act,

shall be paid only from amounts appropriated from the general fund of the Treasury. 35 percent of such costs shall be paid only from amounts appropriated from the Inland Waterways Trust Fund. For purposes of this subsection, the term "construction" shall include planning, designing, engineering, surveying, the acquisition of all lands, easements, and rights-of-way necessary for the project, including lands for disposal of dredged material, and relocations necessary for the project.

(b) Operation and maintenance

The Federal share of the cost of operation and maintenance of any project for navigation on the inland waterways is 100 percent.

(c) Floodgates on the Inland Waterways

(1) Operation and maintenance carried out by the Secretary

Notwithstanding any other provision of law, the Secretary shall be responsible for the operation and maintenance, including repair, of any flood gate, as well as any pumping station constructed within the channel as a single unit with that flood gate, that—

- (A) was constructed as of June 10, 2014, as a feature of an authorized hurricane and storm damage reduction project; and
- (B) crosses an inland or intracoastal waterway described in section 1804 of this title.

(2) Non-Federal cost share

The non-Federal share of the cost of operation, maintenance, repair, rehabilitation, and replacement of any structure under this subsection shall be 35 percent.

(d) Authorizations from general fund

Any Federal responsibility—

- (1) with respect to a project authorized by title III or section 652(j) of this title, or
- (2) with respect to the portion of the project authorized by section 844 allocated to inland navigation,

which responsibility is not provided for in subsection (a) of this section shall be paid only from amounts appropriated from the general fund of the Treasury.

(Pub. L. 99–662, [title I, §102, Nov. 17, 1986](#), 100 Stat. 4084; Pub. L. 113–121, [title II, §2013, June 10, 2014](#), 128 Stat. 1271; Pub. L. 117–263, [div. H, title LXXXI, §8157\(a\), Dec. 23, 2022](#), 136 Stat. 3738.)

EDITORIAL NOTES

REFERENCES IN TEXT

Title III of this Act, referred to in subsecs. (a)(1) and (d)(1), is title III of Pub. L. 99–662, [Nov. 17, 1986](#), 100 Stat. 4109, consisting of sections 301 and 302. The projects authorized by title III probably mean the projects authorized by section 301 of Pub. L. 99–662, which is not classified to the Code. Section 302 of Pub. L. 99–662, which established the Inland Waterways Users Board, is classified to section 2251 of this title.

Section 844 of this Act, referred to in subsecs. (a)(3) and (d)(2), is section 844 of Pub. L. 99–662, [Nov. 17, 1986](#), 100 Stat. 4177, which is not classified to the Code.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–263 substituted "65 percent of the costs" for "One-half of the costs" in introductory provisions and "35 percent of such costs" for "One-half of such costs" in concluding provisions.

2014—Subsecs. (c), (d). Pub. L. 113–121 added subsec. (c) and redesignated former subsec. (c) as (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117–263, div. H, title LXXXI, §8157(b), Dec. 23, 2022, 136 Stat. 3738, provided that: "The amendments made by subsection (a) [amending this section] shall apply beginning on October 1, 2022, to any construction of a project for navigation on the inland waterways that is new or ongoing on or after that date."

INLAND WATERWAY PROJECTS

Pub. L. 116–260, div. AA, title I, §109, Dec. 27, 2020, 134 Stat. 2624, as amended by Pub. L. 117–263, div. H, title LXXXI, §8157(c), Dec. 23, 2022, 136 Stat. 3738, provided that: "Notwithstanding section 102 of the Water Resources Development Act of 1986 (33 U.S.C. 2212), for a project for navigation on the inland waterways receiving a construction appropriation during any of fiscal years 2021 through 2022, 35 percent of the costs of construction of the project shall be paid from amounts appropriated from the Inland Waterways Trust Fund until such construction of the project is complete."

ACCEPTANCE OF CONTRIBUTED FUNDS TO INCREASE LOCK OPERATIONS

Pub. L. 113–121, title I, §1017, June 10, 2014, 128 Stat. 1223, as amended by Pub. L. 115–270, title I, §1135, Oct. 23, 2018, 132 Stat. 3783, provided that:

- "(a) IN GENERAL.—The Secretary [of the Army], after providing public notice, shall establish a pilot program for the acceptance and expenditure of funds contributed by non-Federal interests to increase the hours of operation of locks at water resources development projects.
- "(b) APPLICABILITY.—The establishment of the pilot program under this section shall not affect the periodic review and adjustment of hours of operation of locks based on increases in commercial traffic carried out by the Secretary.
- "(c) PUBLIC COMMENT.—Not later than 180 days before a proposed modification to the operation of a lock at a water resources development project will be carried out, the Secretary shall—
- "(1) publish the proposed modification in the Federal Register; and
- "(2) accept public comment on the proposed modification.
- "(d) REPORTS.—
- "(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [June 10, 2014], the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report that evaluates the cost-savings resulting from reduced lock hours and any economic impacts of modifying lock operations.
- "(2) REVIEW OF PILOT PROGRAM.—Not later than September 30, 2017, and each year thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes the effectiveness of the pilot program under this section.
- "(e) ANNUAL REVIEW.—The Secretary shall carry out an annual review of the commercial use of locks and make any necessary adjustments to lock operations based on that review.
- "(f) TERMINATION.—The authority to accept funds under this section shall terminate 10 years after the date of enactment of this Act."

§2213. Flood control and other purposes

(a) Flood control

(1) General rule

The non-Federal interests for a project with costs assigned to flood control (other than a nonstructural project) shall—

- (A) pay 5 percent of the cost of the project assigned to flood control during construction of the project;
- (B) provide all lands, easements, rights-of-way, and dredged material disposal areas required only for flood control and perform all related necessary relocations; and
- (C) provide that portion of the joint costs of lands, easements, rights-of-way, dredged material disposal areas, and relocations which is assigned to flood control.

(2) 35 percent minimum contribution

If the value of the contributions required under paragraph (1) of this subsection is less than 35 percent of the cost of the project assigned to flood control, the non-Federal interest shall pay during construction of the project such additional amounts as are necessary so that the total contribution of the non-Federal interests under this subsection is equal to 35 percent of the cost of the project assigned to flood control.

(3) 50 percent maximum

The non-Federal share under paragraph (1) shall not exceed 50 percent of the cost of the project assigned to flood control. The preceding sentence does not modify the requirement of paragraph (1) (A) of this subsection.

(4) Deferred payment of amount exceeding 30 percent

If the total amount of the contribution required under paragraph (1) of this subsection exceeds 30 percent of the cost of the project assigned to flood control, the non-Federal interests may pay the amount of the excess to the Secretary over a 15-year period (or such shorter period as may be agreed to by the Secretary and the non-Federal interests) beginning on the date construction of the project or separable element is completed, at an interest rate determined pursuant to section 2216 of this title. The preceding sentence does not modify the requirement of paragraph (1)(A) of this subsection.

(b) Projects using nonstructural, natural, or nature-based features

(1) In general

The non-Federal share of the cost of a flood risk management or hurricane and storm damage risk reduction measure using a nonstructural feature, or a natural feature or nature-based feature (as those terms are defined in section 2289a(a) of this title), shall be 35 percent of the cost of such measures. The non-Federal interests for any such measures shall be required to provide all lands, easements, rights-of-way, dredged material disposal areas, and relocations necessary for the project, but shall not be required to contribute any amount in cash during construction for a nonstructural feature if the costs of land, easements, rights-of-way, dredged material disposal areas, and relocations for such feature are estimated to exceed 35 percent.

(2) Non-Federal contribution in excess of 35 percent

At any time during construction of a project, if the Secretary determines that the costs of land, easements, rights-of-way, dredged material disposal areas, and relocations for the project, in combination with other costs contributed by the non-Federal interests, will exceed 35 percent, any additional costs for the project (not to exceed 65 percent of the total costs of the project) shall be a Federal responsibility and shall be contributed during construction as part of the Federal share.

(c) Other purposes

The non-Federal share of the cost assigned to other project purposes shall be as follows:

- (1) hydroelectric power: 100 percent, except that the marketing of such power and the recovery of costs of constructing, operating, maintaining, and rehabilitating such projects shall be in accordance with existing law: *Provided*, That after November 17, 1986, the Secretary shall not submit to Congress any proposal for the authorization of any water resources project that has a hydroelectric power component unless such proposal contains the comments of the appropriate Power Marketing Administrator designated pursuant to section 7152 of title 42 concerning the appropriate Power Marketing Administration's ability to market the hydroelectric power expected to be generated and not required in the operation of the project under the applicable Federal power marketing law, so that, 100 percent of operation, maintenance and replacement costs, 100 percent of the capital investment allocated to the purpose of hydroelectric power (with interest at rates established pursuant to or prescribed by applicable law), and any other costs assigned in accordance with law for return from power revenues can be returned within the period set for the return of such costs by or pursuant to such applicable Federal power marketing law;
- (2) municipal and industrial water supply: 100 percent;
- (3) agricultural water supply: 35 percent;
- (4) recreation, including recreational navigation: 50 percent of separable costs and, in the case of any harbor or inland harbor or channel project, 50 percent of joint and separable costs allocated to recreational navigation;
- (5) hurricane and storm damage reduction: 35 percent;
- (6) aquatic plant control: 50 percent of control operations; and
- (7) environmental protection and restoration: 35 percent; except that nothing in this paragraph shall affect or limit the applicability of section 2283 of this title.

(d) Certain other costs assigned to project purposes

(1) Construction

Costs of constructing projects or measures for beach erosion control and water quality enhancement shall be assigned to appropriate project purposes listed in subsections (a), (b), and (c) and shall be shared in the same percentage as the purposes to which the costs are assigned, except that all costs assigned to benefits to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private lands shall be borne by non-Federal interests and all costs assigned to the protection of federally owned shores shall be borne by the United States.

(2) Periodic nourishment

(A) In general

In the case of a project authorized for construction after December 31, 1999, except for a project for which a District Engineer's Report is completed by that date, the non-Federal cost of the periodic nourishment of the project, or any measure for shore protection or beach erosion control for the project, that is carried out—

- (i) after January 1, 2001, shall be 40 percent;
- (ii) after January 1, 2002, shall be 45 percent; and
- (iii) after January 1, 2003, shall be 50 percent.

(B) Benefits to privately owned shores

All costs assigned to benefits of periodic nourishment projects or measures to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private land shall be borne by the non-Federal interest.

(C) Benefits to federally owned shores

All costs assigned to the protection of federally owned shores for periodic nourishment measures shall be borne by the United States.

(e) Applicability

(1) In general

This section applies to any project (including any small project which is not specifically authorized by Congress and for which the Secretary has not approved funding before November 17, 1986), or separable element thereof, on which physical construction is initiated after April 30, 1986, as determined by the Secretary, except as provided in paragraph (2). For the purpose of the preceding sentence,

physical construction shall be considered to be initiated on the date of the award of a construction contract.

(2) Exceptions

This section shall not apply to the Yazoo Basin, Mississippi, Demonstration Erosion Control Program, authorized by Public Law 98–8, or to the Harlan, Kentucky, or Barbourville, Kentucky, elements of the project authorized by section 202 of Public Law 96–367.

(f) "Separable element" defined

For purposes of this Act, the term "separable element" means a portion of a project—

- (1) which is physically separable from other portions of the project; and
- (2) which—
 - (A) achieves hydrologic effects, or
 - (B) produces physical or economic benefits,

which are separately identifiable from those produced by other portions of the project.

(g) Deferral of payment

(1) With respect to the projects listed in paragraph (2), no amount of the non-Federal share required under this section shall be required to be paid during the three-year period beginning on November 17, 1986.

(2) The projects referred to in paragraph (1) are the following:

- (A) Boeuf and Tensas Rivers, Tensas Basin, Louisiana and Arkansas, authorized by the Flood Control Act of 1946;
- (B) Eight Mile Creek, Arkansas, authorized by Public Law 99–88; and
- (C) Rocky Bayou Area, Yazoo Backwater Area, Yazoo Basin, Mississippi, authorized by the Flood Control Act approved August 18, 1941.

(h) Assigned joint and separable costs

The share of the costs specified under this section for each project purpose shall apply to the joint and separable costs of construction of each project assigned to that purpose, except as otherwise specified in this Act.

(i) Lands, easements, rights-of-way, dredged material disposal areas, and relocations

Except as provided under section 2283(c) of this title, the non-Federal interests for a project to which this section applies shall provide all lands, easements, rights-of-way, and dredged material disposal areas required for the project and perform all necessary relocations, except to the extent limited by any provision of this section. The value of any contribution under the preceding sentence shall be included in the non-Federal share of the project specified in this section.

(j) Agreement

(1) Requirement for agreement

(A) In general

Any project to which this section applies (other than a project for hydroelectric power) shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to pay 100 percent of the operation, maintenance, and replacement and rehabilitation costs of the project, to pay the non-Federal share of the costs of construction required by this section, and to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors.

(B) Inclusion

An agreement under subparagraph (A) shall include a brief description and estimation of the anticipated operations, maintenance, and replacement and rehabilitation costs of the non-Federal interest for the project.

(2) Elements of agreement

The agreement required pursuant to paragraph (1) shall be in accordance with the requirements of section 1962d–5b of title 42 and shall provide for the rights and duties of the United States and the non-Federal interest with respect to the construction, operation, and maintenance of the project, including, but not limited to, provisions specifying that, in the event the non-Federal interest fails to provide the required non-Federal share of costs for such work, the Secretary—

- (A) shall terminate or suspend work on the project unless the Secretary determines that continuation of the work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests in connection with the project; and
- (B) may terminate or adjust the rights and privileges of the non-Federal interest to project outputs under the terms of the agreement.

(k) Payment options

(1) In general

Except as otherwise provided in this section, the Secretary may permit the full non-Federal contribution to be made without interest during construction of the project or separable element, or with interest at a rate determined pursuant to section 2216 of this title over a period of not more than thirty years from the date of completion of the project or separable element. Repayment contracts shall provide for recalculation of the interest rate at five-year intervals.

(2) Renegotiation of terms

(A) In general

At the request of a non-Federal interest, the Secretary and the non-Federal interest may renegotiate the terms and conditions of an eligible deferred payment, including—

- (i) permitting the non-Federal contribution to be made without interest, pursuant to paragraph (1);
- (ii) recalculation of the interest rate;
- (iii) full or partial forgiveness of interest accrued during the period of construction; and
- (iv) a credit against construction interest for a non-Federal investment that benefits the completion or performance of the project or separable element.

(B) Eligible deferred payment

An eligible deferred payment agreement under subparagraph (A) is an agreement for which—

- (i) the non-Federal contribution was made with interest;
- (ii) the period of project construction exceeds 10 years from the execution of a project partnership agreement or appropriation of funds; and
- (iii) the construction interest exceeds \$45,000,000.

(3) Credit for non-Federal contribution

(A) In general

The Secretary is authorized to credit any costs incurred by the non-Federal interest (including in-kind contributions) to remedy a design or construction deficiency of a covered project or separable element toward the non-Federal share of the cost of the covered project, if the Secretary determines the remedy to be integral to the completion or performance of the covered project.

(B) Credit of costs

If the non-Federal interest incurs costs or in-kind contributions for a project to remedy a design or construction deficiency of a project or separable element which has a 100 percent Federal cost share, and the Secretary determines the remedy to be integral to the completion or performance of the project, the Secretary is authorized to credit such costs to any interest accrued on a deferred non-Federal contribution.

(4) Treatment of pre-payment

(A) In general

Notwithstanding a deferred payment agreement with a non-Federal interest, the Secretary shall accept, without interest of any type, the repayment of a non-Federal contribution for any eligible deferred payment described in paragraph (2)(B) for which—

- (i) the non-Federal interest makes a payment of at least \$200,000,000 for that eligible deferred payment agreement on or before September 30, 2021;
- (ii) the non-Federal interest repays an amount equal to 2/3 of the remaining principal by September 30, 2023; and
- (iii) the non-Federal interest repays the balance of remaining principal by June 1, 2032.

(B) Repayment options

Repayment of a non-Federal contribution under subparagraph (A)(iii) may be satisfied through the provision by the non-Federal interest of fish and wildlife mitigation for one or more projects or separable elements, if the Secretary determines that—

- (i) the non-Federal interest has incurred costs for the provision of mitigation that—
 - (I) equal or exceed the amount of the required repayment; and
 - (II) are in excess of any required non-Federal contribution for the project or separable element for which the mitigation is provided; and

- (ii) the mitigation is integral to the project for which it is provided.

(l) Delay of payment

(1) Initial payment

At the request of any non-Federal interest the Secretary may permit such non-Federal interest to delay the initial payment of any non-Federal contribution under this section or section 2211 of this title for up to one year after the date when construction is begun on the project for which such contribution is to be made. Any such delay in initial payment shall be subject to interest charges for up to six months at a rate determined pursuant to section 2216 of this title.

(2) Interest

(A) In general

At the request of any non-Federal interest, the Secretary may waive the accrual of interest on any non-Federal cash contribution under this section or section 2211 of this title for a project for a period of not more than 1 year if the Secretary determines that—

- (i) the waiver will contribute to the ability of the non-Federal interest to make future contributions; and

(ii) the non-Federal interest is in good standing under terms agreed to under subsection (k)(1).

(B) Limitations

The Secretary may grant not more than 1 waiver under subparagraph (A) for the same project.

(m) Ability to pay

(1) In general

Any cost-sharing agreement under this section for a feasibility study, or for construction of an environmental protection and restoration project, a flood control project, a project for navigation, storm damage protection, shoreline erosion, hurricane protection, or recreation, or an agricultural water supply project, shall be subject to the ability of the non-Federal interest to pay.

(2) Criteria and procedures

The ability of a non-Federal interest to pay shall be determined by the Secretary in accordance with criteria and procedures in effect under paragraph (3) on the day before December 11, 2000; except that such criteria and procedures shall be revised, and new criteria and procedures shall be developed, not later than December 31, 2007, to reflect the requirements of such paragraph (3).

(3) Revision of criteria and procedures

In revising criteria and procedures pursuant to paragraph (2), the Secretary—

(A) shall consider—

(i) per capita income data for the county or counties in which the project is to be located; and

(ii) the per capita non-Federal cost of construction of the project for the county or counties in which the project is to be located; and

(B) may consider additional criteria relating to the non-Federal interest's financial ability to carry out its cost-sharing responsibilities, to the extent that the application of such criteria does not eliminate areas from eligibility for a reduction in the non-Federal share as determined under subparagraph (A).

(4) Non-Federal share

Notwithstanding subsection (a), the Secretary may reduce the requirement that a non-Federal interest make a cash contribution for any project that is determined to be eligible for a reduction in the non-Federal share under criteria and procedures in effect under paragraphs (1), (2), and (3).

(n) Non-Federal contributions

(1) Prohibition on solicitation of excess contributions

The Secretary may not—

(A) solicit contributions from non-Federal interests for costs of constructing authorized water resources projects or measures in excess of the non-Federal share assigned to the appropriate project purposes listed in subsections (a), (b), and (c); or

(B) condition Federal participation in such projects or measures on the receipt of such contributions.

(2) Limitation on statutory construction

Nothing in this subsection shall be construed to affect the Secretary's authority under section 903(c).¹

(Pub. L. 99–662, title I, §103, Nov. 17, 1986, 100 Stat. 4084; Pub. L. 101–640, title III, §305(a), Nov. 28, 1990, 104 Stat. 4635; Pub. L. 102–580, title II, §201(a), title III, §333(b)(2), Oct. 31, 1992, 106 Stat. 4825, 4852; Pub. L. 104–303, title II, §202(a)(1)(A), (2), (b)(1), 210(a), Oct. 12, 1996, 110 Stat. 3673, 3681; Pub. L. 106–53, title II, §215(a), 219(c), Aug. 17, 1999, 113 Stat. 292, 295; Pub. L. 106–109, §5, Nov. 24, 1999, 113 Stat. 1495; Pub. L. 106–541, title II, §204, Dec. 11, 2000, 114 Stat. 2589; Pub. L. 110–114, title II, §2001, 2019(a), Nov. 8, 2007, 121 Stat. 1067, 1078; Pub. L. 116–260, div. AA, title I, §§115(b), 143, title III, §351, Dec. 27, 2020, 134 Stat. 2627, 2653, 2717; Pub. L. 117–263, div. H, title LXXXI, §§8385, 8386, Dec. 23, 2022, 136 Stat. 3829, 3830.)

EDITORIAL NOTES

REFERENCES IN TEXT

Public Law 98–8, referred to in subsec. (e)(2), is Pub. L. 98–8, Mar. 24, 1983, 97 Stat. 13. For complete classification of this Act to the Code, see Tables.

Section 202 of Public Law 96–367, referred to in subsec. (e)(2), is section 202 of Pub. L. 96–367, title II, Oct. 1, 1980, 94 Stat. 1339, which is not classified to the Code.

This Act, referred to in subsections (f) and (h), is Pub. L. 99–662, Nov. 17, 1986, 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

The Flood Control Act of 1946, referred to in subsec. (g)(2)(A), is act July 24, 1946, ch. 596, 60 Stat. 641. For complete classification of this Act to the Code, see Tables.

Public Law 99–88, referred to in subsec. (g)(2)(B), is Pub. L. 99–88, Aug. 15, 1985, 99 Stat. 293, known as the Supplemental Appropriations Act, 1985. Provisions of Pub. L. 99–88 authorizing the project for Eight Mile Creek, Arkansas, are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Flood Control Act approved August 18, 1941, referred to in subsec. (g)(2)(C), is act Aug. 18, 1941, ch. 377, 55 Stat. 638. For complete classification of this Act to the Code, see Tables.

Section 903(c), referred to in subsec. (n)(2), is section 903(c) of Pub. L. 99–662, title IX, Nov. 17, 1986, 100 Stat. 4184, which is not classified to the Code.

AMENDMENTS

2022—Subsec. (k)(4). Pub. L. 117–263, §8386, designated existing provisions as subpar. (A) and inserted heading, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and realigned margins, substituted "\$200,000,000" for "\$200 million" in cl. (i), inserted "an amount equal to 2/3 of" after "repays" in cl. (ii), and added cl. (iii) of subpar. (A) and subpar. (B).

Subsec. (l). Pub. L. 117–263, §8385, struck out "initial" before "payment" in subsec. heading, designated existing provisions as par. (1) and inserted par. heading, and added par. (2).

2020—Subsec. (b). Pub. L. 116–260, §115(b)(1), substituted "Projects using nonstructural, natural, or nature-based features" for "Nonstructural flood control projects" in heading.

Subsec. (b)(1). Pub. L. 116–260, §115(b)(2), substituted "a flood risk management or hurricane and storm damage risk reduction measure using a nonstructural feature, or a natural feature or nature-based feature (as those terms are defined in section 2289a(a) of this title)," for "nonstructural flood control measures" and "cash during construction for a nonstructural feature if the costs of land, easements, rights-of-way, dredged material disposal areas, and relocations for such feature are estimated to exceed 35 percent" for "cash during construction of the project".

Subsec. (j)(1). Pub. L. 116–260, §143, designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (k). Pub. L. 116–260, §351, designated existing provisions as par. (1), inserted heading, and added pars. (2) to (4).

2007—Subsec. (m)(2). Pub. L. 110–114, §2019(a), substituted "December 31, 2007" for "180 days after December 11, 2000".

Subsec. (n). Pub. L. 110–114, §2001, added subsec. (n).

2000—Subsec. (m)(1), (2). Pub. L. 106–541, §204(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which required any cost-sharing agreement to be subject to the ability of a non-Federal interest to pay and required the Secretary to determine ability to pay using certain criteria and procedures.

Subsec. (m)(3)(B), (C). Pub. L. 106–541, §204(2), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "shall not consider criteria (other than criteria described in subparagraph (A)) in effect on the day before October 12, 1996; and".

1999—Subsec. (b). Pub. L. 106–53, §219(c)(1), which directed insertion of the par. (1) designation and heading before "The non-Federal", was executed by making the insertion before that phrase the first place it appeared to reflect the probable intent of Congress.

Subsec. (b)(2). Pub. L. 106–53, §219(c)(2), added par. (2).

Subsec. (d). Pub. L. 106–53, §215(a), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (d)(2)(A). Pub. L. 106–109 substituted "except for a project for which a District Engineer's Report is completed by that date," for "or for which a feasibility study is completed after that date,".

1996—Subsecs. (a)(2), (b). Pub. L. 104–303, §202(a)(1)(A), substituted "35 percent" for "25 percent" wherever appearing.

Subsec. (c)(7). Pub. L. 104–303, §210(a), added par. (7).

Subsec. (e)(1). Pub. L. 104–303, §202(a)(2), inserted at end "For the purpose of the preceding sentence, physical construction shall be considered to be initiated on the date of the award of a construction contract."

Subsec. (m). Pub. L. 104–303, §202(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay. The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary."

1992—Subsec. (i). Pub. L. 102–580, §333(b)(2), substituted "Except as provided under section 2283(c) of this title, the non-Federal" for "The non-Federal".

Subsec. (m). Pub. L. 102–580, §201(a), amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows:

"(1) GENERAL RULE.—Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay.

"(2) PROCEDURES.—

"(A) IN GENERAL.—The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.

"(B) LIMITATIONS.—The procedures established pursuant to this subsection shall provide for a reduction in any non-Federal cash contribution required under subsection (a)(2) of this section. In addition, such procedures shall provide for determination of the eligibility of the non-Federal interest for a reduction in the required cash contribution on the basis of local, not statewide, economic and financial data.

"(C) REGULATIONS.—Not later than 1 year after November 28, 1990, the Secretary shall issue regulations establishing the procedures required by this paragraph."

1990—Subsec. (m). Pub. L. 101–640 amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: "Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay. The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–303, **title II, §202(a)(1)(B)**, Oct. 12, 1996, 110 Stat. 3673, provided that: "The amendments made by subparagraph (A) [amending this section] shall apply to any project authorized after the date of the enactment of this Act [Oct. 12, 1996] and to any flood control project that is not specifically authorized by Congress for which a Detailed Project Report is approved after such date of enactment or, in the case of a project for which no Detailed Project Report is prepared, construction is initiated after such date of enactment."

Pub. L. 104–303, **title II, §202(b)(2)**, Oct. 12, 1996, 110 Stat. 3674, provided that:
 "(A) **GENERALLY.**—Subject to subparagraph (C), the amendment made by paragraph (1) [amending this section] shall apply to any project, or separable element thereof, with respect to which the Secretary and the non-Federal interest enter into a project cooperation agreement after December 31, 1997.

"(B) **AMENDMENT OF COOPERATION AGREEMENT.**—If requested by the non-Federal interest, the Secretary shall amend a project cooperation agreement executed on or before the date of the enactment of this Act [Oct. 12, 1996] to reflect the application of the amendment made by paragraph (1) to any project for which a contract for construction has not been awarded on or before such date of enactment.

"(C) **NON-FEDERAL OPTION.**—If requested by the non-Federal interest, the Secretary shall apply the criteria and procedures established pursuant to section 103(m) of the Water Resources Development Act of 1986 [subsec. (m) of this section] as in effect on the day before the date of the enactment of this Act for projects that are authorized before the date of the enactment of this Act."

[Reference to "project cooperation agreement" deemed to be reference to "project partnership agreement", see section 2003(f)(2) of Pub. L. 110–114, set out as a note under section 1962d–5b of Title 42, The Public Health and Welfare.]

Pub. L. 104–303, **title II, §210(b)**, Oct. 12, 1996, 110 Stat. 3681, provided that: "The amendments made by subsection (a) [amending this section] apply only to projects authorized after the date of the enactment of this Act [Oct. 12, 1996]."

CONTINUATION OF EXISTING REGULATIONS

Pub. L. 101–640, **title III, §305(b)**, Nov. 28, 1990, 104 Stat. 4635, provided that: "Regulations issued to carry out section 103(m) of the Water Resources Development Act of 1986 [33 U.S.C. 2213(m)] before the date of the enactment of this Act [Nov. 28, 1990] and in effect on such date shall continue in effect until regulations are issued pursuant to paragraph (2)(C) of such section, as added by subsection (a) of this section."

REPORTS TO CONGRESS

Pub. L. 100–71, **title I, July 11, 1987**, 101 Stat. 401, provided that: "The Secretary of the Army shall file a report with the appropriate committees of the House of Representatives and the Senate within ninety days after a written request is made pursuant to the provisions of subsection (m) of section 103 of Public Law 99–662 [33 U.S.C. 2213(m)] indicating the action taken on the request. In addition, the Secretary of the Army shall file a report with the appropriate committees of the House of Representatives and the Senate within ninety days after enactment of this Act [July 11, 1987] listing any project or study falling under the provisions of subsection (e)(1) of section 103 of Public Law 99–662."

¹ See *References in Text note below*.

§2213a. Treatment of certain benefits and costs

(a) In general

In the case of a flood risk management or coastal storm risk management project in a region of moderate or high seismic hazard, for the purpose of a benefit-cost analysis for the project, the Secretary shall not include in that analysis any additional design and construction costs resulting from addressing seismic concerns.

(b) Savings provision

Except with respect to the benefit-cost analysis, the additional costs referred to in subsection (a) shall be—

- (1) included in the total project cost; and
- (2) subject to cost-share requirements otherwise applicable to the project.

(Pub. L. 116–260, **div. AA, title I, §152**, Dec. 27, 2020, 134 Stat. 2658; Pub. L. 117–263, **div. H, title LXXXI, §8380**, Dec. 23, 2022, 136 Stat. 3828.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–263 substituted "a flood risk management or coastal storm risk management project in a region" for "flood risk management project that incidentally generates seismic safety benefits in regions".

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

§2214. General credit for flood control

(a) Guidelines

Within one year after November 17, 1986, the Secretary shall issue guidelines to carry out this section, consistent with the principles and guidelines on project formulation. The guidelines shall include criteria for determining whether work carried out by non-Federal interests is compatible with a project for flood control and procedures for making such determinations. The guidelines under this section shall be promulgated after notice in the Federal Register and opportunity for comment.

(b) Analysis of costs and benefits

The guidelines established under subsection (a) shall provide for the Secretary to consider, in analyzing the costs and benefits of a proposed project for flood control, the costs and benefits produced by any flood control work carried out by non-Federal interests that the Secretary determines to be compatible with the project. For purposes of the preceding sentence the Secretary may consider only work carried out after the date which is 5 years before the first obligation of funds for the reconnaissance study for such project. In no case may work which was carried out more than 5 years before November 17, 1986, be considered under this subsection, unless otherwise provided in this Act.

(c) Crediting of non-Federal share

The guidelines established under subsection (a) shall provide for crediting the cost of work carried out by the non-Federal interests against the non-Federal share of the cost of an authorized project for flood control as follows:

- (1) Work which is carried out after the end of the reconnaissance study and before the submission to Congress of the final report of the Chief of Engineers on the project and which is determined by the Secretary to be compatible with the project shall be included as part of the project and shall be recommended by the Secretary in the final report for credit against the non-Federal share of the cost of the project.
- (2) Work which is carried out after submission of the final report of the Chief of Engineers to Congress and which is determined by the Secretary to be compatible with the project shall be considered as part of the project and shall be credited by the Secretary against the non-Federal share of the cost of the project in accordance with the guidelines promulgated pursuant to subsection (a).

In no event may work which was carried out more than 5 years before November 17, 1986, be considered under this subsection, unless otherwise provided in this Act.

(d) Procedure for work done before November 17, 1986

The Secretary shall consider, under subsections (b) and (c), work carried out before November 17, 1986, by non-Federal interests on a project for flood control, if the non-Federal interests apply to the Secretary for consideration of such work not later than March 31, 1987. The Secretary shall make determinations under subsections (b) and (c) with respect to such work not later than 6 months after guidelines are issued under subsection (a).

(e) Procedure for work done after November 17, 1986

The Secretary shall consider work carried out after November 17, 1986, by non-Federal interests on a project for flood control under subsections (b) and (c) in accordance with the guidelines issued under subsection (a). The guidelines shall require prior approval by the Secretary of any flood control work carried out after November 17, 1986, in order to be considered under this section, taking into account the economic and environmental feasibility of the project.

(f) Limitation not applicable

Any flood control work included as part of the non-Federal share of the cost of a project under this section shall not be subject to the limitation contained in the last sentence of section 1962d–5a(a) of title 42.

(g) Cash contribution not affected

Nothing in this section affects the requirement of section 2213(a)(1)(A) of this title.

(Pub. L. 99–662, **title I, §104**, Nov. 17, 1986, 100 Stat. 4087.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsecs. (b) and (c), is Pub. L. 99–662, [Nov. 17, 1986](#), 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

§2215. Feasibility studies; planning, engineering, and design

(a) Feasibility studies

(1) Cost sharing

(A) In general

The Secretary shall not initiate any feasibility study for a water resources project after November 17, 1986, until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost of the study.

(B) Payment of cost share during period of study

During the period of the study, the non-Federal share of the cost of the study payable under subparagraph (A) shall be 50 percent of the sum of—

- (i) the cost estimate for the study as contained in the feasibility cost-sharing agreement; and
- (ii) any excess of the cost of the study over the cost estimate if the excess results from—
 - (I) a change in Federal law; or
 - (II) a change in the scope of the study requested by the non-Federal interests.

(C) Payment of cost share on authorization of project or termination of study

(i) Project timely authorized

Except as otherwise agreed to by the Secretary and the non-Federal interests and subject to clause (ii), the non-Federal share of any excess of the cost of the study over the cost estimate (excluding any excess cost described in subparagraph (B)(ii)) shall be payable on the date on which the Secretary and the non-Federal interests enter into an agreement pursuant to section 2211(e) or 2213(j) of this title with respect to the project.

(ii) Project not timely authorized

If the project that is the subject of the study is not authorized by the date that is 5 years after the completion of the final report of the Chief of Engineers concerning the study or the date that is 2 years after the termination of the study, the non-Federal share of any excess of the cost of the study over the cost estimate (excluding any excess cost described in subparagraph (B)(ii)) shall be payable to the United States on that date.

(D) Amendment of cost estimate

The cost estimate referred to in subparagraph (B)(i) may be amended only by agreement of the Secretary and the non-Federal interests.

(E) In-kind contributions

The non-Federal share required under this paragraph may be satisfied by the provision of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report.

(2) Applicability

This subsection shall not apply to any water resources study primarily designed for the purposes of navigational improvements in the nature of dams, locks, and channels on the Nation's system of inland waterways.

(3) Detailed project reports

The requirements of this subsection that apply to a feasibility study also shall apply to a study that results in a detailed project report, except that—

- (A) the first \$100,000 of the costs of a study that results in a detailed project report shall be a Federal expense; and
- (B) paragraph (1)(C)(ii) shall not apply to such a study.

(b) Planning and engineering

The Secretary shall not initiate any planning or engineering for a water resources project until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost of the planning and engineering during the period of the planning and engineering. Costs of planning and engineering of projects for which non-Federal interests contributed 50 percent of the cost of the feasibility study shall be treated as costs of construction.

(c) Design

Costs of design of a water resources project shall be shared in the same percentage as the purposes of such project.

(d) Definitions

In this section, the following definitions apply:

(1) Detailed project report

The term "detailed project report" means a report for a project not specifically authorized by Congress in law or otherwise that determines the feasibility of the project with a level of detail appropriate to the scope and complexity of the recommended solution and sufficient to proceed directly to the preparation of contract plans and specifications. The term includes any associated environmental impact statement and mitigation plan. For a project for which the Federal cost does not exceed \$1,000,000, the term includes a planning and design analysis document.

(2) Feasibility study

The term "feasibility study" means a study that results in a feasibility report under section 2282 of this title, and any associated environmental impact statement and mitigation plan, prepared by the Corps of Engineers for a water resources project. The term includes a study that results in a project implementation report prepared under title VI of the Water Resources Development Act of 2000 (114 Stat. 2680–2694), a general reevaluation report, and a limited reevaluation report.

(Pub. L. 99–662, title I, §105, Nov. 17, 1986, 100 Stat. 4088; Pub. L. 101–640, title III, §301, Nov. 28, 1990, 104 Stat. 4633; Pub. L. 104–303, title II, §203(a), Oct. 12, 1996, 110 Stat. 3677; Pub. L. 106–541, title II, §225, Dec. 11, 2000, 114 Stat. 2598; Pub. L. 110–114, title II, §2043(a), Nov. 8, 2007, 121 Stat. 1101.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Water Resources Development Act of 2000, referred to in subsec. (d)(2), is Pub. L. 106–541, [Dec. 11, 2000](#), 114 Stat. 2572. Title VI of the Act is not classified to the Code. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 2201 of this title and Tables.

AMENDMENTS

2007—Subsec. (a)(3). Pub. L. 110–114, §2043(a)(1), added par. (3).

Subsec. (b). Pub. L. 110–114, §2043(a)(2), struck out "authorized by this Act" before "for a water resources project".

Subsec. (d). Pub. L. 110–114, §2043(a)(3), added subsec. (d).

2000—Subsec. (a)(1)(E). Pub. L. 106–541 substituted "The" for "Not more than ½ of the".

1996—Subsec. (a)(1). Pub. L. 104–303, §203(a)(1), inserted heading and amended text of par. (1) generally. Prior to amendment text read as follows: "The Secretary shall not initiate any feasibility study for a water resources project after November 17, 1986, until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost for such study during the period of such study. Not more than one-half of such non-Federal contribution may be made by the provision of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report."

Subsec. (a)(2). Pub. L. 104–303, §203(a)(2), inserted heading.

1990—Subsec. (b). Pub. L. 101–640 inserted at end "Costs of planning and engineering of projects for which non-Federal interests contributed 50 percent of the cost of the feasibility study shall be treated as costs of construction."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–303, title II, §203(b), Oct. 12, 1996, 110 Stat. 3678, provided that: "The amendments made by subsection (a) [amending this section] shall apply notwithstanding any feasibility cost-sharing agreement entered into by the Secretary and the non-Federal interests. On request of the non-Federal interest, the Secretary shall amend any feasibility cost-sharing agreements in effect on the date of the enactment of this Act [Oct. 12, 1996] so as to conform the agreements with the amendments."

NO REQUIREMENT OF REIMBURSEMENT

Pub. L. 104–303, title II, §203(c), Oct. 12, 1996, 110 Stat. 3678, provided that: "Nothing in this section [amending this section and enacting provisions set out above] or any amendment made by this section requires the Secretary to reimburse the non-Federal interests for funds previously contributed for a study."

§2216. Rate of interest

Whenever a non-Federal interest is required or elects to repay an amount under this Act over a period of time, the amount to be repaid shall include interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which costs for the construction of the project are first incurred (or in the case of recalculation the fiscal year in which the recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs; except that such rates for hydroelectric power shall be in accordance with existing law.

(Pub. L. 99–662, title I, §106, Nov. 17, 1986, 100 Stat. 4089.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99–662, [Nov. 17, 1986](#), 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

§2217. Limitation on applicability of certain provisions in reports

If any provision in any report designated by this Act recommends that a State contribute in cash 5 percent of the construction costs allocated to non-vendible project purposes and 10 percent of the construction costs allocated to vendible project purposes, such provision shall not apply to the project recommended in such report.

(Pub. L. 99–662, [title I](#), [§107](#), [Nov. 17, 1986](#), 100 Stat. 4089.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99–662, [Nov. 17, 1986](#), 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

§2218. General applicability of cost sharing

Unless otherwise specified, the cost sharing provisions of this subchapter shall apply to all projects in this Act. The Federal share of any cost of a project authorized by this Act for which cost a Federal share is not established in this subchapter, shall be the share of such cost otherwise provided by law.

(Pub. L. 99–662, [title I](#), [§108](#), [Nov. 17, 1986](#), 100 Stat. 4089.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99–662, [Nov. 17, 1986](#), 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

§2219. Definitions

For purposes of this subchapter, terms shall have the meanings given by section 2241 of this title.

(Pub. L. 99–662, [title I](#), [§109](#), [Nov. 17, 1986](#), 100 Stat. 4089.)

§2220. Rivers and harbors and other waterways projects for benefit of navigation, flood control, hurricane protection, beach erosion control, and other purposes**(a) Congressional declaration of policy; purchase of indebtedness and loans to local interests to meet contribution requirements**

In the prosecution of projects for rivers and harbors and other waterways for the benefit of navigation, the control of destructive flood waters, hurricane protection, beach erosion control, and for other purposes, authorized to be prosecuted under the direction of the Secretary of the Army under the supervision of the Chief of Engineers in accordance with plans adopted and authorized by the Congress, it is hereby declared to be the policy of the Congress, that whenever such projects are located wholly or partially within an area which is eligible for financial assistance under the Public Works and Economic Development Act of 1965 [42 U.S.C. 3121 et seq.], the Secretary of Commerce is authorized to purchase evidences of indebtedness and to make loans for a period not exceeding fifty years to enable responsible local interests to meet the requirements of local cooperation pertaining to contributions toward the cost of construction of such projects within such areas.

(b) Authorization of appropriations

There is hereby authorized to be appropriated to carry out this section, not to exceed \$10,000,000 per fiscal year for the fiscal year ending June 30, 1966, and for each fiscal year thereafter through and including the fiscal year ending June 30, 1970.

(Pub. L. 89–298, [title II](#), [§217](#), [Oct. 27, 1965](#), 79 Stat. 1088.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Public Works and Economic Development Act of 1965, referred to in subsec. (a), is Pub. L. 89–136, [Aug. 26, 1965](#), 79 Stat. 552, which is classified generally to chapter 38 (§3121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of Title 42 and Tables.

CODIFICATION

Section was formerly classified to section 3142a of Title 42, The Public Health and Welfare.

Section was not enacted as part of the Water Resources Development Act of 1986 which comprises this chapter.

§2221. Cost limitations on projects

Beginning in fiscal year 2006 and thereafter, agreements proposed for execution by the Assistant Secretary of the Army for Civil Works or the United States Army Corps of Engineers after November 19, 2005, pursuant to section 560 of this title; section 561 ¹ of this title; the Civil Functions Appropriations Act, 1936, Public Law 75–208 ¹; section 1962d–5a of title 42; sections 2214, 2231, and 2232 of this title; section 426i–1 ¹ of this title; section 701b–13 ¹ of this title; and any other specific project authority, shall be limited to total credits and reimbursements for all applicable projects not to exceed \$100,000,000 in each fiscal year.

(Pub. L. 109–103, [title I](#), [§102](#), [Nov. 19, 2005](#), 119 Stat. 2253.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 561 of this title, referred to in text, was repealed by Pub. L. 115–270, [title I](#), [§1166\(c\)](#), [Oct. 23, 2018](#), 132 Stat. 3798.

The Civil Functions Appropriations Act, 1936, Public Law 75–208, referred to in text, may mean the War Department Civil Appropriation Act, 1938, act [July 19, 1937](#), [ch. 511](#), 50 Stat. 515, 518, which amended act June 22, 1936, [ch. 688](#), [§5](#), by adding the proviso classified to section 701h of this title.

Sections 426i–1 and 701b–13 of this title, referred to in text, were repealed by Pub. L. 113–121, [title I](#), [§1014\(c\)\(2\)](#), (3), [June 10, 2014](#), 128 Stat. 1222.

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 2006, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 108–447, [div. C](#), [title I](#), [§101](#), [Dec. 8, 2004](#), 118 Stat. 2941; Pub. L. 109–13, [div. A](#), [title VI](#), [§6005](#), [May 11, 2005](#), 119 Stat. 282.

Pub. L. 108–137, [title I](#), [§101](#), [Dec. 1, 2003](#), 117 Stat. 1833.

Pub. L. 108–7, [div. D](#), [title I](#), [§101](#), [Feb. 20, 2003](#), 117 Stat. 138.

Pub. L. 107–66, [title I](#), [§103](#), [Nov. 12, 2001](#), 115 Stat. 493.

Pub. L. 106–377, [§1\(a\)\(2\)](#) [[title I](#), [§102](#)], [Oct. 27, 2000](#), 114 Stat. 1441, [1441A–65](#).

Pub. L. 106–60, [title I](#), [§102](#), [Sept. 29, 1999](#), 113 Stat. 487.

¹ See *References in Text* note below.

§2222. Use of other Federal funds

The non-Federal interest for a water resources development study or project, including a study or project under a continuing authority program (as defined in section 2282d(c)(1)(D) of this title) and a study or project under an environmental infrastructure assistance program, may use, and the Secretary shall accept, funds provided by a Federal agency under any other Federal program, to satisfy, in whole or in part, the non-Federal share of the cost of the study or project if—

- (1) the statutory authority for the funds provided by the Federal agency does not expressly prohibit use of the funds for a study or project of the Corps of Engineers; and
 - (2) the Federal agency that provides the funds determines that the study or project activities for which the funds will be used are otherwise eligible for funding under such statutory authority.
- (Pub. L. 110–114, [title II, §2007, Nov. 8, 2007](#), 121 Stat. 1073; Pub. L. 117–263, [div. H, title LXXXI, §8149, Dec. 23, 2022](#), 136 Stat. 3731.)

EDITORIAL NOTES**AMENDMENTS**

2022—Pub. L. 117–263 substituted "water resources development study or project, including a study or project under a continuing authority program (as defined in section 2282d(c)(1)(D) of this title) and a study or project under an environmental infrastructure assistance program," for "water resources study or project" and substituted "if—" and pars. (1) and (2) for "if the Federal agency that provides the funds determines that the funds are authorized to be used to carry out the study or project."

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2223. Transfer of excess credit**(a) Application of credit****(1) In general**

Subject to subsection (b), the Secretary may apply credit for in-kind contributions provided by a non-Federal interest that are in excess of the required non-Federal cost share for a water resources development study or project toward the required non-Federal cost share for a different water resources development study or project.

(2) Application prior to completion of project

On request of a non-Federal interest, the credit described in paragraph (1) may be applied prior to completion of a study or project, if the credit amount is verified by the Secretary.

(3) Studies and projects with multiple non-Federal interests

A credit described in paragraph (1) for a study or project with multiple non-Federal interests may be applied to the required non-Federal cost share for a study or project of any such non-Federal interest, if each such non-Federal interest agrees in writing to such application.

(b) Restrictions**(1) In general**

Except for subsection (a)(4)(D)(i) of that section, the requirements of section 1962d–5b of title 42 (as amended by section 1018(a)) shall apply to any credit under this section.

(2) Conditions

Credit in excess of the non-Federal share for a study or project may be approved under this section only if—

- (A) the non-Federal interest submits a comprehensive plan to the Secretary that identifies—
 - (i) the studies and projects for which the non-Federal interest intends to provide in-kind contributions for credit that are in excess of the non-Federal cost share for the study or project; and
 - (ii) the authorized studies and projects to which that excess credit would be applied;
- (B) the Secretary approves the comprehensive plan; and
- (C) the total amount of credit does not exceed the total non-Federal share for the studies and projects in the approved comprehensive plan.

(3) Conditional approval of excess credit

Notwithstanding paragraph (2)(A)(ii), the Secretary may approve credit in excess of the non-Federal share for a study or project prior to the identification of each authorized study or project to which the excess credit will be applied, subject to the condition that the non-Federal interest agrees to submit for approval by the Secretary an amendment to the comprehensive plan prepared under paragraph (2) that identifies each authorized study or project in advance of execution of the feasibility cost-sharing agreement or project partnership agreement for that authorized study or project.

(c) Additional criteria

In evaluating a request to apply credit in excess of the non-Federal share for a study or project toward a different study or project, the Secretary shall consider whether applying that credit will—

- (1) help to expedite the completion of a project or group of projects;
- (2) reduce costs to the Federal Government; and
- (3) aid the completion of a project that provides significant flood risk reduction or environmental benefits.

(d) Termination of authority

The authority provided in this section shall terminate on December 31, 2028.

(e) Report**(1) Deadlines****(A) In general**

Not later than 2 years after June 10, 2014, and once every 2 years thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available an interim report on the use of the authority under this section.

(B) Final report

Not later than December 31, 2028, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a final report on the use of the authority under this section.

(2) Inclusions

The reports described in paragraph (1) shall include—

- (A) a description of the use of the authority under this section during the reporting period;
- (B) an assessment of the impact of the authority under this section on the time required to complete projects; and
- (C) an assessment of the impact of the authority under this section on other water resources projects.

(Pub. L. 113–121, [title I, §1020, June 10, 2014](#), 128 Stat. 1227; Pub. L. 114–322, [title I, §1166, Dec. 16, 2016](#), 130 Stat. 1670; Pub. L. 117–263, [div. H, title LXXXI, §8383, Dec. 23, 2022](#), 136 Stat. 3829.)

EDITORIAL NOTES**REFERENCES IN TEXT**

Section 1018(a), referred to in subsec. (b)(1), means section 1018(a) of Pub. L. 113–121.

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—Subsec. (a)(3). Pub. L. 117–263, §8383(1), added par. (3).

Subsec. (b)(3). Pub. L. 117–263, §8383(2), added par. (3).

Subsec. (d). Pub. L. 117–263, §8383(3), substituted "on December 31, 2028" for "10 years after June 10, 2014".

Subsec. (e)(1)(B). Pub. L. 117–263, §8383(4), substituted "December 31, 2028" for "10 years after June 10, 2014".

2016—Subsec. (a). Pub. L. 114–322 substituted "Application of credit" for "In general" in subsec. heading, designated existing provisions as par. (1) and inserted par. (1) heading, and added par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2224. Crediting authority for federally authorized navigation projects

A non-Federal interest may carry out operation and maintenance activities for an authorized navigation project, subject to the condition that the non-Federal interest complies with all Federal laws and regulations applicable to such operation and maintenance activities, and may receive credit for the costs incurred by the non-Federal interest in carrying out such activities towards the share of construction costs of that non-Federal interest for another element of the same project or another authorized navigation project, except that in no instance may such credit exceed 20 percent of the total costs associated with construction of the general navigation features of the project for which such credit may be applied pursuant to this section.

(Pub. L. 113–121, [title I](#), [§1021](#), [June 10, 2014](#), 128 Stat. 1228.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

§2225. Credit or reimbursement**(a) Requests for credits**

With respect to an authorized flood damage reduction project, or separable element thereof, that has been constructed by a non-Federal interest under section 701b–13 ¹ of this title, or an authorized coastal navigation project that has been constructed by the Corps of Engineers pursuant to section 561 of this title before October 23, 2018, the Secretary may provide to the non-Federal interest, at the request of the non-Federal interest, a credit in an amount equal to the estimated Federal share of the cost of the project or separable element, in lieu of providing to the non-Federal interest a reimbursement in that amount or reimbursement of funds of an equivalent amount, subject to the availability of appropriations.

(b) Application of credits

At the request of the non-Federal interest, the Secretary may apply all or a portion of such credit to the share of the cost of the non-Federal interest of carrying out other flood damage reduction and coastal navigation projects or studies.

(c) Application of reimbursement

At the request of the non-Federal interest, the Secretary may apply such funds, subject to the availability of appropriations, equal to the share of the cost of the non-Federal interest of carrying out other flood damage reduction and coastal navigation projects or studies.

(Pub. L. 113–121, [title I](#), [§1022](#), [June 10, 2014](#), 128 Stat. 1228; Pub. L. 114–322, [title I](#), [§1171](#), [Dec. 16, 2016](#), 130 Stat. 1671; Pub. L. 115–270, [title I](#), [§1136\(a\)](#), [Oct. 23, 2018](#), 132 Stat. 3783.)

EDITORIAL NOTES**REFERENCES IN TEXT**

Section 701b–13 of this title, referred to in subsec. (a), was repealed by Pub. L. 113–121, [title I](#), [§1014\(c\)\(3\)](#), [June 10, 2014](#), 128 Stat. 1222.

AMENDMENTS

2018—Pub. L. 115–270 amended section generally. Prior to amendment, section related to credit in lieu of reimbursement.

2016—Subsec. (a). Pub. L. 114–322, [§1171\(1\)](#), substituted "for which a written agreement with the Corps of Engineers for construction was finalized on or before December 31, 2014, under section 701b–13 of this title (as it existed before the repeal made by section 1014(c)(3))" for "that has been constructed by a non-Federal interest under section 701b–13 of this title before June 10, 2014".

Subsec. (b). Pub. L. 114–322, [§1171\(2\)](#), substituted "non-Federal share of the cost of carrying out other water resources development projects or studies of the non-Federal interest" for "share of the cost of the non-Federal interest of carrying out other flood damage reduction projects or studies".

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

¹ See *References in Text* note below.

§2226. Water resources projects on Federal land**(a) In general**

Subject to subsection (b), the Secretary may carry out an authorized water resources development project on Federal land that is under the administrative jurisdiction of another Federal agency where the cost of the acquisition of such Federal land has been paid for by the non-Federal interest for the project.

(b) MOU required

The Secretary may carry out a project pursuant to subsection (a) only after the non-Federal interest has entered into a memorandum of understanding with the Federal agency that includes such terms and conditions as the Secretary determines to be necessary.

(c) Applicability

Nothing in this section alters any non-Federal cost-sharing requirements for the project.

(Pub. L. 113–121, [title I](#), [§1025](#), [June 10, 2014](#), 128 Stat. 1229.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2227. Clarification of impacts to other Federal facilities

In any case where the modification or construction of a water resources development project carried out by the Secretary adversely impacts other Federal facilities, the Secretary may accept from other Federal agencies such funds as may be necessary to address the adverse impact, including by removing, relocating, or reconstructing those facilities.

(Pub. L. 113–121, [title I](#), [§1026](#), [June 10, 2014](#), 128 Stat. 1229.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

SUBCHAPTER II—HARBOR DEVELOPMENT

§2231. Study of water resources development projects by non-Federal interests

(a) Submission to Secretary

(1) In general

A non-Federal interest may undertake a federally authorized feasibility study of a proposed water resources development project, or, upon the written approval of the Secretary that the modifications are consistent with the authorized purposes of the project, undertake a feasibility study on modifications to a water resources development project constructed by the Corps of Engineers, and submit the study to the Secretary.

(2) Guidelines

To assist non-Federal interests, the Secretary, as soon as practicable, shall issue guidelines for the formulation of feasibility studies of water resources development projects undertaken by non-Federal interests to—

- (A) ensure that any feasibility study with respect to which the Secretary submits an assessment to Congress under subsection (c) complies with all of the requirements that would apply to a feasibility study undertaken by the Secretary; and
- (B) provide sufficient information for the formulation of the studies, including processes and procedures related to reviews and assistance under subsection (e).

(b) Review by Secretary

(1) In general

The Secretary shall review each feasibility study received under subsection (a)(1) for the purpose of determining whether or not the study, and the process under which the study was developed, each comply with Federal laws and regulations applicable to feasibility studies of water resources development projects.

(2) Timing

The Secretary may not submit to Congress an assessment of a feasibility study under this section until such time as the Secretary—

- (A) determines that the feasibility study complies with all of the requirements that would apply to a feasibility study undertaken by the Secretary; and
- (B) completes all of the Federal analyses, reviews, and compliance processes under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), that would be required with respect to the proposed project if the Secretary had undertaken the feasibility study.

(3) Initiation of review

(A) Request

(i) Submission

The non-Federal interest may submit to the Secretary a request that the Secretary initiate the analyses, reviews, and compliance processes described in paragraph (2)(B) with respect to the proposed project prior to the non-Federal interest's submission of a feasibility study under subsection (a)(1).

(ii) Effect

Receipt by the Secretary of a request submitted under clause (i) shall be considered the receipt of a proposal or application that will lead to a major Federal action that is subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) that would be required if the Secretary were to undertake the feasibility study.

(B) Deadline

Not later than 10 days after the Secretary receives a request under this paragraph, the Secretary shall begin the required analyses, reviews, and compliance processes.

(4) Notification

Upon receipt of a request under paragraph (3), the Secretary shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate of the request and a timeline for completion of the required analyses, reviews, and compliance processes.

(5) Status updates

Not later than 30 days after receiving a request under paragraph (3), and every 30 days thereafter until the Secretary submits an assessment under subsection (c) for the applicable feasibility study, the Secretary shall notify the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Environment and Public Works of the Senate, and the non-Federal interest of the status of the Secretary's required analyses, reviews, and compliance processes.

(c) Submission to Congress

(1) Review and submission of studies to Congress

Not later than 180 days after the completion of review of a feasibility study under subsection (b), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an assessment that describes—

- (A) the results of the Secretary's review of the study under subsection (b), including a determination of whether the project is feasible;
- (B) any recommendations the Secretary may have concerning the plan or design of the project; and
- (C) any conditions the Secretary may require for construction of the project.

(2) Limitation

The completion of the review by the Secretary of a feasibility study that has been submitted under subsection (a)(1) may not be delayed as a result of consideration being given to changes in policy or priority with respect to project consideration.

(d) Credit

If a project for which a feasibility study has been submitted under subsection (a)(1) is authorized by a Federal law enacted after the date of the submission to Congress under subsection (c), the Secretary shall credit toward the non-Federal share of the cost of construction of the project an amount equal to the portion of the cost of developing the study that would have been the responsibility of the United States if the study had been developed by the Secretary.

(e) Review and technical assistance

(1) Review

The Secretary may accept and expend funds provided by non-Federal interests to undertake reviews, inspections, certifications, and other activities that are the responsibility of the Secretary in carrying out this section.

(2) Technical assistance

At the request of a non-Federal interest, the Secretary shall provide to the non-Federal interest technical assistance relating to any aspect of a feasibility study if the non-Federal interest contracts with the Secretary to pay all costs of providing such technical assistance.

(3) Limitation

Funds provided by non-Federal interests under this subsection shall not be eligible for credit under subsection (d) or reimbursement.

(4) Impartial decisionmaking

In carrying out this section, the Secretary shall ensure that the use of funds accepted from a non-Federal interest will not affect the impartial decisionmaking of the Secretary, either substantively or procedurally.

(5) Savings provision

The provision of technical assistance by the Secretary under paragraph (2)—

- (A) shall not be considered to be an approval or endorsement of the feasibility study; and
- (B) shall not affect the responsibilities of the Secretary under subsections (b) and (c).

(Pub. L. 99–662, title II, §203, Nov. 17, 1986, 100 Stat. 4098; Pub. L. 113–121, title I, §1014(a), June 10, 2014, 128 Stat. 1219; Pub. L. 114–322, title I, §1126, Dec. 16, 2016, 130 Stat. 1648; Pub. L. 115–270, title I, §1152, Oct. 23, 2018, 132 Stat. 3788; Pub. L. 116–260, div. AA, title I, §161(a), Dec. 27, 2020, 134 Stat. 2665.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(2)(B), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2020—Subsec. (a)(1). Pub. L. 116–260, §161(a)(1)(A), inserted ", or, upon the written approval of the Secretary that the modifications are consistent with the authorized purposes of the project, undertake a feasibility study on modifications to a water resources development project constructed by the Corps of Engineers," after "water resources development project".

Subsec. (a)(2). Pub. L. 116–260, §161(a)(1)(B), substituted "for the formulation of feasibility studies of water resources development projects undertaken by non-Federal interests to —" for "for feasibility studies of water resources development projects to provide sufficient information for the formulation of the studies." and added subpars. (A) and (B).

Subsec. (b). Pub. L. 116–260, §161(a)(2), designated existing provisions as par. (1), inserted heading, and added pars. (2) to (5).

Subsec. (c)(1). Pub. L. 116–260, §161(a)(3), in introductory provisions, substituted "after the completion of review of a feasibility study under subsection (b)" for "after the date of receipt of a feasibility study of a project under subsection (a)(1)" and "an assessment" for "a report".

2018—Subsec. (a)(1). Pub. L. 115–270, §1152(1), inserted "federally authorized" before "feasibility study".

Subsec. (c). Pub. L. 115–270, §1152(2), amended subsec. (c) generally. Prior to amendment, text read as follows: "Not later than 180 days after the date of receipt of a feasibility study of a project under subsection (a)(1), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes—

"(1) the results of the Secretary's review of the study under subsection (b), including a determination of whether the project is feasible;

"(2) any recommendations the Secretary may have concerning the plan or design of the project; and

"(3) any conditions the Secretary may require for construction of the project."

Subsec. (e). Pub. L. 115–270, §1152(3), amended subsec. (e) generally. Prior to amendment, text read as follows "At the request of a non-Federal interest, the Secretary may provide to the non-Federal interest technical assistance relating to any aspect of a feasibility study if the non-Federal interest contracts with the Secretary to pay all costs of providing such technical assistance."

2016—Subsec. (e). Pub. L. 114–322 added subsec. (e).

2014—Pub. L. 113–121 amended section generally. Prior to amendment, section related to studies of projects by non-Federal interests.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

For short title of title II of Pub. L. 99–662, enacting this subchapter, as the Harbor Development and Navigation Improvement Act of 1986, see section 215 of Pub. L. 99–662, set out as a note under section 2201 of this title.

DEADLINE

Pub. L. 116–260, *div. AA, title I, §161(b)*, *Dec. 27, 2020*, 134 Stat. 2667, provided that: "Not later than 90 days after the date of enactment of this Act [Dec. 27, 2020], the Secretary [of the Army] shall issue revised guidelines under section 203 of the Water Resources Development Act of 1986 (33 U.S.C. 2231) to implement the amendments made by this section [amending this section]."

HOLD HARMLESS

Pub. L. 116–260, *div. AA, title I, §161(c)*, *Dec. 27, 2020*, 134 Stat. 2667, provided that:

"(1) **ONE-YEAR WINDOW.**—The amendments made by this section [amending this section] shall not apply to any feasibility study submitted to the Secretary [of the Army] under section 203 of the Water Resources Development Act of 1986 (33 U.S.C. 2231) during the one-year period prior to the date of enactment of this section [Dec. 27, 2020].

"(2) **2020 PROJECTS.**—The amendments made by this section shall not apply to any project authorized by section 403 of this Act [section 403 of *div. AA* of Pub. L. 116–260, 134 Stat. 2743, which is not classified to the Code]."

§2232. Construction of water resources development projects by non-Federal interests

(a) Water resources development project defined

In this section, the term "water resources development project" means a project recommendation that results from—

- (1) a feasibility report, as such term is defined in section 2282d(f) ¹ of this title;
- (2) a completed feasibility study developed under section 2231 of this title; or
- (3) a final feasibility study for water resources development and conservation and other purposes that is specifically authorized by Congress to be carried out by the Secretary.

(b) Authority

(1) In general

A non-Federal interest may carry out a federally authorized water resources development project, or separable element thereof—

- (A) in accordance with a plan approved by the Secretary for the project or separable element; and
- (B) subject to any conditions that the Secretary may require, including any conditions specified under section 2231(c)(3) of this title.

(2) Conditions

Before carrying out a water resources development project, or separable element thereof, under this section, a non-Federal interest shall—

- (A) obtain any permit or approval required in connection with the project or separable element under Federal or State law, except as provided in paragraph (3); and
- (B) ensure that a final environmental impact statement or environmental assessment, as appropriate, for the project or separable element has been filed.

(3) Permit exception

(A) In general

For a project described in subsection (a)(1) or subsection (a)(3), or a separable element thereof, with respect to which a written agreement described in subparagraph (B) has been entered into, a non-Federal interest that carries out a project under this section shall not be required to obtain any Federal permits or approvals that would not be required if the Secretary carried out the project or separable element unless significant new circumstances or information relevant to environmental concerns or compliance have arisen since development of the project recommendation.

(B) Written agreement

For purposes of this paragraph, a written agreement shall provide that the non-Federal interest shall comply with the same legal and technical requirements that would apply if the project or separable element were carried out by the Secretary, including all mitigation required to offset environmental impacts of the project or separable element as determined by the Secretary.

(C) Certifications

Notwithstanding subparagraph (A), if a non-Federal interest carrying out a project under this section would, in the absence of a written agreement entered into under this paragraph, be required to obtain a certification from a State under Federal law to carry out the project, such certification shall still be required if a written agreement is entered into with respect to the project under this paragraph.

(4) Data sharing

(A) In general

If a non-Federal interest for a water resources development project begins to carry out that water resources development project under this section, the non-Federal interest may request that the Secretary transfer to the non-Federal interest all relevant data and documentation under the control of the Secretary with respect to that water resources development project.

(B) Deadline

Except as provided in subparagraph (C), the Secretary shall transfer the data and documentation requested by a non-Federal interest under subparagraph (A) not later than the date that is 90 days after the date on which the non-Federal interest so requests such data and documentation.

(C) Limitation

Nothing in this paragraph obligates the Secretary to share any data or documentation that the Secretary considers to be proprietary information.

(c) Studies and engineering

(1) In general

When requested by an appropriate non-Federal interest, the Secretary shall undertake all necessary studies, engineering, and technical assistance on construction for any project to be undertaken under this section, and provide technical assistance in obtaining all necessary permits for the construction, if the non-Federal interest contracts with the Secretary to furnish the United States funds for the studies, engineering, or technical assistance on construction in the period during which the studies, engineering, or technical assistance on construction are being conducted.

(2) No waiver

Nothing in this section may be construed to waive any requirement of section 3142 of title 40.

(3) Limitation

Funds provided by non-Federal interests under this subsection shall not be eligible for credit or reimbursement under subsection (d).

(4) Impartial decisionmaking

In carrying out this section, the Secretary shall ensure that the use of funds accepted from a non-Federal interest will not affect the impartial decisionmaking of the Secretary, either substantively or procedurally.

(d) Credit or reimbursement

(1) General rule

Subject to paragraph (3), a project or separable element of a project carried out by a non-Federal interest under this section shall be eligible for credit or reimbursement for the Federal share of work carried out on a project or separable element of a project if—

(A) before initiation of construction of the project or separable element—

- (i) the Secretary approves the plans for construction of the project or separable element of the project by the non-Federal interest;
- (ii) the Secretary determines, before approval of the plans, that the project or separable element of the project is feasible; and
- (iii) the non-Federal interest enters into a written agreement with the Secretary under section 1962d–5b of title 42, including an agreement to pay the non-Federal share, if any, of the cost of operation and maintenance of the project; and

(B) the Secretary determines that all Federal laws and regulations applicable to the construction of a water resources development project, and any conditions identified under subsection (b)(1)(B), were complied with by the non-Federal interest during construction of the project or separable element of the project.

(2) Application of credit

The Secretary may apply credit toward—

- (A) the non-Federal share of authorized separable elements of the same project; or
- (B) subject to the requirements of this section and section 2223 of this title, at the request of the non-Federal interest, the non-Federal share of a different water resources development project.

(3) Requirements

The Secretary may only apply credit or provide reimbursement under paragraph (1) if—

- (A) Congress has authorized construction of the project or separable element of the project;
- (B) the Secretary certifies that the project has been constructed in accordance with—
 - (i) all applicable permits or approvals; and
 - (ii) this section; and

(C) in the case of reimbursement, appropriations are provided by Congress for such purpose.

(4) Monitoring

The Secretary shall regularly monitor and audit any water resources development project, or separable element of a water resources development project, constructed by a non-Federal interest under this section to ensure that—

- (A) the construction is carried out in compliance with the requirements of this section; and
- (B) the costs of the construction are reasonable.

(5) Discrete segments

(A) In general

The Secretary may authorize credit or reimbursement under this subsection for carrying out a discrete segment of a federally authorized water resources development project, or separable element thereof, before final completion of the project or separable element if—

- (i) except as provided in clause (ii), the Secretary determines that the discrete segment satisfies the requirements of paragraphs (1) through (4) in the same manner as the project or separable element; and
- (ii) notwithstanding paragraph (1)(A)(ii), the Secretary determines, before the approval of the plans under paragraph (1)(A)(i), that the discrete segment is technically feasible and environmentally acceptable.

(B) Determination

Credit or reimbursement may not be made available to a non-Federal interest pursuant to this paragraph until the Secretary determines that—

- (i) the construction of the discrete segment for which credit or reimbursement is requested is complete; and
- (ii) the construction is consistent with the authorization of the applicable water resources development project, or separable element thereof, and the plans approved under paragraph (1)(A)(i).

(C) Written agreement

(i) In general

As part of the written agreement required under paragraph (1)(A)(iii), a non-Federal interest to be eligible for credit or reimbursement under this paragraph shall—

- (I) identify any discrete segment that the non-Federal interest may carry out; and
- (II) agree to the completion of the water resources development project, or separable element thereof, with respect to which the discrete segment is a part and establish a timeframe for such completion.

(ii) Remittance

If a non-Federal interest fails to complete a water resources development project, or separable element thereof, that it agreed to complete under clause (i)(II), the non-Federal interest shall remit any reimbursements received under this paragraph for a discrete segment of such project or separable element.

(D) Discrete segment defined

In this paragraph, the term "discrete segment" means a physical portion of a water resources development project to be carried out, or separable element thereof—

- (i) described by a non-Federal interest in a written agreement required under paragraph (1)(A)(iii); and
- (ii) that the non-Federal interest can operate and maintain, independently and without creating a hazard, in advance of final completion of the water resources development project, or separable element thereof.

(e) Notification of committees

If a non-Federal interest notifies the Secretary that the non-Federal interest intends to carry out a project, or separable element thereof, under this section, the Secretary shall provide written notice to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives concerning the intent of the non-Federal interest.

(f) Operation and maintenance

(1) Assumption of maintenance

Whenever a non-Federal interest carries out improvements to a federally authorized harbor or inland harbor, the Secretary shall be responsible for operation and maintenance in accordance with section 2211(b) of this title if—

- (A) before construction of the improvements—
 - (i) the Secretary determines that the improvements are feasible and consistent with the purposes of this subchapter; and
 - (ii) the Secretary and the non-Federal interest execute a written agreement relating to operation and maintenance of the improvements;

(B) the Secretary certifies that the project or separable element of the project is constructed in accordance with applicable permits and appropriate engineering and design standards; and

(C) the Secretary does not find that the project or separable element is no longer feasible.

(2) Federal financial participation in the costs of a locally preferred plan.

In the case of improvements determined by the Secretary pursuant to paragraph (1)(A)(i) to deviate from the national economic development plan, the Secretary shall be responsible for all operation and maintenance costs of such improvements, as described in section 2211(b) of this title, including costs in excess of the costs of the national economic development plan, if the Secretary determines that the improvements satisfy the requirements of paragraph (1).

(Pub. L. 99–662, title II, §204, Nov. 17, 1986, 100 Stat. 4099; Pub. L. 101–640, title III, §303, Nov. 28, 1990, 104 Stat. 4634; Pub. L. 113–121, title I, §1014(b)(1), June 10, 2014, 128 Stat. 1220; Pub. L. 114–322, title I, §1127, Dec. 16, 2016, 130 Stat. 1648; Pub. L. 115–270, title I, §1153, Oct. 23, 2018, 132 Stat. 3789; Pub. L. 116–260, div. AA, title I, §105(a), (b), Dec. 27, 2020, 134 Stat. 2622.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2282d(f) of this title, referred to in subsec. (a)(1), was redesignated section 2282(g) of this title by Pub. L. 115–270, title I, §1332(a)(3), Oct. 23, 2018, 132 Stat. 3834.

AMENDMENTS

2020—Subsec. (c)(1). Pub. L. 116–260, §105(a), substituted "under this section" for "under subsection (b)".

Subsec. (f). Pub. L. 116–260, §105(b), amended subsec. (f) generally. Prior to amendment, subsec. (f) related to operation and maintenance.

2018—Subsec. (b)(1). Pub. L. 115–270, §1153(1)(A), inserted "federally authorized" before "water resources development project" in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 115–270, §1153(1)(B), inserted ", except as provided in paragraph (3)" after "Federal or State law".

Subsec. (b)(3), (4). Pub. L. 115–270, §1153(1)(C), added pars. (3) and (4).

Subsec. (c). Pub. L. 115–270, §1153(2), amended subsec. (c) generally. Prior to amendment, text read as follows: "When requested by an appropriate non-Federal interest, the Secretary may undertake all necessary studies and engineering for any construction to be undertaken under subsection (b), and provide technical assistance in obtaining all necessary permits for the construction, if the non-Federal interest contracts with the Secretary to furnish the United States funds for the studies, engineering, or technical assistance in the period during which the studies and engineering are being conducted."

Subsec. (d)(3)(C). Pub. L. 115–270, §1153(3)(A), added subpar. (C).

Subsec. (d)(5). Pub. L. 115–270, §1153(3)(B)(i), substituted "water resources development" for "flood damage reduction" wherever appearing.

Subsec. (d)(5)(A). Pub. L. 115–270, §1153(3)(B)(ii), substituted "for carrying out a discrete segment of a federally authorized" for "for a discrete segment of a" in introductory provisions.

Subsec. (d)(5)(D). Pub. L. 115–270, §1153(3)(B)(iii), inserted "to be carried out" after "project" in introductory provisions.

2016—Subsec. (d)(5). Pub. L. 114–322 added par. (5).

2014—Pub. L. 113–121 amended section generally. Prior to amendment, section related to construction of projects by non-Federal interests.

1990—Subsec. (c). Pub. L. 101–640, §303(a), inserted after first sentence "The Secretary is further authorized to complete and transmit to the appropriate non-Federal interest any study for improvement to harbors or inland harbors of the United States that is initiated pursuant to section 577 of this title or, upon request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest."

Subsec. (e). Pub. L. 101–640, §303(b)(1), redesignated subsec. (e), relating to operation and maintenance, as (f).

Subsec. (e)(1). Pub. L. 101–640, §303(b)(2), (3), in introductory provisions inserted "including any small navigation project approved pursuant to section 577 of this title," after "or separable element thereof," and in subpar. (A) inserted "(or, in the case of a small navigation project, after completion of a favorable project report by the Corps of Engineers)" after "authorization of the project".

Subsec. (f). Pub. L. 101–640, §303(b)(1), redesignated subsec. (e), relating to operation and maintenance, as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 101–640, §303(b)(1), redesignated subsec. (f) as (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

SAVINGS PROVISION

Pub. L. 113–121, **title I, §1014(d), June 10, 2014**, 128 Stat. 1222, provided that: "Nothing in this section [amending this section and section 2231 of this title, repealing sections 4261–1 and 701b–13 of this title, and repealing provisions set out as a note under this section] may be construed to affect an agreement in effect on the date of enactment of this Act [June 10, 2014], or an agreement that is finalized between the Corps of Engineers and a non-Federal interest on or before December 31, 2014, under any of the following sections (as such sections were in effect on the day before such date of enactment):

"(1) Section 204 of the Water Resources Development Act of 1986 (33 U.S.C. 2232).

"(2) Section 206 of the Water Resources Development Act of 1992 (33 U.S.C. 4261–1).

"(3) Section 211 of the Water Resources Development Act of 1996 (33 U.S.C. 701b–13)."

REPORT ON IMPROVEMENTS BY NON-FEDERAL INTEREST

Pub. L. 116–260, **div. AA, title I, §105(c), Dec. 27, 2020**, 134 Stat. 2623, provided that: "A non-Federal interest may submit to the Secretary [of the Army] a report on improvements to a federally authorized harbor or inland harbor to be carried out by the non-Federal interest, containing any information necessary for the Secretary determine whether the improvements satisfy the requirements of section 204(f)(1) of the Water Resources Development Act of 1986 (33 U.S.C. 2232[(f)(1)]), including—

"(1) the economic justification for the improvements;

"(2) details of the project improvement plan and design;

"(3) proposed arrangements for the work to be performed; and

"(4) documents relating to any applicable permits required for the project improvements."

PROJECT STUDIES SUBJECT TO INDEPENDENT PEER REVIEW

Pub. L. 116–260, **div. AA, title I, §105(d), Dec. 27, 2020**, 134 Stat. 2623, provided that: "The Secretary [of the Army] shall not be required to subject a project study for a project with a cost of less than \$200,000,000, which the Secretary determines satisfies the requirements of section 204(f)(1) of the Water Resources Development Act of 1986 (33 U.S.C. 2232[(f)(1)]), to independent peer review under section 2034(a)(3)(A)(i) of the Water Resources Development Act of 2007 (33 U.S.C. 2343(a)(3)(A)(i))."

PRECONSTRUCTION ENGINEERING DESIGN DEMONSTRATION PROGRAM

Pub. L. 115–270, **title I, §1176, Oct. 23, 2018**, 132 Stat. 3801, provided that:

"(a) DEFINITION OF ENVIRONMENTAL IMPACT STATEMENT.—In this section, the term 'environmental impact statement' means the detailed written statement required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

"(b) DEMONSTRATION PROGRAM.—The Secretary [of the Army] shall establish a demonstration program to allow a project authorized to execute pursuant to [former] section 211 of the Water Resources Development Act of 1996 (33 U.S.C. 701b–13) (as in effect on the day before the date of enactment of the Water Resources Reform and Development Act of 2014 (128 Stat. 1193) [June 10, 2014]) to begin preconstruction engineering and design on a determination by the Secretary that the project is technically feasible, economically justified, and environmentally acceptable.

"(c) REQUIREMENTS.—For each project authorized to begin preconstruction engineering and design under subsection (b)—

"(1) the project shall conform to the feasibility study and the environmental impact statement approved by the Secretary; and

"(2) the Secretary and the non-Federal sponsor shall jointly agree to the construction design of the project.

"(d) SECRETARY REVIEW OF POTENTIAL ADVERSE IMPACTS.—When reviewing the feasibility study and the environmental impact statement for a project under subsection (b), the Secretary shall follow current USACE Policy, Regulations, and Guidance, to assess potential adverse downstream impacts to the Pearl River Basin. Upon completion of the Secretary's determination under subsection (b), the non-Federal sponsor shall design the project in a manner that addresses any potential adverse impacts or that provides mitigation in accordance with section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283).

"(e) SUNSET.—The authority to carry out the demonstration program under this section shall terminate on the date that is 5 years after the date of enactment of this Act [Oct. 23, 2018].

"(f) SAVINGS PROVISION.—Nothing in this section supersedes, precludes, or affects any applicable requirements for a project under subsection (b) under—

"(1) section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283); or

"(2) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.)."

NAVIGATION SAFETY

Pub. L. 114–322, **title I, §1102, Dec. 16, 2016**, 130 Stat. 1633, provided that: "The Secretary [of the Army] shall use section 5 of the Act of March 4, 1915 (38 Stat. 1053, chapter 142; 33 U.S.C. 562), to carry out navigation safety activities at those projects eligible for operation and maintenance under section 204(f) of the Water Resources Development Act of 1986 (33 U.S.C. 2232(f))."

OPERATION AND MAINTENANCE OF CERTAIN PROJECTS

Pub. L. 113–121, **title I, §1016, June 10, 2014**, 128 Stat. 1223, provided that: "The Secretary [of the Army] may assume responsibility for operation and maintenance in accordance with section 101(b) of the Water Resources Development Act of 1986 (33 U.S.C. 2211(b)) (as amended by section 2102(b)) for improvements to a federally authorized harbor or inland harbor that are carried out by a non-Federal interest prior to December 31, 2014, if the Secretary determines that the requirements under paragraphs (2) and (3) of section 204(f) of the Water Resources Development Act of 1986 (33 U.S.C. 2232(f)) are met."

DEMONSTRATION OF CONSTRUCTION OF FEDERAL PROJECT BY NON-FEDERAL INTERESTS

Pub. L. 101–640, **title IV, §404, Nov. 28, 1990**, 104 Stat. 4646, which related to the demonstration of safety benefits and economic efficiencies of non-Federal management of harbor improvement projects, was repealed by Pub. L. 113–121, **title I, §1014(c)(1), June 10, 2014**, 128 Stat. 1222.

¹ See *References in Text note below*.

§2232. Coordination and scheduling of Federal, State, and local actions

(a) Notice of intent

The Secretary, on request from an appropriate non-Federal interest in the form of a written notice of intent to construct a navigation project for a harbor or inland harbor under section 2232 of this title or this section, shall initiate procedures to establish a schedule for consolidating Federal, State, and local agency environmental assessments, project reviews, and issuance of all permits for the construction of the project, including associated access channels, berthing areas, and onshore port-related facilities, before the initiation of construction. The non-Federal interest shall submit, with the notice of intent, studies and documentation, including environmental reviews, that may be required by Federal law for decisionmaking on the proposed project. A State shall not be required to participate in carrying out this section.

(b) Procedural requirements

Within 15 days after receipt of notice under subsection (a), the Secretary shall publish such notice in the Federal Register. The Secretary also shall provide written notification of the receipt of a notice under subsection (a) to all State and local agencies that may be required to issue permits for the construction of the project or related activities. The Secretary shall solicit the cooperation of those agencies and request their entry into a memorandum of agreement described in subsection (c). Within 30 days after publication of the notice in the Federal Register, State and local agencies that intend to enter into the memorandum of agreement shall notify the Secretary of their intent in writing.

(c) Scheduling agreement

Within 90 days after receipt of notice under subsection (a), the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and any State or local agencies that have notified the Secretary under subsection (b) shall enter into an agreement with the Secretary establishing a schedule of decisionmaking for approval of the project and permits associated with it and with related activities. Such schedule may not exceed two and one-half years from the date of the agreement.

(d) Contents of agreement

The agreement entered into under subsection (c), to the extent practicable, shall consolidate hearing and comment periods, procedures for data collection and report preparation, and the environmental review and permitting processes associated with the project and related activities. The agreement shall detail, to the extent possible, the non-Federal interest's responsibilities for data development and information that may be necessary to process each permit, including a schedule when the information and data will be provided to the appropriate Federal, State, or local agency.

(e) Preliminary decision

The agreement shall include a date by which the Secretary, taking into consideration the views of all affected Federal agencies, shall provide to the non-Federal interest in writing a preliminary determination whether the project and Federal permits associated with it are reasonably likely to receive approval.

(f) **Revision of agreement**

The Secretary may revise the agreement once to extend the schedule to allow the non-Federal interest the minimum amount of additional time necessary to revise its original application to meet the objections of a Federal, State, or local agency which is a party to the agreement.

(g) **Progress reports**

Six months before the final date of the schedule, the Secretary shall provide to Congress a written progress report for each navigation project for a harbor or inland harbor subject to this section. The Secretary shall transmit the report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. The report shall summarize all work completed under the agreement and shall include a detailed work program that will assure completion of all remaining work under the agreement.

(h) **Final decision**

Not later than the final day of the schedule, the Secretary shall notify the non-Federal interest of the final decision on the project and whether the permit or permits have been issued.

(i) **Report on timesavings methods**

Not later than one year after November 17, 1986, the Secretary shall prepare and transmit to Congress a report estimating the time required for the issuance of all Federal, State, and local permits for the construction of navigation projects for harbors or inland harbors and associated activities. The Secretary shall include in that report recommendations for further reducing the amount of time required for the issuance of those permits, including any proposed changes in existing law.

(Pub. L. 99–662, title II, §205, Nov. 17, 1986, 100 Stat. 4101.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§2234. Nonapplicability to Saint Lawrence Seaway

Sections 2231, 2232, and 2233 of this title do not apply to any harbor or inland harbor project for that portion of the Saint Lawrence Seaway administered by the Great Lakes St. Lawrence Seaway Development Corporation.

(Pub. L. 99–662, title II, §206, Nov. 17, 1986, 100 Stat. 4102; Pub. L. 116–260, div. AA, title V, §512(c)(5)(A), Dec. 27, 2020, 134 Stat. 2756.)

EDITORIAL NOTES

AMENDMENTS

2020—Pub. L. 116–260 substituted "Great Lakes St. Lawrence Seaway Development Corporation" for "Saint Lawrence Seaway Development Corporation".

§2235. Construction in usable increments

Any navigation project for a harbor or inland harbor authorized by this subchapter or any other provision of law enacted before, on, or after November 17, 1986, may be constructed in usable increments.

(Pub. L. 99–662, title II, §207, Nov. 17, 1986, 100 Stat. 4102.)

§2236. Port or harbor dues

(a) **Consent of Congress**

Subject to the following conditions, a non-Federal interest may levy port or harbor dues (in the form of tonnage duties or fees) on a vessel engaged in trade entering or departing from a harbor and on cargo loaded on or unloaded from that vessel under clauses 2 and 3 of section 10, and under clause 3 of section 8, of Article 1 of the Constitution:

(1) **Purposes**

Port or harbor dues may be levied only in conjunction with a harbor navigation project whose construction is complete (including a usable increment of the project) and for the following purposes and in amounts not to exceed those necessary to carry out those purposes:

- (A)(i) to finance the non-Federal share of construction and operation and maintenance costs of a navigation project for a harbor under the requirements of section 2211 of this title; or
- (ii) to finance the cost of construction and operation and maintenance of a navigation project for a harbor under section 2232 or 2233 of this title; and
- (B) provide emergency response services in the harbor, including contingency planning, necessary personnel training, and the procurement of equipment and facilities.

(2) **Limitation on port or harbor dues for emergency service**

Port or harbor dues may not be levied for the purposes described in paragraph (1)(B) of this subsection after the dues cease to be levied for the purposes described in paragraph (1)(A) of this subsection.

(3) **General limitations**

(A) Port or harbor dues may not be levied under this section in conjunction with a deepening feature of a navigation improvement project on any vessel if that vessel, based on its design draft, could have utilized the project at mean low water before construction. In the case of project features which solely—

- (i) widen channels or harbors,
- (ii) create or enlarge bend easings, turning basins or anchorage areas, or provide protected areas, or
- (iii) remove obstructions to navigation,

only vessels at least comparable in size to those used to justify these features may be charged under this section.

(B) In developing port or harbor dues that may be charged under this section on vessels for project features constructed under this subchapter, the non-Federal interest may consider such criteria as: elapsed time of passage, safety of passage, vessel economy of scale, under keel clearance, vessel draft, vessel squat, vessel speed, sinkage, and trim.

(C) Port or harbor dues authorized by this section shall not be imposed on—

- (i) vessels owned and operated by the United States Government, a foreign country, a State, or a political subdivision of a country or State, unless engaged in commercial services;
- (ii) towing vessels, vessels engaged in dredging activities, or vessels engaged in intraport movements; or
- (iii) vessels with design drafts of 20 feet or less when utilizing general cargo and deep-draft navigation projects.

(4) **Formulation of port or harbor dues**

Port or harbor dues may be levied only on a vessel entering or departing from a harbor and its cargo on a fair and equitable basis. In formulating port and harbor dues, the non-Federal interest shall consider—

- (A) the direct and indirect cost of construction, operations, and maintenance, and providing the facilities and services under paragraph (1) of this subsection;
- (B) the value of those facilities and services to the vessel and cargo;
- (C) the public policy or interest served; and
- (D) any other pertinent factors.

(5) **Notice and hearing**

(A) Before the initial levy of or subsequent modification to port or harbor dues under this section, a non-Federal interest shall transmit to the Secretary—

- (i) the text of the proposed law, regulation, or ordinance that would establish the port or harbor dues, including provisions for their administration, collection, and enforcement;
- (ii) the name, address, and telephone number of an official to whom comments on and requests for further information on the proposal are to be directed;
- (iii) the date by which comments on the proposal are due and a date for a public hearing on the proposal at which any interested party may present a statement; however, the non-Federal interest may not set a hearing date earlier than 45 days after the date of publication of the notice in the Federal Register required by subparagraph (B) of this paragraph or set a deadline for receipt of comments earlier than 60 days after the date of publication; and
- (iv) a written statement signed by an appropriate official that the non-Federal interest agrees to be governed by the provisions of this section.

(B) On receiving from a non-Federal interest the information required by subparagraph (A) of this paragraph, the Secretary shall transmit the material required by clauses (i) through (iii) of subparagraph (A) of this paragraph to the Federal Register for publication.

(C) Port or harbor dues may be imposed by a non-Federal interest only after meeting the conditions of this paragraph.

(6) **Requirements on non-Federal interest**

A non-Federal interest shall—

- (A) file a schedule of any port or harbor dues levied under this subsection with the Secretary and the Federal Maritime Commission, which the Commission shall make available for public inspection;
- (B) provide to the Comptroller General of the United States on request of the Comptroller General any records or other evidence that the Comptroller General considers to be necessary and appropriate to enable the Comptroller General to carry out the audit required under subsection (b) ¹ of this section;
- (C) designate an officer or authorized representative, including the Secretary of the Treasury acting on a cost-reimbursable basis, to receive tonnage certificates and cargo manifests from vessels which may be subject to the levy of port or harbor dues, export declarations from shippers, consignors, and terminal operators, and such other documents as the non-Federal interest may by law, regulation, or ordinance require for the imposition, computation, and collection of port or harbor dues; and
- (D) consent expressly to the exclusive exercise of Federal jurisdiction under subsection (c) ¹ of this section.

(b) **Jurisdiction**

- (1) The district court of the United States for the district in which is located a non-Federal interest that levies port or harbor dues under this section has original and exclusive jurisdiction over any matter arising out of or concerning, the imposition, computation, collection, and enforcement of port or harbor dues by a non-Federal interest under this section.
- (2) Any person who suffers legal wrong or is adversely affected or aggrieved by the imposition by a non-Federal interest of a proposed scheme or schedule of port or harbor dues under this section may, not later than 180 days after the date of hearing under subsection (a)(5)(A)(iii) of this section, commence an action to seek judicial review of that proposed scheme or schedule in the appropriate district court under paragraph (1).
- (3) On petition of the Attorney General or any other party, that district court may—
- (A) grant appropriate injunctive relief to restrain an action by that non-Federal interest violating the conditions of consent in subsection (a) of this section;
 - (B) order the refund of any port or harbor dues not lawfully collected; and
 - (C) grant other appropriate relief or remedy.

(c) Collection of duties

(1) ² Delivery of certificate and manifest

(A) Upon arrival of vessel

Upon the arrival of a vessel in a harbor in which the vessel may be subject to the levy of port or harbor dues under this section, the master of that vessel shall, within forty-eight hours after arrival and before any cargo is unloaded from that vessel, deliver to the appropriate authorized representative appointed under subsection (a)(6)(C) of this section a tonnage certificate for the vessel and a manifest of the cargo aboard that vessel or, if the vessel is in ballast, a declaration to that effect.

(B) Before departure of vessel

The shipper, consignee, or terminal operator having custody of any cargo to be loaded on board a vessel while the vessel is in a harbor in which the vessel may be subject to the levy of port or harbor dues under this section shall, within forty-eight hours before departure of that vessel, deliver to the appropriate authorized representative appointed under subsection (a)(6)(C) of this section an export declaration specifying the cargo to be loaded on board that vessel.

(d) Enforcement

At the request of an authorized representative referred to in subsection (a)(6)(C) of this section, the Secretary of the Treasury may:

- (1) withhold the clearance required by section 60105 of title 46 for a vessel if the master, owner, or operator of a vessel subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation or ordinance issued hereunder; and
- (2) assess a penalty or initiate a forfeiture of the cargo in the same manner and under the same procedures as are applicable for failure to pay customs duties under the Tariff Act of 1930 (19 U.S.C. 1202 et seq.) if the shipper, consignee, or terminal operator having title to or custody of cargo subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation, or ordinance issued hereunder.

(e) Maritime Lien

Port or harbor dues levied under this section against a vessel constitute a maritime lien against the vessel and port or harbor dues levied against cargo constitute a lien against the cargo that may be recovered in an action in the district court of the United States for the district in which the vessel or cargo is found.

(Pub. L. 99–662, [title II, §208](#), Nov. 17, 1986, 100 Stat. 4102; Pub. L. 104–66, [title I, §1021\(g\)](#), Dec. 21, 1995, 109 Stat. 713.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subsection (b) of this section, referred to in subsec. (a)(6)(B), which related to audits, was struck out by Pub. L. 104–66 and subsec. (c) was redesignated as subsec. (b). Subsection (c) of this section, referred to in subsec. (a)(6)(D), which related to jurisdiction, was redesignated as subsec. (b) by Pub. L. 104–66. The Tariff Act of 1930, referred to in subsec. (d)(2), is act [June 17, 1930, ch. 497](#), 46 Stat. 590, which is classified generally to chapter 4 (§1202 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

CODIFICATION

In subsec. (d)(1), "section 60105 of title 46" substituted for "[section 4197 of the Revised Statutes](#) of the United States (46 U.S.C. App. 91)" on authority of Pub. L. 109–304, [§18\(c\)](#), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

AMENDMENTS

1995—Subsecs. (b) to (f). Pub. L. 104–66 redesignated subsecs. (c) to (f) as (b) to (e), respectively, and struck out heading and text of former subsec. (b). Text read as follows: "The Comptroller General of the United States shall—

- "(1) carry out periodic audits of the operations of non-Federal interests that elect to levy port or harbor dues under this section to determine if the conditions of subsection (a) of this section are being complied with;
- "(2) submit to each House of the Congress a written report containing the findings resulting from each audit; and
- "(3) make any recommendations that the Comptroller General considers appropriate regarding the compliance of those non-Federal interests with the requirements of this section."

¹ See [References in Text](#) note below.

² So in original. No par. (2) has been enacted.

§2237. Information for national security

Any non-Federal interest shall provide the United States the information necessary for military readiness planning and harbor, inland harbor, and national security, including information necessary to obtain national security clearances for individuals employed in critical harbor and inland harbor positions.

(Pub. L. 99–662, [title II, §209](#), Nov. 17, 1986, 100 Stat. 4106.)

§2238. Authorization of appropriations

(a) Trust fund

There are authorized to be appropriated out of the Harbor Maintenance Trust Fund, established by section 9505 of title 26, for each fiscal year such sums as may be necessary to pay—

- (1) 100 percent of the eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Great Lakes St. Lawrence Seaway Development Corporation for such fiscal year; and
- (2) up to 100 percent of the eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States.

(b) General fund

There are authorized to be appropriated out of the general fund of the Treasury of the United States for each fiscal year such sums as may be necessary to pay the balance of all eligible operations and maintenance costs not provided by payments from the Harbor Maintenance Trust Fund under this section.

(c) Operation and maintenance of harbor projects

(1) In general

To the maximum extent practicable, the Secretary shall make expenditures to pay for operation and maintenance costs of the harbors and inland harbors referred to in subsection (a)(2), including expenditures of funds appropriated from the Harbor Maintenance Trust Fund, based on an equitable allocation of funds among all such harbors and inland harbors.

(2) Criteria

(A) In general

- In determining an equitable allocation of funds under paragraph (1), the Secretary shall—
- (i) consider the information obtained in the assessment conducted under subsection (e);
 - (ii) consider the national and regional significance of harbor operations and maintenance; and
 - (iii) as appropriate, consider national security and military readiness needs.

(B) Limitation

The Secretary shall not allocate funds under paragraph (1) based solely on the tonnage transiting through a harbor.

(3) Emerging harbor projects

(A) Allocation

Notwithstanding any other provision of this subsection, in making expenditures under paragraph (1) for each fiscal year, the Secretary shall allocate for operation and maintenance costs of emerging harbor projects an amount that is not less than 10 percent of the funds made available under this section for fiscal year 2012 to pay the costs described in subsection (a)(2).

(B) Additional uses at emerging harbors

(i) Uses

In each fiscal year, the Secretary may use not more than \$5,000,000 of funds allocated for emerging harbor projects under paragraph (1) to pay for the costs of up to 10 projects for maintenance dredging of a marina or berthing area, in an emerging harbor, that includes an area that is located adjacent to, or is accessible by, a Federal navigation project, subject to clauses (ii) and (iii) of this

subparagraph.

(ii) Eligible emerging harbors

The Secretary may use funds as authorized under clause (i) at an emerging harbor that—

- (I) supports commercial activities, including commercial fishing operations, commercial fish processing operations, recreational and sport fishing, and commercial boat yards; or
- (II) supports activities of the Secretary of the department in which the Coast Guard is operating.

(iii) Cost-sharing requirements

The Secretary shall require a non-Federal interest to contribute not less than 25 percent of the costs for maintenance dredging of that portion of a maintenance dredging project described in clause (i) that is located outside of the Federal navigation project, which may be provided as an in-kind contribution, including through the use of dredge equipment owned by non-Federal interest to carry out such activities.

(4) Management of Great Lakes Navigation System

To sustain effective and efficient operation and maintenance of the Great Lakes Navigation System, including any navigation feature in the Great Lakes that is a Federal responsibility with respect to operation and maintenance, the Secretary shall manage all of the individually authorized projects in the Great Lakes Navigation System as components of a single, comprehensive system, recognizing the interdependence of the projects.

(d) Prioritization

(1) Priority

(A) In general

For each fiscal year, if priority funds are available, the Secretary shall use at least 10 percent of such funds for emerging harbor projects.

(B) Additional considerations

For each fiscal year, of the priority funds available, the Secretary shall use—

- (i) not less than 5 percent of such funds for underserved harbor projects; and
- (ii) not less than 10 percent of such funds for projects that are located within the Great Lakes Navigation System.

(C) Underserved harbors

In determining which underserved harbor projects shall receive funds under this paragraph, the Secretary shall consider—

- (i) the total quantity of commerce supported by the water body on which the project is located; and
- (ii) the minimum width and depth that—
 - (I) would be necessary at the underserved harbor project to provide sufficient clearance for fully loaded commercial vessels using the underserved harbor project to maneuver safely; and
 - (II) does not exceed the constructed width and depth of the authorized navigation project.

(2) Expanded uses

(A) Definition of eligible harbor or inland harbor defined

In this paragraph, the term "eligible harbor or inland harbor" means a harbor or inland harbor at which the total amount of harbor maintenance taxes collected in the immediately preceding 3 fiscal years exceeds the value of the work carried out for the harbor or inland harbor using amounts from the Harbor Maintenance Trust Fund during those 3 fiscal years.

(B) Use of expanded uses funds

(i) Fiscal years 2015 through 2024

For each of fiscal years 2015 through 2024, of the priority funds available, the Secretary shall use not less than 10 percent of such funds for expanded uses carried out at an eligible harbor or inland harbor.

(ii) Subsequent fiscal years

For fiscal year 2025 and each fiscal year thereafter, the Secretary shall use not less than 10 percent of the priority funds available for expanded uses carried out at an eligible harbor or inland harbor.

(C) Prioritization

In allocating funds under this paragraph, the Secretary shall give priority to projects at eligible harbors or inland harbors for which the difference, calculated in dollars, is greatest between—

- (i) the total amount of funding made available for projects at that eligible harbor or inland harbor from the Harbor Maintenance Trust Fund in the immediately preceding 3 fiscal years; and
- (ii) the total amount of harbor maintenance taxes collected at that harbor or inland harbor in the immediately preceding 3 fiscal years.

(3) Remaining funds

(A) In general

For each of fiscal years 2015 through 2024, if after fully funding all projects eligible for funding under paragraphs (1)(B) and (2)(B)(i), priority funds made available under those paragraphs remain unobligated, the Secretary shall use those remaining funds to pay for operation and maintenance costs of any harbor or inland harbor referred to in subsection (a)(2) based on an equitable allocation of those funds among the harbors and inland harbors.

(B) Criteria

In determining an equitable allocation of funds under subparagraph (A), the Secretary shall—

- (i) use the criteria specified in subsection (c)(2)(A); and
- (ii) make amounts available in accordance with the requirements of paragraph (1)(A).

(4) Emergency expenditures

Nothing in this subsection prohibits the Secretary from making an expenditure to pay for the operation and maintenance costs of a specific harbor or inland harbor, including the transfer of funding from the operation and maintenance of a separate project, if—

(A) the Secretary determines that the action is necessary to address the navigation needs of a harbor or inland harbor where safe navigation has been severely restricted due to an unforeseen event; and

(B) the Secretary provides within 90 days of the action notice and information on the need for the action to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

(e) Assessment of harbors and inland harbors

(1) In general

Not later than 270 days after June 10, 2014, and biennially thereafter, the Secretary shall assess, and issue a report to Congress on, the operation and maintenance needs and uses of the harbors and inland harbors referred to in subsection (a)(2).

(2) Assessment of harbor needs and activities

(A) Total operation and maintenance needs of harbors

In carrying out paragraph (1), the Secretary shall identify—

- (i) the total future costs required to achieve and maintain the constructed width and depth for the harbors and inland harbors referred to in subsection (a)(2); and
- (ii) the total expected costs for uses described in subsection (c)(3)(B) and expanded uses at eligible harbors or inland harbors referred to in subsection (d)(2).

(B) Uses of harbors and inland harbors

In carrying out paragraph (1), the Secretary shall identify current uses (and, to the extent practicable, assess the national, regional, and local benefits of such uses) of harbors and inland harbors referred to in subsection (a)(2), including the use of those harbors for—

- (i) commercial navigation, including the movement of goods;
- (ii) domestic trade;
- (iii) international trade;
- (iv) commercial fishing;
- (v) subsistence, including use by Indian tribes (as defined in section 5304 of title 25) for subsistence and ceremonial purposes;
- (vi) use as a harbor of refuge;
- (vii) transportation of persons;
- (viii) purposes relating to domestic energy production, including the fabrication, servicing, or supply of domestic offshore energy production facilities;
- (ix) activities of the Secretary of the department in which the Coast Guard is operating;
- (x) activities of the Secretary of the Navy;
- (xi) public health and safety related equipment for responding to coastal and inland emergencies;
- (xii) recreation purposes; and
- (xiii) other authorized purposes.

(C) Opportunities for beneficial use of dredged materials

In carrying out paragraph (1), the Secretary shall identify potential opportunities for the beneficial use of dredged materials obtained from harbors and inland harbors referred to in subsection (a)(2), including projects eligible under section 1122 of the Water Resources Development Act of 2016 (130 Stat. 1645; 33 U.S.C. 2326 note).

(3) Report to Congress

(A) In general

For fiscal year 2016, and biennially thereafter, in conjunction with the President's annual budget submission to Congress under section 1105(a) of title 31, the Secretary shall submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives a report that, with respect to harbors and inland harbors referred to in subsection (a)(2)—

- (i) identifies the operation and maintenance costs associated with the harbors and inland harbors, including those costs required to achieve and maintain the constructed width and depth for the harbors and inland harbors and the costs for expanded uses at eligible harbors and inland harbors, on a project-by-project basis;

- (ii) identifies the amount of funding requested in the President's budget for the operation and maintenance costs associated with the harbors and inland harbors, on a project-by-project basis;
- (iii) identifies the unmet operation and maintenance needs associated with the harbors and inland harbors, on a project-by-project basis; and
- (iv) identifies the harbors and inland harbors for which the President will allocate funding over the subsequent 5 fiscal years for operation and maintenance activities, on a project-by-project basis, including the amounts to be allocated for such purposes.

(B) Additional requirement

In the first report submitted under subparagraph (A) following December 16, 2016, the Secretary shall identify, to the maximum extent practicable, transportation cost savings realized by achieving and maintaining the constructed width and depth for the harbors and inland harbors referred to in subsection (a)(2), on a project-by-project basis.

(C) Public availability

The Secretary shall make the report submitted under subparagraph (A) available to the public, including on the Internet.

(f) Definitions

In this section:

(1) Constructed width and depth

The term "constructed width and depth" means the width and depth to which a project has been constructed, which may not exceed the authorized width and depth of the project.

(2) Emerging harbor

The term "emerging harbor" means a harbor or inland harbor referred to in subsection (a)(2) that transits less than 1,000,000 tons of cargo annually.

(3) Emerging harbor project

The term "emerging harbor project" means a project that is assigned to an emerging harbor.

(4) Expanded uses

The term "expanded uses" means the following activities:

- (A) The maintenance dredging of a berth in a harbor that is accessible to a Federal navigation project and that benefits commercial navigation at the harbor.
- (B) The maintenance dredging and disposal of legacy-contaminated sediment, and sediment unsuitable for open water disposal, if—
 - (i) such dredging and disposal benefits commercial navigation at the harbor; and
 - (ii) such sediment is located in and affects the maintenance of a Federal navigation project or is located in a berth that is accessible to a Federal navigation project.
- (C) An in-water improvement, if the improvement—
 - (i) is for the seismic reinforcement of a wharf or other berthing structure, or the repair or replacement of a deteriorating wharf or other berthing structure, at a port facility;
 - (ii) benefits commercial navigation at the harbor; and
 - (iii) is located in, or adjacent to, a berth that is accessible to a Federal navigation project.

(D) An activity to maintain slope stability at a berth in a harbor that is accessible to a Federal navigation project if such activity benefits commercial navigation at the harbor.

(5) Great Lakes Navigation System

The term "Great Lakes Navigation System" includes—

- (A)(i) Lake Superior;
- (ii) Lake Huron;
- (iii) Lake Michigan;
- (iv) Lake Erie; and
- (v) Lake Ontario;
- (B) all connecting waters between the lakes referred to in subparagraph (A) used for commercial navigation;
- (C) any navigation features in the lakes referred to in subparagraph (A) or waters described in subparagraph (B) that are a Federal operation or maintenance responsibility; and
- (D) areas of the Saint Lawrence River that are operated or maintained by the Federal Government for commercial navigation.

(6) Harbor maintenance tax

The term "harbor maintenance tax" means the amounts collected under section 4461 of title 26.

(7) Moderate-use harbor project

The term "moderate-use harbor project" means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits annually—

- (A) more than 1,000,000 tons of cargo; but
- (B) less than 10,000,000 tons of cargo.

(8) Priority funds

The term "priority funds" means the difference between—

- (A) the total funds that are made available under this section to pay the costs described in subsection (a)(2) for a fiscal year; and
- (B) the total funds made available under this section to pay the costs described in subsection (a)(2) in fiscal year 2012.

(9) Underserved harbor project

(A) In general

The term "underserved harbor project" means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2)—

- (i) that is a moderate-use harbor project or an emerging harbor project;
- (ii) that has been maintained at less than the constructed width and depth of the project during each of the preceding 6 fiscal years; and
- (iii) for which State and local investments in infrastructure have been made at those projects during the preceding 6 fiscal years.

(B) Administration

For purposes of this paragraph, State and local investments in infrastructure shall include infrastructure investments made using amounts made available for activities under section 5305(a)(9) of title 42.

(Pub. L. 99–662, title II, §210, Nov. 17, 1986, 100 Stat. 4106; Pub. L. 101–640, title III, §316, Nov. 28, 1990, 104 Stat. 4641; Pub. L. 113–121, title II, §2102(a), June 10, 2014, 128 Stat. 1273; Pub. L. 114–322, title I, §§1103, 1107, 1114, Dec. 16, 2016, 130 Stat. 1633, 1634, 1638; Pub. L. 115–270, title I, §1216, Oct. 23, 2018, 132 Stat. 3810; Pub. L. 116–260, div. AA, title I, §102(b), title V, §512(c)(5)(B), Dec. 27, 2020, 134 Stat. 2619, 2756.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1122 of the Water Resources Development Act of 2016, referred to in subsec. (e)(2)(C), is section 1122 of Pub. L. 114–322, title I, §1122, Dec. 16, 2016, 130 Stat. 1645. Subsecs. (a) to (h) of section 1122 are set out as a note under section 2326 of this title. Subsec. (i) of section 1122 amended section 2326 of this title. Subsec. (j) of section 1122 amended section 1962d–5f of Title 42, The Public Health and Welfare. For complete classification of this section to the Code, see Tables.

AMENDMENTS

2020—Subsec. (a)(1). Pub. L. 116–260, §512(c)(5)(B), substituted "Great Lakes St. Lawrence Seaway Development Corporation" for "Saint Lawrence Seaway Development Corporation".

Subsec. (c)(3). Pub. L. 116–260, §102(b)(1), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (e)(2)(A)(ii). Pub. L. 116–260, §102(b)(2), inserted "uses described in subsection (c)(3)(B) and" after "costs for".

Subsec. (f)(2), (3). Pub. L. 116–260, §102(b)(3)(C), added pars. (2) and (3) and struck out former par. (2) which defined "emerging harbor project".

Subsec. (f)(4). Pub. L. 116–260, §102(b)(3)(B), redesignated par. (3) as (4) and added subpars. (C) and (D). Former par. (4) redesignated (5).

Subsec. (f)(4)(C), (D). Pub. L. 116–260, §102(b)(3)(D), added subpars. (C) and (D).

Subsec. (f)(5). Pub. L. 116–260, §102(b)(3)(B), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (f)(6). Pub. L. 116–260, §102(b)(3)(A), (B), redesignated par. (5) as (6) and struck out former par. (6) which defined "high-use harbor project".

2018—Subsec. (e)(1). Pub. L. 115–270, §1216(1), substituted "shall assess, and issue a report to Congress on, the" for "shall assess the".

Subsec. (e)(2)(C). Pub. L. 115–270, §1216(2), added subpar. (C).

2016—Subsec. (c)(3). Pub. L. 114–322, §1103(1), substituted "for each fiscal year" for "for each of fiscal years 2015 through 2022".

Subsec. (d)(1)(A). Pub. L. 114–322, §1103(2), added subpar. (A) and struck out former subpar. (A). Prior to amendment, text read as follows: "For each of fiscal years 2015 through 2024, if priority funds are available, the Secretary shall use the priority funds as follows:

- "(i) 90 percent of the priority funds shall be used for high- and moderate-use harbor projects.
- "(ii) 10 percent of the priority funds shall be used for emerging harbor projects."

Subsec. (d)(1)(B). Pub. L. 114–322, §1107, substituted "For each fiscal year" for "For each of fiscal years 2015 through 2024" in introductory provisions.

Subsec. (e)(3)(B), (C). Pub. L. 114–322, §1114, added subpar. (B) and redesignated former subpar. (B) as (C).

2014—Subsecs. (c) to (f). Pub. L. 113–121 added subsecs. (c) to (f).

1990—Subsec. (a)(2). Pub. L. 101–640 substituted "up to 100 percent" for "not more than 40 percent".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CRITERIA FOR FUNDING OPERATION AND MAINTENANCE OF SMALL, REMOTE, AND SUBSISTENCE HARBORS

Pub. L. 117–263, div. H, title LXXXI, §8131, Dec. 23, 2022, 136 Stat. 3718, provided that:

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 23, 2022], the Secretary [of the Army] shall develop specific criteria for the annual evaluation and ranking of maintenance dredging requirements for small harbors and remote and subsistence harbors, taking into account the following:

"(1) The contribution of a harbor to the local and regional economy.

"(2) The extent to which a harbor has deteriorated since the last cycle of maintenance dredging.

"(3) Public safety concerns.

"(b) INCLUSION IN GUIDANCE.—The Secretary shall include the criteria developed under subsection (a) in the annual Civil Works Direct Program Development Policy Guidance of the Secretary.

"(c) REPORT TO CONGRESS.—The Secretary shall include in each biennial report submitted under section 210(e)(3) of the Water Resources Development Act of 1986 (33 U.S.C. 2238(e)(3)) a ranking of projects in accordance with the criteria developed under subsection (a) of this section.

"(d) DEFINITIONS.—In this section:

"(1) REMOTE AND SUBSISTENCE HARBOR.—The term 'remote and subsistence harbor' means a harbor with respect to which section 2006 of the Water Resources Development Act of 2007 (33 U.S.C. 2242) applies, as determined by the Secretary [of the Army].

"(2) SMALL HARBOR.—The term 'small harbor' includes an emerging harbor, as such term is defined in section 210 of the Water Resources Development Act of 1986 (33 U.S.C. 2238)."

AUTHORIZATION OF APPROPRIATIONS FOR NAVIGATION

Pub. L. 116–260, div. AA, title I, §102(a), Dec. 27, 2020, 134 Stat. 2618, provided that:

"(1) IN GENERAL.—In carrying out subsection (c) of section 210 of the Water Resources Development Act of 1986 (33 U.S.C. 2238), for each fiscal year, of the funds made available under such section (including funds appropriated from the Harbor Maintenance Trust Fund), the Secretary [of the Army] shall, to the extent practicable, unless otherwise directed in an Act making appropriations for the Corps of Engineers, make expenditures to pay for operation and maintenance costs of the harbors and inland harbors referred to in subsection (a)(2) of such section, to the extent there are identifiable operations and maintenance needs, of—

"(A) not less than 15 percent of such funds for emerging harbor projects, including eligible breakwater and jetty needs at such harbor projects;

"(B) not less than 13 percent of such funds for projects that are located within the Great Lakes Navigation System;

"(C) 12 percent of such funds for expanded uses carried out at donor ports and energy transfer ports, of which—

"(i) 1/3 shall be provided to energy transfer ports; and

"(ii) 2/3 shall be provided to donor ports;

"(D) not less than 17 percent of such funds for projects that are assigned to commercial strategic seaports; and

"(E) any remaining funds for operation and maintenance costs of any harbor or inland harbor referred to in such subsection (a)(2) [33 U.S.C. 2238(a)(2)] based on an equitable allocation of such funds among such harbors and inland harbors, in accordance with subsection (c)(1) of such section 210 [33 U.S.C. 2238(c)(1)].

"(2) DEFINITIONS.—In this subsection:

"(A) COMMERCIAL STRATEGIC SEAPORT.—The term 'commercial strategic seaport' means a commercial harbor supporting the coordination of efficient port operations during peacetime and national defense emergencies that is designated as strategic through the National Port Readiness Network.

"(B) DONOR PORT; ENERGY TRANSFER PORT.—The terms 'donor port' and 'energy transfer port' have the meanings given those terms in section 2106 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2238c).

"(C) EMERGING HARBOR PROJECT; GREAT LAKES NAVIGATION SYSTEM.—The terms 'emerging harbor project' and 'Great Lakes Navigation System' have the meanings given those terms in section 210 of the Water Resources Development Act of 1986 (33 U.S.C. 2238).

"(3) EFFECTIVE DATE.—This subsection shall take effect on October 1, 2022."

GUIDANCE

Pub. L. 113–121, title II, §2102(d), as added by Pub. L. 114–322, title I, §1112, Dec. 16, 2016, 130 Stat. 1637, provided that: "Not later than 90 days after the date of enactment of the Water Resources Development Act of 2016 [Dec. 16, 2016], the Secretary [of the Army] shall publish on the website of the Corps of Engineers guidance on the implementation of this section [amending this section, section 2211 of this title, and section 9505 of Title 26, Internal Revenue Code] and the amendments made by this section."

§2238a. Estimate of harbor maintenance needs

For fiscal year 2014 and each fiscal year thereafter, the President's budget request submitted pursuant to section 1105 of title 31, United States Code, shall include—

(1) an estimate of the nationwide average availability, expressed as a percentage, of the authorized depth and authorized width of all navigation channels authorized to be maintained using appropriations from the Harbor Maintenance Trust Fund that would result from harbor maintenance activities to be funded by the budget request; and

(2) an estimate of the average annual amount of appropriations from the Harbor Maintenance Trust Fund that would be required to increase that average availability to 95 percent over a 3-year period.

(Pub. L. 112–141, div. A, title I, §1537, July 6, 2012, 126 Stat. 585.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Moving Ahead for Progress in the 21st Century Act, also known as the MAP–21, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

§2238b. Funding for harbor maintenance programs

(a) Definitions

In this section:

(1) Total amount of harbor maintenance taxes received

The term "total amount of harbor maintenance taxes received" means, with respect to a fiscal year, the aggregate of amounts appropriated, transferred, or credited to the Harbor Maintenance Trust Fund under section 9505(a) of title 26 for that fiscal year as set forth in the current year estimate provided in the President's budget request for the subsequent fiscal year, submitted pursuant to section 1105 of title 31.

(2) Total budget resources

The term "total budget resources" means the total amount made available by appropriations Acts from the Harbor Maintenance Trust Fund for a fiscal year for making expenditures under section 9505(c) of title 26.

(b) Target appropriations

(1) In general

Except as provided in subsection (c), the target total budget resources made available to the Secretary from the Harbor Maintenance Trust Fund for a fiscal year shall be not less than the following:

- (A) For fiscal year 2015, 67 percent of the total amount of harbor maintenance taxes received in fiscal year 2014.
- (B) For fiscal year 2016, 69 percent of the total amount of harbor maintenance taxes received in fiscal year 2015.
- (C) For fiscal year 2017, 71 percent of the total amount of harbor maintenance taxes received in fiscal year 2016.
- (D) For fiscal year 2018, 74 percent of the total amount of harbor maintenance taxes received in fiscal year 2017.
- (E) For fiscal year 2019, 77 percent of the total amount of harbor maintenance taxes received in fiscal year 2018.
- (F) For fiscal year 2020, 80 percent of the total amount of harbor maintenance taxes received in fiscal year 2019.
- (G) For fiscal year 2021, 83 percent of the total amount of harbor maintenance taxes received in fiscal year 2020.
- (H) For fiscal year 2022, 87 percent of the total amount of harbor maintenance taxes received in fiscal year 2021.
- (I) For fiscal year 2023, 91 percent of the total amount of harbor maintenance taxes received in fiscal year 2022.
- (J) For fiscal year 2024, 95 percent of the total amount of harbor maintenance taxes received in fiscal year 2023.
- (K) For fiscal year 2025, and each fiscal year thereafter, 100 percent of the total amount of harbor maintenance taxes received in the previous fiscal year.

(2) Use of amounts

The total budget resources described in paragraph (1) may be used only for making expenditures under section 9505(c) of title 26.

(c) Exception

If the target total budget resources for a fiscal year described in subparagraphs (A) through (J) of subsection (b)(1) is lower than the target total budget resources for the previous fiscal year, the target total budget resources shall be adjusted to be equal to the lesser of—

- (1) 103 percent of the total budget resources appropriated for the previous fiscal year; or
- (2) 100 percent of the total amount of harbor maintenance taxes received in the previous fiscal year.

(d) Impact on other funds

(1) Sense of Congress

It is the sense of Congress that any increase in funding for harbor maintenance programs under this section shall result from an overall increase in appropriations for the civil works program of the Corps of Engineers and not from reductions in the appropriations for other programs, projects, and activities carried out by the Corps of Engineers for other authorized purposes.

(2) Application

The target total budget resources for a fiscal year specified in subsection (b)(1) shall only apply in a fiscal year for which the level of appropriations provided for the civil works program of the Corps of Engineers in that fiscal year is increased, as compared to the previous fiscal year, by a dollar amount that is at least equivalent to the dollar amount necessary to address such target total budget resources in that fiscal year.

(Pub. L. 113–121, [title II, §2101](#), June 10, 2014, 128 Stat. 1272; Pub. L. 114–322, [title I, §1108](#), Dec. 16, 2016, 130 Stat. 1634.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

Subsec. (b)(1). Pub. L. 114–322, §1108(1), substituted "Except as provided in subsection (c), the target total" for "The target total" in introductory provisions.
Subsecs. (c), (d). Pub. L. 114–322, §1108(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2238b–1. Budgetary treatment expansion and adjustment for the Harbor Maintenance Trust Fund

Any discretionary appropriation for the Corps of Engineers—

(1) derived from the Harbor Maintenance Trust Fund, in this fiscal year and thereafter, not to exceed the sum of—

- (A) the total amount deposited in the Harbor Maintenance Trust Fund in the fiscal year that is two years prior to the fiscal year for which the appropriation is being made; and
- (B)(i) \$500,000,000 for fiscal year 2021;
- (ii) \$600,000,000 for fiscal year 2022;
- (iii) \$700,000,000 for fiscal year 2023;
- (iv) \$800,000,000 for fiscal year 2024;
- (v) \$900,000,000 for fiscal year 2025;
- (vi) \$1,000,000,000 for fiscal year 2026;
- (vii) \$1,200,000,000 for fiscal year 2027;
- (viii) \$1,300,000,000 for fiscal year 2028;
- (ix) \$1,400,000,000 for fiscal year 2029; and
- (x) \$1,500,000,000 for fiscal year 2030 and thereafter; and

(2) for the Operation and Maintenance account of the Corps of Engineers which is designated in statute as being to carry out subsection (c) of section 2238c of this title, not to exceed—

- (A) \$50,000,000 for fiscal year 2021;
- (B) \$50,000,000 for fiscal year 2022;
- (C) \$56,000,000 for fiscal year 2023;
- (D) \$58,000,000 for fiscal year 2024;
- (E) \$60,000,000 for fiscal year 2025;
- (F) \$62,000,000 for fiscal year 2026;
- (G) \$64,000,000 for fiscal year 2027;
- (H) \$66,000,000 for fiscal year 2028;
- (I) \$68,000,000 for fiscal year 2029; and
- (J) \$70,000,000 for fiscal year 2030;

shall be subtracted from the estimate of discretionary budget authority and outlays for any estimate of an appropriations Act under the Congressional Budget and Impoundment Control Act of 1974 or the Balanced Budget and Emergency Deficit Control Act of 1985.

(Pub. L. 116–136, [div. B, title IV, §14003](#), Mar. 27, 2020, 134 Stat. 526; Pub. L. 116–260, [div. AA, title I, §101](#), Dec. 27, 2020, 134 Stat. 2618.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Congressional Budget and Impoundment Control Act of 1974, referred to in concluding provisions, is Pub. L. 93–344, [July 12, 1974](#), 88 Stat. 297. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in concluding provisions, is title II of Pub. L. 99–177, [Dec. 12, 1985](#), 99 Stat. 1038, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2020—Pub. L. 116–260 amended section generally. Prior to amendment, text read as follows: "Any discretionary appropriation for the Corps of Engineers derived from the Harbor Maintenance Trust Fund (not to exceed the total amount deposited in the Harbor Maintenance Trust Fund in the prior fiscal year) shall be subtracted from the estimate of discretionary budget authority and outlays for any estimate of an appropriations Act under the Congressional Budget and Impoundment Control Act of 1974 or the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided*, That the modifications described in this section shall not take effect until the earlier of January 1, 2021 or the date of enactment of legislation authorizing the development of water resources and shall remain in effect thereafter."

§2238c. Additional measures at donor ports and energy transfer ports

(a) Definitions

In this section:

(1) Cargo container

The term "cargo container" means a cargo container that is 1 Twenty-foot Equivalent Unit.

(2) Discretionary cargo

The term "discretionary cargo" means maritime cargo for which the United States port of unloading is different than the United States port of entry.

(3) Donor port

(A) In general

The term "donor port" means a port—

- (i) that is subject to the harbor maintenance fee under section 24.24 of title 19, Code of Federal Regulations (or a successor regulation);
- (ii) at which the total amount of harbor maintenance taxes collected (including the estimated taxes related to domestic cargo and cruise passengers) comprise not less than \$15,000,000 annually of the total funding of the Harbor Maintenance Trust Fund on an average annual basis for the previous 3 fiscal years;
- (iii) that received less than 25 percent of the total amount of harbor maintenance taxes collected (including the estimated taxes related to domestic cargo and cruise passengers) at that port in the previous 3 fiscal years; and
- (iv) that is located in a State in which more than 2,000,000 cargo containers were unloaded from or loaded on to vessels on an average annual basis for the previous 3 fiscal years.

(B) Calculation

For the purpose of calculating the percentage described in subparagraph (A)(iii), payments described under subsection (c)(1) shall not be included.

- (4) Energy commodity

The term "energy commodity" includes—

(A) petroleum products;

(B) natural gas;

(C) coal;

(D) wind and solar energy components; and

(E) biofuels.

(5) Energy transfer port

The term "energy transfer port" means a port—

(A) that is subject to the harbor maintenance fee under section 24.24 of title 19, Code of Federal Regulations (or any successor regulation); and

(B)(i) at which energy commodities comprised greater than 25 percent of all commercial activity by tonnage on an average annual basis for the previous 3 fiscal years; and

(ii) through which more than 40,000,000 tons of cargo were transported on an average annual basis for the previous 3 fiscal years.

(6) Expanded uses

The term "expanded uses" has the meaning given the term in section 2238(f) of this title.

(7) Harbor maintenance tax

The term "harbor maintenance tax" has the meaning given the term in section 2238(f) of this title.

(8) Harbor maintenance trust fund

The term "Harbor Maintenance Trust Fund" means the Harbor Maintenance Trust Fund established by section 9505 of title 26.

(9) Medium-sized donor port

The term "medium-sized donor port" means a port—

(A) that is subject to the harbor maintenance fee under section 24.24 of title 19, Code of Federal Regulations (or a successor regulation);

(B) at which the total amount of harbor maintenance taxes collected (including the estimated taxes related to domestic cargo and cruise passengers) comprise annually more than \$5,000,000 but less than \$15,000,000 of the total funding of the Harbor Maintenance Trust Fund on an average annual basis for the previous 3 fiscal years;

(C) that received less than 25 percent of the total amount of harbor maintenance taxes collected (including the estimated taxes related to domestic cargo and cruise passengers) at that port in the previous 3 fiscal years; and

(D) that is located in a State in which more than 2,000,000 cargo containers were unloaded from or loaded onto vessels on an average annual basis for the previous 3 fiscal years.

(b) Authority

(1) In general

Subject to the availability of appropriations, the Secretary may provide to donor ports, medium-sized donor ports, and energy transfer ports amounts in accordance with this section.

(2) Limitations

Amounts provided under this section—

(A) for energy transfer ports shall be divided equally among all States with an energy transfer port;

(B) shall be made available to a port as either a donor port, medium-sized donor port, or an energy transfer port, and no port may receive amounts from more than 1 designation; and

(C) for donor ports and medium-sized donor ports—

(i) 50 percent of the funds shall be equally divided between the eligible donor ports as authorized by this section; and

(ii) 50 percent of the funds shall be divided between the eligible donor ports and eligible medium-sized donor ports based on the percentage of the total harbor maintenance tax revenues generated at each eligible donor port and medium-sized donor port.

(c) Use of funds

Amounts provided under this section may be used by a donor port, a medium-sized donor port, or an energy transfer port—

(1) to provide payments to importers entering cargo through that port, as calculated by the Secretary according to the value of discretionary cargo;

(2) for expanded uses; or

(3) for environmental remediation related to dredging berths and Federal navigation channels.

(d) Administration of payments

(1) In general

If a donor port, a medium-sized donor port, or an energy transfer port elects to provide payments to importers under subsection (c), the Secretary shall transfer to the Commissioner of U.S. Customs and Border Protection an amount equal to those payments that would otherwise be provided to the port under this section to provide the payments to the importers of the discretionary cargo that is—

(A) shipped through the port; and

(B) most at risk of diversion to seaports outside of the United States.

(2) Requirement

The Secretary, in consultation with a port electing to provide payments under subsection (c), shall determine the top importers at the port, as ranked by the value of discretionary cargo, and payments shall be limited to those top importers.

(e) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section—

(A) \$56,000,000 for fiscal year 2023;

(B) \$58,000,000 for fiscal year 2024;

(C) \$60,000,000 for fiscal year 2025;

(D) \$62,000,000 for fiscal year 2026;

(E) \$64,000,000 for fiscal year 2027;

(F) \$66,000,000 for fiscal year 2028;

(G) \$68,000,000 for fiscal year 2029; and

(H) \$70,000,000 for fiscal year 2030.

(2) Division between donor ports, medium-sized donor ports, and energy transfer ports

For each fiscal year, amounts made available to carry out this section shall be provided in equal amounts to—

(A) donor ports and medium-sized donor ports; and

(B) energy transfer ports.

(f) Savings clause

Nothing in this section waives any statutory requirement related to the transportation of merchandise as authorized under chapter 551 of title 46.
- (Pub. L. 113–121, title II, §2106, June 10, 2014, 128 Stat. 1280; Pub. L. 114–322, title I, §1110, Dec. 16, 2016, 130 Stat. 1634; Pub. L. 116–260, div. AA, title I, §104(a)–(b)(2), Dec. 27, 2020, 134 Stat. 2621, 2622.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2020—Subsec. (a)(3)(A)(ii). Pub. L. 116–260, §104(b)(1)(A)(i), amended cl. (ii) generally. Prior to amendment, text read as follows: "at which the total amount of harbor maintenance taxes collected comprise not less than \$15,000,000 annually of the total funding of the Harbor Maintenance Trust Fund established under section 9505 of title 26;".

Subsec. (a)(3)(A)(iii). Pub. L. 116–260, §104(b)(1)(A)(ii), inserted "(including the estimated taxes related to domestic cargo and cruise passengers)" after "taxes collected" and substituted "3 fiscal years" for "5 fiscal years".

Subsec. (a)(3)(A)(iv). Pub. L. 116–260, §104(b)(1)(A)(iii), substituted "on an average annual basis for the previous 3 fiscal years" for "in fiscal year 2012".

Subsec. (a)(5)(B). Pub. L. 116–260, §104(b)(1)(B), substituted "on an average annual basis for the previous 3 fiscal years" for "in fiscal year 2012" in two places.

Subsec. (a)(8), (9). Pub. L. 116–260, §104(b)(1)(C), added par. (8) and redesignated former par. (8) as (9).

Subsec. (a)(9)(B). Pub. L. 116–260, §104(b)(1)(D)(i), amended subpar. (B) generally. Prior to amendment, text read as follows: "at which the total amount of harbor maintenance taxes collected comprise annually more than \$5,000,000 but less than \$15,000,000 of the total funding of the Harbor Maintenance Trust Fund established under section 9505 of title 26;".

Subsec. (a)(9)(C). Pub. L. 116–260, §104(b)(1)(D)(ii), inserted "(including the estimated taxes related to domestic cargo and cruise passengers)" after "taxes collected" and substituted "3 fiscal years" for "5 fiscal years".

Subsec. (a)(9)(D). Pub. L. 116–260, §104(b)(1)(D)(iii), substituted "on an average annual basis for the previous 3 fiscal years" for "in fiscal year 2012".

Subsec. (e). Pub. L. 116–260, §104(b)(2)(A), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to report to Congress.

Subsec. (e)(1). Pub. L. 116–260, §104(b)(2)(B), amended par. (1) generally. Prior to amendment, text read as follows: "There is authorized to be appropriated to carry out this section \$50,000,000 for each of fiscal years 2015 through 2020."

Subsec. (f). Pub. L. 116–260, §104(b)(2)(A), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).
Subsec. (f)(1). Pub. L. 116–260, §104(a)(1), substituted "2022" for "2020".
Subsec. (f)(3). Pub. L. 116–260, §104(a)(2), struck out par. (3). Prior to amendment, text read as follows: "If the target total budget resources under subparagraphs (A) through (D) of section 2238b(b)(1) of this title are met for each of fiscal years 2016 through 2020, there is authorized to be appropriated to carry out this section \$50,000,000 for each of fiscal years 2021 through 2025."
Subsec. (g). Pub. L. 116–260, §104(b)(2)(A), redesignated subsec. (g) as (f).
2016—Subsec. (a)(2). Pub. L. 114–322, §1110(1)(B), added par. (2). Former par. (2) redesignated (3).
Subsec. (a)(3). Pub. L. 114–322, §1110(1)(C), designated existing provisions as subpar. (A) and inserted heading, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A), and added subpar. (B).
Pub. L. 114–322, §1110(1)(A), redesignated par. (2) as (3). Former par. (3) redesignated (4).
Subsec. (a)(4). Pub. L. 114–322, §1110(1)(A), redesignated par. (3) as (4). Former par. (4) redesignated (5).
Subsec. (a)(5). Pub. L. 114–322, §1110(1)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).
Subsec. (a)(5)(A). Pub. L. 114–322, §1110(1)(D), substituted "Code of Federal Regulations" for "Code of Federal Regulation".
Subsec. (a)(6), (7). Pub. L. 114–322, §1110(1)(A), redesignated pars. (5) and (6) as (6) and (7), respectively.
Subsec. (a)(8). Pub. L. 114–322, §1110(1)(E), added par. (8).
Subsec. (b)(1). Pub. L. 114–322, §1110(2)(A), substituted "donor ports, medium-sized donor ports," for "donor ports".
Subsec. (b)(2)(B), (C). Pub. L. 114–322, §1110(2)(B), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: "shall be made available to a port as either a donor port or an energy transfer port and no port may receive amounts as both a donor port and an energy transfer port."
Subsec. (c). Pub. L. 114–322, §1110(3)(A), substituted "donor port, a medium-sized donor port," for "donor port" in introductory provisions.
Subsec. (c)(1). Pub. L. 114–322, §1110(3)(B), struck out "or shippers transporting cargo" after "entering cargo" and substituted "the Secretary" for "U.S. Customs and Border Protection" and "value of discretionary cargo" for "amount of harbor maintenance taxes collected".
Subsec. (d). Pub. L. 114–322, §1110(4), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: "If a donor port or an energy transfer port elects to provide payments to importers or shippers under subsection (c), the Secretary shall transfer the amount that would otherwise be provided to the port under this section that is equal to those payments to the Commissioner of U.S. Customs and Border Protection to provide the payments to the importers or shippers."
Subsec. (f)(1). Pub. L. 114–322, §1110(5)(A), substituted "2020" for "2018".
Subsec. (f)(2). Pub. L. 114–322, §1110(5)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: "For each fiscal year, amounts made available to carry out this section shall be provided in equal amounts to donor ports and energy transfer ports."
Subsec. (f)(3). Pub. L. 114–322, §1110(5)(C), substituted "2016 through 2020" for "2015 through 2018" and "2021 through 2025" for "2019 through 2022".
Subsec. (g). Pub. L. 114–322, §1110(6), added subsec. (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116–260, [div. AA, title I, §104\(b\)\(3\)](#), [Dec. 27, 2020](#), 134 Stat. 2622, provided that: "The amendments made by this subsection [amending this section] shall take effect on October 1, 2022."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2238d. Maintenance of harbors of refuge

The Secretary is authorized to maintain federally authorized harbors of refuge to restore and maintain the authorized dimensions of the harbors.
(Pub. L. 114–322, [title I, §1109](#), [Dec. 16, 2016](#), 130 Stat. 1634.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114–322, set out as a note under section 2201 of this title.

§2238e. Additional projects for underserved community harbors

(a) In general

Subject to the availability of appropriations designated by statute as being for the purpose of carrying out this section, the Secretary may carry out projects for underserved community harbors for purposes of sustaining water-dependent commercial and recreational activities at such harbors.

(b) Beneficial use

(1) Justification

The Secretary may carry out a project under this section involving a disposal option for the beneficial use of dredged material that is not the least cost disposal option if the Secretary determines that the incremental cost of the disposal option is reasonable pursuant to the standard described in section 2326(d)(1) of this title.

(2) Cost share

The non-Federal share of the incremental cost of a project carried out under this section involving a disposal option for the beneficial use of dredged material that is not the least cost disposal option shall be determined as provided under subsections (a) through (d) of section 2213 of this title.

(c) Prioritization

The Secretary shall prioritize carrying out projects using funds made available under this section based on an assessment of—

- (1) the local or regional economic benefits of the project;
- (2) the environmental benefits of the project, including the benefits to the aquatic environment to be derived from the creation of wetland and control of shoreline erosion; and
- (3) other social effects of the project, including protection against loss of life and contributions to local or regional cultural heritage.

(d) Clarification

The Secretary shall not require the non-Federal interest for a project carried out under this section to perform additional operation and maintenance activities at the beneficial use placement site or the disposal site for such project as a condition of receiving assistance under this section.

(e) Federal participation limit

The Federal share of the cost of a project under this section shall not exceed \$10,000,000.

(f) Statutory construction

Projects carried out under this section shall be in addition to operation and maintenance activities otherwise carried out by the Secretary for underserved community harbors using funds appropriated pursuant to section 2238 of this title or section 102(a) of the Water Resources Development Act of 2020 (33 U.S.C. 2238 note).

(g) Definitions

In this section:

(1) Project

The term "project" means a single cycle of maintenance dredging of an underserved community harbor and any associated placement of dredged material at a beneficial use placement site or disposal site.

(2) Underserved community harbor

The term "underserved community harbor" means an emerging harbor (as defined in section 2238(f) of this title) for which—

- (A) no Federal funds have been obligated for maintenance dredging in the current fiscal year or in any of the 4 preceding fiscal years; and
- (B) State and local investments in infrastructure have been made during any of the 4 preceding fiscal years.

(h) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section \$50,000,000 from the General Fund of the Treasury for each of fiscal years 2023 through 2026, to be deposited into the "CORPS OF ENGINEERS—CIVIL—OPERATION AND MAINTENANCE" account.

(2) Special rule

Not less than 35 percent of the amounts made available to carry out this section for each fiscal year shall be used for projects involving the beneficial use of dredged material.

(Pub. L. 117–263, [div. H](#), [title LXXXI](#), §8132, Dec. 23, 2022, 136 Stat. 3719.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 102(a) of the Water Resources Development Act of 2020, referred to in subsec. (f), is section 102(a) of div. AA of Pub. L. 116–260, which is set out as a note under section 2238 of this title.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2022, and also as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 8002 of Pub. L. 117–263, set out as a note under section 2201 of this title.

§2239. Repealed. Pub. L. 101–640, title IV, §412(f), Nov. 28, 1990, 104 Stat. 4650

Section, Pub. L. 99–662, [title II](#), §211, Nov. 17, 1986, 100 Stat. 4106; Pub. L. 100–676, §32, Nov. 17, 1988, 102 Stat. 4030, directed Administrator of Environmental Protection Agency to designate one or more sites for disposal of dredged material as an alternative to disposal at the Mud Dump in New Jersey.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SEDIMENTS DECONTAMINATION TECHNOLOGY

Pub. L. 102–580, [title IV](#), §405, Oct. 31, 1992, 106 Stat. 4863, as amended by Pub. L. 104–303, [title II](#), §226, Oct. 12, 1996, 110 Stat. 3697; Pub. L. 106–53, [title II](#), §204, Aug. 17, 1999, 113 Stat. 285, provided that:

"(a) DECONTAMINATION PROJECT.—

"(1) SELECTION OF TECHNOLOGIES.—Based upon a review of decontamination technologies identified pursuant to section 412(c) of the Water Resources Development Act of 1990 [Pub. L. 101–640, set out below], the Administrator of the Environmental Protection Agency and the Secretary shall, within 1 year after the date of the enactment of this Act [Oct. 31, 1992], jointly select removal, pre-treatment, post-treatment, and decontamination technologies for contaminated marine sediments for a decontamination project in the New York/New Jersey Harbor.

"(2) RECOMMENDED PROGRAM.—Upon selection of technologies, the Administrator and the Secretary shall jointly recommend a program of selected technologies to assess their effectiveness in rendering sediments acceptable for unrestricted ocean disposal or beneficial reuse, or both.

"(3) PROJECT PURPOSE.—The purpose of the project to be carried out under this section is to provide for the development of 1 or more sediment decontamination technologies on a pilot scale demonstrating a capacity of at least 500,000 cubic yards per year.

"(4) PRACTICAL END-USE PRODUCTS.—Technologies selected for demonstration at the pilot scale shall be intended to result in practical end-use products.

"(5) ASSISTANCE BY THE SECRETARY.—The Secretary shall assist the project to ensure expeditious completion by providing sufficient quantities of contaminated dredged material to conduct the full-scale demonstrations to stated capacity.

"(b) DECONTAMINATION DEFINED.—For purposes of this section, 'decontamination' may include local or remote prototype or production and laboratory decontamination technologies, sediment pre-treatment and post-treatment processes, and siting, economic, or other measures necessary to develop a matrix for selection of interim prototype of long-term processes. Decontamination techniques need not be preproven in terms of likely success.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$22,000,000 to complete technology testing, technology commercialization, and the development of full scale processing facilities within the New York/New Jersey Harbor. Such sums shall remain available until expended.

"(d) REPORTS.—Not later than September 30, 1998, and periodically thereafter, the Administrator and the Secretary shall transmit to Congress a report on the results of the project to be carried out under this section, including an assessment of the progress made in achieving the purpose of the project set forth in subsection (a)(3).

"(e) SUPPORT.—In carrying out the program under this section, the Secretary is encouraged to use contracts, cooperative agreements, and grants with colleges and universities and other non-Federal entities."

ALTERNATIVES TO MUD DUMP SITE FOR DISPOSAL OF DREDGED MATERIAL

Pub. L. 101–640, [title IV](#), §412, Nov. 28, 1990, 104 Stat. 4650, provided that:

"(a) REPORT.—Within 90 days after the date of the enactment of this Act [Nov. 28, 1990], the Administrator of the Environmental Protection Agency shall submit to the Congress a final report on the feasibility of designating an alternative site to the Mud Dump Site at a distance not less than 20 miles from the shoreline.

"(b) PLAN.—Within 180 days after the date of the enactment of this Act [Nov. 28, 1990], the Secretary and the Administrator of the Environmental Protection Agency shall submit to Congress a plan for the long-term management of dredged material from the New York/New Jersey Harbor region. The plan shall include—

"(1) an identification of the source, quantities, and characteristics of material to be dredged;

"(2) a discussion of potential alternative sites for disposal of dredged material, including the feasibility of altering the boundaries of the Mud Dump Site;

"(3) measures to reduce the quantities of dredged material proposed for ocean disposal;

"(4) measures to reduce the amount of contaminants in materials proposed to be dredged from the Harbor through source controls and decontamination technology;

"(5) a program for monitoring the physical, chemical, and biological effects of dumping dredged material at the Mud Dump Site; and

"(6) a study of the characteristics of the bottom sediments, including type and distribution.

"(c) DEMONSTRATION PROJECT.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall implement a demonstration project for disposing on an annual basis up to 10 percent of the material dredged from the New York/New Jersey Harbor region in an environmentally sound manner other than by ocean disposal. Environmentally sound alternatives may include, among others, capping of borrow pits, construction of a containment island, application for landfill cover, habitat restoration, and use of decontamination technology.

"(d) MUD DUMP SITE DEFINED.—For purposes of this section, the term 'Mud Dump Site' means the area located approximately 5½ miles east of Sandy Hook, New Jersey, with boundary coordinates of 40 degrees, 23 minutes, 48 seconds North, 73 degrees, 51 minutes, 28 seconds West; 40 degrees, 21 minutes, 48 seconds North, 73 degrees, 50 minutes, 00 seconds West; 40 degrees, 21 minutes, 48 seconds North; 73 degrees, 51 minutes, 28 seconds West; and 40 degrees, 23 minutes, 48 seconds North; 73 degrees, 50 minutes, 00 seconds West.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal year 1991, \$3,000,000 to implement subsection (b) and \$1,000,000 to implement subsection (c), and such sums as may be necessary for fiscal year 1992.

"(f) REPEAL.—Section 211 of the Water Resources Development Act of 1986 (33 U.S.C. 2239) is repealed."

§2240. Emergency response services

(a) Grants

The Secretary is authorized to make grants to any non-Federal interest operating a project for a harbor for provision of emergency response services in such harbor (including contingency planning, necessary personnel training, and the procurement of equipment and facilities either by the non-Federal interest, by a local agency or municipality, or by a combination of local agencies or municipalities on a cost-reimbursable basis, either by a cooperative agreement, mutual aid plan, or mutual assistance plan entered into between one or more non-Federal interests, public agencies, or local municipalities).

(b) Authorization of appropriations

There is authorized to be appropriated for fiscal years beginning after September 30, 1986, and ending before October 1, 1992, \$5,000,000.

(Pub. L. 99–662, [title II](#), §212, Nov. 17, 1986, 100 Stat. 4107.)

§2241. Definitions

For purposes of this subchapter—

(1) Deep-draft harbor

The term "deep-draft harbor" means a harbor which is authorized to be constructed to a depth of more than 45 feet (other than a project which is authorized by section 202 of this title).

(2) Eligible operations and maintenance

(A) Except as provided in subparagraph (B), the term "eligible operations and maintenance" means all Federal operations, maintenance, repair, and rehabilitation, including (i) maintenance dredging reasonably necessary to maintain the width and nominal depth of any harbor or inland harbor; (ii) the construction of dredged material disposal facilities that are necessary for the operation and maintenance of any harbor or inland harbor; (iii) dredging and disposing of contaminated sediments that are in or that affect the maintenance of Federal navigation channels; (iv) mitigating for impacts resulting from Federal navigation operation and maintenance activities; and (v) operating and maintaining dredged material disposal facilities.

(B) As applied to the Saint Lawrence Seaway, the term "eligible operations and maintenance" means all operations, maintenance, repair, and rehabilitation, including maintenance dredging reasonably necessary to keep such Seaway or navigation improvements operated or maintained by the Great Lakes St. Lawrence Seaway Development Corporation in operation and reasonable state of repair.

(C) The term "eligible operations and maintenance" does not include providing any lands, easements, or rights-of-way, or performing relocations required for project operations and maintenance.

(3) General cargo harbor

The term "general cargo harbor" means a harbor for which a project is authorized by section 202 of this title and any other harbor which is authorized to be constructed to a depth of more than 20 feet but not more than 45 feet;

(4) Harbor

The term "harbor" means any channel or harbor, or element thereof, in the United States, capable of being utilized in the transportation of commercial cargo in domestic or foreign waterborne commerce by commercial vessels. The term does not include—

- (A) an inland harbor;
- (B) the Saint Lawrence Seaway;
- (C) local access or berthing channels;
- (D) channels or harbors constructed or maintained by nonpublic interests; and
- (E) any portion of the Columbia River other than the channels on the downstream side of Bonneville lock and dam.

(5) Inland harbor

The term "inland harbor" means a navigation project which is used principally for the accommodation of commercial vessels and the receipt and shipment of waterborne cargoes on inland waters. The term does not include—

- (A) projects on the Great Lakes;
- (B) projects that are subject to tidal influence;
- (C) projects with authorized depths of greater than 20 feet;
- (D) local access or berthing channels; and
- (E) projects constructed or maintained by nonpublic interests.

(6) Nominal depth

The term "nominal depth" means, in relation to the stated depth for any navigation improvement project, such depth, including any greater depths which must be maintained for any harbor or inland harbor or element thereof included within such project in order to ensure the safe passage at mean low tide of any vessel requiring the stated depth.

(7) Non-Federal interest

The term "non-Federal interest" has the meaning such term has under section 1962d–5b of title 42 and includes any interstate agency and port authority established under a compact entered into between two or more States with the consent of Congress under section 10 of Article I of the Constitution.

(8) United States

The term "United States" means all areas included within the territorial boundaries of the United States, including the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and any other territory or possession over which the United States exercises jurisdiction. (Pub. L. 99–662, [title II, §214](#), Nov. 17, 1986, 100 Stat. 4108; Pub. L. 104–303, [title II, §201\(e\)](#), Oct. 12, 1996, 110 Stat. 3672; Pub. L. 116–260, [div. AA, title V, §512\(c\)\(5\)\(C\)](#), Dec. 27, 2020, 134 Stat. 2756.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 202 of this title, referred to in pars. (1) and (3), is section 202 of title II of Pub. L. 99–662, [Nov. 17, 1986](#), 100 Stat. 4091, which is not classified to the Code.

AMENDMENTS

2020—Par. (2)(B). Pub. L. 116–260 substituted "Great Lakes St. Lawrence Seaway Development Corporation" for "Saint Lawrence Seaway Development Corporation".

1996—Par. (2)(A). Pub. L. 104–303, §201(e)(1), inserted "Federal" after "means all" and "(i)" after "including", and inserted before period at end a semicolon and cls. (ii) to (v).

Par. (2)(C). Pub. L. 104–303, §201(e)(2), substituted "or rights-of-way," for "rights-of-way, or dredged material disposal areas,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

INCREASES IN NON-FEDERAL SHARE OF COSTS

Amendment by Pub. L. 104–303 not to increase, or result in increase of, non-Federal share of costs of expanding any confined dredged material disposal facility that is operated by Secretary and authorized for cost recovery through collection of tolls, any confined dredged material disposal facility for which invitation for bids for construction was issued before Oct. 12, 1996, and expanding any confined dredged material disposal facility constructed under section 1293a of this title if capacity of confined dredged material disposal facility was exceeded in less than 6 years, see section 201(g) of Pub. L. 104–303, set out as a note under section 2211 of this title.

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§2242. Remote and subsistence harbors

(a) In general

In conducting a study of harbor and navigation improvements, the Secretary may recommend a project without the need to demonstrate that the project is justified solely by national economic development benefits if the Secretary determines that—

- (1)(A) the community to be served by the project is at least 70 miles from the nearest surface accessible commercial port and has no direct rail or highway link to another community served by a surface accessible port or harbor; or
- (B) the project would be located in the State of Hawaii or Alaska, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, or American Samoa;
- (2) the harbor is economically critical such that over 80 percent of the goods transported through the harbor would be consumed within the region served by the harbor and navigation improvement, as determined by the Secretary, including consideration of information provided by the non-Federal interest; and
- (3) the long-term viability of the community in which the project is located, or the long-term viability of a community that is located in the region that is served by the project and that will rely on the project, would be threatened without the harbor and navigation improvement.

(b) Justification

In considering whether to recommend a project under subsection (a), the Secretary shall consider the benefits of the project to—

- (1) public health and safety of the local community and communities that are located in the region to be served by the project and that will rely on the project, including access to facilities designed to protect public health and safety;
- (2) access to natural resources for subsistence purposes;
- (3) local and regional economic opportunities;
- (4) welfare of the regional population to be served by the project; and
- (5) social and cultural value to the local community and communities that are located in the region to be served by the project and that will rely on the project.

(c) Prioritization

Projects recommended by the Secretary under subsection (a) shall be given equivalent budget consideration and priority as projects recommended solely by national economic development benefits.

(d) Disposition

(1) In general

The Secretary may carry out any project identified in the study carried out pursuant to subsection (a) in accordance with the criteria for projects carried out under the authority of the Secretary under section 577 of this title.

(2) Non-Federal interests

In evaluating and implementing a project under this section, the Secretary shall allow a non-Federal interest to participate in the financing of a project in accordance with the criteria established for flood control projects under section 903(c) of the Water Resources Development Act of 1986 (Public Law 99–662; 100 Stat. 4184).

(e) Annual report

For a project that cannot be carried out under the authority specified in subsection (d), on a determination by the Secretary of the feasibility of the project under subsection (a), the Secretary may include a recommendation concerning the project in the annual report submitted to Congress under section 2282d of this title.

(Pub. L. 110–114, [title II, §2006](#), Nov. 8, 2007, 121 Stat. 1073; Pub. L. 113–121, [title II, §2104](#), June 10, 2014, 128 Stat. 1279; Pub. L. 114–322, [title I, §1105](#), Dec. 16, 2016, 130 Stat. 1633.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 903(c) of the Water Resources Development Act of 1986 (Public Law 99–662; 100 Stat. 4184), referred to in subsec. (d)(2), is not classified to the Code.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Subsec. (a)(3). Pub. L. 114–322, §1105(1), inserted "in which the project is located, or the long-term viability of a community that is located in the region that is served by the project and that will rely on the project," after "the community".

Subsec. (b)(1). Pub. L. 114–322, §1105(2)(A), inserted "and communities that are located in the region to be served by the project and that will rely on the project" after "local community".

Subsec. (b)(4). Pub. L. 114–322, §1105(2)(B), substituted "regional population to be served by the project" for "local population".

Subsec. (b)(5). Pub. L. 114–322, §1105(2)(C), substituted "local community and communities that are located in the region to be served by the project and that will rely on the project" for "community".

2014—Subsec. (a)(1)(B). Pub. L. 113–121, §2104(1)(A), inserted "or Alaska" after "Hawaii".

Subsec. (a)(2). Pub. L. 113–121, §2104(1)(B), substituted "region" for "community" and inserted ", as determined by the Secretary, including consideration of information provided by the non-Federal interest" after "improvement".

Subsecs. (c) to (e). Pub. L. 113–121, §2104(2), added subsecs. (c) to (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2243. Arctic deep draft port development partnerships

(a) In general

The Secretary may provide technical assistance to non-Federal public entities, including Indian tribes (as defined in section 5304 of title 25) and a Native village, Regional Corporation, or Village Corporation (as those terms are defined in section 1602 of title 43 ¹, for the development, construction, operation, and maintenance of channels, harbors, and related infrastructure associated with deep draft ports for purposes of dealing with Arctic development and security needs.

(b) Acceptance of funds

The Secretary is authorized to accept and expend funds provided by non-Federal public entities, including Indian tribes (as defined in section 5304 of title 25) and a Native village, Regional Corporation, or Village Corporation (as those terms are defined in section 1602 of title 43 ¹, to carry out the technical assistance activities described in subsection (a).

(c) Limitation

No assistance may be provided under this section until after the date on which the entity to which that assistance is to be provided enters into a written agreement with the Secretary that includes such terms and conditions as the Secretary determines to be appropriate and in the public interest.

(d) Prioritization

The Secretary shall prioritize technical assistance provided under this section for Arctic deep draft ports identified by the Secretary, the Secretary of the department in which the Coast Guard is operating, and the Secretary of Defense as important for Arctic development and security.

(e) Consideration of national security interests

In carrying out a study of the feasibility of an Arctic deep draft port, the Secretary—

(1) shall consult with the Secretary of the department in which the Coast Guard is operating to identify benefits in carrying out the missions specified in section 468 of title 6 associated with an Arctic deep draft port;

(2) shall consult with the Secretary of Defense to identify national security benefits associated with an Arctic deep draft port; and

(3) may consider such benefits in determining whether an Arctic deep draft port is feasible.

(Pub. L. 113–121, title II, §2105, June 10, 2014, 128 Stat. 1279; Pub. L. 114–322, title I, §1202(c), Dec. 16, 2016, 130 Stat. 1684.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Subsecs. (a), (b). Pub. L. 114–322, §1202(c)(1), inserted "and a Native village, Regional Corporation, or Village Corporation (as those terms are defined in section 1602 of title 43" after "title 25)" and made technical amendment to reference in original act which appears in text as reference to section 5304 of title 25.

Subsec. (d). Pub. L. 114–322, §1202(c)(2), substituted "the Secretary of the department in which the Coast Guard is operating" for "the Secretary of Homeland Security".

Subsec. (e). Pub. L. 114–322, §1202(c)(3), added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

¹ *So in original. Probably should be followed by a closing parenthesis.*

SUBCHAPTER III—INLAND WATERWAY TRANSPORTATION SYSTEM

STATUTORY NOTES AND RELATED SUBSIDIARIES

INLAND WATERWAYS REGIONAL DREDGE PILOT PROGRAM

Pub. L. 117–263, div. H, title LXXXI, §8133, Dec. 23, 2022, 136 Stat. 3720, provided that:

"(a) IN GENERAL.—The Secretary [of the Army] is authorized to establish a pilot program (referred to in this section as the 'pilot program') to conduct a multiyear demonstration program to award contracts with a duration of up to 5 years for dredging projects on inland waterways of the United States described in section 206 of the Inland Waterways Revenue Act of 1978 (33 U.S.C. 1804).

"(b) PURPOSES.—The purposes of the pilot program shall be to—

"(1) increase the reliability, availability, and efficiency of federally owned and federally operated inland waterways projects;

"(2) decrease operational risks across the inland waterways system; and

"(3) provide cost savings by combining work across multiple projects across different accounts of the Corps of Engineers.

"(c) DEMONSTRATION.—

"(1) IN GENERAL.—The Secretary shall, to the maximum extent practicable, award contracts for projects under subsection (a) that combine work for construction and operation and maintenance.

"(2) PROJECTS.—In awarding contracts under paragraph (1), the Secretary shall consider projects that—

"(A) improve navigation reliability on inland waterways that are accessible year-round;

"(B) increase freight capacity on inland waterways; and

"(C) have the potential to enhance the availability of containerized cargo on inland waterways.

"(d) SAVINGS CLAUSE.—Nothing in this section affects the responsibility of the Secretary with respect to the construction and operation and maintenance of projects on the inland waterways system.

"(e) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first contract is awarded pursuant to the pilot program, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that evaluates, with respect to the pilot program and any contracts awarded under the pilot program—

- "(1) cost-effectiveness;
- "(2) reliability and performance;
- "(3) cost savings attributable to mobilization and demobilization of dredge equipment; and
- "(4) response times to address navigational impediments.

"(f) SUNSET.—The authority of the Secretary to enter into contracts pursuant to the pilot program shall expire on the date that is 10 years after the date of enactment of this Act [Dec. 23, 2022]."

INLAND WATERWAYS PILOT PROGRAM

Pub. L. 116–260, div. AA, title I, §159, Dec. 27, 2020, 134 Stat. 2663, provided that:

"(a) DEFINITIONS.—In this section:

- "(1) AUTHORIZED PROJECT.—The term 'authorized project' means a federally authorized water resources development project for navigation on the inland waterways.
- "(2) MODERNIZATION ACTIVITIES.—The term 'modernization activities' means construction or major rehabilitation activities for any authorized project.
- "(3) NON-FEDERAL INTEREST.—The term 'non-Federal interest' means any public body described in section 221(b) of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b(b)).

"(b) AUTHORIZATION OF PILOT PROGRAM.—The Secretary [of the Army] is authorized to carry out a pilot program for modernization activities on the inland waterways system.

"(c) IMPLEMENTATION.—

"(1) IN GENERAL.—In carrying out the pilot program under this section, the Secretary may—

"(A) accept and expend funds provided by a non-Federal interest to carry out, for an authorized project (or a separable element of an authorized project), modernization activities for such project; or

"(B) coordinate with the non-Federal interest in order to allow the non-Federal interest to carry out, for an authorized project (or a separable element of an authorized project), such modernization activities.

"(2) NUMBER.—The Secretary shall select not more than 2 authorized projects to participate in the pilot program under paragraph (1).

"(3) CONDITIONS.—Before carrying out modernization activities pursuant to paragraph (1)(B), a non-Federal interest shall—

"(A) obtain any permit or approval required in connection with such activities under Federal or State law that would be required if the Secretary were to carry out such activities; and

"(B) ensure that a final environmental impact statement or environmental assessment, as appropriate, for such activities has been filed pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

"(4) MONITORING.—For any modernization activities carried out by the non-Federal interest pursuant to this section, the Secretary shall regularly monitor and audit such activities to ensure that—

"(A) the modernization activities are carried out in accordance with this section; and

"(B) the cost of the modernization activities is reasonable.

"(5) REQUIREMENTS.—The requirements of section 3142 of title 40, United States Code[,] shall apply to any modernization activities undertaken under or pursuant to this section, either by the Secretary or the non-Federal interest.

"(d) AGREEMENTS.—

"(1) ACTIVITIES CARRIED OUT BY NON-FEDERAL INTEREST.—

"(A) IN GENERAL.—

"(i) WRITTEN AGREEMENT.—Before a non-Federal interest initiates modernization activities for an authorized project pursuant to this subsection (c)(1)(B), the non-Federal interest shall enter into a written agreement with the Secretary, under section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), that requires the modernization activities to be carried out in accordance with—

"(I) a plan approved by the Secretary; and

"(II) any other terms and conditions specified by the Secretary in the agreement.

"(ii) REQUIREMENTS.—A written agreement under clause (i) shall provide that the non-Federal interest shall comply with the same legal and technical requirements that would apply if the modernization activities were carried out by the Secretary, including all mitigation required to offset environmental impacts of the activities, as determined by the Secretary.

"(B) ALIGNMENT WITH ONGOING ACTIVITIES.—A written agreement under subparagraph (A) shall include provisions that, to the maximum extent practicable, align modernization activities under this section with ongoing operations and maintenance activities for the applicable authorized project.

"(C) INDEMNIFICATION.—As part of a written agreement under subparagraph (A), the non-Federal interest shall agree to hold and save the United States free from liability for any and all damage that arises from the modernization activities carried out by the non-Federal interest pursuant to this section.

"(2) ACTIVITIES CARRIED OUT BY SECRETARY.—For modernization activities to be carried out by the Secretary pursuant to subsection (c)(1)(A), the non-Federal interest shall enter into a written agreement with the Secretary, containing such terms and conditions as the Secretary determines appropriate.

"(e) REIMBURSEMENT.—

"(1) AUTHORIZATION.—Subject to the availability of appropriations, the Secretary may reimburse a non-Federal interest for the costs of modernization activities carried out by the non-Federal interest pursuant to an agreement entered into under subsection (d), or for funds provided to the Secretary under subsection (c)(1)(A), if—

"(A) the non-Federal interest complies with the agreement entered into under subsection (d); and

"(B) with respect to modernization activities carried out by the non-Federal interest pursuant to the agreement, the Secretary determines that the non-Federal interest complied with all applicable Federal requirements in carrying out the modernization activities.

"(2) LIMITATION.—The Secretary may only reimburse a non-Federal interest under paragraph (1) for costs of construction that would otherwise be paid from amounts appropriated from the general fund of the Treasury pursuant to section 102 of the Water Resources Development Act of 1986 (33 U.S.C. 2212).

"(f) RULE OF CONSTRUCTION.—Nothing in this section—

"(1) affects the responsibility of the Secretary for the operations and maintenance of the inland waterway system, as of the day before the date of enactment of this Act [Dec. 27, 2020], including the responsibility of the Secretary for the operations and maintenance costs for any covered project after the modernization activities are completed pursuant to this section;

"(2) prohibits or prevents the use of Federal funds for operations and maintenance of the inland waterway system or any authorized project within the inland waterway system; or

"(3) prohibits or prevents the use of Federal funds for construction or major rehabilitation activities within the inland waterway system or for any authorized project within the inland waterway system.

"(g) NOTIFICATION.—If a non-Federal interest notifies the Secretary that the non-Federal interest intends to carry out modernization activities for an authorized project, or separable element thereof, pursuant to this section, the Secretary shall provide written notice to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives concerning the intent of the non-Federal interest.

"(h) SUNSET.—

"(1) IN GENERAL.—The authority of the Secretary to enter into an agreement under this section shall terminate on the date that is 5 years after the date of enactment of this Act.

"(2) REIMBURSEMENT ELIGIBILITY.—The termination of authority under paragraph (1) shall not extinguish the eligibility of a non-Federal interest to seek reimbursement under subsection (e)."

§2251. Inland Waterways Users Board

(a) Establishment of Users Board

There is hereby established an Inland Waterway Users Board (hereinafter in this section referred to as the "Users Board") composed of the eleven members selected by the Secretary, one of whom shall be designated by the Secretary as Chairman. The members shall be selected so as to represent various regions of the country and a spectrum of the primary users and shippers utilizing the inland and intracoastal waterways for commercial purposes. Due consideration shall be given to assure a balance among the members based on the ton-mile shipments of the various categories of commodities shipped on inland waterways. The Secretary of the Army shall designate, and the Secretaries of Agriculture, Transportation, and Commerce may each designate, a representative to act as an observer of the Users Board.

(b) Duties of Users Board

(1) In general

The Users Board shall meet not less frequently than semiannually to develop and make recommendations to the Secretary and Congress regarding the inland waterways and inland harbors of the United States.

(2) Advice and recommendations

For commercial navigation features and components of the inland waterways and inland harbors of the United States, the Users Board shall provide—

(A) prior to the development of the budget proposal of the President for a given fiscal year, advice and recommendations to the Secretary regarding construction and rehabilitation priorities and spending levels;

(B) advice and recommendations to Congress regarding any feasibility report for a project on the inland waterway system that has been submitted to Congress pursuant to section 2282d of this title;

(C) advice and recommendations to Congress regarding an increase in the authorized cost of those features and components;

(D) not later than 60 days after the date of the submission of the budget proposal of the President to Congress, advice and recommendations to Congress regarding construction and rehabilitation priorities and spending levels; and

(E) advice and recommendations on the development of a long-term capital investment program in accordance with subsection (d).

(3) Project development teams

The chairperson of the Users Board shall appoint a representative of the Users Board to serve as an advisor to the project development team for a qualifying project or the study or design of a commercial navigation feature or component of the inland waterways and inland harbors of the United States.

(4) Independent judgment

Any advice or recommendation made by the Users Board to the Secretary shall reflect the independent judgment of the Users Board.

(c) Duties of Secretary

The Secretary shall—

- (1) communicate not less frequently than once each quarter to the Users Board the status of the study, design, or construction of all commercial navigation features or components of the inland waterways or inland harbors of the United States; and
- (2) submit to the Users Board a courtesy copy of all completed feasibility reports relating to a commercial navigation feature or component of the inland waterways or inland harbors of the United States.

(d) Capital investment program

(1) In general

Not later than 1 year after June 10, 2014, the Secretary, in coordination with the Users Board, shall develop and submit to Congress a report describing a 20-year program for making capital investments on the inland and intracoastal waterways based on the application of objective, national project selection prioritization criteria.

(2) Consideration

In developing the program under paragraph (1), the Secretary shall take into consideration the 20-year capital investment strategy contained in the Inland Marine Transportation System (IMTS) Capital Projects Business Model, Final Report published on April 13, 2010, as approved by the Users Board.

(3) Criteria

In developing the plan and prioritization criteria under paragraph (1), the Secretary shall ensure, to the maximum extent practicable, that investments made under the 20-year program described in paragraph (1)—

- (A) are made in all geographical areas of the inland waterways system; and
- (B) ensure efficient funding of inland waterways projects.

(4) Strategic review and update

Not later than 5 years after June 10, 2014, and not less frequently than once every 5 years thereafter, the Secretary, in coordination with the Users Board, shall—

- (A) submit to Congress and make publicly available a strategic review of the 20-year program in effect under this subsection, which shall identify and explain any changes to the project-specific recommendations contained in the previous 20-year program (including any changes to the prioritization criteria used to develop the updated recommendations); and
- (B) make revisions to the program, as appropriate.

(e) Project management plans

The chairperson of the Users Board and the project development team member appointed by the chairperson under subsection (b)(3) may sign the project management plan for the qualifying project or the study or design of a commercial navigation feature or component of the inland waterways and inland harbors of the United States.

(f) Administration

(1) In general

The Users Board shall be subject to chapter 10 of title 5, other than section 1013, and, with the consent of the appropriate agency head, the Users Board may use the facilities and services of any Federal agency.

(2) Members not considered special Government employees

For the purposes of complying with chapter 10 of title 5, the members of the Users Board shall not be considered special Government employees (as defined in section 202 of title 18).

(3) Travel expenses

Non-Federal members of the Users Board while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(Pub. L. 99–662, title III, §302, Nov. 17, 1986, 100 Stat. 4111; Pub. L. 106–109, §8(a), Nov. 24, 1999, 113 Stat. 1495; Pub. L. 113–121, title II, §2002(d), June 10, 2014, 128 Stat. 1262; Pub. L. 117–286, §4(a)(202), Dec. 27, 2022, 136 Stat. 4328.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (f)(1). Pub. L. 117–286, §4(a)(202)(A), substituted "chapter 10 of title 5, other than section 1013," for "the Federal Advisory Committee Act (5 U.S.C. App.), other than section 14,".

Subsec. (f)(2). Pub. L. 117–286, §4(a)(202)(B), substituted "chapter 10 of title 5," for "the Federal Advisory Committee Act (5 U.S.C. App.).".

2014—Subsec. (b). Pub. L. 113–121, §2002(d)(1), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: "The Users Board shall meet at least semi-annually to develop and make recommendations to the Secretary regarding construction and rehabilitation priorities and spending levels on the commercial navigational features and components of the inland waterways and inland harbors of the United States for the following fiscal years. Any advice or recommendation made by the Users Board to the Secretary shall reflect the independent judgment of the Users Board. Notwithstanding section 3003 of Public Law 104–66 (31 U.S.C. 1113 note; 109 Stat. 734), the Users Board shall, by December 31, 1987, and annually thereafter file such recommendations with the Secretary and with the Congress."

Subsecs. (c) to (f). Pub. L. 113–121, §2002(d)(2), added subsecs. (c) to (f) and struck out former subsec. (c). Prior to amendment, text read as follows: "The Users Board shall be subject to the Federal Advisory Committee Act, other than section 14, and, with the consent of the appropriate agency head, the Users Board may use the facilities and services of any Federal agency. Non-Federal members of the Users Board while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5."

1999—Subsec. (b). Pub. L. 106–109, in last sentence, substituted "Notwithstanding section 3003 of Public Law 104–66 (31 U.S.C. 1113 note; 109 Stat. 734), the" for "The".

§2252. Project delivery process reforms

(a) Requirements for qualifying projects

With respect to each qualifying project, the Secretary shall require—

- (1) for each project manager, that—
 - (A) the project manager have formal project management training and certification; and
 - (B) the project manager be assigned from among personnel certified by the Chief of Engineers; and
- (2) for an applicable cost estimation, that—
 - (A) the Secretary utilize a risk-based cost estimate with a confidence level of at least 80 percent; and
 - (B) the cost estimate be developed—
 - (i) for a qualifying project that requires an increase in the authorized amount in accordance with section 2280 of this title, during the preparation of a post-authorization change report or other similar decision document;
 - (ii) for a qualifying project for which the first construction contract has not been awarded, prior to the award of the first construction contract;
 - (iii) for a qualifying project without a completed feasibility report in accordance with section 2282 of this title, prior to the completion of such a report; and
 - (iv) for a qualifying project with a completed feasibility report in accordance with section 2282 of this title that has not yet been authorized, during design for the qualifying project.

(b) Additional project delivery process reforms

Not later than 18 months after June 10, 2014, the Secretary shall—

- (1) establish a system to identify and apply on a continuing basis best management practices from prior or ongoing qualifying projects to improve the likelihood of on-time and on-budget completion of qualifying projects;
- (2) evaluate early contractor involvement acquisition procedures to improve on-time and on-budget project delivery performance; and
- (3) implement any additional measures that the Secretary determines will achieve the purposes of this subtitle, including—
 - (A) the implementation of applicable practices and procedures developed pursuant to management by the Secretary of an applicable military construction program;
 - (B) the development and use of a portfolio of standard designs for inland navigation locks, incorporating the use of a center of expertise for the design and review of qualifying projects;
 - (C) the use of full-funding contracts or formulation of a revised continuing contracts clause; and
 - (D) the establishment of procedures for recommending new project construction starts using a capital projects business model.

(c) Pilot projects

(1) In general

Subject to paragraph (2), the Secretary may carry out pilot projects to evaluate processes and procedures for the study, design, and construction of qualifying projects.

(2) Inclusions

At a minimum, the Secretary shall carry out pilot projects under this subsection to evaluate—

- (A) early contractor involvement in the development of features and components;
- (B) an appropriate use of continuing contracts for the construction of features and components; and
- (C) applicable principles, procedures, and processes used for military construction projects.

(Pub. L. 113–121, title II, §2002, June 10, 2014, 128 Stat. 1261.)

EDITORIAL NOTES**REFERENCES IN TEXT**

This subtitle, referred to in subsec. (b)(3), is subtitle A (§§2001–2013) of title II of Pub. L. 113–121, which enacted this section and sections 2253, 2254, and 2255 of this title, amended sections 2212, 2251, and 2327 of this title, and enacted provisions set out as a note under this section. For complete classification of subtitle A to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

Section is comprised of section 2002 of Pub. L. 113–121. Subsec. (d) of section 2002 of Pub. L. 113–121 amended section 2251 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES**DEFINITIONS**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

Pub. L. 113–121, **title II, §2001, June 10, 2014**, 128 Stat. 1260, provided that: "In this title [enacting this section and sections 2211a, 2238b, 2238c, 2243, 2253, 2254, and 2255 of this title and amending sections 2211, 2212, 2238, 2242, 2251, 2282a, and 2327 of this title and section 9505 of Title 26, Internal Revenue Code]:

"(1) **INLAND WATERWAYS TRUST FUND.**—The term 'Inland Waterways Trust Fund' means the Inland Waterways Trust Fund established by section 9506(a) of the Internal Revenue Code of 1986 [26 U.S.C. 9506(a)].

"(2) **QUALIFYING PROJECT.**—The term 'qualifying project' means any construction or major rehabilitation project for navigation infrastructure of the inland and intracoastal waterways that is—

"(A) authorized before, on, or after the date of enactment of this Act [June 10, 2014];

"(B) not completed on the date of enactment of this Act; and

"(C) funded at least in part from the Inland Waterways Trust Fund."

§2253. Annual financial review

For any inland waterways project that the Secretary carries out that has an estimated total cost of \$500,000,000 or more, the Secretary shall submit to the congressional committees referred to in subsection (a) ¹ an annual financial plan for the project. The plan shall be based on detailed annual estimates of the cost to complete the remaining elements of the project and on reasonable assumptions, as determined by the Secretary, of any future increases of the cost to complete the project.

(Pub. L. 113–121, **title II, §2007(b), June 10, 2014**, 128 Stat. 1268.)

EDITORIAL NOTES**REFERENCES IN TEXT**

The congressional committees referred to in subsection (a), referred to in text, mean the congressional committees referred to in subsec. (a) of section 2007 of Pub. L. 113–121, which are the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

¹ See *References in Text note below*.

§2254. Assessment of operation and maintenance needs of the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway**(a) In general**

Not later than 90 days after June 10, 2014, the Secretary shall assess the operation and maintenance needs of the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway.

(b) Types of activities

In carrying out subsection (a), the Secretary shall assess the operation and maintenance needs of the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway as used for the following purposes:

- (1) Commercial navigation.
- (2) Commercial fishing.
- (3) Subsistence, including utilization by Indian tribes (as defined in section 5304 of title 25) for subsistence and ceremonial purposes.
- (4) Use as ingress and egress to harbors of refuge.
- (5) Transportation of persons.
- (6) Purposes relating to domestic energy production, including fabrication, servicing, and supply of domestic offshore energy production facilities.
- (7) Activities of the Secretary of the department in which the Coast Guard is operating.
- (8) Public health and safety related equipment for responding to coastal and inland emergencies.
- (9) Recreation purposes.
- (10) Any other authorized purpose.

(c) Report to Congress

For fiscal year 2015, and biennially thereafter, in conjunction with the annual budget submission by the President to Congress under section 1105(a) of title 31, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report that, with respect to the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway—

- (1) identifies the operation and maintenance costs required to achieve the authorized length, width, and depth;
- (2) identifies the amount of funding requested in the President's budget for operation and maintenance costs; and
- (3) identifies the unmet operation and maintenance needs of the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway.

(Pub. L. 113–121, **title II, §2008, June 10, 2014**, 128 Stat. 1268.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2255. Inland waterways riverbank stabilization**(a) In general**

Not later than 1 year after June 10, 2014, and biennially thereafter, the Secretary shall conduct a study to determine the feasibility of—

- (1) carrying out projects for the inland and intracoastal waterways for purposes of—
 - (A) flood damage reduction;

- (B) emergency streambank and shoreline protection; and
- (C) prevention and mitigation of shore damages attributable to navigation improvements; and

(2) modifying projects for the inland and intracoastal waterways for the purpose of improving the quality of the environment.

(b) Recommendations

In conducting the study, the Secretary shall develop specific project recommendations and prioritize those recommendations based on—

- (1) the extent of damage and land loss resulting from riverbank erosion;
- (2) the rate of erosion;
- (3) the significant threat of future flood risk to public property, public infrastructure, or public safety;
- (4) the destruction of natural resources or habitats; and
- (5) the potential cost savings for maintenance of the channel.

(c) Disposition

The Secretary may carry out any project identified in the study conducted pursuant to subsection (a) in accordance with the criteria for projects carried out under one of the following authorities:

- (1) Section 701r of this title.
- (2) Section 701s of this title.
- (3) Section 426i of this title.
- (4) Section 2309a of this title.

(d) Annual report

For a project recommended pursuant to the study that cannot be carried out under any of the authorities specified in subsection (c), upon a determination by the Secretary of the feasibility of the project, the Secretary may include a recommendation concerning the project in the annual report submitted to Congress under section 2282d of this title.

(Pub. L. 113–121, [title II](#), [§2009](#), [June 10, 2014](#), 128 Stat. 1269.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2255a. High water-low water preparedness

(a) Definitions

In this section:

(1) Bypass

The term "bypass" means an alternate water route adjacent to a lock and dam on a Federal inland waterway system that can be used for commercial navigation during high water conditions.

(2) Emergency condition

The term "emergency condition" means—

- (A) unsafe conditions on a Federal inland waterway system that prevent the operation of commercial vessels, resulting from a major change in water level or flows;
- (B) an obstruction in a Federal inland waterway system, including silt, sediment, rock formation, or a shallow channel;
- (C) an impaired or inoperable Federal lock and dam; or
- (D) any other condition determined appropriate by the Secretary.

(b) Emergency determination

The Secretary, in consultation with the District Commanders responsible for maintaining any Federal inland waterway system, the users of the waterway system, and the Coast Guard, may make a determination that an emergency condition exists on the waterway system.

(c) Emergency mitigation project

(1) In general

Subject to paragraph (2) and the availability of appropriations, and in accordance with all applicable Federal requirements, the Secretary may carry out an emergency mitigation project on a Federal inland waterway system with respect to which the Secretary has determined that an emergency condition exists under subsection (b), or on a bypass of such system, to remedy that emergency condition.

(2) Deadline

An emergency mitigation project under paragraph (1) shall—

- (A) be initiated by not later than 60 days after the date on which the Secretary makes the applicable determination under subsection (b); and
- (B) to the maximum extent practicable, be completed by not later than 1 year after the date on which the Secretary makes such determination.

(d) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out this section \$25,000,000 for each of fiscal years 2022 through 2024, to remain available until expended.

(Pub. L. 116–260, [div. AA](#), [title I](#), [§151](#), [Dec. 27, 2020](#), 134 Stat. 2657.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

SUBCHAPTER IV—WATER RESOURCES STUDIES

§2261. Territories development study

The Secretary is hereby authorized and directed to make studies in cooperation with the Secretary of the Interior and the governments of the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands for the purposes of providing plans for the development, utilization, and conservation of water and related land resources of such jurisdiction, at a total cost of \$2,000,000 for each of the five studies. Such studies shall include appropriate consideration of the needs for flood protection, wise use of flood plain lands, navigation facilities, hydroelectric power generation, regional water supply and waste water management facilities systems, general recreation facilities, enhancement and control of water quality, enhancement and conservation of fish and wildlife, and other measures for environmental enhancement, economic and human resources development. Such studies shall be compatible with comprehensive development plans formulated by local planning agencies and other interested Federal agencies. Any funds made available under this section for a study for any such jurisdiction which is not needed for such study shall be available to the Secretary to construct authorized water resources projects in such jurisdiction and to implement the findings of such study with appropriate cost sharing as provided in this Act.

(Pub. L. 99–662, [title VII](#), [§702](#), [Nov. 17, 1986](#), 100 Stat. 4156.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99–662, [Nov. 17, 1986](#), 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§2262. Survey of potential for use of certain facilities as hydroelectric facilities**(a) Survey authority**

The Secretary shall, upon the request of local public officials, survey the potential and methods for rehabilitating former industrial sites, millraces, and similar types of facilities already constructed for use as hydroelectric facilities. The Secretary shall, upon request, provide technical assistance to local public agencies, including electric cooperatives, in designing projects to rehabilitate sites that have been surveyed, or are qualified for such survey, under this section. The non-Federal share of the cost of carrying out this section shall be 50 percent.

(b) Authorization of appropriations

There is authorized to be appropriated to the Secretary, to implement this section, the sum of \$5,000,000 for each of the fiscal years ending September 30, 1988, through September 30, 1992, such sums to remain available until expended.

(Pub. L. 99–662, title VII, §703, Nov. 17, 1986, 100 Stat. 4156.)

§2263. Study of Corps capability to conserve fish and wildlife**(a) Investigation and study**

The Secretary shall investigate and study the feasibility of utilizing the capabilities of the United States Army Corps of Engineers to conserve fish and wildlife (including their habitats) where such fish and wildlife are indigenous to the United States, its possessions, or its territories. The scope of such study shall include the use of engineering or construction capabilities to create alternative habitats, or to improve, enlarge, develop, or otherwise beneficially modify existing habitats of such fish and wildlife. The study shall be conducted in consultation with the Director of the Fish and Wildlife Service of the Department of the Interior, the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, and the Administrator of the Environmental Protection Agency, and shall be transmitted within the 30-month period beginning on November 17, 1986, by the Secretary to Congress, together with the findings, conclusions, and recommendations of the Chief of Engineers. The Secretary, in consultation with the Federal officers referred to in the preceding sentence, shall undertake a continuing review of the matters covered in the study and shall transmit to Congress, on a biennial basis, any revisions to the study that may be required as a result of the review, together with the findings, conclusions, and recommendations of the Chief of Engineers.

(b) Projects**(1) In general**

The Secretary is further authorized to conduct projects of alternative or beneficially modified habitats for fish and wildlife, including but not limited to man-made reefs for fish. There is authorized to be appropriated not to exceed \$100,000,000 to carry out such projects.

(2) Inclusions

Such projects shall be developed, and their effectiveness evaluated, in consultation with the Director of the Fish and Wildlife Service and the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration. Such projects shall include—

- (A) the construction of a reef for fish habitat in Lake Erie in the vicinity of Buffalo, New York;
- (B) the construction of a reef for fish habitat in the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida;
- (C) the construction of a reef for fish habitat in Lake Ontario in the vicinity of the town of Newfane, New York; and
- (D) the restoration and rehabilitation of habitat for fish, including native oysters, in the Chesapeake Bay and its tributaries in Virginia and Maryland, including—
 - (i) the construction of oyster bars and reefs;
 - (ii) the rehabilitation of existing marginal habitat;
 - (iii) the use of appropriate alternative substrate material in oyster bar and reef construction;
 - (iv) the construction and upgrading of oyster hatcheries; and
 - (v) activities relating to increasing the output of native oyster broodstock for seeding and monitoring of restored sites to ensure ecological success.

(3) Restoration and rehabilitation activities

The restoration and rehabilitation activities described in paragraph (2)(D) shall be—

- (A) for the purpose of establishing permanent sanctuaries and harvest management areas; and
- (B) consistent with plans and strategies for guiding the restoration of the Chesapeake Bay oyster resource and fishery.

(4) Cost sharing**(A) In general**

The non-Federal share of the cost of any project under this subsection shall be 25 percent.

(B) Form

The non-Federal share may be provided through in-kind services, including—

- (i) the provision by the non-Federal interest of shell stock material that is determined by the Secretary to be suitable for use in carrying out the project; and
- (ii) in the case of a project carried out under paragraph (2)(D) after June 10, 2014, land conservation or restoration efforts undertaken by the non-Federal interest that the Secretary determines provide water quality benefits that—
 - (I) enhance the viability of oyster restoration efforts;
 - (II) are integral to the project; and
 - (III) are cost effective.

(C) Applicability

The non-Federal interest shall be credited with the value of in-kind services provided on or after October 1, 2000, for a project described in paragraph (1) completed on or after that date, if the Secretary determines that the work is integral to the project.

(5) Definition of ecological success

In this subsection, the term "ecological success" means—

- (A) achieving a tenfold increase in native oyster biomass by the year 2010, from a 1994 baseline; and
- (B) the establishment of a sustainable fishery as determined by a broad scientific and economic consensus.

In carrying out paragraph (4),¹ the Chief of Engineers may solicit participation by and the services of commercial watermen in the construction of the reefs.

(Pub. L. 99–662, title VII, §704, Nov. 17, 1986, 100 Stat. 4157; Pub. L. 104–303, title V, §505, Oct. 12, 1996, 110 Stat. 3757; Pub. L. 106–541, title III, §342, Dec. 11, 2000, 114 Stat. 2612; Pub. L. 107–66, title I, §113, Nov. 12, 2001, 115 Stat. 496; Pub. L. 109–103, title I, §126, Nov. 19, 2005, 119 Stat. 2259; Pub. L. 110–114, title V, §5021, Nov. 8, 2007, 121 Stat. 1202; Pub. L. 113–121, title IV, §4010(b), June 10, 2014, 128 Stat. 1318; Pub. L. 114–322, title I, §1180, Dec. 16, 2016, 130 Stat. 1677.)

EDITORIAL NOTES

REFERENCES IN TEXT

Paragraph (4), referred to in concluding provisions of subsec. (b), meaning subsec. (b)(4) of this section, was redesignated subsec. (b)(1)(D) by Pub. L. 107–66, title I, §113(1), (2), Nov. 12, 2001, 115 Stat. 496. Subsequently, Pub. L. 110–114, title V, §5021(1), (2)(B), (3), Nov. 8, 2007, 121 Stat. 1202, redesignated subsec. (b)(1)(D) as (b)(2)(D), struck it out, added a new subsec. (b)(2)(D), and redesignated former subsec. (b)(2) as (b)(4).

AMENDMENTS

2016—Subsec. (b)(1). Pub. L. 114–322 substituted "\$100,000,000" for "\$60,000,000".

2014—Subsec. (b)(1). Pub. L. 113–121, §4010(b)(1), substituted "\$60,000,000" for "\$50,000,000".

Subsec. (b)(4)(B). Pub. L. 113–121, §4010(b)(2), added subpar. (B) and struck out former subpar. (B). Prior to amendment, text read as follows: "The non-Federal share may be provided through in-kind services, including the provision by the non-Federal interest of shell stock material that is determined by the Chief of Engineers to be suitable for use in carrying out the project."

2007—Subsec. (b)(1). Pub. L. 110–114, §5021(2), substituted "\$50,000,000" for "\$30,000,000" in second sentence and designated last sentence as par. (2).

Subsec. (b)(2). Pub. L. 110–114, §5021(2)(B), designated last sentence of par. (1) as (2) and inserted heading. Former par. (2) redesignated (4).

Subsec. (b)(2)(D). Pub. L. 110–114, §5021(3), added subpar. (D) and struck out former subpar. (D) which read as follows: "the construction of reefs and related clean shell substrate for fish habitat, including manmade 3-dimensional oyster reefs, in the Chesapeake Bay and its tributaries in Maryland and Virginia if the reefs are preserved as permanent sanctuaries by the non-Federal interests, consistent with the recommendations of the scientific consensus document on Chesapeake Bay oyster restoration dated June 1999."

Subsec. (b)(3), (4). Pub. L. 110–114, §5021(1), (3), added par. (3) and redesignated par. (2) as (4).

Subsec. (b)(5). Pub. L. 110–114, §5021(4), which directed addition of par. (5) at end of subsec. (b), was executed by adding par. (5) after par. (4) to reflect the probable intent of Congress.

2005—Subsec. (b)(1). Pub. L. 109–103 substituted "\$30,000,000" for "\$20,000,000" in introductory provisions.

2001—Subsec. (b). Pub. L. 107–66 inserted subsec. heading, designated introductory provisions as par. (1), inserted par. (1) heading, redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), and substituted par. (2) for first sentence of concluding provisions which read "The non-Federal share of the cost of any project under this section shall be 25 percent."

2000—Subsec. (b). Pub. L. 106–541, §342(1), (3), substituted "\$20,000,000" for "\$7,000,000" in second sentence of introductory provisions and inserted at end of concluding provisions "In carrying out paragraph (4), the Chief of Engineers may solicit participation by and the services of commercial watermen in the construction of the reefs."
 Subsec. (b)(4). Pub. L. 106–541, §342(2), added par. (4) and struck out former par. (4) which read as follows: "the construction of a reef for fish habitat in the Chesapeake Bay in Maryland and Virginia."
1996—Subsec. (b). Pub. L. 104–303 substituted "\$7,000,000" for "\$5,000,000" in introductory provisions and inserted "and Virginia" after "Maryland" in par. (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (a) of this section is listed on page 68), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

¹ See *References in Text note below*.

§2263a. Aquatic invasive species research

(a) In general

As part of the ongoing activities of the Engineer Research and Development Center to address the spread and impacts of aquatic invasive species, the Secretary shall undertake research on the prevention, management, and eradication of aquatic invasive species, including Asian carp, elodea, hydrilla, quagga mussels, and zebra mussels.

(b) Locations

In carrying out subsection (a), the Secretary shall work with Corps of Engineers district offices representing diverse geographical regions of the continental United States that are impacted or could be impacted in the future by aquatic invasive species, such as the Atlantic, Pacific, Arctic, and Gulf Coasts, the Great Lakes, and reservoirs operated and maintained by the Secretary.

(c) Report

Not later than 180 days after October 23, 2018, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report recommending a plan to address the spread and impacts of aquatic invasive species.

(Pub. L. 115–270, title I, §1108, Oct. 23, 2018, 132 Stat. 3774; Pub. L. 116–260, div. AA, title V, §502, Dec. 27, 2020, 134 Stat. 2744; Pub. L. 117–263, div. H, title LXXXI, §8305(a), Dec. 23, 2022, 136 Stat. 3778.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2018, and also as part of the America's Water Infrastructure Act of 2018, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–263 inserted ", hydrilla" after "elodea".

2020—Subsec. (a). Pub. L. 116–260, §502(1), substituted "prevention, management," for "management" and inserted ", elodea, quagga mussels," after "Asian carp".

Subsec. (b). Pub. L. 116–260, §502(2), inserted "or could be impacted in the future" after "that are impacted" and substituted "Pacific, Arctic, and Gulf Coasts, the Great Lakes, and reservoirs operated and maintained by the Secretary." for "Pacific, and Gulf coasts and the Great Lakes."

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 102 of Pub. L. 115–270, set out as a note under section 2201 of this title.

§2264. Repealed. Pub. L. 116–260, div. AA, title III, §360(a), Dec. 27, 2020, 134 Stat. 2732

Section, Pub. L. 99–662, title VII, §710, Nov. 17, 1986, 100 Stat. 4160; Pub. L. 106–109, §8(b), Nov. 24, 1999, 113 Stat. 1495, related to deauthorization of studies.

§2265. Columbia River/Arkansas River Basin transfers

(a) No Federal agency shall study or participate in the study of any regional or river basin plan or any plan for any Federal water and related land resource project which has as its objective the transfer of water from the Columbia River Basin to any other region or any other major river basin of the United States, unless such study is approved by the Governors of all affected States.

(b) For a period of 5 years after November 17, 1986, no Federal agency shall study or participate in the study of any regional or river basin plan or any plan for any Federal water and related land resource project which has as its objective the transfer of water from the Arkansas River Basin to any other region or any other major river basin of the United States, unless such study is approved by the Governors of all affected States.

(Pub. L. 99–662, title VII, §715, Nov. 17, 1986, 100 Stat. 4161.)

§2266. Canadian tidal power study

(a) Study authority

The Secretary, after consultation with the National Oceanic and Atmospheric Administration, the National Marine Fisheries Service, the United States Fish and Wildlife Service, and other appropriate governmental agencies, and the National Research Council of the National Academy of Sciences, is authorized and directed to undertake studies to identify the impacts on the United States of potential Canadian tidal power development in the Bay of Fundy, and submit such studies to the appropriate committees of the Congress.

(b) Study phases

The Secretary shall conduct the studies authorized in subsection (a) of this section in two phases:

(1) Studies to be completed not later than October 1, 1988, to (A) identify effects of any such projects on tidal ranges and resulting impacts to beaches and estuarine areas, and (B) identify further studies which would be needed to meet the requirements of paragraph (2) of this subsection; and

(2) Studies to be completed not later than October 1, 1990, to (A) determine further environmental, social, economic, and institutional impacts of such tidal power development, and (B) determine what measures could be taken in Canada and the United States to offset or minimize any adverse impacts of such development on the United States.

(c) Authorization of appropriations

In the fiscal year ending September 30, 1987, or in any fiscal year thereafter, there is authorized to be appropriated to the Secretary the sum of \$1,100,000 for the purposes of subsection (b)(1) of this section, and the sum of \$8,900,000 for the purposes of subsection (b)(2) of this section, such sums to remain available until expended.

(Pub. L. 99–662, title VII, §724, Nov. 17, 1986, 100 Stat. 4163.)

§2267. New York Bight study

(a) Study authority

The Secretary shall study a hydro-environmental monitoring and information system in the New York Bight in the form of a system using computerized buoys and radio telemetry that allows for the continual monitoring (at strategically located sites throughout the New York Bight) of the following: wind, wave, current, salinity and thermal gradients and sea chemistry, in order to measure the effect of changes due to air and water pollution, including changes due to continued dumping in the Bight.

(b) Study of physical hydraulic model

In addition, the Secretary shall study a proper physical hydraulic model of the New York Bight and for such an offshore model to be tied into the existing inshore physical hydraulic model of the Port of New York and New Jersey operated by the United States Army Corps of Engineers.

(c) Agency coordination; findings and recommendations

The Secretary shall coordinate fully with the Administrator of the Environmental Protection Agency in carrying out the study described in this section and shall report any findings and recommendations to Congress. The Secretary and the Administrator shall also consider the views of other appropriate Federal, State, and local agencies, academic institutions, and members of the public who are concerned about water quality in the New York Bight.

(d) Authorization of appropriations

There is authorized to be appropriated not more than \$1,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

STATUTORY NOTES AND RELATED SUBSIDIARIES

NEW YORK BIGHT AND HARBOR STUDY

Pub. L. 102–580, title III, §326, Oct. 31, 1992, 106 Stat. 4850, as amended by Pub. L. 104–303, title IV, §433, Oct. 12, 1996, 110 Stat. 3746, provided that:

"(a) IN GENERAL.—As a continuation of the study pursuant to section 728 of the Water Resources Development Act of 1986 [33 U.S.C. 2267], the Secretary shall study a hydro-environmental monitoring and information system in the New York Bight and New York Harbor and tributaries to the head of tide, in the form of a system using computerized buoys and radio telemetry that allows for the continual monitoring (at strategically located sites throughout the New York Bight and Harbor region) of the following: wind, wave, current, salinity, and thermal gradients and sea chemistry, in order to measure the effect of changes due to air and water pollution, including changes due to continued dumping in the Bight. This effort will include the study of a verified, nested, high-resolution Harbor/Bight Apex numerical model, and supportive monitoring and information systems.

"(b) HYDRAULIC MODEL.—In addition, the Secretary shall study a proper physical hydraulic model of the New York Bight and the tying in of such model to the existing inshore physical hydraulic model of the Port of New York and New Jersey operated by the United States Army Corps of Engineers.

"(c) PURPOSE.—This New York Bight and Harbor effort will address the engineering, environmental, and social impacts of natural and man-made changes to the New York Bight, including water quality parameters such as contaminant and sediment transport effects, and nutrient eutrophication.

"(d) COORDINATION WITH EPA; REPORTS.—The Secretary shall coordinate fully with the Administrator of the Environmental Protection Agency in carrying out the study described in the section and shall report any findings and recommendations to Congress. The Secretary and the Administrator shall also consider the views of other appropriate Federal, State, and local agencies, academic institutions, and members of the public who are concerned about water and sediment quality in the New York Bight and Harbor region.

"(e) REMEDIATION TECHNIQUES.—

"(1) IN GENERAL.—To test and verify contaminant and sediment tracking ability of the models, and to reduce the problems associated with the dredging and disposal of dioxin contaminated sediments in the region, a study shall be performed to identify appropriate remediation techniques (including isolation and treatment) for mitigating dioxin contaminated sediments at their sources. The study and report are not intended to encumber civil works projects under development or scheduled to be maintained. Work on these projects shall proceed along the present schedule.

"(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1992], the Secretary shall submit to the Committee on Environment and Public Works of the Senate, the Committee on Public Works and Transportation of the House of Representatives, and to the State of New Jersey a report on—

"(A) the dioxin study and monitoring required in this subsection; and

"(B) the effectiveness and costs of all reasonable remediation measures, including recommendations as to a plan for implementation of the most time and cost-effective measures.

"(f) FUNDING.—There is authorized to be appropriated \$3,000,000 for fiscal years beginning after September 30, 1992. Such sums shall remain available until expended."

Pub. L. 100–220, title II, subtitle C, Dec. 29, 1987, 101 Stat. 1467, as amended by Pub. L. 100–688, title I, §1003(b), (c), Nov. 18, 1988, 102 Stat. 4150, directed Administrator of the Environmental Protection Agency, within 3 years after Dec. 29, 1987, in consultation with Administrator of the National Oceanic and Atmospheric Administration and other Federal, State, and interstate agencies, to prepare and submit to Congress a New York Bight Restoration Plan and a detailed schedule and two preliminary reports at specified times, and further directed Administrator to conduct a study of problems associated with plastic debris in the New York Bight and report to Congress within 6 months after Dec. 29, 1987.

§2267a. Watershed and river basin assessments

- (a) In general
- The Secretary may assess the water resources needs of river basins and watersheds of the United States, including needs relating to—
- (1) ecosystem protection and restoration;
 - (2) flood damage reduction;
 - (3) navigation and ports;
 - (4) watershed protection;
 - (5) water supply;
 - (6) drought preparedness;
 - (7) sea level rise;
 - (8) coastal storm damage reduction; and
 - (9) streambank and shoreline protection.
- (b) Cooperation
- An assessment under subsection (a) shall be carried out in cooperation and coordination with—
- (1) the Secretary of the Interior;
 - (2) the Secretary of Agriculture;
 - (3) the Secretary of Commerce;
 - (4) the Administrator of the Environmental Protection Agency; and
 - (5) the heads of other appropriate agencies.
- (c) Consultation
- In carrying out an assessment under subsection (a), the Secretary shall consult with Federal, tribal, State, interstate, and local governmental entities.
- (d) Priority river basins and watersheds
- In selecting river basins and watersheds for assessment under this section, the Secretary shall give priority to—
- (1) the Delaware River basin;
 - (2) the Kentucky River basin;
 - (3) the Potomac River basin;
 - (4) the Susquehanna River basin;
 - (5) the Willamette River basin;
 - (6) Tuscarawas River Basin, Ohio;
 - (7) Sauk River Basin, Snohomish and Skagit Counties, Washington;
 - (8) Niagara River Basin, New York;
 - (9) Genesee River Basin, New York;
 - (10) White River Basin, Arkansas and Missouri;
 - (11) New York-New Jersey Watershed Basin, which encompasses all the watersheds that flow into the New York-New Jersey Harbor and their associated estuaries, including the Hudson, Mohawk, Raritan, Passaic, Hackensack, and Bronx River Watersheds and the Hudson River Estuary;
 - (12) Mississippi River Watershed; and
 - (13) Chattahoochee River Basin, Alabama, Florida, and Georgia.
- (e) Acceptance of contributions
- In carrying out an assessment under subsection (a), the Secretary may accept contributions, in cash or in kind, from Federal, tribal, State, interstate, and local governmental entities to the extent that the Secretary determines that the contributions will facilitate completion of the assessment.
- (f) Cost-sharing requirements
- (1) Non-Federal share
- The non-Federal share of the costs of an assessment carried out under this section on or after December 11, 2000, shall be 25 percent.
- (2) Credit
- (A) In general
- Subject to subparagraph (B), the Secretary may credit toward the non-Federal share of an assessment under this section the cost of services, materials, supplies, or other in-kind contributions provided by the non-Federal interests for the assessment.
- (B) Maximum amount of credit
- The credit under subparagraph (A) may not exceed an amount equal to 25 percent of the costs of the assessment.
- (Pub. L. 99–662, title VII, §729, Nov. 17, 1986, 100 Stat. 4164; Pub. L. 106–541, title II, §202, Dec. 11, 2000, 114 Stat. 2587; Pub. L. 110–114, title II, §2010, Nov. 8, 2007, 121 Stat. 1074; Pub. L. 117–263, div. H, title LXXXI, §8302, Dec. 23, 2022, 136 Stat. 3776.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (a)(7) to (9). Pub. L. 117–263, §8302(1), added pars. (7) to (9).

Subsec. (d)(11) to (13). Pub. L. 117–263, §8302(2), added pars. (11) to (13).

2007—Subsec. (d)(6) to (10). Pub. L. 110–114, §2010(1), added pars. (6) to (10).

Subsec. (f)(1). Pub. L. 110–114, §2010(2), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "The non-Federal share of the costs of an assessment carried out under this section shall be 50 percent."

Subsec. (g). Pub. L. 110–114, §2010(3), struck out heading and text of subsec. (g). Text read as follows: "There is authorized to be appropriated to carry out this section \$15,000,000."

2000—Pub. L. 106–541 amended section catchline and text generally. Prior to amendment, section read as follows:

"(a) The Secretary, in coordination with the Secretary of the Interior and in consultation with appropriate Federal, State, and local agencies, is authorized to study the water resources needs of river basins and regions of the United States. The Secretaries shall report the results of such study to Congress not later than October 1, 1988.

"(b) In carrying out the studies authorized under subsection (a) of this section, the Secretaries shall consult with State, interstate, and local governmental entities.

"(c) There is authorized to be appropriated \$5,000,000 for fiscal years beginning after September 30, 1986, to carry out this section."

§2267b. Post-disaster watershed assessments

(a) Watershed assessments

(1) In general

In an area that the President has declared a major disaster in accordance with section 5170 of title 42, the Secretary may carry out a watershed assessment to identify, to the maximum extent practicable, specific flood risk reduction, hurricane and storm damage reduction, ecosystem restoration, or navigation project recommendations that will help to rehabilitate and improve the resiliency of damaged infrastructure and natural resources to reduce risks to human life and property from future natural disasters.

(2) Existing projects

A watershed assessment carried out paragraph 1 (1) may identify existing projects being carried out under 1 or more of the authorities referred to in subsection (b)(1).

(3) Duplicate watershed assessments

In carrying out a watershed assessment under paragraph (1), the Secretary shall use all existing watershed assessments and related information developed by the Secretary or other Federal, State, or local entities.

(b) Projects

(1) In general

The Secretary may carry out projects identified under a watershed assessment under subsection (a) in accordance with the criteria for projects carried out under one of the following authorities:

(A) Section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s).

(B) Section 111 of the River and Harbor Act of 1968 (33 U.S.C. 426i).

(C) Section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330).

(D) Section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a).

(E) Section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577).

(F) Section 3 of the Act of August 13, 1946 (33 U.S.C. 426g).

(2) Annual plan

For each project that does not meet the criteria under paragraph (1), the Secretary shall include a recommendation relating to the project in the annual report submitted to Congress by the Secretary in accordance with section 2282d of this title.

(3) Existing projects

In carrying out a project under paragraph (1), the Secretary shall—

(A) to the maximum extent practicable, use all existing information and studies available for the project; and

(B) not require any element of a study completed for the project prior to the disaster to be repeated.

(c) Requirements

All requirements applicable to a project under the Acts described in subsection (b) shall apply to the project.

(d) Limitations on assessments

A watershed assessment under subsection (a) shall be initiated not later than 2 years after the date on which the major disaster declaration is issued.

(e) Assessments in territories of the United States

(1) In general

For any major disaster declared in a territory of the United States before October 23, 2018, all activities in the territory carried out or undertaken pursuant to the authorities described in this section shall be conducted at full Federal expense unless the President determines that the territory has the ability to pay the cost share for an assessment under this section without the use of loans.

(2) Territory defined

In this subsection, the term "territory of the United States" means an insular area specified in section 2310(a)(1) of this title.

(Pub. L. 113–121, title III, §3025, June 10, 2014, 128 Stat. 1303; Pub. L. 115–270, title I, §1139, Oct. 23, 2018, 132 Stat. 3784.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Flood Control Act of 1948, referred to in subsecs. (b)(1)(A) and (c), is act June 30, 1948, ch. 771, title II, 62 Stat. 1175. For complete classification of this Act to the Code, see Tables.

The River and Harbor Act of 1968, referred to in subsecs. (b)(1)(B) and (c), is Pub. L. 90–483, title I, Aug. 13, 1968, 82 Stat. 731. For complete classification of this Act to the Code, see Tables.

The Water Resources Development Act of 1996, referred to in subsecs. (b)(1)(C) and (c), is Pub. L. 104–303, Oct. 12, 1996, 110 Stat. 3658. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 2201 of this title and Tables.

The Water Resources Development Act of 1986, referred to in subsecs. (b)(1)(D) and (c), is Pub. L. 99–662, Nov. 17, 1986, 100 Stat. 4082. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

The River and Harbor Act of 1960, referred to in subsecs. (b)(1)(E) and (c), is Pub. L. 86–645, title I, July 14, 1960, 74 Stat. 480. For complete classification of this Act to the Code, see Tables.

The Act of August 13, 1946, referred to in subsecs. (b)(1)(F) and (c), is act Aug. 13, 1946, ch. 960, 60 Stat. 1056. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2018—Subsec. (e). Pub. L. 115–270 added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

¹ *So in original. Probably should be preceded by "under".*

§2268. Marine technology review

(a) Dredging needs

The Secretary is authorized to conduct such studies as are necessary to provide a report to Congress on the dredging needs of the national ports and harbors of the United States. The report shall include existing and projected future project depths, types and sizes of ships in use, and world trade patterns, an assessment of the future national waterside infrastructure needs, and a comparison of drafts of United States and selected world ports.

(b) Authorization of appropriations

There is authorized to be appropriated \$2,500,000 to carry out this section for fiscal years beginning after September 30, 1992. Such sums shall remain available until expended.

(Pub. L. 102–580, title IV, §402, Oct. 31, 1992, 106 Stat. 4862.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102–580, set out as a note under section 2201 of this title.

§2269. Tribal partnership program

(a) Definition of Indian tribe

In this section, the term "Indian tribe" has the meaning given the term in section 5304 of title 25.

(b) Program

(1) In general

In cooperation with Indian tribes and the heads of other Federal agencies, the Secretary may carry out water-related planning activities, or activities relating to the study, design, and construction of water resources development projects, that—

(A) will substantially benefit Indian tribes; and

(B) are located primarily within Indian country (as defined in section 1151 of title 18, and including lands that are within the jurisdictional area of an Oklahoma Indian tribe, as determined by the Secretary of the Interior, and are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations) or in proximity to Alaska Native villages.

(2) Authorized activities

An activity conducted under paragraph (1) may address—

(A) projects for flood ¹/₄ hurricane and storm damage reduction, including erosion control, environmental restoration and protection, and preservation of cultural and natural resources;

(B) watershed assessments and planning activities;

(C) technical assistance to an Indian tribe, including—

(i) assistance for planning to ameliorate flood hazards, to avoid repetitive flood impacts, to anticipate, prepare, and adapt to changing hydrological and climatic conditions and extreme weather events, and to withstand, respond to, and recover rapidly from disruption due to flood hazards; and

(ii) the provision of, and integration into planning of, hydrologic, economic, and environmental data and analyses; and

(D) such other projects as the Secretary, in cooperation with Indian tribes and the heads of other Federal agencies, determines to be appropriate.

(3) Feasibility study and reports

(A) In general

On the request of an Indian tribe, the Secretary shall conduct a study on, and provide to the Indian tribe a report describing, the feasibility of a water resources development project described in paragraph (1).

(B) Recommendation

A report under subparagraph (A) may, but shall not be required to, contain a recommendation on a specific water resources development project.

(C) Initial costs

The first \$200,000 of the costs of a study under this section shall be at Federal expense.

(4) Design and construction

(A) In general

The Secretary may carry out the design and construction of a water resources development project, or separable element of a project, described in paragraph (1) that the Secretary determines is feasible if the Federal share of the cost of the project or separable element is not more than \$26,000,000.

(B) Specific authorization

If the Federal share of the cost of the project or separable element described in subparagraph (A) is more than \$26,000,000, the Secretary may only carry out the project or separable element if Congress enacts a law authorizing the Secretary to carry out the project or separable element.

(5) Project justification

Notwithstanding any requirement for economic justification established under section 1962–2 of title 42, the Secretary may implement a project (other than a project for ecosystem restoration) under this section if the Secretary determines that the project will—

(A) significantly reduce potential flood or hurricane and storm damage hazards (which may be limited to hazards that may be addressed by measures for erosion mitigation or bank stabilization);

(B) improve the quality of the environment;

(C) reduce risks to life safety associated with the hazards described in subparagraph (A); and

(D) improve the long-term viability of the community.

(c) Consultation and coordination with Secretary of the Interior

(1) In general

In recognition of the unique role of the Secretary of the Interior concerning trust responsibilities with Indian tribes and in recognition of mutual trust responsibilities, the Secretary shall consult with the Secretary of the Interior concerning an activity conducted under subsection (b).

(2) Integration of activities

The Secretary shall—

(A) integrate civil works activities of the Department of the Army with activities of the Department of the Interior to avoid conflicts, duplications of effort, or unanticipated adverse effects on Indian tribes; and

(B) consider the authorities and programs of the Department of the Interior and other Federal agencies in any recommendations concerning an activity conducted under subsection (b).

(d) Cost sharing

(1) Ability to pay

(A) In general

Any cost-sharing agreement for an activity conducted under subsection (b) shall be subject to the ability of the non-Federal interest to pay.

(B) Use of procedures

(i) In general

The ability of a non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.

(ii) Determination

Not later than 180 days after June 10, 2014, the Secretary shall issue guidance on the procedures described in clause (i).

(2) Credit

The Secretary may credit toward the non-Federal share of the costs of an activity conducted under subsection (b) the cost of services, studies, supplies, or other in-kind contributions provided by the non-Federal interest.

(3) Sovereign immunity

The Secretary shall not require an Indian tribe to waive the sovereign immunity of the Indian tribe as a condition to entering into a cost-sharing agreement under this subsection.

(4) Water resources development projects

(A) In general

The non-Federal share of costs for the study of a water resources development project described in subsection (b)(1) shall be 50 percent.

(B) Other costs

The non-Federal share of costs of design and construction of a project described in subparagraph (A) shall be assigned to the appropriate project purposes described in sections 2211 and 2213 of this title and shared in the same percentages as the purposes to which the costs are assigned.

(5) Water-related planning activities

(A) In general

The non-Federal share of costs of a watershed and river basin assessment conducted under subsection (b) shall be 25 percent.

(B) Other costs

The Federal share of costs of other water-related planning activities described in subsection (b)(1) shall be 100 percent.

(6) Technical assistance

The Federal share of the cost of activities described in subsection (b)(2)(C) shall be 100 percent.

(e) Restrictions

The Secretary is authorized to carry out activities under this section for fiscal years 2015 through 2033.

(Pub. L. 106–541, title II, §203, Dec. 11, 2000, 114 Stat. 2588; Pub. L. 110–114, title II, §2011, Nov. 8, 2007, 121 Stat. 1074; Pub. L. 113–121, title I, §1031(a), June 10, 2014, 128 Stat. 1232; Pub. L. 114–322, title I, §1121, Dec. 16, 2016, 130 Stat. 1644; Pub. L. 115–270, title I, §1157(i), Oct. 23, 2018, 132 Stat. 3794; Pub. L. 116–260, div. AA, title III, §303, Dec. 27, 2020, 134 Stat. 2703; Pub. L. 117–263, div. H, title LXXXI, §8111, Dec. 23, 2022, 136 Stat. 3703.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2000, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–263, §8111(1), made technical amendment to reference in original act which appears in text as reference to section 5304 of title 25.

Subsec. (b)(2)(A). Pub. L. 117–263, §8111(2)(A)(i), inserted "hurricane and storm" after "flood" and "including erosion control," after "reduction,".

Subsec. (b)(2)(C), (D). Pub. L. 117–263, §8111(2)(A)(ii)–(iv), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (b)(3)(C). Pub. L. 117–263, §8111(2)(B), added subpar. (C).

Subsec. (b)(4)(A). Pub. L. 117–263, §8111(2)(C)(i), substituted "\$26,000,000" for "\$18,500,000".

Subsec. (b)(4)(B). Pub. L. 117–263, §8111(2)(C)(ii), substituted "\$26,000,000" for "\$18,500,000".

Subsec. (b)(5). Pub. L. 117–263, §8111(2)(D), added par. (5).

Subsec. (d)(5)(B). Pub. L. 117–263, §8111(3)(A), substituted "Federal" for "non-Federal" and "100 percent" for "50 percent".

Subsec. (d)(6). Pub. L. 117–263, §8111(3)(B), added par. (6).

Subsec. (e). Pub. L. 117–263, §8111(4), substituted "2033" for "2024".

2020—Subsec. (b)(4). Pub. L. 116–260 substituted "\$18,500,000" for "\$12,500,000" in subpars. (A) and (B).

2018—Subsec. (b)(4). Pub. L. 115–270 amended par. (4) generally. Prior to amendment, text read as follows:

"(A) IN GENERAL.—The Secretary may carry out the design and construction of a water resources development project described in paragraph (1) that the Secretary determines is feasible if the Federal share of the cost of the project is not more than \$10,000,000.

"(B) SPECIFIC AUTHORIZATION.—If the Federal share of the cost of a project described in subparagraph (A) is more than \$10,000,000, the Secretary may only carry out the project if Congress enacts a law authorizing the Secretary to carry out the project."

2016—Subsec. (b)(1). Pub. L. 114–322, §1121(1)(A), substituted "the Secretary may carry out water-related planning activities, or activities relating to the study, design, and construction of water resources development projects," for "the Secretary may carry out water-related planning activities and study and determine the feasibility of carrying out water resources development projects" in introductory provisions.

Subsec. (b)(2). Pub. L. 114–322, §1121(1)(B), substituted "Authorized activities" for "Matters to be studied" in heading and "An activity" for "A study" in introductory provisions.

Subsec. (b)(3), (4). Pub. L. 114–322, §1121(1)(C), added pars. (3) and (4).

Subsec. (c)(1). Pub. L. 114–322, §1121(2)(A), substituted "an activity" for "studies".

Subsec. (c)(2)(B). Pub. L. 114–322, §1121(2)(B), substituted "an activity conducted" for "carrying out projects studied".

Subsec. (d)(1)(A). Pub. L. 114–322, §1121(3)(A), substituted "an activity conducted" for "a study".

Subsec. (d)(2) to (5). Pub. L. 114–322, §1121(3)(B), added pars. (2) to (5) and struck out former par. (2). Prior to amendment, text of par. (2) read as follows: "The Secretary may credit toward the non-Federal share of the costs of a study under subsection (b) the cost of services, studies, supplies, or other in-kind contributions provided by the non-Federal interest if the Secretary determines that the services, studies, supplies, and other in-kind contributions will facilitate completion of the study."

2014—Subsec. (d)(1)(B). Pub. L. 113–121, §1031(a)(1), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Subsec. (e). Pub. L. 113–121, §1031(a)(2), added subsec. (e) and struck out former subsec. (e) which authorized appropriations for fiscal years 2002 to 2012.

2007—Subsec. (b)(1). Pub. L. 110–114, §2011(a)(1), inserted "carry out water-related planning activities and" after "the Secretary may" in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 110–114, §2011(a)(2), inserted ", and including lands that are within the jurisdictional area of an Oklahoma Indian tribe, as determined by the Secretary of the Interior, and are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations" after "section 1151 of title 18".

Subsec. (b)(2). Pub. L. 110–114, §2011(a)(3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (e). Pub. L. 110–114, §2011(b), substituted "2012" for "2006".

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–541, set out as a note under section 2201 of this title.

¹ So in original. Probably should be followed by "or".

§2270. Subsurface drain systems research and development

Subject to the availability of appropriations, the Secretary, acting through the Director of the Engineer Research and Development Center and, where appropriate, in consultation with other Federal agencies, shall carry out research and development activities relating to the use of subsurface drain systems as—

(1) a flood risk-reduction measure; or

(2) a coastal storm risk-reduction measure.

(Pub. L. 116–260, div. AA, title II, §227, Dec. 27, 2020, 134 Stat. 2698.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

SUBCHAPTER V—GENERAL PROVISIONS

§2280. Maximum cost of projects

(a) In general

In order to insure against cost overruns, each total cost set forth with respect to a project for water resources development and conservation and related purposes authorized to be carried out by the Secretary in this Act or in a law enacted after the date of the enactment of this Act, including the Water Resources Development Act of 1988, or in an amendment made by this Act or any later law with respect to such a project shall be the maximum cost of that project, except that such maximum amount—

(1) may be increased by the Secretary for modifications which do not materially alter the scope or functions of the project as authorized, but not by more than 20 percent of the total cost stated for the project in this Act, in any later law, or in an amendment made by this Act or any later law; and

(2) shall be automatically increased for—

(A) changes in construction costs applied to unconstructed features (including real property acquisitions, preconstruction studies, planning, engineering, and design) from the date of enactment of this Act or any later law (unless otherwise specified) as indicated by engineering and other appropriate cost indexes; and

(B) additional studies, modifications, and actions (including mitigation and other environmental actions) authorized by this Act or any later law or required by changes in Federal law.

(b) Contributions by non-Federal interests

Notwithstanding subsection (a), in accordance with section 701h of this title, the Secretary may accept funds from a non-Federal interest for any authorized water resources development project that has exceeded its maximum cost under subsection (a), and use such funds to carry out such project, if the use of such funds does not increase the Federal share of the cost of such project.

(Pub. L. 99–662, title IX, §902, Nov. 17, 1986, 100 Stat. 4183; Pub. L. 100–676, §3(b), Nov. 17, 1988, 102 Stat. 4014; Pub. L. 113–121, title I, §1023, June 10, 2014, 128 Stat. 1228.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 99–662, **Nov. 17, 1986**, 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

The date of enactment of this Act, referred to in subsec. (a), is the date of enactment of Pub. L. 99–662, which was approved Nov. 17, 1986.

The Water Resources Development Act of 1988, referred to in subsec. (a), is Pub. L. 100–676, **Nov. 17, 1988**, 102 Stat. 4012. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2201 of this title and Tables.

AMENDMENTS

2014—Pub. L. 113–121 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1988—Pub. L. 100–676, §3(b)(1), substituted "with respect to a project for water resources development and conservation and related purposes authorized to be carried out by the Secretary in this Act or in a law enacted after the date of the enactment of this Act, including the Water Resources Development Act of 1988, or in an amendment made by this Act or any later law with respect to such a project" for "in this Act, or an amendment made by this Act, for a project".

Par. (1). Pub. L. 100–676, §3(b)(2), inserted ", in any later law," after "in this Act", and "or any later law" after "by this Act".

Par. (2). Pub. L. 100–676, §3(b)(3), (4), inserted "or any later law" after "of this Act" in subpars. (A) and (B).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONTINUATION OF CONSTRUCTION

Pub. L. 117–263, **div. H, title LXXXI, §8155, Dec. 23, 2022**, 136 Stat. 3736, provided that:

"(a) CONTINUATION OF CONSTRUCTION.—

"(1) IN GENERAL.—Upon the transmittal of an initial notification pursuant to subsection (b)(1) with respect to a water resources development project, the Secretary [of the Army] shall not, solely on the basis of the maximum cost requirements under section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280)—

"(A) defer the initiation or continuation of construction of the water resources development project during the covered period; or

"(B) terminate during or after the covered period, a contract for design or construction of the water resources development project that was entered into prior to or during the covered period.

"(2) RESUMPTION OF CONSTRUCTION.—The Secretary shall, upon the transmittal of an initial notification pursuant to subsection (b)(1) with respect to a water resources development project for which construction was deferred, during the period beginning on October 1, 2021, and ending on the date of enactment of this Act [Dec. 23, 2022], because the cost of such project exceeded the maximum cost permitted under section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280), resume construction of the project.

"(b) NOTIFICATION.—

"(1) INITIAL NOTIFICATION.—Not later than 30 days after the Chief of Engineers makes a determination that a water resources development project exceeds, or is expected to exceed, the maximum cost of the project permitted under section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280), the Chief of Engineers shall transmit a written notification concurrently to the Secretary and to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives for each such determination.

"(2) SUPPLEMENTAL NOTIFICATION.—Not later than 60 days after the Chief of Engineers transmits an initial notification required under paragraph (1), the Chief shall transmit concurrently to the Secretary and to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a supplemental notification that includes, based on information available to the Corps of Engineers on the date of the supplemental notification—

"(A) an estimate of the expected increase in the cost of the project that is in excess of the authorized maximum cost for the project;

"(B) a description of the reason for the increased cost of the project; and

"(C) the expected timeline for submission of a post-authorization change report for the project in accordance with section 1132 of the Water Resources Development Act of 2016 (33 U.S.C. 2282e).

"(3) TRANSMITTAL.—The notifications described in paragraphs (1) and (2) may not be delayed as a result of consideration being given to changes in policy or priority with respect to project consideration.

"(c) DEFERRAL OF CONSTRUCTION.—After expiration of the covered period, the Secretary shall not enter into any new contract, or exercise any option in a contract, for construction of a water resources development project if the project exceeds the maximum cost of the project permitted under section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280), until the date on which Congress authorizes an increase in the cost of the project.

"(d) STATUTORY CONSTRUCTION.—Nothing in this section waives the obligation of the Secretary to submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a post-authorization change report recommending an increase in the authorized cost of a project if the project otherwise would exceed the maximum cost of the project permitted under section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280).

"(e) DEFINITION OF COVERED PERIOD.—In this section, the term 'covered period' means the period beginning on the date of enactment of this Act [Dec. 23, 2022] and ending on December 31, 2024."

§2281. Matters to be addressed in planning

(a) In general

Enhancing national economic development (including benefits to particular regions of the Nation not involving the transfer of economic activity to such regions from other regions), the quality of the total environment (including preservation and enhancement of the environment), the well-being of the people of the United States, the prevention of loss of life, and the preservation of cultural and historical values shall be addressed in the formulation and evaluation of water resources projects to be carried out by the Secretary, and the associated benefits and costs, both quantifiable and unquantifiable, and information regarding potential loss of human life that may be associated with flooding and coastal storm events, shall be displayed in the benefits and costs of such projects.

(b) Assessments

For all feasibility reports for water resources projects completed after December 31, 2007, the Secretary shall assess whether—

(1) the water resources project and each separable element is cost-effective; and

(2) the water resources project complies with Federal, State, and local laws (including regulations) and public policies.

(Pub. L. 99–662, **title IX, §904, Nov. 17, 1986**, 100 Stat. 4185; Pub. L. 101–640, **title III, §315, Nov. 28, 1990**, 104 Stat. 4641; Pub. L. 104–303, **title II, §231, Oct. 12, 1996**, 110 Stat. 3704; Pub. L. 110–114, **title II, §2033(a), Nov. 8, 2007**, 121 Stat. 1084.)

EDITORIAL NOTES

AMENDMENTS

2007—Pub. L. 110–114 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1996—Pub. L. 104–303 inserted "and information regarding potential loss of human life that may be associated with flooding and coastal storm events," after "unquantifiable,".

1990—Pub. L. 101–640 inserted "(including preservation and enhancement of the environment)" after "environment".

STATUTORY NOTES AND RELATED SUBSIDIARIES

RURAL PROJECT EVALUATION AND SELECTION CRITERIA

Pub. L. 102–580, **title II, §214, Oct. 31, 1992**, 106 Stat. 4831, directed Comptroller General, not later than 18 months after Oct. 31, 1992, to report to Congress with specific legislative and other recommendations on improving the equitable distribution of water resources development projects in rural areas, prior to repeal by Pub. L. 104–316, **title I, §117, Oct. 19, 1996**, 110 Stat. 3835.

§2281a. Tribal Liaison

(a) In general

Beginning not later than 1 year after December 23, 2022, the District Commander for each Corps of Engineers district that contains a Tribal community shall have on staff a Tribal Liaison.

(b) Duties

Each Tribal Liaison shall make recommendations to the applicable District Commander regarding, and be responsible for—

(1) removing barriers to access to, and participation in, Corps of Engineers programs for Tribal communities, including by improving implementation of section 2213(m) of this title;

(2) improving outreach to, and engagement with, Tribal communities about relevant Corps of Engineers programs and services;

(3) identifying and engaging with Tribal communities suffering from water resources challenges;

(4) improving, expanding, and facilitating government-to-government consultation between Tribal communities and the Corps of Engineers;

(5) coordinating and implementing all relevant Tribal consultation policies and associated guidelines, including the requirements of section 2356 of title;

(6) training and tools to facilitate the ability of Corps of Engineers staff to effectively engage with Tribal communities in a culturally competent manner, especially in regards to lands of ancestral, historic, or cultural significance to a Tribal community, including burial sites; and

(7) such other issues identified by the Secretary.

(c) Uniformity

Not later than 120 days after December 23, 2022, the Secretary shall finalize guidelines for—
(1) a position description for Tribal Liaisons; and
(2) required qualifications for Tribal Liaisons, including experience and expertise relating to Tribal communities and water resource issues.

(d) Funding

Funding for the position of Tribal Liaison shall be allocated from the budget line item provided for the expenses necessary for the supervision and general administration of the civil works program, and filling the position shall not be dependent on any increase in this budget line item.

(e) Definitions

In this section:

(1) Tribal community

The term "Tribal community" means a community of people who are recognized and defined under Federal law as indigenous people of the United States.

(2) Tribal Liaison

The term "Tribal Liaison" means a permanent employee of a Corps of Engineers district whose primary responsibilities are to—
(A) serve as a direct line of communication between the District Commander and the Tribal communities within the boundaries of the Corps of Engineers district; and
(B) ensure consistency in government-to-government relations.

(Pub. L. 117–263, div. H, title LXXXI, §8112, Dec. 23, 2022, 136 Stat. 3704.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2022, and also as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 8002 of Pub. L. 117–263, set out as a note under section 2201 of this title.

§2281b. Corps of engineers support for underserved communities; outreach

(a) In General

It is the policy of the United States for the Corps of Engineers to strive to understand and accommodate and, in coordination with non-Federal interests, seek to address the water resources development needs of all communities in the United States.

(b) Outreach and access

(1) In general

The Secretary shall, at Federal expense, develop, support, and implement public awareness, education, and regular outreach and engagement efforts for potential non-Federal interests with respect to the water resources development authorities of the Secretary, with particular emphasis on—

- (A) technical service programs, including the authorities under—
 - (i) section 709a of this title;
 - (ii) section 1962d–16 of title 42; and
 - (iii) section 2269 of this title; and
- (B) continuing authority programs, as such term is defined in section 2282d(c)(1)(D) of this title.

(2) Implementation

In carrying out this subsection, the Secretary shall—
(A) develop and make publicly available (including on a publicly available website), technical assistance materials, guidance, and other information with respect to the water resources development authorities of the Secretary;

(B) establish and make publicly available (including on a publicly available website), an appropriate point of contact at each district and division office of the Corps of Engineers for inquiries from potential non-Federal interests relating to the water resources development authorities of the Secretary;

(C) conduct regular outreach and engagement, including through hosting seminars and community information sessions, with local elected officials, community organizations, and previous and potential non-Federal interests, on opportunities to address local water resources challenges through the water resources development authorities of the Secretary;

(D) issue guidance for, and provide technical assistance through technical service programs to, non-Federal interests to assist such interests in pursuing technical services and developing proposals for water resources development projects; and

(E) provide, at the request of a non-Federal interest, assistance with researching and identifying existing project authorizations or authorities to address local water resources challenges.

(3) Prioritization

In carrying out this subsection, the Secretary shall, to the maximum extent practicable, prioritize awareness, education, and outreach and engagement to economically disadvantaged communities (as defined by the Secretary under section 160 of the Water Resources Development Act of 2020 (33 U.S.C. 2201 note)), including economically disadvantaged communities located in urban and rural areas.

(4) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$30,000,000 for each fiscal year.

(Pub. L. 117–263, div. H, title LXXXI, §8117, Dec. 23, 2022, 136 Stat. 3709.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 160 of the Water Resources Development Act of 2020, referred to in subsec. (b)(3), is section 160 of div. AA of Pub. L. 116–260, which is set out as a note under section 2201 of this title.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2022, and also as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRIBAL AND ECONOMICALLY DISADVANTAGED COMMUNITIES ADVISORY COMMITTEE

Pub. L. 117–263, div. H, title LXXXI, §8115, Dec. 23, 2022, 136 Stat. 3707, provided that:

"(a) **ESTABLISHMENT.**—Not later than 90 days after the date of enactment of this Act [Dec. 23, 2022], the Secretary [of the Army] shall establish a committee, to be known as the 'Tribal and Economically Disadvantaged Communities Advisory Committee', to develop and make recommendations to the Secretary and the Chief of Engineers on activities and actions that should be undertaken by the Corps of Engineers to ensure more effective delivery of water resources development projects, programs, and other assistance to Indian Tribes and economically disadvantaged communities, including economically disadvantaged communities located in urban and rural areas.

"(b) **MEMBERSHIP.**—The Committee shall be composed of members, appointed by the Secretary, who have the requisite experiential or technical knowledge needed to address issues related to the water resources needs and challenges of economically disadvantaged communities and Indian Tribes, including—

"(1) 5 individuals representing organizations with expertise in environmental policy, rural water resources, economically disadvantaged communities, Tribal rights, or civil rights; and

"(2) 5 individuals, each representing a non-Federal interest for a Corps of Engineers project.

"(c) **DUTIES.**—

"(1) **RECOMMENDATIONS.**—The Committee shall provide advice and make recommendations to the Secretary and the Chief of Engineers to assist the Corps of Engineers in—

"(A) efficiently and effectively delivering solutions to the needs and challenges of water resources development projects for economically disadvantaged communities and Indian Tribes;

"(B) integrating consideration of economically disadvantaged communities and Indian Tribes, where applicable, in the development of water resources development projects and programs of the Corps of Engineers; and

"(C) improving the capability and capacity of the workforce of the Corps of Engineers to assist economically disadvantaged communities and Indian Tribes.

"(2) **MEETINGS.**—The Committee shall meet as appropriate to develop and make recommendations under paragraph (1).

"(3) **REPORT.**—Recommendations made under paragraph (1) shall be—

"(A) included in a report submitted to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives; and

"(B) made publicly available, including on a publicly available website.

"(d) INDEPENDENT JUDGMENT.—Any recommendation made by the Committee to the Secretary and the Chief of Engineers under subsection (c)(1) shall reflect the independent judgment of the Committee.

"(e) ADMINISTRATION.—

"(1) COMPENSATION.—Except as provided in paragraph (3), the members of the Committee shall serve without compensation.

"(2) TRAVEL EXPENSES.—The members of the Committee shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

"(3) TREATMENT.—The members of the Committee shall not be considered to be Federal employees, and the meetings and reports of the Committee shall not be considered a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(f) DEFINITIONS.—In this section:

"(1) COMMITTEE.—The term 'Committee' means the Tribal and Economically Disadvantaged Communities Advisory Committee established under subsection (a).

"(2) ECONOMICALLY DISADVANTAGED COMMUNITY.—The term 'economically disadvantaged community' has the meaning given the term as defined by the Secretary under section 160 of the Water Resources Development Act of 2020 [div. AA of Pub. L. 116–260] (33 U.S.C. 2201 note).

"(3) INDIAN TRIBE.—The term 'Indian Tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 8002 of Pub. L. 117–263, set out as a note under section 2201 of this title.

§2282. Feasibility reports

(a) Preparation of reports

(1) In general

In the case of any water resources project-related study authorized to be undertaken by the Secretary that results in recommendations concerning a project or the operation of a project and that requires specific authorization by Congress in law or otherwise, the Secretary shall prepare a feasibility report, subject to section 2215 of this title.

(2) Contents of feasibility reports

A feasibility report shall describe, with reasonable certainty, the economic, environmental, and social benefits and detriments of the recommended plan and alternative plans considered by the Secretary and the engineering features (including hydrologic and geologic information), the public acceptability, and the purposes, scope, and scale of the recommended plan. A feasibility report shall also include the views of other Federal agencies and non-Federal agencies with regard to the recommended plan, a description of a nonstructural alternative to the recommended plan when such plan does not have significant nonstructural features, and a description of the Federal and non-Federal participation in such plan, and shall demonstrate that States, other non-Federal interests, and Federal agencies have been consulted in the development of the recommended plan. A feasibility report shall include a preliminary analysis of the Federal interest and the costs, benefits, and environmental impacts of the project.

(3) Applicability

This subsection shall not apply to—

(A) any study with respect to which a report has been submitted to Congress before November 17, 1986;

(B) any study for a project, which project is authorized for construction by this Act and is not subject to section 903(b); ¹

(C) any study for a project which does not require specific authorization by Congress in law or otherwise; and

(D) general studies not intended to lead to recommendation of a specific water resources project.

(4) Feasibility report defined

In this subsection, the term "feasibility report" means each feasibility report, and any associated environmental impact statement and mitigation plan, prepared by the Corps of Engineers for a water resources project. The term includes a project implementation report prepared under title VI of the Water Resources Development Act of 2000 (114 Stat. 2680–2694), a general reevaluation report, and a limited reevaluation report.

(b) Federal interest determination

(1) In general

(A) Economically disadvantaged communities

In preparing a feasibility report under subsection (a) for a study that will benefit an economically disadvantaged community, upon request by the non-Federal interest for the study, the Secretary shall first determine the Federal interest in carrying out the study and the projects that may be proposed in the study.

(B) Other communities

In preparing a feasibility report under subsection (a) for a study that will benefit a community other than a community described in subparagraph (A), upon request by the non-Federal interest for the study, the Secretary may, with respect to not more than 20 studies in each fiscal year, first determine the Federal interest in carrying out the study and the projects that may be proposed in the study.

(2) Cost share

The costs of a determination under paragraph (1)—

(A) shall be at Federal expense; and

(B) shall not exceed \$200,000.

(3) Deadline

A determination under paragraph (1) shall be completed by not later than 120 days after the date on which funds are made available to the Secretary to carry out the determination.

(4) Treatment

(A) Timing

The period during which a determination is being completed under paragraph (1) for a study shall not be included for purposes of the deadline to complete a final feasibility report under section 2282c(a)(1) of this title.

(B) Cost

The cost of a determination under paragraph (1) shall not be included for purposes of the maximum Federal cost under section 2282c(a)(2) of this title.

(5) Report to non-Federal interest

If, based on a determination under paragraph (1), the Secretary determines that a study or project is not in the Federal interest because the project will not result, or is unlikely to result, in a recommended plan that will produce national economic development benefits greater than cost, but may result in a technically sound and environmentally acceptable plan that is otherwise consistent with section 2281 of this title, the Secretary shall issue a report to the non-Federal interest with recommendations on how the non-Federal interest might modify the proposal such that the project could be in the Federal interest and feasible.

(c) Projects not specifically authorized by Congress

In the case of any water resources project-related study authorized to be undertaken by the Secretary without specific authorization by Congress in law or otherwise, the Secretary shall prepare a detailed project report.

(d) Indian tribes

For purposes of studies undertaken pursuant to this section, the Secretary is authorized to consider benefits which may accrue to Indian tribes as a result of a project resulting from such a study.

(e) Standard and uniform procedures and practices

The Secretary shall undertake such measures as are necessary to ensure that standard and uniform procedures and practices are followed by each district office (and each division office for any area in which there is no district office) of the United States Army Corps of Engineers in the preparation of feasibility reports on water resources projects.

(f) Enhanced public participation

(1) In general

The Secretary shall establish procedures to enhance public participation in the development of each feasibility study under subsection (a), including, if appropriate, establishment of a stakeholder advisory group to assist the Secretary with the development of the study.

(2) Membership

If the Secretary provides for the establishment of a stakeholder advisory group under this subsection, the membership of the advisory group shall include balanced representation of social, economic, and environmental interest groups, and such members shall serve on a voluntary, uncompensated basis.

(3) Limitation

Procedures established under this subsection shall not delay development of any feasibility study under subsection (a).

(g) Detailed project schedule

(1) In general

Not later than 180 days after June 10, 2014, the Secretary shall determine a set of milestones needed for the completion of a feasibility study under this subsection, including all major actions, report submissions and responses, reviews, and comment periods.

(2) Detailed project schedule milestones

Each District Engineer shall, to the maximum extent practicable, establish a detailed project schedule, based on full funding capability, that lists all deadlines for milestones relating to feasibility studies in the District developed by the Secretary under paragraph (1).

(3) Non-Federal interest notification

Each District Engineer shall submit by certified mail the detailed project schedule under paragraph (2) to each relevant non-Federal interest—

(A) for projects that have received funding from the General Investigations Account of the Corps of Engineers in the period beginning on October 1, 2009, and ending on June 10, 2014, not later than 180 days after the establishment of milestones under paragraph (1); and

(B) for projects for which a feasibility cost-sharing agreement is executed after the establishment of milestones under paragraph (1), not later than 90 days after the date on which the agreement is executed.

(4) Congressional and public notification

Beginning in the first full fiscal year after June 10, 2014, the Secretary shall—

(A) submit an annual report that lists all detailed project schedules under paragraph (2) and an explanation of any missed deadlines to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives; and

(B) make publicly available, including on the Internet, a copy of the annual report described in subparagraph (A) not later than 14 days after date ² on which a report is submitted to Congress.

(5) Failure to act

If a District Engineer fails to meet any of the deadlines in the project schedule under paragraph (2), the District Engineer shall—

(A) not later than 30 days after each missed deadline, submit to the non-Federal interest a report detailing—

(i) why the District Engineer failed to meet the deadline; and

(ii) a revised project schedule reflecting amended deadlines for the feasibility study; and

(B) not later than 30 days after each missed deadline, make publicly available, including on the Internet, a copy of the amended project schedule described in subparagraph (A)(ii).

(Pub. L. 99–662, title IX, §905, Nov. 17, 1986, 100 Stat. 4185; Pub. L. 106–541, title II, §222(a), Dec. 11, 2000, 114 Stat. 2597; Pub. L. 110–114, title II, §2043(b), Nov. 8, 2007, 121 Stat. 1101; Pub. L. 113–121, title I, §1002(a)–(c), June 10, 2014, 128 Stat. 1198; Pub. L. 116–260, div. AA, title I, §117, Dec. 27, 2020, 134 Stat. 2628; Pub. L. 117–263, div. H, title LXXXI, §8156, Dec. 23, 2022, 136 Stat. 3738.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(3)(B), is Pub. L. 99–662, Nov. 17, 1986, 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

Section 903(b), referred to in subsec. (a)(3)(B), is section 903(b) of Pub. L. 99–662, title IX, Nov. 17, 1986, 100 Stat. 4184, which is not classified to the Code.

The Water Resources Development Act of 2000, referred to in subsec. (a)(4), is Pub. L. 106–541, Dec. 11, 2000, 114 Stat. 2572. Title VI of the Act is not classified to the Code. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 2201 of this title and Tables.

AMENDMENTS

2022—Subsec. (b)(1)(B). Pub. L. 117–263 amended subpar. (B) generally. Prior to amendment, subpar. (B) related to feasibility reports for studies benefitting certain other communities.

2020—Subsec. (b). Pub. L. 116–260 added subsec. (b). A prior subsec. (b) was repealed by Pub. L. 113–121, title I, §1002(a)(1). See 2014 Amendment note below.

2014—Subsec. (a)(1). Pub. L. 113–121, §1002(a)(2), struck out "perform a reconnaissance study and" after "shall".

Subsec. (a)(2). Pub. L. 113–121, §1002(b), inserted at end "A feasibility report shall include a preliminary analysis of the Federal interest and the costs, benefits, and environmental impacts of the project."

Subsec. (b). Pub. L. 113–121, §1002(a)(1), struck out subsec. (b) which related to performing reconnaissance studies prior to initiating feasibility studies.

Subsec. (g). Pub. L. 113–121, §1002(c), added subsec. (g).

2007—Subsec. (a). Pub. L. 110–114, §2043(b)(1), designated first sentence of existing provisions as par. (1) and inserted subsec. (a) and par. (1) headings, substituted "the Secretary that results in recommendations concerning a project or the operation of a project and that requires specific authorization by Congress in law or otherwise, the Secretary shall perform a reconnaissance study and" for "the Secretary, the Secretary shall" in par. (1), designated second and third sentences of existing provisions as par. (2) and inserted heading, substituted "A feasibility report" for "Such feasibility report" and "The feasibility report" in par. (2), added pars. (3) and (4), and struck out last sentence of existing provisions which read as follows: "This subsection shall not apply to (1) any study with respect to which a report has been submitted to Congress before November 17, 1986, (2) any study for a project, which project is authorized for construction by this Act and is not subject to section 903(b), (3) any study for a project which is authorized under any of the following sections: section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), section 2 of the Flood Control Act of August 28, 1946 (33 U.S.C. 701r), section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577), section 3 of the Act entitled 'An Act authorizing Federal participation in the cost of protecting the shores of publicly owned property', approved August 13, 1946 (33 U.S.C. 426g), and section 111 of the River and Harbor Act of 1968 (33 U.S.C. 426i), and (4) general studies not intended to lead to recommendation of a specific water resources project."

Subsec. (b). Pub. L. 110–114, §2043(b)(2)(A), inserted heading.

Subsecs. (c) to (f). Pub. L. 110–114, §2043(b)(2)(B)–(E), added subsec. (c), redesignated former subsecs. (c) to (e) as (d) to (f), respectively, and inserted headings in subsecs. (d) and (e).

2000—Subsec. (e). Pub. L. 106–541 added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

SUMMARY OF ANALYSIS

Pub. L. 116–260, div. AA, title I, §116(b), Dec. 27, 2020, 134 Stat. 2628, provided that: "To the maximum extent practicable, the Secretary [of the Army] shall include in each feasibility report developed under section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282) for a project that contains a flood risk management or hurricane and storm damage risk reduction element, a summary of the natural feature or nature-based feature alternatives, along with their long-term costs and benefits, that were evaluated in the development of the feasibility report, and, if such alternatives were not included in the recommended plan, an explanation of why such alternatives were not included in the recommended plan."

NATURAL INFRASTRUCTURE

Pub. L. 115–270, title I, §1149(c), Oct. 23, 2018, 132 Stat. 3787, as amended by Pub. L. 116–260, div. AA, title I, §116(a), Dec. 27, 2020, 134 Stat. 2627, provided that: "In carrying out a feasibility report developed under section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282) for a project for flood risk management or hurricane and storm damage risk reduction, the Secretary [of the Army] shall consider the use of both traditional and natural feature or nature-based feature alternatives (as such terms are defined in section 1184 of the Water Resources Development Act of 2016 (32 U.S.C. 2289a)), alone or in conjunction with each other, if those alternatives are practicable."

CONTINUATION OF STUDIES

Pub. L. 113–121, title I, §1002(d), June 10, 2014, 128 Stat. 1199, provided that: "The Secretary [of the Army] shall continue to carry out a study for which a reconnaissance level investigation has been initiated before the date of enactment of this Act [June 10, 2014] as if this section [amending this section], including the amendments made by this section, had not been enacted."

EXPEDITED COMPLETION OF REPORTS

Pub. L. 113–121, title I, §1003, June 10, 2014, 128 Stat. 1199, provided that: "The Secretary [of the Army] shall—

"(1) expedite the completion of any on-going feasibility study for a project initiated before the date of enactment of this Act [June 10, 2014]; and

"(2) if the Secretary determines that the project is justified in a completed report, proceed directly to preconstruction planning, engineering, and design of the project in accordance with section 910 of the Water Resources Development Act of 1986 (33 U.S.C. 2287)."

NATIONAL ACADEMY OF SCIENCES STUDY

Pub. L. 106–541, title II, §216, Dec. 11, 2000, 114 Stat. 2595, provided that:

"(a) DEFINITIONS.—In this section, the following definitions apply:

"(1) ACADEMY.—The term 'Academy' means the National Academy of Sciences.

"(2) METHOD.—The term 'method' means a method, model, assumption, or other pertinent planning tool used in conducting an economic or environmental analysis of a water resources project, including the formulation of a feasibility report.

"(3) FEASIBILITY REPORT.—The term 'feasibility report' means each feasibility report, and each associated environmental impact statement and mitigation plan, prepared by the Corps of Engineers for a water resources project.

"(4) WATER RESOURCES PROJECT.—The term 'water resources project' means a project for navigation, a project for flood control, a project for hurricane and storm damage reduction, a project for emergency streambank and shore protection, a project for ecosystem restoration and protection, and a water resources project of any other type carried out by the Corps of Engineers.

"(b) INDEPENDENT PEER REVIEW OF PROJECTS.—

"(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Dec. 11, 2000], the Secretary [of the Army] shall contract with the Academy to study, and make recommendations relating to, the independent peer review of feasibility reports.

"(2) STUDY ELEMENTS.—In carrying out a contract under paragraph (1), the Academy shall study the practicality and efficacy of the independent peer review of the feasibility reports, including—

"(A) the cost, time requirements, and other considerations relating to the implementation of independent peer review; and

"(B) objective criteria that may be used to determine the most effective application of independent peer review to feasibility reports for each type of water resources project.

- "(3) ACADEMY REPORT.—Not later than 1 year after the date of a contract under paragraph (1), the Academy shall submit to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Environment and Public Works of the Senate a report that includes—
- "(A) the results of the study conducted under paragraphs (1) and (2); and
- "(B) in light of the results of the study, specific recommendations, if any, on a program for implementing independent peer review of feasibility reports.
- "(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$1,000,000, to remain available until expended.
- "(c) INDEPENDENT PEER REVIEW OF METHODS FOR PROJECT ANALYSIS.—
- "(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Dec. 11, 2000], the Secretary [of the Army] shall contract with the Academy to conduct a study that includes—
- "(A) a review of state-of-the-art methods;
- "(B) a review of the methods currently used by the Secretary;
- "(C) a review of a sample of instances in which the Secretary has applied the methods identified under subparagraph (B) in the analysis of each type of water resources project; and
- "(D) a comparative evaluation of the basis and validity of state-of-the-art methods identified under subparagraph (A) and the methods identified under subparagraphs (B) and (C).
- "(2) ACADEMY REPORT.—Not later than 1 year after the date of a contract under paragraph (1), the Academy shall transmit to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Environment and Public Works of the Senate a report that includes—
- "(A) the results of the study conducted under paragraph (1); and
- "(B) in light of the results of the study, specific recommendations for modifying any of the methods currently used by the Secretary for conducting economic and environmental analyses of water resources projects.
- "(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$2,000,000. Such sums shall remain available until expended."

ENGINEERING CONSULTING SERVICES

Pub. L. 106–541, [title II, §219, Dec. 11, 2000](#), 114 Stat. 2596, provided that: "In conducting a feasibility study for a water resources project, the Secretary [of the Army], to the maximum extent practicable, should not employ a person for engineering and consulting services if the same person is also employed by the non-Federal interest for such services unless there is only 1 qualified and responsive bidder for such services."

DEFINITIONS

For definition of "economically disadvantaged community" as used in subsec. (b) of this section, see section 160 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

¹ See *References in Text* note below.

² So in original. Probably should be preceded by "the".

§2282a. Planning

(a) Omitted

(b) Planning process improvements

- The Chief of Engineers—
- (1) shall adopt a risk analysis approach to project cost estimates for water resources projects; and
- (2) not later than one year after November 8, 2007, shall—
- (A) issue procedures for risk analysis for cost estimation for water resources projects; and
- (B) submit to Congress a report that includes any recommended amendments to section 2280 of this title.

(c) Benchmarks

(1) In general

Not later than 12 months after November 8, 2007, the Chief of Engineers shall establish benchmarks for determining the length of time it should take to conduct a feasibility study for a water resources project and its associated review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Chief of Engineers shall use such benchmarks as a management tool to make the feasibility study process more efficient in all districts of the Corps of Engineers.

(2) Benchmark goals

The Chief of Engineers shall establish, to the extent practicable, under paragraph (1) benchmark goals for completion of feasibility studies for water resources projects generally within 2 years. In the case of feasibility studies that the Chief of Engineers determines may require additional time based on the project type, size, cost, or complexity, the benchmark goal for completion shall be generally within 4 years.

(d) Calculation of benefits and costs for flood damage reduction projects

A feasibility study for a project for flood damage reduction shall include, as part of the calculation of benefits and costs—

- (1) a calculation of the residual risk of flooding following completion of the proposed project;
- (2) a calculation of the residual risk of loss of human life and residual risk to human safety following completion of the proposed project;
- (3) a calculation of any upstream or downstream impacts of the proposed project; and
- (4) calculations to ensure that the benefits and costs associated with structural and nonstructural alternatives are evaluated in an equitable manner.

(e) Centers of specialized planning expertise

(1) Establishment

The Secretary may establish centers of expertise to provide specialized planning expertise for water resources projects to be carried out by the Secretary in order to enhance and supplement the capabilities of the districts of the Corps of Engineers.

(2) Duties

- A center of expertise established under this subsection shall—
- (A) provide technical and managerial assistance to district commanders of the Corps of Engineers for project planning, development, and implementation;
- (B) provide agency peer reviews of new major scientific, engineering, or economic methods, models, or analyses that will be used to support decisions of the Secretary with respect to feasibility studies for water resources projects;
- (C) provide support for independent peer review panels under section 2343 of this title; and
- (D) carry out such other duties as are prescribed by the Secretary.

(3) Deep draft navigation planning center of expertise

(A) In general

The Secretary shall consolidate deep draft navigation expertise within the Corps of Engineers into a deep draft navigation planning center of expertise.

(B) List

Not later than 60 days after the date of the consolidation required under subparagraph (A), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a list of the grade levels and expertise of each of the personnel assigned to the center described in subparagraph (A).

(f) Completion of Corps of Engineers reports

(1) Alternatives

(A) In general

- Feasibility and other studies and assessments for a water resources project shall include recommendations for alternatives—
- (i) that, as determined in coordination with the non-Federal interest for the project, promote integrated water resources management; and
- (ii) for which the non-Federal interest is willing to provide the non-Federal share for the studies or assessments.

(B) Constraints

The alternatives contained in studies and assessments described in subparagraph (A) shall not be constrained by budgetary or other policy.

(C) Reports of Chief of Engineers

The reports of the Chief of Engineers shall identify any recommendation that is not the best technical solution to water resource needs and problems and the reason for the deviation.

(2) Report completion

- The completion of a report of the Chief of Engineers for a water resources project—
- (A) shall not be delayed while consideration is being given to potential changes in policy or priority for project consideration; and
- (B) shall be submitted, on completion, to—
- (i) the Committee on Environment and Public Works of the Senate; and
- (ii) the Committee on Transportation and Infrastructure of the House of Representatives.

(g) Completion review

(1) In general

Except as provided in paragraph (2), not later than 120 days after the date of completion of a report of the Chief of Engineers that recommends to Congress a water resources project, the Secretary shall—

- (A) review the report; and
- (B) provide any recommendations of the Secretary regarding the water resources project to Congress.

(2) Prior reports

Not later than 180 days after November 8, 2007, with respect to any report of the Chief of Engineers recommending a water resources project that is complete prior to November 8, 2007, the Secretary shall complete review of, and provide recommendations to Congress for, the report in accordance with paragraph (1).

(Pub. L. 110–114, [title II, §2033](#), Nov. 8, 2007, 121 Stat. 1084; Pub. L. 113–121, [title II, §2103](#), June 10, 2014, 128 Stat. 1278.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c)(1), is Pub. L. 91–190, [Jan. 1, 1970](#), 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

CODIFICATION

Section is comprised of section 2033 of Pub. L. 110–114. Subsec. (a) of section 2033 of Pub. L. 110–114 amended section 2281 of this title.

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2014—Subsec. (e)(3). Pub. L. 113–121 added par. (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2282b. Submission of reports to Congress

Beginning on January 17, 2014, and hereafter, not later than 120 days after the date of the Chief of Engineers Report on a water resource matter, the Assistant Secretary of the Army (Civil Works) shall submit the report to the appropriate authorizing and appropriating committees of the Congress.

(Pub. L. 113–76, [div. D, title I, §104](#), Jan. 17, 2014, 128 Stat. 157.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Energy and Water Development and Related Agencies Appropriations Act, 2014, and also as part of the Consolidated Appropriations Act, 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

§2282c. Vertical integration and acceleration of studies

(a) In general

To the extent practicable, a feasibility study initiated by the Secretary, after June 10, 2014, under section 2282(a) of this title shall—

- (1) result in the completion of a final feasibility report not later than 3 years after the date of initiation;
- (2) have a maximum Federal cost of \$3,000,000; and
- (3) ensure that personnel from the district, division, and headquarters levels of the Corps of Engineers concurrently conduct the review required under that section.

(b) Extension

If the Secretary determines that a feasibility study described in subsection (a) will not be conducted in accordance with subsection (a), the Secretary, not later than 30 days after the date of making the determination, shall—

- (1) prepare an updated feasibility study schedule and cost estimate;
- (2) notify the non-Federal feasibility cost-sharing partner that the feasibility study has been delayed; and
- (3) provide written notice to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives as to the reasons the requirements of subsection (a) are not attainable.

(c) Exception

(1) In general

The Secretary may extend the timeline of a study by a period not to exceed 3 years, if the Secretary determines that the feasibility study is too complex to comply with the requirements of subsection (a).

(2) Factors

In making a determination that a study is too complex to comply with the requirements of subsection (a), the Secretary shall consider—

- (A) the type, size, location, scope, and overall cost of the project;
- (B) whether the project will use any innovative design or construction techniques;
- (C) whether the project will require significant action by other Federal, State, or local agencies;
- (D) whether there is significant public dispute as to the nature or effects of the project; and
- (E) whether there is significant public dispute as to the economic or environmental costs or benefits of the project.

(3) Notification

Each time the Secretary makes a determination under this subsection, the Secretary shall provide written notice to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives as to the results of that determination, including an identification of the specific 1 or more factors used in making the determination that the project is complex.

(d) Reviews

Not later than 90 days after the date of the initiation of a study described in subsection (a) for a project, the Secretary shall—

- (1) take all steps necessary to initiate the process for completing federally mandated reviews that the Secretary is required to complete as part of the study, including the environmental review process under section 1005;
- (2) convene a meeting of all Federal, tribal, and State agencies identified under section 2348(e) of this title that may be required by law to conduct or issue a review, analysis, or opinion on or to make a determination concerning a permit or license for the study; and
- (3) take all steps necessary to provide information that will enable required reviews and analyses related to the project to be conducted by other agencies in a thorough and timely manner.

(e) Interim report

Not later than 18 months after June 10, 2014, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report that describes—

- (1) the status of the implementation of the planning process under this section, including the number of participating projects;
- (2) a review of project delivery schedules, including a description of any delays on those studies participating in the planning process under this section; and
- (3) any recommendations for additional authority necessary to support efforts to expedite the feasibility study process for water resource projects.

(f) Final report

Not later than 4 years after June 10, 2014, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report that describes—

- (1) the status of the implementation of this section, including a description of each feasibility study subject to the requirements of this section;
- (2) the amount of time taken to complete each feasibility study; and
- (3) any recommendations for additional authority necessary to support efforts to expedite the feasibility study process, including an analysis of whether the limitation established by subsection (a)(2) needs to be adjusted to address the impacts of inflation.

(Pub. L. 113–121, [title I, §1001](#), June 10, 2014, 128 Stat. 1196; Pub. L. 115–270, [title I, §1330\(b\)](#), Oct. 23, 2018, 132 Stat. 3827; Pub. L. 116–260, [div. AA, title III, §360\(c\)](#), Dec. 27, 2020, 134 Stat. 2733.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1005, referred to in subsec. (d)(1), is section 1005 of Pub. L. 113–121, which enacted section 2349 of this title and amended generally section 2348 of this title.

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2020—Subsec. (c). Pub. L. 116–260, §360(c)(2), redesignated subsec. (d) as (c) and struck out former subsec. (c). Prior to amendment, text of subsec. (c) read as follows: "A feasibility study for which the Secretary has issued a determination under subsection (b) is not authorized after the last day of the 1-year period beginning on the date of the determination if the Secretary has not completed the study on or before such last day."

Subsec. (d). Pub. L. 116–260, §360(c)(2), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 116–260, §360(c)(1)(A), (B), substituted "The Secretary" for "Notwithstanding the requirements of subsection (c), the Secretary" and "subsection (a)" for "subsections (a) and (c)".

Subsec. (d)(2). Pub. L. 116–260, §360(c)(1)(B), substituted "subsection (a)" for "subsections (a) and (c)" in introductory provisions.

Subsec. (d)(4). Pub. L. 116–260, §360(c)(1)(C), struck out par. (4). Text read as follows: "The Secretary shall not extend the timeline for a feasibility study for a period of more than 10 years, and any feasibility study that is not completed before that date shall no longer be authorized."

Subsecs. (e) to (g). Pub. L. 116–260, §360(c)(2), redesignated subsecs. (f) and (g) as (e) and (f), respectively. Former subsec. (e) redesignated (d).

2018—Subsec. (d)(4). Pub. L. 115–270 substituted "10 years" for "7 years".

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2282d. Annual report to Congress

(a) In general

Not later than February 1 of each year, the Secretary shall develop and submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an annual report, to be entitled "Report to Congress on Future Water Resources Development", that identifies the following:

(1) Feasibility reports

Each feasibility report that meets the criteria established in subsection (c)(1)(A).

(2) Proposed feasibility studies

Any proposed feasibility study submitted to the Secretary by a non-Federal interest pursuant to subsection (b) that meets the criteria established in subsection (c)(1)(A).

(3) Proposed modifications

Any proposed modification to an authorized water resources development project or feasibility study that meets the criteria established in subsection (c)(1)(A) that—

- (A) is submitted to the Secretary by a non-Federal interest pursuant to subsection (b); or
- (B) is identified by the Secretary for authorization.

(4) Programmatic modifications

Any programmatic modification for an environmental infrastructure assistance program.

(b) Requests for proposals

(1) Publication

Not later than May 1 of each year, the Secretary shall publish in the Federal Register a notice requesting proposals from non-Federal interests for proposed feasibility studies, proposed modifications to authorized water resources development projects and feasibility studies, and proposed modifications for an environmental infrastructure program to be included in the annual report.

(2) Deadline for requests

The Secretary shall include in each notice required by this subsection a requirement that non-Federal interests submit to the Secretary any proposals described in paragraph (1) by not later than 120 days after the date of publication of the notice in the Federal Register in order for the proposals to be considered for inclusion in the annual report.

(3) Notification

On the date of publication of each notice required by this subsection, the Secretary shall—

- (A) make the notice publicly available, including on the Internet; and
- (B) provide written notification of the publication to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(c) Contents

(1) Feasibility reports, proposed feasibility studies, and proposed modifications

(A) Criteria for inclusion in report

The Secretary shall include in the annual report only those feasibility reports, proposed feasibility studies, and proposed modifications to authorized water resources development projects and feasibility studies that—

- (i) are related to the missions and authorities of the Corps of Engineers;
- (ii) require specific congressional authorization, including by an Act of Congress;
- (iii) have not been congressionally authorized;
- (iv) have not been included in any previous annual report; and
- (v) if authorized, could be carried out by the Corps of Engineers.

(B) Description of benefits

(i) Description

The Secretary shall describe in the annual report, to the extent applicable and practicable, for each proposed feasibility study and proposed modification to an authorized water resources development project or feasibility study included in the annual report, the benefits, as described in clause (ii), of each such study or proposed modification (including the water resources development project that is the subject of the proposed feasibility study or the proposed modification to an authorized feasibility study).

(ii) Benefits

The benefits (or expected benefits, in the case of a proposed feasibility study) described in this clause are benefits to—

- (I) the protection of human life and property;
- (II) improvement to transportation;
- (III) the national, regional, or local economy;
- (IV) the environment; or
- (V) the national security interests of the United States.

(C) Identification of other factors

The Secretary shall identify in the annual report, to the extent practicable—

- (i) for each proposed feasibility study included in the annual report, the non-Federal interest that submitted the proposed feasibility study pursuant to subsection (b); and
- (ii) for each proposed feasibility study and proposed modification to an authorized water resources development project or feasibility study included in the annual report, whether the non-Federal interest has demonstrated—
 - (I) that local support exists for the proposed feasibility study or proposed modification to an authorized water resources development project or feasibility study (including the water resources development project that is the subject of the proposed feasibility study or the proposed modification to an authorized feasibility study); and
 - (II) the financial ability to provide the required non-Federal cost share.

(D) Modifications of projects carried out pursuant to continuing authority programs

(i) In general

With respect to a project being carried out pursuant to a continuing authority program for which a proposed modification is necessary because the project is projected to exceed, in the coming fiscal year, the maximum Federal cost of the project, the Secretary shall include a proposed modification in the annual report if the proposed modification will result in completion of construction the 1st project and the justification for the modification is not the result of a change in the scope of the project.

(ii) Inclusion

For each proposed modification included in an annual report under clause (i), the Secretary shall include in the annual report—

- (I) a justification of why the modification is necessary;
- (II) an estimate of the total cost and timeline required to complete construction of the project; and
- (III) an indication of continued support by the non-Federal interest and the financial ability of the non-Federal interest to provide the required cost-share.

(iii) Definition

For the purposes of this subparagraph, the term "continuing authority program" means any of—

- (I) section 701r of this title;
- (II) section 426g of this title;
- (III) section 577 of this title;
- (IV) section 426i of this title;
- (V) section 2326 of this title;
- (VI) section 701s of this title;
- (VII) section 2330 of this title;
- (VIII) section 701g of this title; and
- (IX) section 2309a of this title.

(2) Transparency

The Secretary shall include in the annual report, for each feasibility report, proposed feasibility study, and proposed modification to an authorized water resources development project or feasibility study included under paragraph (1)(A)—

- (A) the name of the associated non-Federal interest, including the name of any non-Federal interest that has contributed, or is expected to contribute, a non-Federal share of the cost of—
 - (i) the feasibility report;
 - (ii) the proposed feasibility study;
 - (iii) the authorized feasibility study for which the modification is proposed; or
 - (iv) construction of—
 - (I) the water resources development project that is the subject of—
 - (aa) the feasibility report;
 - (bb) the proposed feasibility study; or
 - (cc) the authorized feasibility study for which a modification is proposed; or

- (II) the proposed modification to an authorized water resources development project;

(B) a letter or statement of support for the feasibility report, proposed feasibility study, or proposed modification to an authorized water resources development project or feasibility study from each associated non-Federal interest;

(C) the purpose of the feasibility report, proposed feasibility study, or proposed modification to an authorized water resources development project or feasibility study;

(D) an estimate, to the extent practicable, of the Federal, non-Federal, and total costs of—

- (i) the proposed modification to an authorized feasibility study; and
- (ii) construction of—
 - (I) the water resources development project that is the subject of—
 - (aa) the feasibility report; or
 - (bb) the authorized feasibility study for which a modification is proposed, with respect to the change in costs resulting from such modification; or

- (II) the proposed modification to an authorized water resources development project; and

(E) an estimate, to the extent practicable, of the monetary and nonmonetary benefits of—

- (i) the water resources development project that is the subject of—
 - (I) the feasibility report; or
 - (II) the authorized feasibility study for which a modification is proposed, with respect to the benefits of such modification; or

- (ii) the proposed modification to an authorized water resources development project.

(3) Certification

The Secretary shall include in the annual report a certification stating that each feasibility report, proposed feasibility study, and proposed modification to an authorized water resources development project or feasibility study included in the annual report meets the criteria established in paragraph (1)(A).

(4) Appendix

(A) In general

The Secretary shall include in the annual report an appendix listing the proposals submitted under subsection (b) that were not included in the annual report under paragraph (1)(A) and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion under such paragraph.

(B) Limitation

In carrying out the activities described in this section—

- (i) the Secretary shall not include proposals in the appendix of the annual report that otherwise meet the criteria for inclusion in the annual report solely on the basis of the Secretary's determination that the proposal requires legislative changes to an authorized water resources development project, feasibility study, or environmental infrastructure program;
- (ii) the Secretary shall not include proposals in the appendix of the annual report that otherwise meet the criteria for inclusion in the annual report solely on the basis that the proposals are for the purposes of navigation, flood risk management, ecosystem restoration, or municipal or agricultural water supply; and
- (iii) the Secretary shall not include proposals in the appendix of the annual report that otherwise meet the criteria for inclusion in the annual report solely on the basis of a policy of the Secretary.

(d) Programmatic modifications in annual report

The Secretary shall include in the annual report only proposed modifications for an environmental infrastructure assistance program that have not been included in any previous annual report. For each proposed modification, the Secretary shall include a letter or statement of support for the proposed modification from each associated non-Federal interest, description of assistance provided, and total Federal cost of assistance provided.

(e) Special rule for initial annual report

Notwithstanding any other deadlines required by this section, the Secretary shall—

- (1) not later than 60 days after June 10, 2014, publish in the Federal Register a notice required by subsection (b)(1); and
- (2) include in such notice a requirement that non-Federal interests submit to the Secretary any proposals described in subsection (b)(1) by not later than 120 days after the date of publication of such notice in the Federal Register in order for such proposals to be considered for inclusion in the first annual report developed by the Secretary under this section.

(f) Publication

Upon submission of an annual report to Congress, the Secretary shall make the annual report publicly available, including through publication on the Internet.

(g) Definitions

In this section:

(1) Annual report

The term "annual report" means a report required by subsection (a).

(2) Feasibility report

(A) In general

The term "feasibility report" means a final feasibility report developed under section 2282 of this title.

(B) Inclusions

The term "feasibility report" includes—

- (i) a report described in section 2215(d)(2) of this title; and
- (ii) where applicable, any associated report of the Chief of Engineers.

(3) Feasibility study

The term "feasibility study" has the meaning given that term in section 2215 of this title.

(4) Non-Federal interest

The term "non-Federal interest" has the meaning given that term in section 1962d–5b of title 42.

(5) Water resources development project

The term "water resources development project" includes a project under an environmental infrastructure assistance program.

(Pub. L. 113–121, [title VII](#), §7001, June 10, 2014, 128 Stat. 1360; Pub. L. 114–322, [title I](#), §1157(b), Dec. 16, 2016, 130 Stat. 1666; Pub. L. 115–270, [title I](#), §1332(a), Oct. 23, 2018, 132 Stat. 3834; Pub. L. 116–260, div. AA, [title I](#), §127(a), Dec. 27, 2020, 134 Stat. 2640.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2020—Subsec. (c)(1)(B)(ii)(III). Pub. L. 116–260, §127(a)(1)(A)(i), inserted ", regional, or local" after "national".
 Subsec. (c)(1)(D). Pub. L. 116–260, §127(a)(1)(A)(ii), added subpar. (D).
 Subsec. (c)(4)(B)(ii), (iii). Pub. L. 116–260, §127(a)(1)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).
 Subsec. (g)(5). Pub. L. 116–260, §127(a)(2), struck out "if authorized before December 16, 2016" before period at end.
2018—Subsec. (a)(4). Pub. L. 115–270, §1332(a)(1), added par. (4).
 Subsec. (b)(1). Pub. L. 115–270, §1332(a)(2), substituted "studies and proposed modifications to authorized water resources development projects and feasibility studies, and proposed modifications for an environmental infrastructure program" for "studies and proposed modifications to authorized water resources development projects and feasibility studies".
 Subsec. (c)(4). Pub. L. 115–270, §1332(a)(5), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: "The Secretary shall include in the annual report an appendix listing the proposals submitted under subsection (b) that were not included in the annual report under paragraph (1)(A) and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion under such paragraph."
 Subsecs. (d) to (g). Pub. L. 115–270, §1332(a)(3), (4), added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively.
2016—Subsec. (f)(5). Pub. L. 114–322 added par. (5).

STATUTORY NOTES AND RELATED SUBSIDIARIES

OVER-BUDGET CAP PROGRAMS

Pub. L. 116–260, *div. AA, title I, §127(b)*, Dec. 27, 2020, 134 Stat. 2642, provided that: "For any project carried out under a continuing authority program, as such term is defined in section 7001(c)(1)(D) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d[(c)(1)(D)]), [sic] for which the Secretary [of the Army] is required to include a proposed modification in an annual report under such section 7001(c)(1)(D), the Secretary shall, to the extent practicable, inform the non-Federal interest of the process for carrying out the project pursuant to section 105 of the Water Resources Development Act of 1986 (33 U.S.C. 2215) and whether the Secretary has the authority to complete a feasibility study for the project."

ANNUAL REPORT ON STATUS OF FEASIBILITY STUDIES

Pub. L. 116–260, *div. AA, title I, §127(c)*, Dec. 27, 2020, 134 Stat. 2642, provided that: "Concurrent with each report submitted under section 7001 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d), the Secretary [of the Army] shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that provides for an accounting of all outstanding feasibility studies being conducted by the Secretary, including, for each such study, its length, cost, and expected completion date."

DISSEMINATION OF INFORMATION

Pub. L. 115–270, *title I, §1104*, Oct. 23, 2018, 132 Stat. 3771, as amended by Pub. L. 116–260, *div. AA, title II, §229*, Dec. 27, 2020, 134 Stat. 2698, provided that:

"(a) FINDINGS.—Congress finds the following:

"(1) Congress plays a central role in identifying, prioritizing, and authorizing vital water resources infrastructure activities throughout the United States.

"(2) The Water Resources Reform and Development Act of 2014 (Public Law 113–121) established a new and transparent process to review and prioritize the water resources development activities of the Corps of Engineers with strong congressional oversight.

"(3) Section 7001 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d) requires the Secretary [of the Army] to develop and submit to Congress each year a Report to Congress on Future Water Resources Development and, as part of the annual report process, to—

"(A) publish a notice in the Federal Register that requests from non-Federal interests proposed feasibility studies and proposed modifications to authorized water resources development projects and feasibility studies for inclusion in the report; and

"(B) review the proposals submitted and include in the report those proposed feasibility studies and proposed modifications that meet the criteria for inclusion established under such section 7001.

"(4) Congress will use the information provided in the annual Report to Congress on Future Water Resources Development to determine authorization needs and priorities for purposes of water resources development legislation.

"(5) To ensure that Congress can gain a thorough understanding of the water resources development needs and priorities of the United States, it is important that the Secretary take sufficient steps to ensure that non-Federal interests are made aware of the new annual report process, including the need for non-Federal interests to submit proposals during the Secretary's annual request for proposals in order for such proposals to be eligible for consideration by Congress.

"(b) DISSEMINATION OF PROCESS INFORMATION.—

"(1) IN GENERAL.—The Secretary shall develop, support, and implement education and awareness efforts for non-Federal interests with respect to the annual Report to Congress on Future Water Resources Development required under section 7001 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d), including efforts to—

"(A) develop and disseminate technical assistance materials, seminars, and guidance on the annual process as it relates to non-Federal interests;

"(B) provide written notice to local elected officials and previous and potential non-Federal interests on the annual process and on opportunities to address local water resources challenges through the missions and authorities of the Corps of Engineers;

"(C) issue guidance for non-Federal interests to assist such interests in developing proposals for water resources development projects that satisfy the requirements of such section 7001; and

"(D) provide, at the request of a non-Federal interest, assistance with researching and identifying existing project authorizations and Corps of Engineers decision documents.

"(2) ANNUAL REPORTING.—Not less frequently than annually, the Secretary shall provide to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a written update on the progress of the implementation of paragraph (1), including a description of each education and outreach action the Secretary is taking to implement that paragraph.

"(3) GUIDANCE; COMPLIANCE.—The Secretary shall—

"(A) issue guidance on the uniform implementation by each district of the Corps of Engineers of the process for submitting proposals under section 7001 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d); and

"(B) each year, ensure compliance with the guidance issued under subparagraph (A)."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

1 So in original. Probably should be preceded by "of".

§2282d–1. Report to Congress on authorized studies and projects

(a) In general

Not later than February 1 of each year, the Secretary shall develop and submit to Congress an annual report, to be entitled "Report to Congress on Authorized Water Resources Development Projects and Studies", that identifies—

- (1) ongoing or new feasibility studies, authorized within the previous 20 years, for which a Report of the Chief of Engineers has not been issued;
- (2) authorized feasibility studies for projects in the preconstruction, engineering and design phase;
- (3) ongoing or new water resources development projects authorized for construction within the previous 20 years; and
- (4) authorized and constructed water resources development projects the Secretary has the responsibility to operate or maintain.

(b) Contents

(1) Inclusions

(A) Criteria

The Secretary shall include in each report submitted under this section only a feasibility study or water resources development project—

(i) that has been authorized by Congress to be carried out by the Secretary and does not require any additional congressional authorization to be carried out;

(ii) that the Secretary has the capability to carry out if funds are appropriated for such study or project under any of the "Investigations", "Construction", "Operation and Maintenance", or "Mississippi River and Tributaries" appropriations accounts for the Corps of Engineers; and

(iii) for which a non-Federal interest—

(I) in the case of a study or a project other than a project for which funds may be appropriated for operation and maintenance, has entered into a feasibility cost-sharing agreement, design agreement, or project partnership agreement with the Corps of Engineers, or has informed the Secretary that the non-Federal interest has the financial capability to enter into such an agreement within 1 year; and

(II) demonstrates the legal and financial capability to satisfy the requirements for local cooperation with respect to the study or project.

(B) Description of benefits

(i) Description

The Secretary shall, to the maximum extent practicable, describe in each report submitted under this section the benefits, as described in clause (ii), of each feasibility study and water resources development project included in the report.

(ii) Benefits

The benefits referred to in clause (i) are benefits to—

- (I) the protection of human life and property;

- (II) improvement to transportation;
- (III) the national, regional, or local economy;
- (IV) the environment; or
- (V) the national security interests of the United States.

(2) Transparency

- The Secretary shall include in each report submitted under this section, for each feasibility study and water resources development project included in the report—
- (A) the name of the associated non-Federal interest, including the name of any non-Federal interest that has contributed, or is expected to contribute, a non-Federal share of the cost of the study or project;
 - (B) the purpose of the study or project;
 - (C) an estimate, to the extent practicable, of the Federal, non-Federal, and total costs of the study or project, including, to the extent practicable, the fully funded capability of the Corps of Engineers for—
 - (i) the 3 fiscal years following the fiscal year in which the report is submitted, in the case of a feasibility study; and
 - (ii) the 5 fiscal years following the fiscal year in which the report is submitted, in the case of a water resources development project; and
 - (D) an estimate, to the extent practicable, of the monetary and nonmonetary benefits of the study or project.

(3) Certification

The Secretary shall include in each report submitted under this section a certification stating that each feasibility study or water resources development project included in the report meets the criteria described in paragraph (1)(A).

(4) Omissions

- (A) Limitation**
- The Secretary shall not omit from a report submitted under this section a study or project that otherwise meets the criteria for inclusion in the report solely on the basis of a policy of the Secretary.
- (B) Appendix**
- If the Secretary omits from a report submitted under this section a study or project that otherwise meets the criteria for inclusion in the report, the Secretary shall include with the report an appendix that lists the name of the study or project and reason for its omission.

(c) Submission to Congress; publication

(1) Submission to Congress

The Secretary may submit a report under this section in conjunction with the submission of the annual report under section 2282d of this title.

(2) Publication

On submission of each report under this section, the Secretary shall make the report publicly available, including through publication on the internet.

(d) Definitions

In this section:

(1) Non-Federal interest

The term "non-Federal interest" has the meaning given that term in section 1962d–5b of title 42.

(2) Water resources development project

The term "water resources development project" includes a separable element of a project, a project under an environmental infrastructure assistance program, and a project the authorized purposes of which include water supply.

(Pub. L. 116–260, *div. AA*, title II, §222, Dec. 27, 2020, 134 Stat. 2694.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of *div. AA* of Pub. L. 116–260, set out as a note under section 2201 of this title.

§2282e. Post-authorization change reports

(a) In general

- The completion of a post-authorization change report prepared by the Corps of Engineers for a water resources development project—
- (1) may not be delayed as a result of consideration being given to changes in policy or priority with respect to project consideration; and
 - (2) shall be submitted, upon completion, to—
 - (A) the Committee on Environment and Public Works of the Senate; and
 - (B) the Committee on Transportation and Infrastructure of the House of Representatives.

(b) Completion review

- With respect to a post-authorization change report subject to review by the Secretary, the Secretary shall, not later than 120 days after the date of completion of such report—
- (1) review the report; and
 - (2) provide to Congress any recommendations of the Secretary regarding modification of the applicable water resources development project.

(c) Prior reports

Not later than 120 days after December 16, 2016, with respect to any post-authorization change report that was completed prior to December 16, 2016, and is subject to a review by the Secretary that has yet to be completed, the Secretary shall complete review of, and provide recommendations to Congress with respect to, the report.

(d) Post-authorization change report inclusions

- In this section, the term "post-authorization change report" includes—
- (1) a general reevaluation report;
 - (2) a limited reevaluation report; and
 - (3) any other report that recommends the modification of an authorized water resources development project.

(Pub. L. 114–322, title I, §1132, Dec. 16, 2016, 130 Stat. 1653.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114–322, set out as a note under section 2201 of this title.

§2282f. Review of resiliency assessments

(a) Resiliency assessment

(1) In general

Not later than 180 days after December 27, 2020, and in conjunction with the development of procedures under section 1962–4 of title 42, the Secretary is directed to review, and where appropriate, revise the existing planning guidance documents and regulations of the Corps of Engineers on the assessment of the effects of sea level rise or inland flooding on future water resources development projects to ensure that such guidance documents and regulations are based on the best available, peer-reviewed science and data on the current and future effects of sea level rise or inland flooding on relevant communities.

(2) Coordination

In carrying out this subsection, the Secretary shall—

(A) coordinate the review with the Engineer Research and Development Center, other Federal and State agencies, and other relevant entities; and

(B) to the maximum extent practicable and where appropriate, utilize data provided to the Secretary by such agencies.

(b) **Assessment of benefits from addressing sea level rise and inland flooding resiliency in feasibility reports**

(1) **In general**

Upon the request of a non-Federal interest, in carrying out a feasibility study for a project for flood risk mitigation, hurricane and storm damage risk reduction, or ecosystem restoration under section 2282 of this title, the Secretary shall consider whether the need for the project is predicated upon or exacerbated by conditions related to sea level rise or inland flooding.

(2) **Addressing sea level rise and inland flooding resiliency benefits**

To the maximum extent practicable, in carrying out a study pursuant to paragraph (1), the Secretary shall document the potential effects of sea level rise or inland flooding on the project, and the expected benefits of the project relating to sea level rise or inland flooding, during the 50-year period after the date of completion of the project.

(Pub. L. 116–260, [div. AA, title I, §113, Dec. 27, 2020](#), 134 Stat. 2626.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

§2282g. Scope of feasibility studies

(a) **Flood risk management or hurricane and storm damage risk reduction**

In carrying out a feasibility study for a project for flood risk management or hurricane and storm damage risk reduction, the Secretary, at the request of the non-Federal interest for the study, shall formulate alternatives to maximize the net benefits from the reduction of the comprehensive flood risk within the geographic scope of the study from the isolated and compound effects of—

(1) a riverine discharge of any magnitude or frequency;

(2) inundation, wave attack, and erosion coinciding with a hurricane or coastal storm;

(3) flooding associated with tidally influenced portions of rivers, bays, and estuaries that are hydrologically connected to the coastal water body;

(4) a rainfall event of any magnitude or frequency;

(5) a tide of any magnitude or frequency;

(6) seasonal variation in water levels;

(7) groundwater emergence;

(8) sea level rise;

(9) subsidence; or

(10) any other driver of flood risk affecting the area within the geographic scope of the study.

(b) **Water supply, water conservation, and drought risk reduction**

In carrying out a feasibility study for any purpose, the Secretary, at the request of the non-Federal interest for the study, shall formulate alternatives—

(1) to maximize combined net benefits for the primary purpose of the study and for the purposes of water supply or water conservation (including the use of water supply conservation measures described in section 1116 of the Water Resources Development Act of 2016 (130 Stat. 1639)); or

(2) to include 1 or more measures for the purposes of water supply or water conservation if the Secretary determines that such measures may reduce potential adverse impacts of extreme weather events, including drought, on water resources within the geographic scope of the study.

(c) **Cost sharing**

All costs to carry out a feasibility study in accordance with this section shall be shared in accordance with the cost share requirements otherwise applicable to the study.

(Pub. L. 117–263, [div. H, title LXXXI, §8106, Dec. 23, 2022](#), 136 Stat. 3699.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1116 of the Water Resources Development Act of 2016, referred to in subsec. (b)(1), is section 1116 of Pub. L. 114–322, [title I, Dec. 16, 2016](#), 130 Stat. 1639, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2022, and also as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 8002 of Pub. L. 117–263, set out as a note under section 2201 of this title.

§2283. Fish and wildlife mitigation

(a) **Steps to be taken prior to or concurrently with construction**

(1) In the case of any water resources project which is authorized to be constructed by the Secretary before, on, or after November 17, 1986, construction of which has not commenced as of November 17, 1986, and which necessitates the mitigation of fish and wildlife losses, including the acquisition of lands or interests in lands to mitigate losses to fish and wildlife, as a result of such project, such mitigation, including acquisition of the lands or interests—

(A) shall be undertaken or acquired before any construction of the project (other than such acquisition) commences, or

(B) shall be undertaken or acquired concurrently with lands and interests in lands for project purposes (other than mitigation of fish and wildlife losses),

whichever the Secretary determines is appropriate, except that any physical construction required for the purposes of mitigation may be undertaken concurrently with the physical construction of such project.

(2) For the purposes of this subsection, any project authorized before November 17, 1986, on which more than 50 percent of the land needed for the project, exclusive of mitigation lands, has been acquired shall be deemed to have commenced construction under this subsection.

(b) **Acquisition of lands or interests in lands for mitigation**

(1) After consultation with appropriate Federal and non-Federal agencies, the Secretary is authorized to mitigate damages to fish and wildlife resulting from any water resources project under his jurisdiction, whether completed, under construction, or to be constructed. Such mitigation may include the acquisition of lands, or interests therein, except that—

(A) acquisition under this paragraph shall not be by condemnation in the case of projects completed as of November 17, 1986, or on which at least 10 percent of the physical construction on the project has been completed as of November 17, 1986; and

(B) acquisition of water, or interests therein, under this paragraph, shall not be by condemnation.

The Secretary, shall, under the terms of this paragraph, obligate no more than \$30,000,000 in any fiscal year. With respect to any water resources project, the authority under this subsection shall not apply to measures that cost more than \$7,500,000 or 10 percent of the cost of the project, whichever is greater.

(2) Whenever, after his review, the Secretary determines that such mitigation features under this subsection are likely to require condemnation under subparagraph (A) or (B) of paragraph (1) of this subsection, the Secretary shall transmit to Congress a report on such proposed modification, together with his recommendations.

(c) **Allocation of mitigation costs**

Costs incurred after November 17, 1986, including lands, easements, rights-of-way, and relocations, for implementation and operation, maintenance, and rehabilitation to mitigate damages to fish and wildlife shall be allocated among authorized project purposes in accordance with applicable cost allocation procedures, and shall be subject to cost sharing or reimbursement to the same extent as such other project costs are shared or reimbursed, except that when such costs are covered by contracts entered into prior to November 17, 1986, such costs shall not be recovered without the consent of the non-Federal interests or until such contracts are complied with or renegotiated.

(d) **Mitigation plans as part of project proposals**

(1) **In general**

After November 17, 1986, the Secretary shall not submit any proposal for the authorization of any water resources project to Congress in any report, and shall not select a project alternative in any report, unless such report contains (A) a recommendation with a specific plan to mitigate for damages to ecological resources, including terrestrial and aquatic resources, and fish and wildlife losses created by such project, or (B) a determination by the Secretary that such project will have negligible adverse impact on ecological resources and fish and wildlife without the implementation of mitigation measures. Specific mitigation plans shall ensure that impacts to bottomland hardwood forests are mitigated in-kind, and other habitat types are mitigated to not less than in-kind conditions, to the extent possible. If the Secretary determines that mitigation to in-kind conditions is not possible, the Secretary shall identify in the report the basis for that determination and the mitigation measures that will be implemented to meet the requirements of this section and the goals of section 2317(a)(1) of this title. In carrying out this subsection, the Secretary shall consult with appropriate Federal and non-Federal agencies.

(2) Selection and design of mitigation projects

The Secretary shall select and design mitigation projects using a watershed approach to reflect contemporary understanding of the science of mitigating the adverse environmental impacts of water resources projects.

(3) Mitigation requirements

(A) In general

To mitigate losses to flood damage reduction capabilities and fish and wildlife resulting from a water resources project, the Secretary shall ensure that the mitigation plan for each water resources project complies with, at a minimum, the mitigation standards and policies established pursuant to the regulatory programs administered by the Secretary.

(B) Inclusions

A specific mitigation plan for a water resources project under paragraph (1) shall include, at a minimum—

(i) a plan for monitoring the implementation and ecological success of each mitigation measure, including the cost and duration of any monitoring, and, to the extent practicable, a designation of the entities that will be responsible for the monitoring;

(ii) the criteria for ecological success by which the mitigation will be evaluated and determined to be successful based on replacement of lost functions and values of the habitat, including hydrologic and vegetative characteristics;

(iii) for projects where mitigation will be carried out by the Secretary—

(I) a description of the land and interest in land to be acquired for the mitigation plan;

(II) the basis for a determination that the land and interests are available for acquisition; and

(III) a determination that the proposed interest sought does not exceed the minimum interest in land necessary to meet the mitigation requirements for the project;

(iv) for projects where mitigation will be carried out through a third party mitigation arrangement in accordance with subsection (i)—

(I) a description of the third party mitigation instrument to be used; and

(II) the basis for a determination that the mitigation instrument can meet the mitigation requirements for the project;

(v) a description of—

(I) the types and amount of restoration activities to be conducted;

(II) the physical action to be undertaken to achieve the mitigation objectives within the watershed in which such losses occur and, in any case in which the mitigation will occur outside the watershed, a detailed explanation for undertaking the mitigation outside the watershed; and

(III) the functions and values that will result from the mitigation plan; and

(vi) a contingency plan for taking corrective actions in cases in which monitoring demonstrates that mitigation measures are not achieving ecological success in accordance with criteria under clause (ii).

(C) Responsibility for monitoring

In any case in which it is not practicable to identify in a mitigation plan for a water resources project the entity responsible for monitoring at the time of a final report of the Chief of Engineers or other final decision document for the project, such entity shall be identified in the partnership agreement entered into with the non-Federal interest under section 1962d–5b of title 42.

(4) Determination of success

(A) In general

A mitigation plan under this subsection shall be considered to be successful at the time at which the criteria under paragraph (3)(B)(ii) are achieved under the plan, as determined by monitoring under paragraph (3)(B)(i).

(B) Consultation

In determining whether a mitigation plan is successful under subparagraph (A), the Secretary shall consult annually with appropriate Federal agencies and each State in which the applicable project is located on at least the following:

(i) The ecological success of the mitigation as of the date on which the report is submitted.

(ii) The likelihood that the mitigation will achieve ecological success, as defined in the mitigation plan.

(iii) The projected timeline for achieving that success.

(iv) Any recommendations for improving the likelihood of success.

(5) Monitoring

Mitigation monitoring shall continue until it has been demonstrated that the mitigation has met the ecological success criteria.

(e) First enhancement costs as Federal costs

In those cases when the Secretary, as part of any report to Congress, recommends activities to enhance fish and wildlife resources, the first costs of such enhancement shall be a Federal cost when—

(1) such enhancement provides benefits that are determined to be national, including benefits to species that are identified by the National Marine Fisheries Service as of national economic importance, species that are subject to treaties or international convention to which the United States is a party, and anadromous fish;

(2) such enhancement is designed to benefit species that have been listed as threatened or endangered by the Secretary of the Interior under the terms of the Endangered Species Act, as amended (16 U.S.C. 1531, et seq.), or

(3) such activities are located on lands managed as a national wildlife refuge.

When benefits of enhancement do not qualify under the preceding sentence, 25 percent of such first costs of enhancement shall be provided by non-Federal interests under a schedule of reimbursement determined by the Secretary. Not more than 80 percent of the non-Federal share of such first costs may be satisfied through in-kind contributions, including facilities, supplies, and services that are necessary to carry out the enhancement project. The non-Federal share of operation, maintenance, and rehabilitation of activities to enhance fish and wildlife resources shall be 25 percent.

(f) National benefits from enhancement measures for Atchafalaya Floodway System and Mississippi Delta Region projects

Fish and wildlife enhancement measures carried out as part of the project for Atchafalaya Floodway System, Louisiana, authorized by Public Law 99–88, and the project for Mississippi Delta Region, Louisiana, authorized by the Flood Control Act of 1965, shall be considered to provide benefits that are national for purposes of this section.

(g) Fish and Wildlife Coordination Act supplementation

The provisions of subsections (a), (b), and (d) shall be deemed to supplement the responsibility and authority of the Secretary pursuant to the Fish and Wildlife Coordination Act [16 U.S.C. 661 et seq.], and nothing in this section is intended to affect that Act.

(h) Programmatic mitigation plans

(1) In general

The Secretary may develop programmatic mitigation plans to address the potential impacts to ecological resources, fish, and wildlife associated with existing or future Federal water resources development projects.

(2) Use of mitigation plans

The Secretary shall, to the maximum extent practicable, use programmatic mitigation plans developed in accordance with this subsection to guide the development of a mitigation plan under subsection (d).

(3) Non-Federal plans

The Secretary shall, to the maximum extent practicable and subject to all conditions of this subsection, use programmatic environmental plans developed by a State, a body politic of the State, which derives its powers from a State constitution, a government entity created by State legislation, or a local government, that meet the requirements of this subsection to address the potential environmental impacts of existing or future water resources development projects.

(4) Scope

A programmatic mitigation plan developed by the Secretary or an entity described in paragraph (3) to address potential impacts of existing or future water resources development projects shall, to the maximum extent practicable—

(A) be developed on a regional, ecosystem, watershed, or statewide scale;

(B) include specific goals for aquatic resource and fish and wildlife habitat restoration, establishment, enhancement, or preservation;

(C) identify priority areas for aquatic resource and fish and wildlife habitat protection or restoration;

(D) include measures to protect or restore habitat connectivity;

(E) encompass multiple environmental resources within a defined geographical area or focus on a specific resource, such as aquatic resources or wildlife habitat; and

(F) address impacts from all projects in a defined geographical area or focus on a specific type of project.

(5) Consultation

The scope of the plan shall be determined by the Secretary or an entity described in paragraph (3), as appropriate, in consultation with the agency with jurisdiction over the resources being addressed in the environmental mitigation plan.

(6) Contents

A programmatic environmental mitigation plan may include—

- (A) an assessment of the condition of environmental resources in the geographical area covered by the plan, including an assessment of recent trends and any potential threats to those resources;
- (B) an assessment of potential opportunities to improve the overall quality of environmental resources in the geographical area covered by the plan through strategic mitigation for impacts of water resources development projects;
- (C) standard measures for mitigating certain types of impacts, including impacts to habitat connectivity;
- (D) parameters for determining appropriate mitigation for certain types of impacts, such as mitigation ratios or criteria for determining appropriate mitigation sites;
- (E) adaptive management procedures, such as protocols that involve monitoring predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring;
- (F) acknowledgment of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources; and
- (G) any offsetting benefits of self-mitigating projects, such as ecosystem or resource restoration and protection.

(7) Process

Before adopting a programmatic environmental mitigation plan for use under this subsection, the Secretary shall—

(A) for a plan developed by the Secretary—

- (i) make a draft of the plan available for review and comment by applicable environmental resource agencies and the public; and
- (ii) consider any comments received from those agencies and the public on the draft plan; and

(B) for a plan developed under paragraph (3), determine, not later than 180 days after receiving the plan, whether the plan meets the requirements of paragraphs (4) through (6) and was made available for public comment.

(8) Integration with other plans

A programmatic environmental mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, and land use plans.

(9) Consideration in project development and permitting

If a programmatic environmental mitigation plan has been developed under this subsection, any Federal agency responsible for environmental reviews, permits, or approvals for a water resources development project may use the recommendations in that programmatic environmental mitigation plan when carrying out the responsibilities of the agency under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(10) Preservation of existing authorities

Nothing in this subsection limits the use of programmatic approaches to reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(11) Effect

Nothing in this subsection—

- (A) requires the Secretary to undertake additional mitigation for existing projects for which mitigation has already been initiated, including the addition of fish passage to an existing water resources development project; or
- (B) affects the mitigation responsibilities of the Secretary under any other provision of law.

(i) Third-party mitigation arrangements

(1) Eligible activities

In accordance with all applicable Federal laws (including regulations), mitigation efforts carried out under this section may include—

- (A) participation in mitigation banking or other third-party mitigation arrangements, such as—
 - (i) the purchase of credits from commercial or State, regional, or local agency-sponsored mitigation banks; and
 - (ii) the purchase of credits from in-lieu fee mitigation programs; and

(B) contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands if the Secretary determines that the contributions will ensure that the mitigation requirements of this section and the goals of section 2317(a)(1) of this title will be met.

(2) Inclusion of other activities

The banks, programs, and efforts described in paragraph (1) include any banks, programs, and efforts developed in accordance with applicable law (including regulations).

(3) Terms and conditions

In carrying out natural habitat and wetlands mitigation efforts under this section, contributions to the mitigation effort may—

- (A) take place concurrent with, or in advance of, the commitment of funding to a project; and
- (B) occur in advance of project construction only if the efforts are consistent with all applicable requirements of Federal law (including regulations) and water resources development planning processes.

(4) Preference

At the request of the non-Federal project sponsor, preference may be given, to the maximum extent practicable, to mitigating an environmental impact through the use of a mitigation bank, in-lieu fee, or other third-party mitigation arrangement, if the use of credits from the mitigation bank or in-lieu fee, or the other third-party mitigation arrangement for the project has been approved by the applicable Federal agency.

(j) Use of funds

(1) In general

The Secretary, with the consent of the applicable non-Federal interest, may use funds made available for preconstruction engineering and design after authorization of project construction to satisfy mitigation requirements through third-party arrangements or to acquire interests in land necessary for meeting mitigation requirements under this section.

(2) Notification

Prior to the expenditure of any funds for a project pursuant to paragraph (1), the Secretary shall notify the Committee on Appropriations and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Appropriations and the Committee on Environment and Public Works of the Senate.

(k) Measures

The Secretary shall consult with interested members of the public, the Director of the United States Fish and Wildlife Service, the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, States, including State fish and game departments, and interested local governments to identify standard measures under subsection (h)(6)(C) that reflect the best available scientific information for evaluating habitat connectivity.

(Pub. L. 99–662, title IX, §906, Nov. 17, 1986, 100 Stat. 4186; Pub. L. 102–580, title III, §333(a), Oct. 31, 1992, 106 Stat. 4852; Pub. L. 106–53, title II, §221, Aug. 17, 1999, 113 Stat. 295; Pub. L. 106–541, title II, §224(a), Dec. 11, 2000, 114 Stat. 2597; Pub. L. 110–114, title II, §2036(a), Nov. 8, 2007, 121 Stat. 1092; Pub. L. 113–121, title I, §1040(a), June 10, 2014, 128 Stat. 1239; Pub. L. 114–322, title I, §1162, Dec. 16, 2016, 130 Stat. 1668.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Endangered Species Act, as amended, referred to in subsec. (e)(2), probably means the Endangered Species Act of 1973, Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified generally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

Public Law 99–88, referred to in subsec. (f), is Pub. L. 99–88, Aug. 15, 1985, 99 Stat. 293, known as the Supplemental Appropriations Act, 1985. Provisions of Pub. L. 99–88 authorizing the project for the Atchafalaya Floodway System, Louisiana, are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Flood Control Act of 1965, referred to in subsec. (f), is title II of Pub. L. 89–298, Oct. 27, 1965, 79 Stat. 1073. Provisions of that Act authorizing the project for Mississippi Delta Region, Louisiana, are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Fish and Wildlife Coordination Act, referred to in subsec. (g), is at Mar. 10, 1934, ch. 55, 48 Stat. 401, which is classified generally to sections 661 to 666c–1 of Title 16, Conservation. For complete classification of this Act to the Code, see section 661(a) of Title 16, Short Title note set out under section 661 of Title 16, and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (h)(9), (10), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2016—Subsec. (h)(4)(D) to (F). Pub. L. 114–322, §1162(1)(A), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (h)(6)(C). Pub. L. 114–322, §1162(1)(B), substituted "impacts, including impacts to habitat connectivity" for "impacts".

Subsec. (h)(11). Pub. L. 114–322, §1162(1)(C), added par. (11) and struck out former par. (11). Prior to amendment, text read as follows: "Nothing in this subsection requires the Secretary to undertake additional mitigation for existing projects for which mitigation has already been initiated."

Subsecs. (j), (k). Pub. L. 114–322, §1162(2), added subsecs. (j) and (k).

2014—Subsec. (d)(1). Pub. L. 113–121, §1040(a)(1)(A), inserted "for damages to ecological resources, including terrestrial and aquatic resources, and" after "mitigate", "ecological resources and" after "impact on", "without the implementation of mitigation measures" before period at end of first sentence, and "If the Secretary determines that mitigation to in-kind conditions is not possible, the Secretary shall identify in the report the basis for that determination and the mitigation measures that will be implemented to meet the requirements of this section and the goals of section 2317(a)(1) of this title." after "to the extent possible."

Subsec. (d)(2). Pub. L. 113–121, §1040(a)(1)(B)(iii), which directed insertion of "using a watershed approach" after "projects" was executed by making the insertion after "projects" the first place appearing to reflect the probable intent of Congress.

Pub. L. 113–121, §1040(a)(1)(B)(i), (ii), substituted "Selection and design" for "Design" in heading and inserted "select and" before "design" in text.

Subsec. (d)(3)(A). Pub. L. 113–121, §1040(a)(1)(C)(i), inserted ", at a minimum," after "complies with".

Subsec. (d)(3)(B)(iii) to (vi). Pub. L. 113–121, §1040(a)(1)(C)(ii), added cls. (iii) and (iv), redesignated former cls. (iv) and (v) as (v) and (vi), respectively, and struck out former cl. (iii) which read as follows: "a description of the land and interests in land to be acquired for the mitigation plan and the basis for a determination that the land and interests are available

for acquisition;"

Subsecs. (h), (i). Pub. L. 113–121, §1040(a)(2), added subsecs. (h) and (i).

2007—Subsec. (d)(1). Pub. L. 110–114, §2036(a)(1), (2), substituted "to Congress in any report, and shall not select a project alternative in any report," for "to the Congress" and inserted ", and other habitat types are mitigated to not less than in-kind conditions" after "mitigated in-kind".

Subsec. (d)(3) to (5). Pub. L. 110–114, §2036(a)(3), added pars. (3) to (5).

2000—Subsec. (d). Pub. L. 106–541 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, realigned margins, substituted "November 17, 1986" for "the date of enactment of this Act", redesignated former cls. (1) and (2) as (A) and (B), respectively, and added par. (2).

1999—Subsec. (e). Pub. L. 106–53 inserted after second sentence "Not more than 80 percent of the non-Federal share of such first costs may be satisfied through in-kind contributions, including facilities, supplies, and services that are necessary to carry out the enhancement project."

1992—Subsec. (c). Pub. L. 102–580 inserted ", including lands, easements, rights-of-way, and relocations," before "for implementation and operation".

STATUTORY NOTES AND RELATED SUBSIDIARIES

APPLICABILITY

Pub. L. 113–121, [title I, §1040\(b\)](#), [June 10, 2014](#), 128 Stat. 1243, provided that: "The amendments made by subsection (a) [amending this section] shall not apply to a project for which a mitigation plan has been completed as of the date of enactment of this Act [June 10, 2014]."

CONCURRENT MITIGATION

Pub. L. 106–541, [title II, §224\(b\)](#), [Dec. 11, 2000](#), 114 Stat. 2598, required the Comptroller General to conduct an investigation of the effectiveness of the concurrent mitigation requirements of this section and to transmit to Congress a report on the results of the investigation not later than 1 year after Dec. 11, 2000.

§2283a. Status report

(1) In general

Concurrent with the President's submission to Congress of the President's request for appropriations for the Civil Works Program for a fiscal year, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status of construction of projects that require mitigation under section 2283 of this title, the status of such mitigation, and the results of the consultation under subsection (d)(4)(B) of such section.

(2) Projects included

- The status report shall include the status of—
- (A) all projects that are under construction as of the date of the report;
 - (B) all projects for which the President requests funding for the next fiscal year; and
 - (C) all projects that have undergone or completed construction, but have not completed the mitigation required under section 2283 of this title.

(3) Information included

- In reporting the status of all projects included in the report, the Secretary shall—
- (A) use a uniform methodology for determining the status of all projects included in the report;
 - (B) use a methodology that describes both a qualitative and quantitative status for all projects in the report; and
 - (C) provide specific dates for participation in the consultations required under section 2283(d)(4)(B) of this title.

(4) Availability of information

The Secretary shall make information contained in the status report available to the public, including on the Internet.

(Pub. L. 110–114, [title II, §2036\(b\)](#), [Nov. 8, 2007](#), 121 Stat. 1094; Pub. L. 113–121, [title I, §1041](#), [June 10, 2014](#), 128 Stat. 1243.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2014—Pars. (3), (4). Pub. L. 113–121 added par. (3) and redesignated former par. (3) as (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2283b. Clarification of mitigation authority

(a) In general

The Secretary may carry out measures to improve fish species habitat within the boundaries and downstream of a water resources project constructed by the Secretary that includes a fish hatchery if the Secretary—

- (1) has been explicitly authorized to compensate for fish losses associated with the project; and
- (2) determines that the measures are—
 - (A) feasible;
 - (B) consistent with authorized project purposes and the fish hatchery; and
 - (C) in the public interest.

(b) Cost sharing

(1) In general

Subject to paragraph (2), the non-Federal interest shall contribute 35 percent of the total cost of carrying out activities under this section, including the costs relating to the provision or acquisition of required land, easements, rights-of-way, dredged material disposal areas, and relocations.

(2) Operation and maintenance

The non-Federal interest shall contribute 100 percent of the costs of operation, maintenance, replacement, repair, and rehabilitation of the measures carried out under this section.

(Pub. L. 113–121, [title I, §1028](#), [June 10, 2014](#), 128 Stat. 1230.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2283c. Technical assistance

(1) In general

The Secretary may provide technical assistance to States and local governments to establish third-party mitigation instruments, including mitigation banks and in-lieu fee programs, that will help to target mitigation payments to high-priority ecosystem restoration actions.

(2) Requirements

In providing technical assistance under this section, the Secretary shall give priority to States and local governments that have developed State, regional, or watershed-based plans identifying priority restoration actions.

(3) Mitigation instruments

The Secretary shall seek to ensure any technical assistance provided under this section will support the establishment of mitigation instruments that will result in restoration of high-priority areas identified in the plans under paragraph (2).

(Pub. L. 113–121, [title I](#), §1040(c), June 10, 2014, 128 Stat. 1243.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2284. Benefits and costs attributable to environmental measures

In the evaluation by the Secretary of benefits and costs of a water resources project, the benefits attributable to measures included in a project for the purpose of environmental quality, including improvement of the environment and fish and wildlife enhancement, shall be deemed to be at least equal to the costs of such measures.

(Pub. L. 99–662, [title IX](#), §907, Nov. 17, 1986, 100 Stat. 4188.)

§2284a. Benefits to navigation

In evaluating potential improvements to navigation and the maintenance of navigation projects, the Secretary shall consider, and include for purposes of project justification, economic benefits generated by cruise ships as commercial navigation benefits.

(Pub. L. 104–303, [title II](#), §230, Oct. 12, 1996, 110 Stat. 3704.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104–303, set out as a note under section 2201 of this title.

§2284b. Scenic and aesthetic considerations

In conducting studies of potential water resources projects, the Secretary shall consider measures to preserve and enhance scenic and aesthetic qualities in the vicinity of such projects.

(Pub. L. 104–303, [title II](#), §232, Oct. 12, 1996, 110 Stat. 3704.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104–303, set out as a note under section 2201 of this title.

§2285. Environmental Protection and Mitigation Fund

There is established an Environmental Protection and Mitigation Fund. There is authorized to be appropriated to such fund \$35,000,000 for fiscal years beginning after September 30, 1986. Amounts in the fund ¹ shall be available for undertaking, in advance of construction of any water resources project authorized to be constructed by the Secretary, such measures authorized as part of such project, including the acquisition of lands and interests therein, as may be necessary to ensure that project-induced losses to fish and wildlife production and habitat will be mitigated. The Secretary shall reimburse the Fund for any amounts expended under this section for a water resources project from the first appropriations made for construction, including planning and designing, of such project.

(Pub. L. 99–662, [title IX](#), §908, Nov. 17, 1986, 100 Stat. 4188.)

¹ So in original. Probably should be capitalized.

§2286. Acceptance of certain funds for mitigation

The Secretary is authorized to accept funds from any entity, public or private, in accordance with the Pacific Northwest Electric Power Planning and Conservation Act [16 U.S.C. 839 et seq.] to be used to protect, mitigate, and enhance fish and wildlife in connection with projects constructed or operated by the Secretary. The Secretary may accept and use funds for such purposes without regard to any limitation established under any other provision of law or rule of law.

(Pub. L. 99–662, [title XI](#), §1146, Nov. 17, 1986, 100 Stat. 4253.)

EDITORIAL NOTES**REFERENCES IN TEXT**

The Pacific Northwest Electric Power Planning and Conservation Act, referred to in text, is Pub. L. 96–501, [Dec. 5, 1980](#), 94 Stat. 2697, which is classified principally to chapter 12H (§839 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 839 of Title 16 and Tables.

§2287. Continued planning and investigations**(a) Pre-authorization planning and engineering**

After the Chief of Engineers transmits his recommendations for a water resources development project to the Secretary for transmittal to the Congress, as authorized in section 701–1 of this title, and before authorization for construction of such project, the Chief of Engineers is authorized to undertake continued planning and engineering (other than preparation of plans and specifications) for such project if the Chief of Engineers finds that the project is without substantial controversy and justifies further engineering, economic, and environmental investigations and the Chief of Engineers transmits to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a statement of such findings. In the one-year period after authorization for construction of such project, the Chief of Engineers is authorized to undertake planning, engineering, and design for such project.

(b) Omitted**(c) Authorizations as additions to other authorizations**

The authorization made by this section shall be in addition to any other authorizations for planning, engineering, and design of water resources development projects and shall not be construed as a limitation on any other such authorization.

(Pub. L. 99–662, [title IX](#), §910, Nov. 17, 1986, 100 Stat. 4189.)

EDITORIAL NOTES**CODIFICATION**

Subsec. (b) of this section, which required the Secretary to prepare and transmit an annual report to certain committees of Congress on activities undertaken under this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 72 of House Document No. 103–7.

STATUTORY NOTES AND RELATED SUBSIDIARIES**CHANGE OF NAME**

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§2288. Repealed. Pub. L. 113–121, title I, §1004, June 10, 2014, 128 Stat. 1199

Section, Pub. L. 99–662, title IX, §911, Nov. 17, 1986, 100 Stat. 4189, related to review of cost effectiveness of design.

§2289. Urban and rural flood control frequency

In the preparation of feasibility reports for projects for flood damage prevention in urban and rural areas, the Secretary may consider and evaluate measures to reduce or eliminate damages from flooding without regard to frequency of flooding, drainage area, and amount of runoff. This section shall apply with respect to any project, or separable element thereof, the Federal share of the cost of which is less than \$3,000,000.

(Pub. L. 99–662, title IX, §914, Nov. 17, 1986, 100 Stat. 4190.)

§2289a. Consideration of measures**(a) Definitions**

In this section, the following definitions apply:

(1) Natural feature

The term "natural feature" means a feature that is created through the action of physical, geological, biological, and chemical processes over time.

(2) Nature-based feature

The term "nature-based feature" means a feature that is created by human design, engineering, and construction to provide risk reduction by acting in concert with natural processes.

(b) Requirement

In studying the feasibility of projects for flood risk management, hurricane and storm damage reduction, and ecosystem restoration the Secretary shall, with the consent of the non-Federal sponsor of the feasibility study, consider, as appropriate—

- (1) natural features;
- (2) nature-based features;
- (3) nonstructural measures; and
- (4) structural measures.

(c) Report to Congress**(1) In general**

Not later than February 1, 2020, and 5 and 10 years thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the implementation of subsection (b).

(2) Contents

The report under paragraph (1) shall include, at a minimum, the following:

- (A) A description of guidance or instructions issued, and other measures taken, by the Secretary and the Chief of Engineers to implement subsection (b).
- (B) An assessment of the costs, benefits, impacts, and trade-offs associated with measures recommended by the Secretary for coastal risk reduction and the effectiveness of those measures.
- (C) A description of any statutory, fiscal, or regulatory barriers to the appropriate consideration and use of a full array of measures for coastal risk reduction.

(Pub. L. 114–322, title I, §1184, Dec. 16, 2016, 130 Stat. 1679; Pub. L. 115–270, title I, §1149(b), Oct. 23, 2018, 132 Stat. 3787.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2018—Subsec. (a)(2). Pub. L. 115–270 struck out "in coastal areas" after "risk reduction".

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114–322, set out as a note under section 2201 of this title.

§2290. Flood control in Trust Territory of the Pacific Islands

The Secretary is authorized to use the authority contained in section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), section 2 of the Flood Control Act of August 28, 1937 (33 U.S.C. 701g), section 14 of the Flood Control Act of 1946 (33 U.S.C. 701r), section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577), section 3 of the Act entitled "An Act authorizing Federal participation in the cost of protecting the shores of publicly owned property", approved August 13, 1946 (33 U.S.C. 426g), and section 111 of the River and Harbor Act of 1968 (33 U.S.C. 426i) in the Trust Territory of the Pacific Islands.

(Pub. L. 99–662, title IX, §915(h), Nov. 17, 1986, 100 Stat. 4191.)

EXECUTIVE DOCUMENTS**TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS**

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§2291. Federal Project Repayment District

(a) The Secretary may enter into a contract providing for the payment or recovery of an appropriate share of the costs of a project under his responsibility with a Federal Project Repayment District or other political subdivision of a State prior to the construction, operation, improvement, or financing of such project. The Federal Project Repayment District shall include lands and improvements which receive identifiable benefits from the construction or operation of such project. Such districts shall be established in accordance with State law, shall have specific boundaries which may be changed from time to time based upon further evaluations of benefits, and shall have the power to recover benefits through any cost-recovery approach that is consistent with State law and satisfies the applicable cost-recovery requirement under subsection (b).

(b) Prior to execution of an agreement pursuant to subsection (a) of this section, the Secretary shall require and approve a study from the State or political subdivision demonstrating that the revenues to be derived from a contract under this section, or an agreement with a Federal Project Repayment District, will be sufficient to equal or exceed the cost recovery requirements over the term of repayment required by Federal law.

(Pub. L. 99–662, title IX, §916, Nov. 17, 1986, 100 Stat. 4191; Pub. L. 100–676, §15, Nov. 17, 1988, 102 Stat. 4026.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–676 substituted "have the power to recover benefits through any cost-recovery approach that is consistent with State law and satisfies the applicable cost-recovery requirement under subsection (b)" for "include the power to collect a portion of the transfer price from any transaction involving the sale, transfer, or change in beneficial ownership of lands and improvements within the district boundaries".

§2292. Surveying and mapping

Any surveying or mapping services to be performed in connection with a water resources project which is or has been authorized to be undertaken by the Secretary shall be procured in accordance with title IX of the Federal Property and Administrative Services Act of 1949.¹
(Pub. L. 99–662, title IX, §918, Nov. 17, 1986, 100 Stat. 4192.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377. Title IX of the Act, which was classified generally to subchapter VI (§541 et seq.) of chapter 10 of former Title 40, Public Buildings, Property, and Works, was repealed and reenacted by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapter 11 (§1101 et seq.) of Title 40, Public Buildings, Property, and Works. For disposition of sections of former Title 40 to revised Title 40, see Table preceding section 101 of Title 40. For complete classification of this Act to the Code, see Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

GEOMATIC DATA

Pub. L. 115–270, title I, §1118, Oct. 23, 2018, 132 Stat. 3776, provided that:

"(a) IN GENERAL.—The Secretary [of the Army] shall develop guidance for the acceptance and use of information obtained from a non-Federal interest through geomatic techniques, including remote sensing and land surveying, cartography, geographic information systems, global navigation satellite systems, photogrammetry, or other remote means, in carrying out any authority of the Secretary.

"(b) CONSIDERATIONS.—In carrying out this section, the Secretary shall ensure that use of information described in subsection (a) meets the data quality and operational requirements of the Secretary.

"(c) SAVINGS CLAUSE.—Nothing in this section—

"(1) requires the Secretary to accept information that the Secretary determines does not meet the guidance developed under this section; or

"(2) changes the current statutory or regulatory requirements of the Corps of Engineers."

¹ See *References in Text* note below.

§2293. Reprogramming during national emergencies**(a) Termination or deferment of civil works projects; application of resources to national defense projects**

In the event of a declaration of war or a declaration by the President of a national emergency in accordance with the National Emergencies Act [50 U.S.C. 1601 et seq.] that requires or may require use of the Armed Forces, the Secretary, without regard to any other provision of law, may (1) terminate or defer the construction, operation, maintenance, or repair of any Department of the Army civil works project that he deems not essential to the national defense, and (2) apply the resources of the Department of the Army's civil works program, including funds, personnel, and equipment, to construct or assist in the construction, operation, maintenance, and repair of authorized civil works, military construction, and civil defense projects that are essential to the national defense.

(b) Termination of state of war or national emergency

The Secretary shall immediately notify the appropriate committees of Congress of any actions taken pursuant to the authorities provided by this section, and cease to exercise such authorities not later than 180 calendar days after the termination of the state of war or national emergency, whichever occurs later.

(Pub. L. 99–662, title IX, §923, Nov. 17, 1986, 100 Stat. 4194.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (a), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

§2293a. Reprogramming of funds for projects by Corps of Engineers

None of the funds made available before, on, or after June 15, 2006, in an appropriations Act may be expended to prevent or limit any reprogramming of funds for a project to be carried out by the Corps of Engineers using funds appropriated in any Act making appropriations for energy and water development, based on whether the project was included by the President in the budget transmitted under section 1105(a) of title 31 or is otherwise proposed by the President or considered part of the budget by the Office of Management and Budget, if the project received funds in an Act making appropriations for energy and water development or any other appropriations Act making additional funds available for energy and water development.

(Pub. L. 109–234, title II, §2307, June 15, 2006, 120 Stat. 457.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

§2294. Office of Environmental Policy

The Secretary shall establish in the Directorate of Civil Works of the Office of the Chief of Engineers an Office of Environmental Policy. Such Office shall be responsible for the formulation, coordination, and implementation of all matters concerning environmental quality and policy as they relate to the water resources program of the United States Army Corps of Engineers. Such Office shall, among other things, develop, and monitor compliance with, guidelines for the consideration of environmental quality in formulation and planning of water resources projects carried out by the Secretary, the preparation and coordination of environmental impact statements for such projects, and the coordination with Federal, State, and local agencies of environmental aspects of such projects and regulatory responsibilities of the Secretary.

(Pub. L. 99–662, title IX, §924, Nov. 17, 1986, 100 Stat. 4194.)

§2295. Compilation of laws; annual reports**(a) Federal laws relating to improvements of rivers and harbors, flood control, beach erosion, and other water resources development**

Within one year after November 17, 1986, the laws of the United States relating to the improvement of rivers and harbors, flood control, beach erosion, and other water resources development enacted after November 8, 1966, and before January 1, 1987, shall be compiled under the direction of the Secretary and the Chief of Engineers and printed for the use of the Department of the Army, the Congress, and the general public. The Secretary shall reprint the volumes containing such laws enacted before November 8, 1966. In addition, the Secretary shall include an index in each volume so compiled or reprinted. The Secretary shall transmit copies of each such volume to Congress.

(b) Annual report

The Secretary shall prepare and submit the annual report required by section 556 of this title, in two volumes. Volume I shall consist of a summary and highlights of Corps of Engineers' activities, authorities, and accomplishments. Volume II shall consist of detailed information and field reports on Corps of Engineers' activities. The Secretary shall publish an index with each annual report.

(c) Biennial reports for each State

The Secretary shall prepare biennially for public information a report for each State containing a description of each water resources project under the jurisdiction of the Secretary in such State and the status of each such project. Each report shall include an index. The report for each State shall be prepared in a separate volume. The reports under this subsection shall be published at the same time and the first such reports shall be published not later than one year after November 17, 1986.

(Pub. L. 99–662, title IX, §925, Nov. 17, 1986, 100 Stat. 4194.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

COMPILATION OF LAWS

Pub. L. 110–114, [title II, §2004, Nov. 8, 2007](#), 121 Stat. 1071, provided that:

"(a) COMPILATION OF LAWS ENACTED AFTER NOVEMBER 8, 1966.—The Secretary [of the Army] and the Chief of Engineers shall prepare a compilation of the laws of the United States relating to the improvement of rivers and harbors, flood damage reduction, beach and shoreline erosion, hurricane and storm damage reduction, ecosystem and environmental restoration, and other water resources development enacted after November 8, 1966, and before January 1, 2008, and have such compilation printed for the use of the Department of the Army, Congress, and the general public.

"(b) REPRINT OF LAWS ENACTED BEFORE NOVEMBER 8, 1966.—The Secretary shall have the volumes containing the laws referred to in subsection (a) enacted before November 8, 1966, reprinted.

"(c) INDEX.—The Secretary shall include an index in each volume compiled, and each volume reprinted, pursuant to this section.

"(d) CONGRESSIONAL COPIES.—Not later than April 1, 2008, the Secretary shall transmit at least 25 copies of each volume compiled, and of each volume reprinted, pursuant to this section to each of the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

"(e) AVAILABILITY.—The Secretary [of the Army] shall ensure that each volume compiled, and each volume reprinted, pursuant to this section are available through electronic means, including on the Internet."

§2295a. Policy and technical standards

Every 5 years, the Secretary shall revise, rescind, or certify as current, as applicable, each policy and technical standards publication for the civil works programs of the Corps of Engineers, including each engineer regulation, engineer circular, engineer manual, engineer pamphlet, engineer technical letter, planning guidance letter, policy guidance letter, planning bulletin, and engineering and construction bulletin.

(Pub. L. 117–263, [div. H, title LXXXI, §8140, Dec. 23, 2022](#), 136 Stat. 3723.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2022, and also as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 8002 of Pub. L. 117–263, set out as a note under section 2201 of this title.

§2296. Acquisition of recreation lands

(a) In the case of any water resources project which is authorized to be constructed by the Secretary before, on, or after November 17, 1986, construction of which has not commenced before November 17, 1986, and which involves the acquisition of lands or interests in lands for recreation purposes, such lands or interests shall be acquired along with the acquisition of lands and interests in lands for other project purposes.

(b) The Secretary is authorized to acquire real property by condemnation, purchase, donation, exchange, or otherwise, as a part of any water resources development project for use for public park and recreation purposes, including but not limited to, real property not contiguous to the principal part of the project.

(Pub. L. 99–662, [title IX, §926, Nov. 17, 1986](#), 100 Stat. 4195.)

§2297. Operation and maintenance on recreation lands

The Secretary shall not require, under section 460d of title 16, and the Federal Water Project Recreation Act [16 U.S.C. 460l–12 et seq.], non-Federal interests to assume operation and maintenance of any recreational facility operated by the Secretary at any water resources project as a condition to the construction of new recreational facilities at such project or any other water resources project.

(Pub. L. 99–662, [title IX, §927, Nov. 17, 1986](#), 100 Stat. 4195.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Water Project Recreation Act, referred to in text, is Pub. L. 89–72, [July 9, 1965](#), 79 Stat. 213, which is classified principally to part C (§460l–12 et seq.) of subchapter LXIX of chapter 1 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 460l–12 of Title 16 and Tables.

§2298. Impact of proposed projects on existing recreation facilities

Any report describing a project having recreation benefits that is submitted after November 17, 1986, to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary, or by the Secretary of Agriculture under authority of the Watershed Protection and Flood Protection Act (68 Stat. 666; 16 U.S.C. 1001 et seq.), shall describe the usage of other, similar public recreational facilities within the general area of the project, and the anticipated impact of the proposed project on the usage of such existing recreational facilities.

(Pub. L. 99–662, [title IX, §928, Nov. 17, 1986](#), 100 Stat. 4195.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Watershed Protection and Flood Prevention Act, referred to in text, is act [Aug. 4, 1954](#), [ch. 656](#), 68 Stat. 666, which is classified principally to chapter 18 (§1001 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 16 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§2299. Acquisition of beach fill

Notwithstanding any other provision of law, in any case in which the use of fill material for beach erosion and beach nourishment is authorized as a purpose of an authorized water resources project, the Secretary is authorized to acquire by purchase, exchange, or otherwise from nondomestic sources and utilize such material for such purposes if such materials are not available from domestic sources for environmental or economic reasons.

(Pub. L. 99–662, [title IX, §935, Nov. 17, 1986](#), 100 Stat. 4197.)

§2300. Study of Corps capabilities

The Secretary shall study and evaluate the measures necessary to increase the capabilities of the United States Army Corps of Engineers to undertake the planning and construction of water resources projects on an expedited basis and to adequately comply with all requirements of law applicable to the water resources program of the Corps of Engineers. As part of such study the Secretary shall consider appropriate measures to increase reliance on the private sector in the conduct of the water resources program of the Corps of Engineers. The Secretary shall implement such measures as may be necessary to improve the capabilities referred to in the first sentence of this section, including the establishment of increased levels of personnel, changes in project planning and construction procedures designed to lessen the time required for such planning and construction, and procedures for expediting the coordination of water resources projects with Federal, State, and local agencies.

(Pub. L. 99–662, [title IX, §936, Nov. 17, 1986](#), 100 Stat. 4197.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

GAO REVIEW OF CIVIL WORKS PROGRAM

Pub. L. 100–676, §44, Nov. 17, 1988, 102 Stat. 4041, provided that the Comptroller General was to conduct a review of the Civil Works Program of the United States Army Corps of Engineers and to transmit the review to Congress with any recommendations the Comptroller General may make.

§§2301, 2302. Omitted

EDITORIAL NOTES

CODIFICATION

Section 2301, Pub. L. 99–662, title IX, §937, Nov. 17, 1986, 100 Stat. 4198, which required the Secretary of the Army to transmit to certain committees of Congress annual reports on electricity generated by water resource projects constructed by the Secretary and revenues and costs associated with the projects, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 72 of House Document No. 103–7.

Subsec. (a) of section 2302, Pub. L. 99–662, title IX, §938(a), Nov. 17, 1986, 100 Stat. 4198, which required the Secretary of the Army to transmit an annual report to certain committees of Congress describing contracts awarded, broken down by Engineer District of the Army Corps of Engineers, including the number and dollar amount of contracts set aside for small business concerns, awarded to small business or small disadvantaged business concerns, available for competition by qualified firms of all sizes, and awarded to other than small business or small disadvantaged business concerns, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 69 of House Document No. 103–7.

Subsec. (b) of section 2302, Pub. L. 99–662, title IX, §938(b), Nov. 17, 1986, 100 Stat. 4198, directed the Comptroller General to conduct a study of the contracting procedures of the Secretary of the Army for civil works projects, examining whether potential bidders or offerors, regardless of their size, are allowed to compete fairly in the interest of lowering cost on contracts for construction, and to report findings and recommendations to Congress within two years of Nov. 17, 1986.

§2303. Historical properties

The Secretary is authorized to preserve, restore, and maintain those historic properties located on water resource development project lands under the jurisdiction of the Department of the Army if such properties have been entered into the National Register of Historic Places.

(Pub. L. 99–662, title IX, §943, Nov. 17, 1986, 100 Stat. 4200.)

§2304. Separability

If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

(Pub. L. 99–662, title IX, §949, Nov. 17, 1986, 100 Stat. 4201.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99–662, Nov. 17, 1986, 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

§2305. Use of FMHA funds

Notwithstanding any other provision of law, Federal assistance made available by the Farmers Home Administration may be used to pay the non-Federal share of any other Federal grant-in-aid program for any project for water resources, including water pollution control.

(Pub. L. 99–662, title IX, §950, Nov. 17, 1986, 100 Stat. 4201.)

§2306. Reports

If any report required to be transmitted under this Act to the Committee on Public Works and Transportation of the House of Representatives or the Committee on Environment and Public Works of the Senate pertains in whole or in part to fish and wildlife mitigation, benthic environmental repercussions, or ecosystem mitigation, the Federal officer required to prepare or transmit that report also shall transmit a copy of the report to the Committee on Merchant Marine and Fisheries of the House of Representatives.

(Pub. L. 99–662, title IX, §951, Nov. 17, 1986, 100 Stat. 4201.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99–662, Nov. 17, 1986, 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§2307. Control of ice

(a) Program authority

The Secretary shall undertake a program of research for the control of ice, and to assist communities in breaking up ice, which otherwise is likely to cause or aggravate flood damage or severe streambank erosion.

(b) Assistance to units of local government

The Secretary is further authorized to provide technical assistance to units of local government to implement local plans to control or break up such ice. As part of such authority, the Secretary shall acquire necessary ice-control or ice-breaking equipment, which shall be loaned to units of local government together with operating assistance, where appropriate.

(c) Authorization of appropriations

There is authorized to be appropriated \$5,000,000 per fiscal year for each of the fiscal years 1988, 1989, 1990, 1991, and 1992 for purposes of carrying out subsections (a) and (b) of this section, such sums to remain available until expended.

(d) Hardwick, Vermont, demonstration program

To implement further the purposes of this section, the Secretary, in consultation and cooperation with local officials, is authorized and directed to undertake a demonstration program for the control of ice at Hardwick, Vermont. The work authorized by this subsection shall be designed to minimize the danger of flooding due to ice problems in the vicinity of such community. In the design, construction, and location of ice-control structures for this project, full consideration will be given to the recreational, scenic, and environmental values of the reach of river affected by the project, in order to minimize project impacts on these values. Full opportunity shall be given to interested environmental and recreational organizations to participate in such planning. There is authorized to be appropriated \$900,000 for fiscal years beginning after September 30, 1986, for the purposes of carrying out this subsection, such sum to remain available until expended.

(e) **Salmon, Idaho, experimental program**

(1) The Secretary is directed to complete an experimental program placing screens in the Salmon River in the vicinity of Salmon, Idaho, to trap frazil ice, and thus to eliminate flooding caused by ice dams in the river. Within one year of November 17, 1986, the Secretary shall report to the Congress on the feasibility of such experiment, including consideration of any adverse environmental or social effects that could result from such experiment. If, in the Secretary's judgment, such experiment is not feasible or acceptable, the Secretary is authorized to consult with local public interests to develop a plan that is workable and practical, and then to submit such plan to Congress.

(2) There is authorized to be appropriated \$1,000,000 for fiscal years beginning after September 30, 1986, for purposes of carrying out this subsection, such sum to remain available until expended.

(f) **Wilmington, Illinois, project**

(1) To implement further the purposes of this section, the Secretary shall carry out a project for the control of ice on the Kankakee River in the vicinity of Wilmington, Illinois. The Secretary shall report to Congress not later than one year after November 17, 1986, and annually thereafter on the effectiveness of the program under this section with respect to the Kankakee River in the vicinity of Wilmington, Illinois.

(2) There is authorized to be appropriated \$3,000,000 for fiscal years beginning after September 30, 1986, for purposes of carrying out this subsection, such sum to remain available until expended.

(g) **Cost sharing**

Cost sharing applicable to flood control projects under section 2213 of this title shall apply to projects under this section.

(h) **Report to Congress**

Not later than March 1, 1989, the Secretary shall report to the Congress on activities under this section.

(Pub. L. 99–662, [title XI](#), [§1101](#), [Nov. 17, 1986](#), 100 Stat. 4223.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f)(1) of this section relating to the requirement that the Secretary report annually to Congress on the effectiveness of the program under this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 71 of House Document No. 103–7.

§2308. Campgrounds for senior citizens

(a) **Establishment and development**

The Secretary may establish and develop separate campgrounds for individuals sixty-two years of age or older at any lake or reservoir under the jurisdiction of the Secretary where camping is permitted.

(b) **Control of campground use and access**

The Secretary may prescribe regulations to control the use of and the access to any separate campground established and developed under subsection (a) of this section.

(c) **Authorization of appropriations**

There are authorized to be appropriated such sums as may be necessary for fiscal years beginning after September 30, 1986, to carry out subsection (a) of this section.

(d) **Campground at Sam Rayburn Dam and Reservoir, Texas**

The Secretary shall establish and develop the parcel of land (located in the State of Texas at the Sam Rayburn Dam and Reservoir) described in subsection (g) of this section as a separate campground for individuals sixty-two years of age or older.

(e) **Control of use and access to campground at Sam Rayburn Dam and Reservoir, Texas**

The Secretary shall prescribe regulations to control the use of and the access to the separate campground established and developed pursuant to subsection (d) of this section.

(f) **Authorization of appropriations**

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, \$600,000 to carry out subsection (d) of this section.

(g) **Boundaries of campground at Sam Rayburn Dam and Reservoir, Texas**

The parcel of land to be established and developed as a separate campground pursuant to subsection (d) of this section is a tract of land of approximately 50 acres which is located in the county of Angellina in the State of Texas and which is part of the Thomas Hanks survey. The boundary of the parcel begins at a point at the corner furthest west of tract numbered 3420 of the Sam Rayburn Dam and Reservoir:

 thence north 81 degrees 30 minutes east, approximately 2,800 feet to a point at the edge of the water;

 thence south along the edge of the water approximately 2,600 feet;

 thence north 80 degrees 30 minutes west, approximately 1,960 feet to a point at the reentrant corner of tract numbered 3419 of the Sam Rayburn Dam and Reservoir;

 thence along the boundary line of tract numbered 3419 north 46 degrees 15 minutes west, 220 feet to a point at the center line of a road at the corner common to tract numbered 3419 and tract numbered 3420;

 thence along the southwestern boundary line of tract numbered 3420 north 46 degrees 15 minutes west, 230 feet to a point at the corner furthest east of tract numbered 3424 of the Sam Rayburn Dam and Reservoir;

 thence along the boundary line of tract numbered 3424 south 32 degrees 4 minutes west, 420 feet to a point;

 thence along the boundary line of tract numbered 3424 north 28 degrees 34 minutes west, 170 feet to a point;

 thence along the boundary line of tract numbered 3424 north 38 degrees 15 minutes east, 248 feet to a point;

 thence along the boundary line of tract numbered 3424 north 32 degrees 44 minutes east, 120 feet to a point at the corner furthest north of tract numbered 3424;

 thence along the southwestern boundary line of tract numbered 3420 north 46 degrees 15 minutes west, 460 feet to the beginning point.

(Pub. L. 99–662, [title XI](#), [§1127](#), [Nov. 17, 1986](#), 100 Stat. 4245.)

§2309. Great Lakes Commodities Marketing Board

(a) **Congressional declaration of purpose**

To ensure the coordinated economic revitalization and environmental enhancement of the Great Lakes and their connecting channels and the Saint Lawrence Seaway (hereinafter in this section referred to as the "Great Lakes"), known as the "Fourth Seacoast" of the United States, it is hereby declared to be the intent of Congress to recognize the importance of the economic vitality of the Great Lakes region, the importance of exports from the region in the United States balance of trade, and the need to assure an environmentally and socially responsible navigation system for the Great Lakes. Congress finds that the Great Lakes provide a diversity of agricultural, commercial, environmental, recreational, and related opportunities based on their extensive water resources and water transportation systems.

(b) **Establishment; strategy development; composition of Board; Director; report; termination**

(1) There is hereby established a Board to be known as the Great Lakes Commodities Marketing Board (hereinafter in this subsection referred to as the "Board").

(2)(A) The Board shall develop a strategy to improve the capacity of the Great Lakes region to produce, market, and transport commodities in a timely manner and to maximize the efficiency and benefits of marketing products produced in the Great Lakes region and products shipped through the Great Lakes.

(B) The strategy shall address, among other things, environmental issues relating to transportation on the Great Lakes and marketing difficulties experienced due to late harvest seasons in the Great Lakes region. The strategy shall include, as appropriate alternative storage, sales, marketing, multimodal transportation systems, and other systems, to assure optimal economic benefits to the region from agricultural and other commercial activities. The strategy shall develop—

 (i) methods to improve and promote both bulk and general cargo trade through Great Lakes ports;

 (ii) methods to accelerate the movement of grains and other agricultural commodities through the Great Lakes;

 (iii) methods to provide needed flexibility to farmers in the Great Lakes region to market grains and other agricultural commodities; and

 (iv) methods and materials to promote trade from the Great Lakes region and through Great Lakes ports, particularly with European, Mediterranean, African, Caribbean, Central American, and South American nations.

(C) In developing the strategy, the Board shall conduct and consider the results of—

 (i) an analysis of the feasibility and costs of using iron ore vessels, which are not being utilized, to move grain and other agricultural commodities on the Great Lakes;

 (ii) an economic analysis of transshipping such commodities through Montreal, Canada, and other ports;

 (iii) an analysis of the economic feasibility of storing such commodities during the non-navigation season of the Great Lakes and the feasibility of and need for construction of new storage facilities for such commodities;

 (iv) an analysis of the constraints on the flexibility of farmers in the Great Lakes region to market grains and other agricultural commodities, including harvest dates for such commodities and the availability of transport and storage facilities for such commodities; and

 (v) an analysis of the amount of grain and other agricultural commodities produced in the United States which are being diverted to Canada by rail but which could be shipped on the Great Lakes if vessels were available for shipping such products during the navigation season.

(D) In developing the strategy, the Board shall consider weather problems and related costs and marketing problems resulting from the late harvest of agricultural commodities (including wheat and sunflower seeds) in the Great Lakes region.

(E) In developing the strategy, the Board shall consult United States ports on the Great Lakes and their users, including farm organizations (such as wheat growers and soybean growers), port authorities, water carrier organizations, and other interested persons.

(3) The Board shall be composed of seven members as follows:

 (A) the chairman of the Great Lakes Commission or his or her delegate,

 (B) the Secretary or his or her delegate,

 (C) the Secretary of Transportation or his or her delegate,

 (D) the Secretary of Commerce or his or her delegate,

- (E) the Administrator of the Great Lakes St. Lawrence Seaway Development Corporation or his or her delegate,
- (F) the Secretary of Agriculture or his or her delegate, and
- (G) the Administrator of the Environmental Protection Agency or his or her delegate.

(4)(A) Members of the Board shall serve for the life of the Board.

(B) Members of the Board shall serve without pay and those members who are full time officers or employees of the United States shall receive no additional pay by reason of their service on the Board, except that members of the Board shall be allowed travel or transportation expenses under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business and engaged in the actual performance of duties vested in the Board.

(C) Four members of the Board shall constitute a quorum but a lesser number may hold hearings.

(D) The co-chairmen of the Board shall be the Secretary or his or her delegate and the Administrator of the Great Lakes St. Lawrence Seaway Development Corporation or his or her delegate.

(E) The Board shall meet at the call of the co-chairmen or a majority of its members.

(5)(A) The Board shall, without regard to section 5311(b) ¹ of title 5, have a Director, who shall be appointed by the Board and shall be paid at a rate which the Board considers appropriate.

(B) Subject to such rules as may be prescribed by the Board, without regard to 5311(b) ¹ of title 5, the Board may appoint and fix the pay of such additional personnel as the Board considers appropriate.

(C) Upon request of the Board, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Board to assist the Board in carrying out its duties under this subsection.

(6)(A) The Board may, for purposes of carrying out this subsection, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate.

(B) Any member or agent of the Board may, if so authorized by the Board, take any action which the Board is authorized to take by this paragraph.

(C) The Board may secure directly from any department or agency of the United States any information necessary to enable it to carry out this subsection. Upon request of the co-chairmen of the Board, the head of such department or agency shall furnish such information to the Board.

(D) The Board may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States.

(E) The Administrator of General Services shall provide to the Board on a reimbursable basis such administrative support services as the Board may request.

(7) Not later than September 30, 1989, the Board shall transmit to the President and to each House of the Congress a report stating the strategy developed under this subsection and the results of each analysis conducted under this subsection. Such report shall contain a detailed statement of the findings and conclusions of the Board together with its recommendations for such legislative and administrative actions as it considers appropriate to carry out such strategy and to assure maximum economic benefits to the users of the Great Lakes and to the Great Lakes region.

(8) The Board shall cease to exist 180 days after submitting its report pursuant to this subsection.

(9) The non-Federal share of the cost of carrying out this subsection shall be 25 percent. There is authorized to be appropriated such sums as may be necessary to carry out the Federal share of this subsection for fiscal years beginning after September 30, 1986, and ending before October 1, 1990.

(c) International advisory group

(1) The President shall invite the Government of Canada to join in the formation of an international advisory group whose duty it shall be (A) to develop a bilateral program for improving navigation, through a coordinated strategy, on the Great Lakes, and (B) to conduct investigations on a continuing basis and make recommendations for a system-wide navigation improvement program to facilitate optimum use of the Great Lakes. The advisory group shall be composed of five members representing the United States, five members representing Canada, and two members from the International Joint Commission established by the treaty between the United States and Great Britain relating to boundary waters between the United States and Canada, signed at Washington, January 11, 1909 (36 Stat. 2448). The five members representing the United States shall include the Secretary of State, one member of the Great Lakes Commodities Marketing Board (as designated by the Board), and three individuals appointed by the President representing commercial, shipping, and environmental interests, respectively.

(2) The United States representatives to the international advisory group shall serve without pay and the United States representatives to the advisory group who are full time officers or employees of the United States shall receive no additional pay by reason of their service on the advisory group, except that the United States representatives shall be allowed travel or transportation expenses under subchapter I of chapter 57 of title 5 while away from their homes or regular place of business and engaged in the actual performance of duties vested in the advisory group.

(3) The international advisory group established by this subsection shall report to Congress and to the Canadian Parliament on its progress in carrying out the duties set forth in this subsection not later than one year after the formation of such group and biennially thereafter.

(d) Review of environmental, economic, and social impacts of navigation in United States portion of Great Lakes

The Secretary and the Administrator of the Environmental Protection Agency, in cooperation with the Secretary of the Interior, the Administrator of the National Oceanic and Atmospheric Administration, and other appropriate Federal and non-Federal entities, shall carry out a review of the environmental, economic, and social impacts of navigation in the United States portion of the Great Lakes. In carrying out such review, the Secretary and the Administrator shall use existing research, studies, and investigations relating to such impacts to the maximum extent possible. Special emphasis shall be made in such review of the impacts of navigation on the shoreline and on fish and wildlife habitat, including, but not limited to, impacts associated with resuspension of bottom sediment. The Secretary and the Administrator shall submit to Congress an interim report of such review not later than September 30, 1988, and a final report of such review along with recommendations not later than September 30, 1990.

(Pub. L. 99–662, title XI, §1132, Nov. 17, 1986, 100 Stat. 4246; Pub. L. 116–260, div. AA, title V, §512(c)(5)(D), Dec. 27, 2020, 134 Stat. 2756.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 5311(b) of title 5, referred to in subsec. (b)(5)(A), (B), was repealed by Pub. L. 101–509, title V, §529 [title I, §104(c)(1)], Nov. 5, 1990, 104 Stat. 1427, 1447.

AMENDMENTS

2020—Subsec. (b)(3)(E), (4)(D). Pub. L. 116–260 substituted "Great Lakes St. Lawrence Seaway Development Corporation" for "Saint Lawrence Seaway Development Corporation".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(3) of this section relating to the requirement that the international advisory group report biennially to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 193 of House Document No. 103–7.

¹ See *References in Text note below*.

§2309a. Project modifications for improvement of environment

(a) Determination of need

The Secretary is authorized to review water resources projects constructed by the Secretary to determine the need for modifications in the structures and operations of such projects for the purpose of improving the quality of the environment in the public interest and to determine if the operation of such projects has contributed to the degradation of the quality of the environment.

(b) Authority to make modifications

The Secretary is authorized to carry out a program for the purpose of making such modifications in the structures and operations of water resources projects constructed by the Secretary which the Secretary determines (1) are feasible and consistent with the authorized project purposes, and (2) will improve the quality of the environment in the public interest.

(c) Restoration of environmental quality

(1) In general

If the Secretary determines that construction of a water resources project by the Secretary or operation of a water resources project constructed by the Secretary has contributed to the degradation of the quality of the environment, the Secretary may undertake measures for restoration of environmental quality and measures for enhancement of environmental quality that are associated with the restoration, through modifications either at the project site or at other locations that have been affected by the construction or operation of the project, if such measures do not conflict with the authorized project purposes.

(2) Control of sea lamprey

Congress finds that—

- (A) the Great Lakes navigation system has been instrumental in the spread of sea lamprey and the associated impacts on its fishery; and
- (B) the use of the authority under this subsection for control of sea lamprey at any Great Lakes basin location is appropriate.

(d) Non-Federal share; limitation on maximum Federal expenditure

The non-Federal share of the cost of any modifications or measures carried out or undertaken pursuant to subsection (b) or (c) shall be 25 percent. The non-Federal share may be provided in kind, including a facility, supply, or service that is necessary to carry out the modification or measure. Not more than \$10,000,000 in Federal funds may be expended on any single modification or measure carried out or undertaken pursuant to this section.

(e) Coordination of actions

The Secretary shall coordinate any actions taken pursuant to this section with appropriate Federal, State, and local agencies.

(f) Omitted

(g) Nonprofit entities

Notwithstanding section 1962d–5b of title 42, a non-Federal sponsor for any project carried out under this section may include a nonprofit entity, with the consent of the affected local government.

(h) Authorization of appropriations

There is authorized to be appropriated not to exceed \$50,000,000 annually to carry out this section.

(i) Definition

In this section, the term "water resources project constructed by the Secretary" includes a water resources project constructed or funded jointly by the Secretary and the head of any other Federal agency (including the Natural Resources Conservation Service).

(Pub. L. 99–662, title XI, §1135, Nov. 17, 1986, 100 Stat. 4251; Pub. L. 100–676, §41, Nov. 17, 1988, 102 Stat. 4040; Pub. L. 101–640, title III, §304, Nov. 28, 1990, 104 Stat. 4634; Pub. L. 102–580, title II, §202, Oct. 31, 1992, 106 Stat. 4826; Pub. L. 104–303, title II, §204, Oct. 12, 1996, 110 Stat. 3678; Pub. L. 106–53, title V, §506, Aug. 17, 1999, 113 Stat. 338; Pub. L. 106–541, title II, §210(c), Dec. 11, 2000, 114 Stat. 2592; Pub. L. 110–114, title II, §2024, Nov. 8, 2007, 121 Stat. 1079; Pub. L. 113–121, title I, §1030(f), June 10, 2014, 128 Stat. 1232; Pub. L. 115–270, title I, §1157(g), Oct. 23, 2018, 132 Stat. 3794.)

EDITORIAL NOTES

CODIFICATION

Subsec. (f) of this section, which required the Secretary to transmit biennial reports to Congress on the results of reviews conducted under subsec. (a) of this section and on the programs conducted under subsections. (b) and (c) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 72 of House Document No. 103–7.

Section was formerly set out as a note under section 2294 of this title.

AMENDMENTS

2018—Subsec. (h). Pub. L. 115–270 substituted "\$50,000,000" for "\$40,000,000".

2014—Subsec. (d). Pub. L. 113–121 substituted "The non-Federal share may be provided" for "Not more than 80 percent of the non-Federal share may be" and "\$10,000,000" for "\$5,000,000".

2007—Subsec. (h). Pub. L. 110–114 substituted "\$40,000,000" for "\$25,000,000".

2000—Subsecs. (g) to (i). Pub. L. 106–541 added subsec. (g) and redesignated former subsections. (g) and (h) as (h) and (i), respectively.

1999—Subsec. (c). Pub. L. 106–53 designated existing provisions as par. (1), inserted heading, and added par. (2).

1996—Subsec. (a). Pub. L. 104–303, §204(a), struck out "the operation of" after "to review" and inserted before period at end "and to determine if the operation of such projects has contributed to the degradation of the quality of the environment".

Subsec. (b). Pub. L. 104–303, §204(b), struck out at end "The non-Federal share of the cost of any modifications carried out under this section shall be 25 percent. No modification shall be carried out under this section without specific authorization by Congress if the estimated cost exceeds \$5,000,000."

Subsecs. (c), (d). Pub. L. 104–303, §204(c)(2), added subsections. (c) and (d). Former subsections. (c) and (d) redesignated (e) and (f), respectively.

Subsec. (e). Pub. L. 104–303, §204(c)(1), redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 104–303, §204(c)(1), (3), redesignated subsec. (d) as (f) and substituted "programs conducted under subsections (b) and (c)" for "program conducted under subsection (b)".

Subsec. (g). Pub. L. 104–303, §204(c)(1), redesignated subsec. (e) as (g).

Subsec. (h). Pub. L. 104–303, §204(d), added subsec. (h).

1992—Subsec. (b). Pub. L. 102–580, §202(1), inserted at end "No modification shall be carried out under this section without specific authorization by Congress if the estimated cost exceeds \$5,000,000."

Subsec. (e). Pub. L. 102–580, §202(2), substituted "\$25,000,000" for "\$15,000,000".

1990—Subsec. (a). Pub. L. 101–640, §304(a), struck out "before the date of enactment of this Act" after "constructed by the Secretary".

Subsec. (b). Pub. L. 101–640, §304(b), substituted "program" for "demonstration program in the 5-year period beginning on the date of enactment of this Act" and struck out "before the date of enactment of this Act" after "constructed by the Secretary".

Subsec. (d). Pub. L. 101–640, §304(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Not later than 5 years after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the review conducted under subsection (a) and on the demonstration program conducted under subsection (b). Such report shall contain any recommendations of the Secretary concerning modification and extension of such program."

Subsec. (e). Pub. L. 101–640, §304(d), substituted "\$15,000,000 annually to carry out this section" for "\$25,000,000 to carry out this section".

1988—Subsec. (b). Pub. L. 100–676, §41(a), substituted "5-year period" for "two-year period".

Subsec. (d). Pub. L. 100–676, §41(b), substituted "5 years" for "two years".

§2310. Cost sharing for Territories and Indian tribes

(a) In general

The Secretary shall waive local cost-sharing requirements up to \$200,000 for all studies and projects—

(1) in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, Puerto Rico, and the Trust Territory of the Pacific Islands;

(2) for any Indian tribe or tribal organization (as those terms are defined in section 5304 of title 25); and

(3) for any organization that—

(A) is composed primarily of people who are—

(i) recognized and defined under Federal law as indigenous people of the United States; and

(ii) from a specific community; and

(B) assists in the social, cultural, and educational development of such people in that community.

(b) Inflation adjustment

The Secretary shall adjust the dollar amount specified in subsection (a) on an annual basis for inflation.

(c) Inclusion

For purposes of this section, the term "study" includes a watershed assessment.

(d) Application

The Secretary shall apply the waiver amount described in subsection (a) to reduce only the non-Federal share of study and project costs.

(Pub. L. 99–662, title XI, §1156, Nov. 17, 1986, 100 Stat. 4256; Pub. L. 113–121, title I, §1032, June 10, 2014, 128 Stat. 1233; Pub. L. 114–322, title I, §1119, Dec. 16, 2016, 130 Stat. 1643; Pub. L. 115–270, title I, §1155(a), 1156, Oct. 23, 2018, 132 Stat. 3793; Pub. L. 116–260, div. AA, title I, §135, Dec. 27, 2020, 134 Stat. 2649; Pub. L. 117–263, div. H, title LXXXI, §8114, Dec. 23, 2022, 136 Stat. 3707.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (a)(3). Pub. L. 117–263, §8114(1), added par. (3).

Subsecs. (c), (d). Pub. L. 117–263, §8114(2), added subsections. (c) and (d).

2020—Subsec. (b). Pub. L. 116–260 substituted "on an annual basis for inflation." for "for inflation for the period beginning on November 17, 1986, and ending on October 23, 2018."

2018—Subsec. (a)(2). Pub. L. 115–270, §1155(a), substituted "or tribal organization (as those terms are defined in section 5304 of title 25)." for "(as defined in section 5130 of title 25)."

Subsec. (b). Pub. L. 115–270, §1156, substituted "October 23, 2018" for "June 10, 2014".

2016—Pub. L. 114–322, §1119(1), inserted "and Indian tribes" after "Territories" in section catchline.

Subsec. (a). Pub. L. 114–322, §1119(2), inserted dash after "projects" and par. (1) designation before "in American" and added par. (2).

2014—Pub. L. 113–121 designated existing provisions as subsec. (a) and inserted heading, inserted "Puerto Rico," before "and the Trust Territory of the Pacific Islands", and added subsec. (b).

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§2311. Report to Congress covering proposals for water impoundment facilities

Any report that is submitted to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary, or the Secretary of Agriculture acting under Public Law 83–566, as amended [16 U.S.C. 1001 et seq.], which proposes construction of a water impoundment facility, shall include information on the consequences of failure and geologic or design factors which could contribute to the possible failure of such facility.

(Pub. L. 99–662, title XII, §1202, Nov. 17, 1986, 100 Stat. 4263.)

EDITORIAL NOTES

REFERENCES IN TEXT

Public Law 83–566, as amended, referred to in text, is act Aug. 4, 1954, ch. 656, 68 Stat. 666, known as the Watershed Protection and Flood Prevention Act, which is classified principally to chapter 18 (§1001 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 16 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§2312. Comments on certain changes in operations of reservoirs

Before the Secretary may make changes in the operation of any reservoir which will result in or require a reallocation of storage space in such reservoir or will significantly affect any project purpose, the Secretary shall provide an opportunity for public review and comment.

(Pub. L. 100–676, §5, Nov. 17, 1988, 102 Stat. 4022.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1988, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 100–676, set out as a note under section 2201 of this title.

§2313. Research and development

(a) In general

The Secretary is authorized to carry out basic, applied, and advanced research activities as required to aid in the planning, design, construction, operation, and maintenance of water resources development projects and to support the missions and authorities of the Corps of Engineers.

(b) Testing and application

In carrying out subsection (a), the Secretary is authorized to test and apply technology, tools, techniques, and materials developed pursuant to such subsection, including the testing and application of such technology, tools, techniques, and materials at authorized water resources development projects, in consultation with the non-Federal interests for such projects.

(c) Other transactional authority for prototype projects

(1) In general

In carrying out subsection (b), the Secretary is authorized to enter into transactions (other than contracts, cooperative agreements, or grants) to carry out prototype projects to support basic, applied, and advanced research activities that are directly relevant to the civil works missions and authorities of the Corps of Engineers.

(2) Follow-on production transactions

A transaction entered into under paragraph (1) for a prototype project may provide for the award of a follow-on production contract or transaction to the participants in the transaction in accordance with the requirements of section 4022 of title 10.

(3) Guidance

Prior to entering into the first transaction under this subsection, the Secretary shall issue guidance for entering into transactions under this subsection (including guidance for follow-on production contracts or transactions under paragraph (2)).

(4) Conditions

In carrying out this subsection, the Secretary shall ensure that—

(A) competitive procedures are used to the maximum extent practicable to award each transaction; and

(B) at least one of the following conditions is met with respect to each transaction:

(i) The prototype project includes significant participation by at least one nonprofit research institution or nontraditional defense contractor, as that term is defined in section 3014 of title 10.

(ii) All significant participants in the transaction other than the Federal Government are small business concerns, as that term is used in section 632 of title 15 (including such concerns participating in a program described in section 638 of title 15).

(iii) At least one-third of the total cost of the prototype project is to be paid out of funds provided by sources other than the Federal Government.

(iv) The Head of the Contracting Activity for the Corps of Engineers submits to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a notification that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract, cooperative agreement, or grant.

(5) Notification

Not later than 30 days before the Secretary enters into a transaction under paragraph (1), the Secretary shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate of—

(A) the dollar amount of the transaction;

(B) the entity carrying out the prototype project that is the subject of the transaction;

(C) the justification for the transaction; and

(D) as applicable, the water resources development project where the prototype project will be carried out.

(6) Report

Not later than 4 years after December 23, 2022, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report describing the use of the authority under this subsection.

(7) Comptroller General access to information

(A) Examination of records

Each transaction entered into under this subsection shall provide for mandatory examination by the Comptroller General of the United States of the records of any party to the transaction or any entity that participates in the performance of the transaction.

(B) Limitations

(i) Parties and entities

Examination of records by the Comptroller General pursuant to subparagraph (A) shall be limited as provided under clause (ii) in the case of a party to the transaction, an entity that participates in the performance of the transaction, or a subordinate element of that party or entity if the only transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that transaction were entered into under paragraph (1) or under section 4021 or 4022 of title 10.

(ii) Records

The only records of a party, other entity, or subordinate element referred to in clause (i) that the Comptroller General may examine pursuant to subparagraph (A) are records of the same type as the records that the Government has had the right to examine under the audit access clauses of the previous transactions referred to in such clause that were entered into by that particular party, entity, or subordinate element.

(C) Waiver

The Head of the Contracting Activity for the Corps of Engineers may waive the applicability of subparagraph (A) to a transaction if the Head of the Contracting Activity for the Corps of Engineers—

(i) determines that it would not be in the public interest to apply the requirement to the transaction; and

(ii) transmits to the Committee on Environment and Public Works of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Comptroller General, before the transaction is entered into, a notification of the waiver, including the rationale for the determination under clause (i).

(D) Timing

The Comptroller General may not examine records pursuant to subparagraph (A) more than 3 years after the final payment is made by the United States under the transaction.

(E) Report

Not later than 1 year after December 23, 2022, and annually thereafter, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the use of the authority under this paragraph.

(8) Termination of authority

The authority to enter into a transaction under this subsection shall terminate on December 31, 2028.

(d) Coordination and consultation

In carrying out this section, the Secretary may coordinate and consult with Federal agencies, State and local agencies, Indian Tribes, universities, consortiums, councils, and other relevant entities that will aid in the planning, design, construction, operation, and maintenance of water resources development projects.

(e) Annual report

(1) In general

For fiscal year 2025, and annually thereafter, in conjunction with the annual budget submission of the President to Congress under section 1105(a) of title 31, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on basic, applied, and advanced research activities and prototype projects carried out under this section.

(2) Contents

Each report under paragraph (1) shall include—

- (A) a description of each ongoing and new activity or project, including—
 - (i) the estimated total cost of the activity or project;
 - (ii) the amount of Federal expenditures for the activity or project;
 - (iii) the amounts provided by a non-Federal party to a transaction described in subsection (c), if applicable;
 - (iv) the estimated timeline for completion of the activity or project;
 - (v) the requesting district of the Corps of Engineers, if applicable; and
 - (vi) how the activity or project is consistent with subsection (a); and
- (B) any additional information that the Secretary determines to be appropriate.

(f) Savings clause

Nothing in this section affects the authority of the Secretary to carry out, through the Engineer Research and Development Center, any activity requested by a district of the Corps of Engineers in support of a water resources development project or feasibility study (as defined in section 2215(d) of this title).

(g) Establishment of account

The Secretary, in consultation with the Director of the Office of Management and Budget, shall establish a separate appropriations account for administering funds made available to carry out this section. (Pub. L. 100–676, §7, Nov. 17, 1988, 102 Stat. 4022; Pub. L. 104–303, title II, §214, Oct. 12, 1996, 110 Stat. 3684; Pub. L. 117–263, div. H, title LXXXI, §8160(a), Dec. 23, 2022, 136 Stat. 3741.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1988, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—Pub. L. 117–263 amended section generally. Prior to amendment, section related to collaborative research and development with non-Federal entities.

1996—Subsec. (a). Pub. L. 104–303, §214(a)(1), inserted "civil works" before "mission".

Subsecs. (b), (c). Pub. L. 104–303, §214(b)(1), (2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–303, §214(b)(1), (3), redesignated subsec. (c) as (d) and substituted "subsection (c)" for "subsection (b)". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–303, §214(b)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Pub. L. 104–303, §214(a)(2), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows: "Notwithstanding the third proviso under the heading 'GENERAL INVESTIGATIONS' of title I of the Energy and Water Development Appropriations Act, 1989 (102 Stat. 857), an additional \$3,000,000 of the funds appropriated under such heading shall be available to the Secretary for obligation to carry out the purposes of this section in fiscal year 1989."

Subsec. (f). Pub. L. 104–303, §214(b)(1), redesignated subsec. (e) as (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

MAGNETIC LEVITATION TECHNOLOGY

Pub. L. 101–640, title IV, §417, Nov. 28, 1990, 104 Stat. 4652, provided that:

"(a) RESEARCH AND DEVELOPMENT.—The Secretary is authorized, in cooperation with the Secretary of Transportation, to conduct research and development activities on magnetic levitation technology or to provide for such research and development.

"(b) COLLABORATION.—The Secretary is authorized to collaborate with non-Federal entities (including State and local governments, colleges and universities, and corporations, partnerships, sole proprietorships, and trade associations which are incorporated or established under laws of a State or the District of Columbia) in carrying out research and development on magnetic levitation technology.

"(c) COOPERATIVE RESEARCH CONTRACTS.—In carrying out this section, the Secretary may enter into contracts or cooperative research and development agreements under section 12 of the Stevenson-Wylder Technology Innovation Act of 1980 (15 U.S.C. 3710a), except that the Secretary may fund up to 50 percent of the cost of each collaborative research and development project undertaken.

"(d) LICENSING OF RESEARCH AND DEVELOPMENT.—The research, development, and use of any technology developed under an agreement entered into pursuant to this section, including the terms under which such technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wylder Technology Innovation Act of 1980 (15 U.S.C. 3701–3714). In addition, the Secretary may require the non-Federal entity to certify that such research and development will be performed substantially in the United States and that products embodying inventions made under an agreement entered into pursuant to this section or produced through the use of such inventions will be manufactured substantially in the United States.

"(e) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this section, there is authorized to be appropriated \$1,000,000 for fiscal year 1990 and \$4,000,000 for fiscal year 1991. Such funds shall remain available until expended. No funds are authorized to be appropriated under this section for any fiscal year beginning after September 30, 1991."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 100–676, set out as a note under section 2201 of this title.

§2313a. Engineering and environmental innovations of national significance

(a) Surveys, plans, and studies

To encourage innovative and environmentally sound engineering solutions and innovative environmental solutions to problems of national significance, the Secretary may undertake surveys, plans, and studies and prepare reports that may lead to work under existing civil works authorities or to recommendations for authorizations.

(b) Funding

(1) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$1,000,000 for each of fiscal years 1997 through 2000.

(2) Funding from other sources

The Secretary may accept and expend additional funds from other Federal agencies, States, or non-Federal entities for purposes of carrying out this section.

(Pub. L. 104–303, title II, §212, Oct. 12, 1996, 110 Stat. 3684.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104–303, set out as a note under section 2201 of this title.

§2313b. Support of Army civil works program

(a) General authority

In carrying out research and development in support of the civil works program of the Department of the Army, the Secretary may utilize contracts, cooperative research and development agreements, cooperative agreements, and grants with non-Federal entities, including State and local governments, colleges and universities, consortia, professional and technical societies, public and private scientific and technical foundations, research institutions, educational organizations, and nonprofit organizations.

(b) Commercial application

With respect to contracts for research and development, the Secretary may include requirements that have potential commercial application and may use such potential application as an evaluation factor where appropriate.

(Pub. L. 104–303, title II, §229, Oct. 12, 1996, 110 Stat. 3703.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104–303, set out as a note under section 2201 of this title.

§2314. Innovative technology**(a) Use**

The Secretary shall, whenever feasible, seek to promote long- and short-term cost savings, increased efficiency, reliability, and safety, and improved environmental results through the use of innovative technology in all phases of water resources development projects and programs under the Secretary's jurisdiction. To further this goal, Congress encourages the Secretary to—

- (1) use procurement and contracting procedures that encourage innovative project design, construction, rehabilitation, repair, and operation and maintenance technologies;
- (2) frequently review technical and design criteria to remove or modify unnecessary impediments to innovation;
- (3) increase timely exchange of technical information with universities, private companies, government agencies, and individuals;
- (4) foster design competition; and
- (5) encourage greater participation by non-Federal project sponsors in the development and implementation of projects.

(b) Accelerated adoption of innovative technologies for management of contaminated sediments**(1) Test projects**

The Secretary shall approve an appropriate number of projects to test, under actual field conditions, innovative technologies for environmentally sound management of contaminated sediments.

(2) Demonstration projects

The Secretary may approve an appropriate number of projects to demonstrate innovative technologies that have been pilot tested under paragraph (1).

(3) Conduct of projects

Each pilot project under paragraph (1) and demonstration project under paragraph (2) shall be conducted by a university with proven expertise in the research and development of contaminated sediment treatment technologies and innovative applications using waste materials.

(4) Location

At least 1 of the projects under this subsection shall be conducted in New England by the University of New Hampshire.

(c) Reports

Within 2 years after November 17, 1988, and thereafter at the Secretary's discretion, the Secretary shall provide Congress with a report on the results of, and recommendations to increase, the development and use of innovative technology in water resources development projects under the Secretary's jurisdiction. Such report shall also contain information regarding innovative technologies which the Secretary has considered and rejected for use in water resources development projects under the Secretary's jurisdiction.

(d) "Innovative technology" defined

For the purpose of this section, the term "innovative technology" means designs, methods, or materials, including roller compacted concrete, geosynthetic materials, and advanced composites, that the Secretary determines are appropriate to carry out this section.

(Pub. L. 100–676, §8, Nov. 17, 1988, 102 Stat. 4023; Pub. L. 106–53, title V, §503(b), Aug. 17, 1999, 113 Stat. 337; Pub. L. 113–121, title III, §3021, June 10, 2014, 128 Stat. 1301.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 1988, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2014—Subsec. (d). Pub. L. 113–121 substituted "methods, or materials, including roller compacted concrete, geosynthetic materials, and advanced composites, that the Secretary determines are appropriate to carry out this section." for "materials, or methods which the Secretary determines are previously undemonstrated or are too new to be considered standard practice."

1999—Subsecs. (b) to (d). Pub. L. 106–53 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES**DESIGN-BUILD CONTRACTING**

Pub. L. 106–541, title II, §221, Dec. 11, 2000, 114 Stat. 2596, provided that the Secretary of the Army could conduct a pilot program consisting of not more than 5 authorized projects to test the design-build method of project delivery on various authorized civil works projects of the Corps of Engineers, including levees, pumping plants, revetments, dikes, dredging, weirs, dams, retaining walls, generation facilities, mattress laying, recreation facilities, and other water resources facilities, and, not later than 4 years after Dec. 11, 2000, to transmit to Congress a report on the results of the pilot program.

REVIEW OF INNOVATIVE DREDGING TECHNOLOGIES

Pub. L. 106–53, title V, §503(a), Aug. 17, 1999, 113 Stat. 337, provided that:

"(1) **IN GENERAL.**—Not later than June 1, 2001, the Secretary shall complete a review of innovative dredging technologies designed to minimize or eliminate contamination of a water column upon removal of contaminated sediments.

"(2) **TESTING.**—

"(A) **SELECTION OF TECHNOLOGY.**—After completion of the review under paragraph (1), the Secretary shall select, from among the technologies reviewed, the technology that the Secretary determines will best increase the effectiveness of removing contaminated sediments and significantly reduce contamination of the water column.

"(B) **AGREEMENT.**—Not later than December 31, 2001, the Secretary shall enter into an agreement with a public or private entity to test the selected technology in the vicinity of Peoria Lakes, Illinois.

"(3) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this subsection \$2,000,000."

BENEFICIAL USE OF WASTE TIRE RUBBER

Pub. L. 106–53, title V, §561, Aug. 17, 1999, 113 Stat. 355, provided that:

"(a) **IN GENERAL.**—The Secretary shall, when appropriate, encourage the beneficial use of waste tire rubber (including crumb rubber and baled tire products) recycled from tires.

"(b) **INCLUDED BENEFICIAL USES.**—Beneficial uses under subsection (a) may include marine pilings, underwater framing, floating docks with built-in flotation, utility poles, and other uses associated with transportation and infrastructure projects receiving Federal funds.

"(c) **USE OF WASTE TIRE RUBBER.**—The Secretary shall encourage the use, when appropriate, of waste tire rubber (including crumb rubber) in projects described in subsection (b)."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 100–676, set out as a note under section 2201 of this title.

§2314a. Technical assistance program**(a) In general**

The Secretary is authorized to provide technical assistance, on a nonexclusive basis, to any United States firm which is competing for, or has been awarded, a contract for the planning, design, or construction of a project outside the United States, if the United States firm provides, in advance of fiscal obligation by the United States, funds to cover all costs of such assistance. In determining whether to provide such assistance, the Secretary shall consider the effects on the Department of the Army civil works mission, personnel, and facilities. Prior to the Secretary providing such assistance, a United States firm must—

- (1) certify to the Secretary that such assistance is not otherwise reasonably and expeditiously available; and
- (2) agree to hold and save the United States free from damages due to the planning, design, construction, operation, or maintenance of the project.

(b) Federal employees' inventions

As to an invention made or conceived by a Federal employee while providing assistance pursuant to this section, if the Secretary decides not to retain all rights in such invention, the Secretary may—

(1) grant or agree to grant in advance, to a United States firm, a patent license or assignment, or an option thereto, retaining a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the United States and such other rights as the Secretary deems appropriate; or

(2) waive, subject to reservation by the United States of a nonexclusive, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the United States, in advance, in whole, or in part, any right which the United States may have to such invention.

(c) Protection of confidential information

Information of a confidential nature, such as proprietary or classified information, provided to a United States firm pursuant to this section shall be protected. Such information may be released by a United States firm only after written approval by the Secretary.

(d) Definitions

For purposes of this section—

(1) United States firm

The term "United States firm" means a corporation, partnership, limited partnership, or sole proprietorship that is incorporated or established under the laws of any of the United States with its principal place of business in the United States.

(2) United States

The term "United States", when used in a geographical sense, means the several States of the United States and the District of Columbia.
(Pub. L. 100–676, §9, Nov. 17, 1988, 102 Stat. 4024; Pub. L. 101–640, title III, §318(c), Nov. 28, 1990, 104 Stat. 4642.)

EDITORIAL NOTES

CODIFICATION

Section was formerly set out as a note under section 2314 of this title.
Section was enacted as part of the Water Resources Development Act of 1988, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1990—Pub. L. 101–640, §318(c)(1), struck out "demonstration" after "Technical assistance" in section catchline.
Subsec. (a). Pub. L. 101–640, §318(c)(2), struck out "to undertake a demonstration program for a 2-year period, which shall begin within 6 months after the date of enactment of this Act," after "The Secretary is authorized".
Subsecs. (d), (e). Pub. L. 101–640, §318(c)(3), (4), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: "Within 6 months after the end of the demonstration program authorized by this section, the Secretary shall submit to Congress a report on the results of such demonstration program."

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 100–676, set out as a note under section 2201 of this title.

§2314b. Advanced modeling technologies

(a) In general

To the greatest extent practicable, the Secretary shall encourage and incorporate advanced modeling technologies, including 3-dimensional digital modeling, that can expedite project delivery or improve the evaluation of water resources development projects that receive Federal funding by—

(1) accelerating and improving the environmental review process;

(2) increasing effective public participation;

(3) enhancing the detail and accuracy of project designs;

(4) increasing safety;

(5) accelerating construction and reducing construction costs; or

(6) otherwise achieving the purposes described in paragraphs (1) through (5).

(b) Activities

In carrying out subsection (a), the Secretary, to the greatest extent practicable, shall—

(1) compile information related to advanced modeling technologies, including industry best practices with respect to the use of the technologies;

(2) disseminate to non-Federal interests the information described in paragraph (1); and

(3) promote the use of advanced modeling technologies.
(Pub. L. 113–121, title I, §1034, June 10, 2014, 128 Stat. 1234.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2315. Periodic statements

Upon receipt of a request from a non-Federal sponsor of a water resources development project under construction by the Secretary, the Secretary shall provide such sponsor with periodic statements of project expenditures. Such statements shall include an estimate of all Federal and non-Federal funds expended by the Secretary, including overhead expenditures, the purpose for expenditures, and a schedule of anticipated expenditures during the remaining period of construction. Statements shall be provided to the sponsor at intervals of no greater than 6 months.
(Pub. L. 100–676, §10, Nov. 17, 1988, 102 Stat. 4024.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1988, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 100–676, set out as a note under section 2201 of this title.

§2315a. Transparency in accounting and administrative expenses

On the request of a non-Federal interest, the Secretary shall provide to the non-Federal interest a detailed accounting of the Federal expenses associated with a water resources project.
(Pub. L. 113–121, title I, §1012(a), June 10, 2014, 128 Stat. 1218.)

EDITORIAL NOTES

CODIFICATION

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2315b. Transparency and accountability in cost sharing for water resources development projects

(a) Definition of balance sheet

In this section, the term "balance sheet" means a document that describes—
(1) the funds provided by each Federal and non-Federal interest for a water resources development project; and
(2) the status of those funds.

(b) Establishment of balance sheet

Each district of the Corps of Engineers shall, using the authority of the Secretary under section 2315 of this title—
(1) maintain a balance sheet for each water resources development project carried out by the Secretary for which a non-Federal cost share is required; and
(2) on request of a non-Federal interest that provided funds for the project, provide to the non-Federal interest a copy of the balance sheet.

(c) Under-budget projects

In the case of a water resources development project carried out by the Secretary that is completed at a cost less than the estimated cost, the Secretary shall transfer any excess non-Federal funds to the non-Federal interest in accordance with the cost-share requirement applicable to the project.
(Pub. L. 115–270, title I, §1120, Oct. 23, 2018, 132 Stat. 3777.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2018, and also as part of the America's Water Infrastructure Act of 2018, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 102 of Pub. L. 115–270, set out as a note under section 2201 of this title.

§2316. Environmental protection mission

(a) General rule

The Secretary shall include environmental protection as one of the primary missions of the Corps of Engineers in planning, designing, constructing, operating, and maintaining water resources projects.

(b) Limitation

Nothing in this section affects—
(1) existing Corps of Engineers' authorities, including its authorities with respect to navigation and flood control;
(2) pending Corps of Engineers permit applications or pending lawsuits involving permits or water resources projects; or
(3) the application of public interest review procedures for Corps of Engineers permits.

(Pub. L. 101–640, title III, §306, Nov. 28, 1990, 104 Stat. 4635.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101–640, set out as a note under section 2201 of this title.

§2317. Wetlands

(a) Goals and action plan

(1) Goals

There is established, as part of the Corps of Engineers water resources development program, an interim goal of no overall net loss of the Nation's remaining wetlands base, as defined by acreage and function, and a long-term goal to increase the quality and quantity of the Nation's wetlands, as defined by acreage and function.

(2) Use of authorities

The Secretary shall utilize all appropriate authorities, including those to restore and create wetlands, in meeting the interim and long-term goals.

(3) Action plan

(A) Development

The Secretary shall develop, in consultation with the Environmental Protection Agency, the Fish and Wildlife Service, and other appropriate Federal agencies, a wetlands action plan to achieve the goals established by this subsection as soon as possible.

(B) Contents

The plan shall include and identify actions to be taken by the Secretary in achieving the goals and any new authorities which may be necessary to accelerate attainment of the goals.

(C) Completion deadline

The Secretary shall complete the plan not later than 1 year after November 28, 1990.

(b) Constructed wetlands for Mud Creek, Arkansas

Notwithstanding any other provision of law, the Secretary is authorized and directed to establish and carry out a research and pilot project to evaluate and demonstrate—

- (1) the use of constructed wetlands for wastewater treatment, and
- (2) methods by which such projects contribute—
 - (A) to meeting the objective of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] to restore and maintain the physical, chemical, and biological integrity of the Nation's waters, and
 - (B) to attaining the goals established by subsection (a).

The project under this subsection shall be carried out to improve the quality of effluent discharged from publicly owned treatment works operated by the city of Fayetteville, Arkansas, into Mud Creek or its tributaries.

(c) Non-Federal responsibilities

For the project conducted under subsection (b), the non-Federal interest shall agree—

- (1) to provide, without cost to the United States, all lands, easements, rights-of-way, relocations, and dredged material disposal areas necessary for construction and subsequent research and demonstration work;
- (2) to hold and save the United States free from damages due to construction, operation, and maintenance of the project, except damages due to the fault or negligence of the United States or its contractors; and
- (3) to operate and maintain the restored or constructed wetlands in accordance with good management practices; except that nothing in this paragraph shall be construed as precluding a Federal agency from agreeing to operate and maintain the restored or reconstructed wetlands.

The value of the non-Federal lands, easements, rights-of-way, relocations, and dredged material disposal areas provided by the non-Federal interest shall be credited toward the non-Federal share of project design and construction costs. The non-Federal share of project design and construction costs shall be 25 percent.

(d) Wetlands restoration and enhancement demonstration program

(1) Establishment and implementation

The Secretary, in consultation with the Administrator, is authorized to establish and implement a demonstration program for the purpose of determining the feasibility of wetlands restoration, enhancement, and creation as a means of contributing to the goals established by subsection (a).

(2) Goal

The goal of the program under this subsection shall be to establish a limited number of demonstration wetlands restoration, enhancement, and creation areas in districts of the Corps of Engineers for the purpose of evaluating the technical and scientific long-term feasibility of such areas as a means of contributing to the attainment of the goals established by subsection (a). Federal and State land-owning agencies and private parties may contribute to such areas.

(3) Factors to consider

In establishing the demonstration program under this subsection, the Secretary shall consider—

- (A) past experience with wetlands restoration, enhancement, and creation;
- (B) the appropriate means of measuring benefits of compensatory mitigation activities, including enhancement or restoration of existing wetlands or creation of wetlands;
- (C) the appropriate geographic scope for which wetlands loss may be offset by restoration, enhancement, and creation efforts;
- (D) the technical feasibility and scientific likelihood that wetlands can be successfully restored, enhanced, and created;
- (E) means of establishing liability for, and long-term ownership of, wetlands restoration, enhancement, and creation areas; and
- (F) responsibilities for short- and long-term project monitoring.

(4) Reporting

(A) To the Chief of Engineers

The district engineer for each district of the Corps of Engineers in which a wetlands restoration, enhancement, and creation area is established under this subsection shall transmit annual reports to the Chief of Engineers describing the amount and value of wetlands restored, enhanced, and created for the area and a summary of whether the area is contributing to the goal established in paragraph (2).

(B) To Congress

Not later than 3 years after November 28, 1990, the Secretary shall transmit to Congress a report evaluating the use of wetlands restoration, enhancement, and creation areas in fulfilling the goal established by paragraph (2), together with recommendations on whether or not to continue use of such areas as a means of meeting the goals established by subsection (a).

(5) Effect on other laws

Nothing in this subsection affects any requirements under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 403 of this title.

(e) Training and certification of delineators

(1) In general

The Secretary is authorized to establish a program for the training and certification of individuals as wetlands delineators. As part of such program, the Secretary shall carry out demonstration projects in districts of the Corps of Engineers. The program shall include training and certification of delineators and procedures for expediting consideration and acceptance of delineations performed by certified delineators.

(2) Reports

The Secretary shall transmit to Congress periodic reports concerning the status of the program and any recommendations on improving the content and implementation of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

(Pub. L. 101–640, [title III, §307](#), Nov. 28, 1990, 104 Stat. 4635.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (b)(2)(A), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, [§2](#), Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (e)(2) of this section is listed on page 70), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

WETLANDS ENHANCEMENT OPPORTUNITIES

Pub. L. 101–640, [title IV, §409](#), Nov. 28, 1990, 104 Stat. 4648, provided that: "Not later than January 20, 1992, the Secretary shall transmit to Congress a list which specifically identifies opportunities of enhancing wetlands in connection with construction and operation of water resource projects."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101–640, set out as a note under section 2201 of this title.

§2317a. Cooperative agreements

(a) In general

For the purpose of expediting the cost-effective design and construction of wetlands restoration that is part of an authorized water resources project, the Secretary may enter into cooperative agreements under section 6305 of title 31 with nonprofit organizations with expertise in wetlands restoration to carry out such design and construction on behalf of the Secretary.

(b) Limitations

(1) Per project limit

A cooperative agreement under this section may not obligate the Secretary to pay the nonprofit organization more than \$1,000,000 for any single wetlands restoration project.

(2) Annual limit

The total value of work carried out under cooperative agreements under this section may not exceed \$5,000,000 in any fiscal year.

(Pub. L. 110–114, [title II, §2015](#), Nov. 8, 2007, 121 Stat. 1076.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2317b. Mitigation banks and in-lieu fee arrangements

(1) In general

Not later than 180 days after December 16, 2016, the Secretary shall issue implementation guidance that provides for the consideration in water resources development feasibility studies of the entire amount of potential in-kind credits available at mitigation banks approved by the Secretary and in-lieu fee programs with an approved service area that includes the location of the projected impacts of the water resources development project.

(2) Requirements

All potential mitigation bank and in-lieu fee credits that meet the criteria under paragraph (1) shall be considered a reasonable alternative for planning purposes if—

(A) the applicable mitigation bank—

- (i) has an approved mitigation banking instrument; and
- (ii) has completed a functional analysis of the potential credits using the approved Corps of Engineers certified habitat assessment model specific to the region; and

(B) the Secretary determines that the use of such banks or in-lieu fee programs provide reasonable assurance that the statutory (and regulatory) mitigation requirements for a water resources development project are met, including monitoring or demonstrating mitigation success.

(3) Effect

Nothing in this subsection—

- (A) modifies or alters any requirement for a water resources development project to comply with applicable laws or regulations, including section 2283 of this title; or
- (B) shall be construed as to limit mitigation alternatives or require the use of mitigation banks or in-lieu fee programs.

(Pub. L. 110–114, title II, §2036(c), Nov. 8, 2007, 121 Stat. 1094; Pub. L. 114–322, title I, §1163, Dec. 16, 2016, 130 Stat. 1669.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Pub. L. 114–322 amended section generally. Prior to amendment, section related to use of the mitigation bank for certain water resources projects that involved wetlands mitigation.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2318. Flood plain management**(a) Exclusion of elements from benefit-cost analysis**

The Secretary shall not include in the benefit base for justifying Federal flood damage reduction projects—

- (1)(A) any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation after July 1, 1991; or
- (B) in the case of a county substantially located within the 100-year flood plain, any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 10-year flood plain after July 1, 1991; and
- (2) any structure which becomes located in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation or in the 10-year flood plain, as the case may be, by virtue of constrictions placed in the flood plain after July 1, 1991.

(b) Flood damage reduction benefits**(1) In general**

In calculating the benefits of a proposed project for nonstructural flood damage reduction, the Secretary shall calculate the benefits of the nonstructural project using methods similar to those used for calculating the benefits of structural projects, including similar treatment in calculating the benefits from losses avoided.

(2) Avoidance of double counting

In carrying out paragraph (1), the Secretary should avoid double counting of benefits.

(c) Counties substantially located within 100-year flood plain

For the purposes of subsection (a), a county is substantially located within the 100-year flood plain—

- (1) if the county is comprised of lands of which 50 percent or more are located in the 100-year flood plain; and
- (2) if the Secretary determines that application of the requirement contained in subsection (a)(1)(A) with respect to the county would unreasonably restrain continued economic development or unreasonably limit the availability of needed flood control measures.

(d) Cost sharing

Not later than January 1, 1992, the Secretary shall transmit to Congress a report on the feasibility and advisability of increasing the non-Federal share of costs for new projects in areas where new or substantially improved structures and other constrictions are built or placed in the 100-year flood plain or the 10-year flood plain, as the case may be, after the initial date of the affected governmental unit's entry into the regular program of the national flood insurance program of the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.].

(e) Regulations

Not later than 6 months after the date on which a report is transmitted to Congress under subsection (c), the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall issue regulations to implement subsection (a). Such regulations shall define key terms, such as new or substantially improved structure, constriction, 10-year flood plain, and 100-year flood plain.

(f) Applicability

The provisions of this section shall not apply to any project, or separable element thereof, for which a final report of the Chief of Engineers has been forwarded to the Secretary before the last day of the 6-month period beginning on the date on which regulations are issued pursuant to subsection (a) but not later than July 1, 1993.

(Pub. L. 101–640, title III, §308, Nov. 28, 1990, 104 Stat. 4638; Pub. L. 106–53, title II, §219(a), Aug. 17, 1999, 113 Stat. 294.)

EDITORIAL NOTES**REFERENCES IN TEXT**

The National Flood Insurance Act of 1968, referred to in subsec. (d), is title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, which is classified principally to chapter 50 (§4001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–53, §219(a)(1), inserted "Exclusion of elements from" before "benefit-cost" in heading.

Subsecs. (b) to (d). Pub. L. 106–53, §219(a)(2), (3), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 106–53, §219(a)(2), (4), redesignated subsec. (d) as (e) and substituted "subsection (c)" for "subsection (b)". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106–53, §219(a)(2), redesignated subsec. (e) as (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES**CHANGE OF NAME**

References to the Director of the Federal Emergency Management Agency to be considered to refer and apply to the Administrator of the Federal Emergency Management Agency, see section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REEVALUATION OF FLOOD CONTROL PROJECTS

Pub. L. 106–53, title II, §219(b), Aug. 17, 1999, 113 Stat. 295, provided that: "At the request of a non-Federal interest for a flood control project, the Secretary shall conduct a reevaluation of a project authorized before the date of enactment of this Act [Aug. 17, 1999] to consider nonstructural alternatives in light of the amendments made by subsection (a)

[amending this section]."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101–640, set out as a note under section 2201 of this title.

§2319. Reservoir management

The Secretary shall ensure that, in developing or revising reservoir operating manuals of the Corps of Engineers, the Corps shall provide significant opportunities for public participation, including opportunities for public hearings. The Secretary shall issue regulations to implement this section, including a requirement that all appropriate informational materials relating to proposed management decisions of the Corps be made available to the public sufficiently in advance of public hearings. Not later than January 1, 1992, the Secretary shall transmit to Congress a report on measures taken pursuant to this section.

(Pub. L. 101–640, title III, §310, Nov. 28, 1990, 104 Stat. 4639; Pub. L. 104–303, title II, §233, Oct. 12, 1996, 110 Stat. 3704.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–303, §233(1), struck out heading and text of subsec. (a). Text read as follows: "Not later than 2 years after November 28, 1990, the Secretary shall establish for major reservoirs under the jurisdiction of the Corps of Engineers a technical advisory committee to provide to the Secretary and Corps of Engineers recommendations on reservoir monitoring and options for reservoir research. The Secretary shall determine the membership of the committee, except that the Secretary may not appoint more than 6 members and shall ensure a predominance of members with appropriate academic, technical, or scientific qualifications. Members shall serve without pay, and the Secretary shall provide any necessary facilities, staff, and other support services in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.)."

Subsec. (b). Pub. L. 104–303, §233(2), struck out "(b) PUBLIC PARTICIPATION.—" before "The Secretary shall ensure", and substituted "section" for "subsection" in two places.

STATUTORY NOTES AND RELATED SUBSIDIARIES

FORECAST-INFORMED RESERVOIR OPERATIONS

Pub. L. 117–263, div. H, title LXXXI, §8303(c), Dec. 23, 2022, 136 Stat. 3777, provided that:

"(1) IN GENERAL.—The Secretary [of the Army] is authorized to carry out a research study pilot program at 1 or more dams owned and operated by the Secretary in the North Atlantic Division of the Corps of Engineers to assess the viability of forecast-informed reservoir operations in the eastern United States.

"(2) REPORT.—Not later than 1 year after completion of the research study pilot program under paragraph (1), the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the research study pilot program."

DAM OPTIMIZATION

Pub. L. 113–121, title I, §1046(a), June 10, 2014, 128 Stat. 1251, provided that:

"(1) DEFINITION OF PROJECT.—In this subsection, the term 'project' means a water resources development project that is operated and maintained by the Secretary [of the Army].

"(2) REPORTS.—

"(A) ASSESSMENT OF WATER SUPPLY IN ARID REGIONS.—

"(i) IN GENERAL.—The Secretary shall conduct an assessment of the management practices, priorities, and authorized purposes at Corps of Engineers reservoirs in arid regions to determine the effects of such practices, priorities, and purposes on water supply during periods of drought.

"(ii) INCLUSIONS.—The assessment under clause (i) shall identify actions that can be carried out within the scope of existing authorities of the Secretary to increase project flexibility for the purpose of mitigating drought impacts.

"(iii) REPORT.—Not later than 1 year after the date of enactment of this Act [June 10, 2014], the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report on the results of the assessment.

"(B) UPDATED REPORT.—

"(i) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall update and make publicly available the report entitled 'Authorized and Operating Purposes of Corps of Engineers Reservoirs' and dated July 1992, which was produced pursuant to section 311 of the Water Resources Development Act of 1990 [Pub. L. 101–640] (104 Stat. 4639).

"(ii) INCLUSIONS.—The updated report described in clause (i) shall—

"(I) include—

"(aa) the date on which the most recent review of project operations was conducted and any recommendations of the Secretary relating to that review the Secretary determines to be significant;

"(bb) the activities carried out pursuant to each such review to improve the efficiency of operations and maintenance and to improve project benefits consistent with authorized purposes;

"(cc) the degree to which reviews of project operations and subsequent activities pursuant to completed reviews complied with the policies and requirements of applicable law and regulations; and

"(dd) a plan for reviewing the operations of individual projects, including a detailed schedule for future reviews of project operations, that—

"(AA) complies with the policies and requirements of applicable law and regulations;

"(BB) gives priority to reviews and activities carried out pursuant to such plan where the Secretary determines that there is support for carrying out those reviews and activities; and

"(CC) ensures that reviews and activities are carried out pursuant to such plan;

"(II) be coordinated with appropriate Federal, State, and local agencies and those public and private entities that the Secretary determines may be affected by those reviews or activities;

"(III) not supersede or modify any written agreement between the Federal Government and a non-Federal interest that is in effect on the date of enactment of this Act [June 10, 2014];

"(IV) not supersede or authorize any amendment to a multistate water control plan, including the Missouri River Master Water Control Manual (as in effect on the date of enactment of this Act);

"(V) not affect any water right in existence on the date of enactment of this Act;

"(VI) not preempt or affect any State water law or interstate compact governing water;

"(VII) not affect any authority of a State, as in effect on the date of enactment of this Act, to manage water resources within that State; and

"(VIII) comply with section 301 of the Water Supply Act of 1958 (43 U.S.C. 390b).

"(3) GENERAL ACCOUNTABILITY OFFICE REPORT TO CONGRESS.—The Comptroller General shall—

"(A) conduct an audit to determine—

"(i) whether reviews of project operations carried out by the Secretary prior to the date of enactment of this Act complied with the policies and requirements of applicable law and regulations; and

"(ii) whether the plan developed by the Secretary pursuant to paragraph (2)(B)(ii)(I)(dd) complies with this subsection and with the policies and requirements of applicable law and regulation; and

"(B) not later than 2 years after the date of enactment of this Act, submit to Congress a report that—

"(i) summarizes the results of the audit required by subparagraph (A);

"(ii) includes an assessment of whether existing practices for managing and reviewing project operations could result in greater efficiencies that would enable the Corps of Engineers to better prepare for, contain, and respond to flood, storm, and drought conditions; and

"(iii) includes recommendations for improving the review of project operations to improve the efficiency and effectiveness of such operations and to better achieve authorized purposes while enhancing overall project benefits.

"(4) INTERAGENCY AND COOPERATIVE AGREEMENTS.—The Secretary may enter into interagency agreements with other Federal agencies and cooperative agreements with non-Federal entities to carry out this subsection and reviews of project operations or activities resulting from those reviews.

"(5) FUNDING.—

"(A) IN GENERAL.—The Secretary may use to carry out this subsection, including any reviews of project operations identified in the plan developed under paragraph (2)(B)(ii)(I)(dd), amounts made available to the Secretary.

"(B) FUNDING FROM OTHER SOURCES.—The Secretary may accept and expend amounts from non-Federal entities and other Federal agencies to carry out this subsection and reviews of project operations or activities resulting from those reviews.

"(6) EFFECT OF SUBSECTION.—

"(A) IN GENERAL.—Nothing in this subsection changes the authorized purpose of any Corps of Engineers dam or reservoir.

"(B) ADMINISTRATION.—The Secretary may carry out any recommendations and activities under this subsection pursuant to existing law."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101–640, set out as a note under section 2201 of this title.

§2320. Protection of recreational and commercial uses**(a) General rule**

In planning any water resources project, the Secretary shall consider the impact of the project on existing and future recreational and commercial uses in the area surrounding the project.

(b) Maintenance

Whenever the Secretary maintains, repairs, rehabilitates, or reconstructs a water resources project which will result in a change in the configuration of a structure which is a part of such project, the Secretary, to the maximum extent practicable, shall carry out such maintenance, repair, rehabilitation, or reconstruction in a manner which will not adversely affect any recreational use established with respect to such project before the date of such maintenance, repair, rehabilitation, or reconstruction.

(c) Mitigation**(1) In general**

If maintenance, repair, rehabilitation, or reconstruction of a water resources project by the Secretary results in a change in the configuration of any structure which is a part of such project and has an adverse effect on a recreational use established with respect to such project before the date of such maintenance, repair, rehabilitation, or reconstruction, the Secretary, to the maximum extent practicable, shall take such actions as may be necessary to restore such recreational use or provide alternative opportunities for comparable recreational use.

(2) Maximum amount

The Secretary may not expend more than \$2,000,000 in a fiscal year to carry out this subsection.

(3) Termination date

This subsection shall not be effective after the last day of the 5-year period beginning on November 28, 1990; except that the Secretary may complete any restoration commenced under this subsection on or before such last day.

(d) Applicability**(1) General rule**

Subsections (b) and (c) shall apply to maintenance, repair, rehabilitation, or reconstruction for which physical construction is initiated after May 1, 1988.

(2) Limitation

Subsections (b) and (c) shall not apply to any action of the Secretary which is necessary to discontinue the operation of a water resources project.

(e) Cost sharing

Costs incurred by the Secretary to carry out the objectives of this section shall be allocated to recreation and shall be payable by the beneficiaries of the recreation.

(Pub. L. 101–640, title III, §313, Nov. 28, 1990, 104 Stat. 4640.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101–640, set out as a note under section 2201 of this title.

§2321. Operation and maintenance of navigation and hydroelectric facilities**(a) In general**

Activities currently performed by personnel under the direction of the Secretary in connection with the operation and maintenance of navigation or hydroelectric power generating facilities at Corps of Engineers water resources projects are to be considered as inherently governmental functions and not commercial activities.

(b) Major maintenance contracts allowed

This section does not prohibit contracting out major maintenance or other functions which are currently contracted out or studying services not directly connected with project maintenance and operations.

(c) Exclusion

This section does not—

- (1) apply to a navigation facility that was under contract on or before October 23, 2018, with a non-Federal interest to perform operations or maintenance; and
- (2) prohibit the Secretary from contracting out commercial activities after October 23, 2018, at a navigation facility.

(Pub. L. 101–640, title III, §314, Nov. 28, 1990, 104 Stat. 4641; Pub. L. 115–270, title I, §1151(a), Oct. 23, 2018, 132 Stat. 3787.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2018—Pub. L. 115–270 inserted "navigation and" before "hydroelectric facilities" in section catchline, designated first sentence as subsec. (a), inserted heading, and inserted "navigation or" before "hydroelectric", designated second sentence as subsec. (b) and inserted heading, and added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101–640, set out as a note under section 2201 of this title.

§2321a. Hydroelectric power project uprating**(a) In general**

In carrying out the operation, maintenance, rehabilitation, and modernization of a hydroelectric power generating facility at a water resources project under the jurisdiction of the Department of the Army, the Secretary may, to the extent funds are made available in appropriations Acts or in accordance with subsection (c), take such actions as are necessary to optimize the efficiency of energy production or increase the capacity of the facility, or both, if, after consulting with the heads of other appropriate Federal and State agencies, the Secretary determines that such actions—

- (1) are economically justified and financially feasible;
- (2) will not result in any significant adverse effect on the other purposes for which the project is authorized;
- (3) will not result in significant adverse environmental impacts;
- (4) will not involve major structural or operational changes in the project; and
- (5) will not adversely affect the use, management, or protection of existing Federal, State, or tribal water rights.

(b) Consultation

Before proceeding with any proposed uprating under subsection (a), the Secretary shall provide affected State, tribal, and Federal agencies with a copy of the proposed determinations under subsection (a). If the agencies submit comments, the Secretary shall accept those comments or respond in writing to any objections those agencies raise to the proposed determinations.

(c) Use of funds provided by preference customers

In carrying out this section, the Secretary may accept and expend funds provided by preference customers under Federal law relating to the marketing of power.

(d) Application

This section does not apply to any facility of the Department of the Army that is authorized to be funded under section 839d–1 of title 16.

(e) Effect on other authority

This section shall not affect the authority of the Secretary and the Administrator of the Bonneville Power Administration under section 839d–1 of title 16.

(Pub. L. 104–303, title II, §216, Oct. 12, 1996, 110 Stat. 3694; Pub. L. 106–541, title II, §212, Dec. 11, 2000, 114 Stat. 2593.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–541, §212(1), inserted introductory provisions and struck out former introductory provisions which read as follows: "In carrying out the maintenance, rehabilitation, and modernization of a hydroelectric power generating facility at a water resources project under the jurisdiction of the Department of the Army, the Secretary may take, to the extent funds are made available in appropriations Acts, such actions as are necessary to increase the efficiency of energy production or the capacity of the facility, or both, if, after consulting with the heads of other appropriate Federal and State agencies, the Secretary determines that the increase—".

Subsec. (a)(1). Pub. L. 106–541, §212(1), substituted "are" for "is" before "economically justified".

Subsec. (b). Pub. L. 106–541, §212(2), substituted "any proposed uprating" for "the proposed uprating" in first sentence.

Subsecs. (c) to (e). Pub. L. 106–541, §212(3), (4), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104–303, set out as a note under section 2201 of this title.

§2321b. Expediting hydropower at Corps of Engineers facilities**(a) Policy**

Congress declares that it is the policy of the United States that—

- (1) the development of non-Federal hydroelectric power at Corps of Engineers water resources development projects, including locks and dams, shall be given priority;
- (2) Corps of Engineers approval of non-Federal hydroelectric power at Corps of Engineers water resources development projects, including permitting required under section 408 of this title, shall be completed by the Corps of Engineers in a timely and consistent manner; and
- (3) approval of hydropower at Corps of Engineers water resources development projects shall in no way diminish the other priorities and missions of the Corps of Engineers, including authorized project purposes and habitat and environmental protection.

(b) Implementation of policy

The Secretary shall—

- (1) ensure that the policy described in subsection (a) is implemented nationwide in an efficient, consistent, and coordinated manner; and
- (2) assess opportunities—
 - (A) to increase the development of hydroelectric power at existing water resources development projects of the Corps of Engineers with hydroelectric facilities; and
 - (B) to develop new hydroelectric power at existing nonpowered water resources development projects of the Corps of Engineers.

(c) Report

Not later than 2 years after June 10, 2014, and biennially thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report that, at a minimum, shall include—

- (1) a description of initiatives carried out by the Secretary to encourage the development of hydroelectric power by non-Federal entities at Corps of Engineers water resources development projects and to meet the requirements of subsection (b);
- (2) a list of all new hydroelectric power activities by non-Federal entities approved at Corps of Engineers water resources development projects in that fiscal year, including the length of time the Secretary needed to approve those activities;
- (3) a description of the status of each pending application from non-Federal entities for approval to develop hydroelectric power at Corps of Engineers water resources development projects;
- (4) a description of any benefits or impacts to the environment, recreation, or other uses associated with Corps of Engineers water resources development projects at which non-Federal entities have developed hydroelectric power in the previous fiscal year; and
- (5) the total annual amount of payments or other services provided to the Corps of Engineers, the Treasury, and any other Federal agency as a result of approved non-Federal hydropower projects at Corps of Engineers water resources development projects.

(d) Reviewing hydropower at Corps of Engineers facilities**(1) Definition of eligible non-Federal interest**

In this subsection, the term "eligible non-Federal interest" means a non-Federal interest that owns or operates an existing non-Federal hydropower facility at a Corps of Engineers water resources development project.

(2) Evaluation**(A) In general**

On the written request of an eligible non-Federal interest, the Secretary shall conduct an evaluation to consider operational changes at the applicable project to facilitate production of non-Federal hydropower, consistent with authorized project purposes. The Secretary shall solicit input from interested stakeholders as part of the evaluation.

(B) Deadline

Not later than 180 days after the date on which the Secretary receives a written request under subparagraph (A), the Secretary shall provide to the non-Federal interest a written response to inform the non-Federal interest—

- (i) that the Secretary has approved the request to conduct an evaluation; or
- (ii) of any additional information necessary for the Secretary to approve the request to conduct an evaluation.

(3) Operational changes

An operational change referred to in paragraph (2)(A) may include—

- (A) changes to seasonal pool levels;
- (B) modifying releases from the project; and
- (C) other changes included in the written request submitted under that paragraph that enhance the usage of the project to facilitate production of non-Federal hydropower, consistent with authorized project purposes.

(4) Cost share

The eligible non-Federal interest shall pay 100 percent of the costs associated with an evaluation under this subsection, including the costs to prepare the report under paragraph (6).

(5) Deadline

The Secretary shall complete an evaluation under this subsection by the date that is not later than 1 year after the date on which the Secretary begins the evaluation.

(6) Report

On completion of an evaluation under this subsection, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the effects of the operational changes proposed by the non-Federal interest and examined in the evaluation on the authorized purposes of the project, including a description of any negative impacts of the proposed operational changes on the authorized purposes of the project, or on any Federal project located in the same basin.

(7) Savings provision

Nothing in this subsection—

- (A) affects the authorized purposes of a Corps of Engineers water resources development project;
- (B) affects existing authorities of the Corps of Engineers, including authorities with respect to navigation, flood damage reduction, environmental protection and restoration, water supply and conservation, and other related purposes; or
- (C) authorizes the Secretary to make any operational changes to a Corps of Engineers water resources development project.

(Pub. L. 113–121, title I, §1008, June 10, 2014, 128 Stat. 1215; Pub. L. 116–260, div. AA, title I, §146, Dec. 27, 2020, 134 Stat. 2655; Pub. L. 117–263, div. H, title LXXXI, §8123, Dec. 23, 2022, 136 Stat. 3714.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—Subsec. (b). Pub. L. 117–263, §8123(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (b)(1). Pub. L. 117–263, §8123(1), inserted "and to meet the requirements of subsection (b)" after "projects".

Subsecs. (c), (d). Pub. L. 117–263, §8123(2), redesignated subsecs. (b) and (c) as (c) and (d), respectively.

2020—Subsecs. (a), (b). Pub. L. 116–260, §146(1), substituted "water resources development" for "civil works" wherever appearing.

Subsec. (c). Pub. L. 116–260, §146(2), added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2322. Single entities

For purposes of Federal participation in water resource development projects which are to be carried out by the Secretary, benefits which are to be provided to a facility owned by a State (including the District of Columbia and a territory or possession of the United States), county, municipality, or other public entity shall not be treated as benefits to be provided a single owner or single entity. The Secretary shall not treat such a facility as a single owner or single entity for any purpose.
(Pub. L. 101–640, title III, §317, Nov. 28, 1990, 104 Stat. 4641.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101–640, set out as a note under section 2201 of this title.

§2323. Technical assistance to private entities

(a) Use of Corps research and development labs

The Secretary is authorized to use Corps of Engineers research and development laboratories to provide research and development assistance to corporations, partnerships, limited partnerships, consortia, public and private foundations, universities, and nonprofit organizations operating within the United States, territories or possessions of the United States, and the Commonwealths of Puerto Rico and the Northern Mariana Islands—

- (1) if the entity furnishes in advance of fiscal obligation by the United States such funds as are necessary to cover any and all costs of such research and development assistance;
- (2) if the Secretary determines that the research and development assistance to be provided is within the mission of the Corps of Engineers and is in the public interest;
- (3) if the entity has certified to the Secretary that provision of such research and development assistance is not otherwise reasonably and expeditiously obtainable from the private sector; and
- (4) if the entity has agreed to hold and save the United States free from any damages due to any such research and development assistance.

(b) Contract

The Secretary may provide research and development assistance under subsection (a), or any part thereof, by contract.

(c) Omitted

(Pub. L. 101–640, title III, §318, Nov. 28, 1990, 104 Stat. 4641.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of section 318 of Pub. L. 101–640. Subsec. (c) of section 318 of Pub. L. 101–640 amended section 2314a of this title.
Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101–640, set out as a note under section 2201 of this title.

§2323a. Interagency and international support authority

(a) In general

The Secretary may engage in activities (including contracting) in support of Federal departments or agencies, nongovernmental organizations, international organizations, or foreign governments to address problems of national significance to the United States.

(b) Consultation

The Secretary may engage in activities in support of international organizations or foreign governments only after consulting with the Department of State.

(c) Use of Corps' expertise

The Secretary may use the technical and managerial expertise of the Corps of Engineers to address domestic and international problems related to water resources, infrastructure development, and environmental protection and restoration.

(d) Funding

(1) In general

There is authorized to be appropriated to carry out this section \$1,000,000 for fiscal year 2008 and each fiscal year thereafter.

(2) Acceptance of funds

The Secretary may accept and expend additional funds from Federal departments or agencies, nongovernmental organizations, international organizations, or foreign governments to carry out this section.

(Pub. L. 104–303, title II, §234, Oct. 12, 1996, 110 Stat. 3704; Pub. L. 106–541, title II, §207, Dec. 11, 2000, 114 Stat. 2590; Pub. L. 110–114, title II, §2030, Nov. 8, 2007, 121 Stat. 1081; Pub. L. 113–121, title I, §1029, June 10, 2014, 128 Stat. 1230.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–121, §1029(1), substituted "Federal departments or agencies, nongovernmental organizations," for "other Federal agencies,".
Subsec. (b). Pub. L. 113–121, §1029(2), inserted "or foreign governments" after "organizations".
Subsec. (c). Pub. L. 113–121, §1029(3), inserted "and restoration" after "protection".
Subsec. (d). Pub. L. 113–121, §1029(4), designated first and second sentences as pars. (1) and (2), respectively, inserted headings, and substituted "Federal departments or agencies, nongovernmental organizations," for "other Federal agencies," in par. (2).
2007—Subsec. (a). Pub. L. 110–114, §2030(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: "The Secretary may engage in activities in support of other Federal agencies or international organizations to address problems of national significance to the United States."
Subsec. (b). Pub. L. 110–114, §2030(2), substituted "Department of State" for "Secretary of State".
Subsec. (d). Pub. L. 110–114, §2030(3), substituted "\$1,000,000 for fiscal year 2008" for "\$250,000 for fiscal year 2001" and ", international organizations, or foreign governments" for "or international organizations".
2000—Subsec. (d). Pub. L. 106–541 substituted "There is authorized to be appropriated to carry out this section \$250,000 for fiscal year 2001 and each fiscal year thereafter." for "There is authorized to be appropriated \$1,000,000 to carry out this section." and inserted "out" after "carry" in second sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

NATIONAL RECREATION RESERVATION SERVICE

Pub. L. 106–541, title II, §206, Dec. 11, 2000, 114 Stat. 2590, provided that: "Notwithstanding section 611 of the Treasury and General Government Appropriations Act, 1999 (112 Stat. 2681–515), the Secretary [of the Army] may—

"(1) participate in the National Recreation Reservation Service on an interagency basis; and

"(2) pay the Department of the Army's share of the activities required to implement, operate, and maintain the Service."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104–303, set out as a note under section 2201 of this title.

§2324. Reduced pricing for certain water supply storage

(a) Provision of storage space

If a low income community requests the Secretary to provide water supply storage space in a water resources development project operated by the Secretary and if the amount of space requested is available or could be made available through reallocation of water supply storage space in the project or through modifications to operation of the project, the Secretary may provide such space to the community at a price determined under subsection (c).

(b) Maximum amount of storage space

The maximum amount of water supply storage space which may be provided to a community under this section may not exceed an amount of water supply storage space sufficient to yield 3,000,000 gallons of water per day.

(c) Price

The Secretary shall provide water supply storage space under this section at a price which is the greater of—

- (1) the updated construction cost of the project allocated to provide such amount of water supply storage space or \$100 per acre foot of storage space, whichever is less; and
- (2) the value of the benefits which are lost as a result of providing such water supply storage space.

(d) Determinations

For purposes of subsection (c), the determinations of updated construction costs and value of benefits lost shall be made by the Secretary on the basis of the most recent information available.

(e) Inflation adjustment of dollar amount

The \$100 amount set forth in subsection (c) shall be adjusted annually by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics.

(f) Non-Federal responsibilities

Nothing in this section shall be construed as affecting the responsibility of non-Federal interests to provide operation and maintenance costs assigned to water supply storage provided under this section.

(g) "Low income community" defined

The term "low income community" means—

- (1) a community with a population of less than 20,000 which is located in a county with a per capita income less than the per capita income of two-thirds of the counties in the United States; or
- (2) a regional water system that serves a population of less than 100,000, for which the per capita income is less than the per capita income of not less than 50 percent of the counties in the United States.

(Pub. L. 101–640, title III, §322, Nov. 28, 1990, 104 Stat. 4643; Pub. L. 116–260, div. AA, title III, §350, Dec. 27, 2020, 134 Stat. 2716.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2020—Subsec. (b). Pub. L. 116–260, §350(1), substituted "3,000,000" for "2,000,000".

Subsec. (g). Pub. L. 116–260, §350(2), substituted "means—" for "means", inserted par. (1) designation before "a community", substituted "; or" for period at end, and added par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101–640, set out as a note under section 2201 of this title.

§2325. Voluntary contributions for environmental and recreation projects

(a) Acceptance

In connection with carrying out a water resources project for environmental protection and restoration or a water resources project for recreation, the Secretary is authorized to accept contributions of cash, funds, materials, and services from persons, including governmental entities but excluding the project sponsor.

(b) Deposit

Any cash or funds received by the Secretary under subsection (a) shall be deposited into the account in the Treasury of the United States entitled "Contributions and Advances, Rivers and Harbors, Corps of Engineers (8862)" and shall be available until expended to carry out water resources projects described in subsection (a).

(Pub. L. 102–580, title II, §203, Oct. 31, 1992, 106 Stat. 4826; Pub. L. 104–303, title II, §236(a), Oct. 12, 1996, 110 Stat. 3705.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–303 substituted "(8862)" for "(8662)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102–580, set out as a note under section 2201 of this title.

§2325a. Authority to accept and use materials and services

(a) In general

Subject to subsection (b), the Secretary is authorized to accept and use materials, services, or funds contributed by a non-Federal public entity, a nonprofit entity, or a private entity to repair, restore, replace, or maintain a water resources project in any case in which the District Commander determines that—

- (1) there is a risk of adverse impacts to the functioning of the project for the authorized purposes of the project; and
- (2) acceptance of the materials and services or funds is in the public interest.

(b) Limitation

Any entity that contributes materials or services under subsection (a) shall not be eligible for credit or reimbursement for the value of such materials or services.

(c) Additional requirements

(1) Applicable laws and regulations

The Secretary may only use materials or services accepted under this section if such materials and services comply with all applicable laws and regulations that would apply if such materials and services were acquired by the Secretary.

(2) Supplementary services

The Secretary may only accept and use services under this section that provide supplementary services to existing Federal employees, and may only use such services to perform work that would not otherwise be accomplished as a result of funding or personnel limitations.

(d) Report

Not later than February 1 of each year after the first fiscal year in which materials, services, or funds are accepted under this section, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an annual report that includes—

(1) a description of the activities undertaken, including the costs associated with the activities; and

(2) a comprehensive description of how the activities are necessary for maintaining a safe and reliable water resources project.

(Pub. L. 113–121, [title I, §1024](#), June 10, 2014, 128 Stat. 1229; Pub. L. 114–322, [title I, §1153](#), Dec. 16, 2016, 130 Stat. 1663.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–322, §1153(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "Subject to subsection (b), the Secretary is authorized to accept and use materials and services contributed by a non-Federal public entity, a nonprofit entity, or a private entity for the purpose of repairing, restoring, or replacing a water resources development project that has been damaged or destroyed as a result of an emergency if the Secretary determines that the acceptance and use of such materials and services is in the public interest."

Subsec. (c). Pub. L. 114–322, §1153(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 114–322, §1153(2), (4), redesignated subsec. (c) as (d) and, in introductory provisions, substituted "Not later than February 1 of each year after the first fiscal year in which materials, services, or funds are accepted under this section," for "Not later than 60 days after initiating an activity under this section," and "an annual report" for "a report".

STATUTORY NOTES AND RELATED SUBSIDIARIES

"**SECRETARY**" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2325b. Materials, services, and funds for repair, restoration, or rehabilitation of projects

(a) Definitions

In this section:

(1) Covered area

The term "covered area" means an area—

(A) for which the Governor of a State has requested a determination that an emergency exists; or

(B) covered by an emergency or major disaster declaration declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Emergency period

The term "emergency period" means—

(A) with respect to a covered area described in paragraph (1)(A), the period during which the Secretary determines an emergency exists; and

(B) with respect to a covered area described in paragraph (1)(B), the period during which the applicable declaration is in effect.

(b) In general

In any covered area, the Secretary is authorized to accept and use materials, services, and funds, during the emergency period, from a non-Federal interest or private entity to repair, restore, or rehabilitate a federally authorized water resources development project, and to provide reimbursement to such non-Federal interest or private entity for such materials, services, and funds, in the Secretary's sole discretion, and subject to the availability of appropriations, if the Secretary determines that reimbursement is in the public interest.

(c) Additional requirement

The Secretary may only reimburse for the use of materials or services accepted under this section if such materials or services meet the Secretary's specifications and comply with all applicable laws and regulations that would apply if such materials and services were acquired by the Secretary, including sections 3141 through 3148 and 3701 through 3708 of title 40, section 8302 of title 41, and the National Environmental Policy Act of 1969.

(d) Agreements

(1) In general

Prior to the acceptance of materials, services, or funds under this section, the Secretary and the non-Federal interest or private entity shall enter into an agreement that specifies—

(A) the non-Federal interest or private entity shall hold and save the United States free from any and all damages that arise from use of materials or services of the non-Federal interest or private entity, except for damages due to the fault or negligence of the United States or its contractors;

(B) the non-Federal interest or private entity shall certify that the materials or services comply with all applicable laws and regulations under subsection (c); and

(C) any other term or condition required by the Secretary.

(2) Exception

If an agreement under paragraph (1) was not entered prior to materials or services being contributed, a non-Federal interest or private entity shall enter into an agreement with the Secretary that—

(A) specifies the value, as determined by the Secretary, of those materials or services contributed and eligible for reimbursement; and

(B) ensures that the materials or services comply with subsection (c) and paragraph (1).

(Pub. L. 116–260, [div. AA, title I, §130](#), Dec. 27, 2020, 134 Stat. 2642.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a)(1)(B), is Pub. L. 93–288, [May 22, 1974](#), 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91–190, [Jan. 1, 1970](#), 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"**SECRETARY**" DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

§2326. Regional sediment management

(a) In general

(1) Sediment use

(A) Sediment from Federal water resources projects

For sediment obtained through or used in the construction, operation, or maintenance of an authorized Federal water resources project, including a project authorized for flood control, the Secretary shall develop, at Federal expense, regional sediment management plans and carry out projects at locations identified in plans developed under this section, or identified jointly by the non-Federal interest and the Secretary, for use in the construction, repair, modification, or rehabilitation of projects associated with Federal water resources projects for purposes listed in paragraph (3).

(B) Sediment from other Federal sources and non-Federal sources

For purposes of projects carried out under this section, the Secretary may include sediment from other Federal sources and non-Federal sources, subject to the requirement that any sediment obtained from a non-Federal source shall not be obtained at Federal expense.

(2) Cooperation

The Secretary shall develop plans under this subsection in cooperation with the appropriate Federal, State, regional, and local agencies.

(3) Purposes for sediment use in projects

The purposes of using sediment for the construction, repair, modification, or rehabilitation of Federal water resources projects are—

- (A) to reduce storm damage to property;
- (B) to protect, restore, and create aquatic and ecologically related habitats, including wetlands; and
- (C) to transport and place suitable sediment for the purposes of improving environmental conditions in marsh and littoral systems, stabilizing stream channels, enhancing shorelines, and supporting State and local risk management adaptation strategies.

(4) Reducing costs

To reduce or avoid Federal costs, the Secretary shall consider the beneficial use of dredged material in a manner that contributes to the maintenance of sediment resources in the nearby coastal system.

(b) Secretarial findings

Subject to subsection (c), projects carried out under subsection (a) may be carried out in any case in which the Secretary finds that—

- (1) the environmental, economic, and social benefits of the project, both monetary and nonmonetary, justify the cost of the project; and
- (2) the project will not result in environmental degradation.

(c) Determination of project costs

(1) Costs of construction

(A) In general

Costs associated with construction of a project under this section or identified in a regional sediment management plan shall be limited solely to construction costs that are in excess of the costs necessary to carry out the dredging for construction, operation, or maintenance of an authorized Federal water resources project in the most cost-effective way, consistent with economic, engineering, and environmental criteria.

(B) Cost sharing

(i) In general

Except as provided in clause (ii), the non-Federal share of the construction cost of a project under this section shall be determined as provided in subsections (a) through (d) of section 2213 of this title.

(ii) Special rule

Construction of a project under this section for one or more of the purposes of protection, restoration, or creation of aquatic and ecologically related habitat, the cost of which does not exceed \$750,000 and which is located in a disadvantaged community as determined by the Secretary, may be carried out at Federal expense.

(C) Total cost

The total Federal costs associated with construction of a project under this section may not exceed \$10,000,000.

(2) Operation, maintenance, replacement, and rehabilitation costs

Operation, maintenance, replacement, and rehabilitation costs associated with a project under this section are the responsibility of the non-Federal interest.

(d) Selection of dredged material disposal method for purposes related to environmental restoration or storm damage and flood reduction

(1) In general

At the request of the non-Federal interest for a water resources development project involving the disposal of dredged material, the Secretary, using funds appropriated for construction or operation and maintenance of the project, may select a disposal method that is not the least cost option if the Secretary determines that the incremental costs of the disposal method are reasonable in relation to—

- (A) the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetlands and control of shoreline erosion; or
- (B) the hurricane and storm or flood risk reduction benefits, including shoreline protection, protection against loss of life, and damage to improved property.

(2) Federal share

The Federal share of such incremental costs shall be determined in accordance with subsection (c).

(3) Special rule

Disposal of dredged material under this subsection may include a single or periodic application of sediment for beneficial use and shall not require operation and maintenance.

(4) Disposal at non-Federal cost

The Secretary may accept funds from a non-Federal interest to dispose of dredged material as provided under section 2213(d)(1) of this title.

(5) Selection of dredged material disposal method for certain purposes

Activities carried out under this subsection—

- (A) shall be carried out using amounts appropriated for construction or operation and maintenance of the project involving the disposal of the dredged material; and
- (B) shall not be carried out using amounts made available under subsection (g).

(e) State and regional plans

The Secretary may—

- (1) cooperate with any State or group of States in the preparation of a comprehensive State or regional sediment management plan within the boundaries of the State or among States;
- (2) encourage State participation in the implementation of the plan; and
- (3) submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out the plan.

(f) Priority areas

In carrying out this section, the Secretary shall give priority to a regional sediment management project in the vicinity of each of the following:

- (1) Little Rock Slackwater Harbor, Arkansas.
- (2) Fletcher Cove, California.
- (3) Egmont Key, Florida.
- (4) Calcasieu Ship Channel, Louisiana.
- (5) Delaware River Estuary, New Jersey and Pennsylvania.
- (6) Fire Island Inlet, Suffolk County, New York.
- (7) Smith Point Park Pavilion and the TWA Flight 800 Memorial, Brookhaven, New York.
- (8) Morehead City, North Carolina.
- (9) Toledo Harbor, Lucas County, Ohio.
- (10) Galveston Bay, Texas.
- (11) Benson Beach, Washington.

(g) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$62,500,000 per fiscal year, of which not more than \$5,000,000 per fiscal year may be used for the development of regional sediment management plans authorized by subsection (e) and of which not more than \$3,000,000 per fiscal year may be used for construction of projects to which subsection (c)(1)(B)(ii) applies. Such funds shall remain available until expended.

(Pub. L. 102–580, title II, §204, Oct. 31, 1992, 106 Stat. 4826; Pub. L. 104–303, title II, §207, Oct. 12, 1996, 110 Stat. 3680; Pub. L. 106–53, title II, §209, Aug. 17, 1999, 113 Stat. 287; Pub. L. 110–114, title II, §2037(a), Nov. 8, 2007, 121 Stat. 1094; Pub. L. 113–121, title I, §§1030(d)(1), 1038, June 10, 2014, 128 Stat. 1232, 1236; Pub. L. 114–322, title I, §1122(i), Dec. 16, 2016, 130 Stat. 1647; Pub. L. 115–270, title I, §§1150, 1157(d), Oct. 23, 2018, 132 Stat. 3787, 3794; Pub. L. 116–260, div. AA, title I, §125(a)(2)(C), Dec. 27, 2020, 134 Stat. 2637.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2020—Subsec. (d)(1). Pub. L. 116–260, §125(a)(2)(C)(i)(I), in introductory provisions, substituted “At the request of the non-Federal interest for a water resources development project involving the disposal of dredged material, the Secretary, using funds appropriated for construction or operation and maintenance of the project, may select” for “In developing and carrying out a Federal water resources project involving the disposal of dredged material, the Secretary may select, with the consent of the non-Federal interest.”

Subsec. (d)(1)(B). Pub. L. 116–260, §125(a)(2)(C)(i)(II), substituted “hurricane and storm or flood risk reduction benefits” for “flood and storm damage and flood reduction benefits”.

Subsec. (d)(5). Pub. L. 116–260, §125(a)(2)(C)(iii), added par. (5).

2018—Subsec. (a)(1)(A). Pub. L. 115–270, §1150, inserted “including a project authorized for flood control,” after “an authorized Federal water resources project.”

Subsec. (g). Pub. L. 115–270, §1157(d), substituted “\$62,500,000” for “\$50,000,000”.

2016—Subsec. (a)(1). Pub. L. 114–322, §1122(i)(1), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (d)(3), (4). Pub. L. 114–322, §1122(i)(2), added pars. (3) and (4).

2014—Subsec. (a)(1). Pub. L. 113–121, §1038(1)(A), inserted “or used in” after “obtained through”.

Subsec. (a)(3)(C). Pub. L. 113–121, §1038(1)(B), inserted “for the purposes of improving environmental conditions in marsh and littoral systems, stabilizing stream channels, enhancing shorelines, and supporting State and local risk management adaptation strategies” before period at end.

Subsec. (a)(4). Pub. L. 113–121, §1038(1)(C), added par. (4).

Subsec. (c)(1)(C). Pub. L. 113–121, §1030(d)(1)(A), substituted “\$10,000,000” for “\$5,000,000”.

Subsec. (d). Pub. L. 113–121, §1038(2)(A), substituted “Selection of dredged material disposal method for purposes related to environmental restoration or storm damage and flood reduction” for “Selection of dredged material disposal method for environmental purposes” in heading.

Subsec. (d)(1). Pub. L. 113–121, §1038(2)(B), substituted "in relation to—" for "in relation to the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetlands and control of shoreline erosion." and added subpars. (A) and (B).

Subsec. (e)(1). Pub. L. 113–121, §1038(3), added par. (1) and struck out former par. (1) which read as follows: "cooperate with any State in the preparation of a comprehensive State or regional sediment management plan within the boundaries of the State;".

Subsec. (g). Pub. L. 113–121, §1030(d)(1)(B), substituted "\$50,000,000" for "\$30,000,000".

2007—Pub. L. 110–114 amended section generally. Prior to amendment, section related to beneficial uses of dredged material.

1999—Subsec. (c). Pub. L. 106–53, §209(1), in introductory provisions, substituted "binding agreement with the Secretary" for "cooperative agreement in accordance with the requirements of section 1962d–5b of title 42".

Subsec. (g). Pub. L. 106–53, §209(2), added subsec. (g).

1996—Subsecs. (e), (f). Pub. L. 104–303 added subsec. (e) and redesignated former subsec. (e) as (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

APPLICABILITY

Pub. L. 110–114, title II, §2037(c), as added by Pub. L. 113–121, title I, §1030(d)(2), June 10, 2014, 128 Stat. 1232, provided that: "The amendment made by subsection (a) [amending this section] shall not apply to any project authorized under this Act [see Tables for classification] if a report of the Chief of Engineers for the project was completed prior to the date of enactment of this Act [Nov. 8, 2007]."

PROJECT SELECTION

Pub. L. 116–260, div. AA, title I, §125(b)(3), Dec. 27, 2020, 134 Stat. 2638, provided that: "In selecting projects for the beneficial use of dredged materials under section 1122 of the Water Resources Development Act of 2016 (33 U.S.C. 2326 note) [set out as a note below], the Secretary [of the Army] shall prioritize the selection of at least one project for the utilization of thin layer placement of dredged fine and coarse grain sediment and at least one project for recovering lost storage capacity in reservoirs due to sediment accumulation authorized by subsection (a)(8) of such section, to the extent that a non-Federal interest has submitted an application for such project purposes that otherwise meets the requirements of such section."

COORDINATION WITH EXISTING AUTHORITIES

Pub. L. 116–260, div. AA, title I, §125(d)(2), Dec. 27, 2020, 134 Stat. 2640, provided that: "The Secretary [of the Army] may carry out the dredge pilot program authorized by section 1111 of the Water Resources Development Act of 2018 (33 U.S.C. 2326 note) in coordination with Federal regional dredge demonstration programs in effect on the date of enactment of this Act [Dec. 27, 2020]."

DREDGE PILOT PROGRAM

Pub. L. 115–270, title I, §1111, Oct. 23, 2018, 132 Stat. 3774, as amended by Pub. L. 116–260, div. AA, title I, §125(d)(1), Dec. 27, 2020, 134 Stat. 2640, provided that:

"(a) IN GENERAL.—The Secretary [of the Army] is authorized to carry out a pilot program to award contracts with a duration of up to 5 years for the operation and maintenance of—

"(1) harbors and inland harbors referred to in section 210(a)(2) of the Water Resources Development Act of 1986 (33 U.S.C. 2238(a)(2)); or

"(2) inland and intracoastal waterways of the United States described in section 206 of the Inland Waterways Revenue Act of 1978 (33 U.S.C. 1804).

"(b) SCOPE.—In carrying out the pilot program under subsection (a), the Secretary may award a contract described in such subsection, which may address one or more harbors, inland harbors, or inland or intracoastal waterways in a geographical region, if the Secretary determines that the contract provides cost savings compared to the awarding of such work on an annual basis or on a project-by-project basis.

"(c) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first contract is awarded pursuant to the pilot program carried out under subsection (a), the Secretary shall submit to Congress a report evaluating, with respect to the pilot program and any contracts awarded under the pilot program—

"(1) cost effectiveness;

"(2) reliability and performance;

"(3) cost savings attributable to mobilization and demobilization of dredge equipment; and

"(4) response times to address navigational impediments.

"(d) SUNSET.—The authority of the Secretary to enter into contracts pursuant to the pilot program carried out under subsection (a), shall expire on the date that is 10 years after the date of enactment of this Act [Oct. 23, 2018]."

BENEFICIAL USE OF DREDGED SEDIMENT

Pub. L. 115–270, title I, §1148, Oct. 23, 2018, 132 Stat. 3787, provided that:

"(a) IN GENERAL.—In carrying out a project for the beneficial reuse of sediment to reduce storm damage to property under section 204 of the Water Resources Development Act of 1992 (33 U.S.C. 2326) that involves only a single application of sediment, the Secretary [of the Army] may grant a temporary easement necessary to facilitate the placement of sediment, if the Secretary determines that granting a temporary easement is in the interest of the United States.

"(b) LIMITATION.—If the Secretary grants a temporary easement under subsection (a) with respect to a project, that project shall no longer be eligible for future placement of sediment under section 204 of the Water Resources Development Act of 1992 (33 U.S.C. 2326)."

BENEFICIAL USE OF DREDGED MATERIAL

Pub. L. 114–322, title I, §1122(a)–(h), Dec. 16, 2016, 130 Stat. 1645, 1646, as amended by Pub. L. 115–270, title I, §1130, Oct. 23, 2018, 132 Stat. 3780; Pub. L. 116–260, div. AA, title I, §125(b)(1), Dec. 27, 2020, 134 Stat. 2638, provided that:

"(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Dec. 16, 2016], the Secretary [of the Army] shall establish a pilot program to carry out projects for the beneficial use of dredged material, including projects for the purposes of—

"(1) reducing storm damage to property and infrastructure;

"(2) promoting public safety;

"(3) protecting, restoring, and creating aquatic ecosystem habitats;

"(4) stabilizing stream systems and enhancing shorelines;

"(5) promoting recreation;

"(6) supporting risk management adaptation strategies;

"(7) reducing the costs of dredging and dredged material placement or disposal, such as projects that use dredged material for—

"(A) construction or fill material;

"(B) civic improvement objectives; and

"(C) other innovative uses and placement alternatives that produce public economic or environmental benefits; and

"(8) recovering lost storage capacity in reservoirs due to sediment accumulation, if the project also has a purpose described in any of paragraphs (1) through (7).

"(b) PROJECT SELECTION.—In carrying out the pilot program, the Secretary shall—

"(1) identify for inclusion in the pilot program and carry out 35 projects for the beneficial use of dredged material;

"(2) consult with relevant State agencies in selecting projects; and

"(3) select projects solely on the basis of—

"(A) the environmental, economic, and social benefits of the projects, including monetary and nonmonetary benefits; and

"(B) the need for a diversity of project types and geographical project locations.

"(c) REGIONAL BENEFICIAL USE TEAMS.—

"(1) IN GENERAL.—In carrying out the pilot program, the Secretary shall establish regional beneficial use teams to identify and assist in the implementation of projects under the pilot program.

"(2) COMPOSITION.—

"(A) LEADERSHIP.—For each regional beneficial use team established under paragraph (1), the Secretary shall appoint the Commander of the relevant division of the Corps of Engineers to serve as the head of the team.

"(B) MEMBERSHIP.—The membership of each regional beneficial use team shall include—

"(i) representatives of relevant Corps of Engineers districts and divisions;

"(ii) representatives of relevant State and local agencies; and

"(iii) representatives of Federal agencies and such other entities as the Secretary determines appropriate, consistent with the purposes of this section.

"(d) CONSIDERATIONS.—The Secretary shall carry out the pilot program in a manner that—

"(1) maximizes the beneficial placement of dredged material from Federal and non-Federal navigation channels;

"(2) incorporates, to the maximum extent practicable, 2 or more Federal navigation, flood control, storm damage reduction, or environmental restoration projects;

"(3) coordinates the mobilization of dredges and related equipment, including through the use of such efficiencies in contracting and environmental permitting as can be implemented under existing laws and regulations;

"(4) fosters Federal, State, and local collaboration;

"(5) implements best practices to maximize the beneficial use of dredged sand and other sediments; and

"(6) ensures that the use of dredged material is consistent with all applicable environmental laws.

"(e) COST SHARING.—

"(1) IN GENERAL.—Projects carried out under this section shall be subject to the cost-sharing requirements applicable to projects carried out under section 204 of the Water Resources Development Act of 1992 (33 U.S.C. 2326).

"(2) ADDITIONAL COSTS.—Notwithstanding paragraph (1), if the cost of transporting and depositing dredged material for a project carried out under this section exceeds the cost of carrying out those activities pursuant to any other water resources project in accordance, if applicable, with the Federal standard (as defined in section 335.7 of title 33, Code of

Federal Regulations), the Secretary may not require the non-Federal interest to bear the additional cost of such activities.

"(f) **REPORT.**—Not later than 2 years after the date of enactment of this Act [Dec. 16, 2016], and annually thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that includes—

- "(1) a description of the projects selected to be carried out under the pilot program;
- "(2) documentation supporting each of the projects selected;
- "(3) the findings of regional beneficial use teams regarding project selection; and
- "(4) any recommendations of the Secretary or regional beneficial use teams with respect to the pilot program.

"(g) **TERMINATION.**—The pilot program shall terminate after completion of the 35 projects carried out pursuant to subsection (b)(1).

"(h) **EXEMPTION FROM OTHER STANDARDS.**—The projects carried out under this section shall be carried out notwithstanding the definition of the term 'Federal standard' in section 335.7 of title 33, Code of Federal Regulations."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102–580, set out as a note under section 2201 of this title.

¹ *So in original. Probably should be preceded by "be".*

§2326a. Dredged material disposal facility partnerships

(a) Additional capacity or replacement capacity

(1) Provided by Secretary

(A) In general

Subject to subparagraph (B), at the request of a non-Federal interest with respect to a project, the Secretary may—

- (i) provide additional capacity at a dredged material disposal facility constructed by the Secretary beyond the capacity that would be required for project purposes; or
- (ii) permit the use of dredged material disposal facility capacity required for project purposes by the non-Federal interest if the Secretary determines that replacement capacity can be constructed at the facility or another facility or site before such capacity is needed for project purposes.

(B) Agreement

Before the Secretary takes an action under subparagraph (A), the non-Federal interest shall agree to pay—

- (i) all costs associated with the construction of the additional capacity or replacement capacity in advance of construction of such capacity; and
- (ii) in the case of use by a non-Federal interest of dredged material disposal capacity required for project purposes under subparagraph (A)(ii), any increase in the cost of operation and maintenance of the project that the Secretary determines results from the use of the project capacity by the non-Federal interest in advance of each cycle of dredging.

(C) Credit

In the event the Secretary determines that the cost to operate or maintain the project decreases as a result of use by the non-Federal interest of dredged material disposal capacity required for project purposes under subparagraph (A)(ii), the Secretary, at the request of the non-Federal interest, shall credit the amount of the decrease toward any cash contribution of the non-Federal interest required thereafter for construction, operation, or maintenance of the project, or of another navigation project.

(2) Cost recovery authority

The non-Federal interest may recover the costs assigned to the additional capacity under paragraph (1)(A)(i) through fees assessed on third parties whose dredged material is deposited at the facility and who enter into agreements with the non-Federal interest for the use of the facility. The amount of such fees may be determined by the non-Federal interest.

(3) Special rule for designation of replacement capacity facility or site

(A) In general

Subject to such terms and conditions as the Secretary determines to be necessary or advisable, an agreement under paragraph (1)(B) for use permitted under paragraph (1)(A)(ii) shall reserve to the non-Federal interest—

- (i) the right to submit to the Secretary for approval at a later date an alternative to the facility or site designated in the agreement for construction of replacement capacity; and
- (ii) the right to construct the replacement capacity at the alternative facility or site at the expense of the non-Federal interest.

(B) Requirement

The Secretary shall not reject a site for the construction of replacement capacity under paragraph (1)(A)(ii) that is submitted by the non-Federal interest for approval by the Secretary before the date of execution of the agreement under paragraph (1)(B), or thereafter, unless the Secretary—

- (i) determines that the site is environmentally unacceptable, geographically unacceptable, or technically unsound; and
- (ii) provides a written basis for the determination under clause (i) to the non-Federal interest.

(4) Public comment

The Secretary shall afford the public an opportunity to comment on the determinations required under this subsection for a use permitted under paragraph (1)(A)(ii).

(b) Non-Federal use of disposal facilities

(1) In general

The Secretary—

- (A) may permit the use of any dredged material disposal facility under the jurisdiction of, or managed by, the Secretary by a non-Federal interest if the Secretary determines that such use will not reduce the availability of the facility for project purposes; and
- (B) may impose fees to recover capital, operation, and maintenance costs associated with such use.

(2) Use of fees

Notwithstanding section 1341(c) of this title but subject to advance appropriations, any monies received through collection of fees under this subsection shall be available to the Secretary, and shall be used by the Secretary, for the operation and maintenance of the disposal facility from which the fees were collected.

(c) Dredged material facility

(1) In general

The Secretary may enter into a partnership agreement under section 1962d–5b of title 42 with one or more non-Federal interests with respect to a water resources project, or group of water resources projects within a geographic region, if appropriate, for the acquisition, design, construction, management, or operation of a dredged material processing, treatment, contaminant reduction, or disposal facility (including any facility used to demonstrate potential beneficial uses of dredged material, which may include effective sediment contaminant reduction technologies) using funds provided in whole or in part by the Federal Government.

(2) Performance

One or more of the parties to a partnership agreement under this subsection may perform the acquisition, design, construction, management, or operation of a dredged material processing, treatment, contaminant reduction, or disposal facility.

(3) Multiple projects

If appropriate, the Secretary may combine portions of separate water resources projects with appropriate combined cost-sharing among the various water resources projects in a partnership agreement for a facility under this subsection if the facility serves to manage dredged material from multiple water resources projects located in the geographic region of the facility.

(4) Specified Federal funding sources and cost sharing

(A) Specified Federal funding

A partnership agreement with respect to a facility under this subsection shall specify—

- (i) the Federal funding sources and combined cost-sharing when applicable to multiple water resources projects; and
- (ii) the responsibilities and risks of each of the parties relating to present and future dredged material managed by the facility.

(B) Management of sediments

(i) In general

A partnership agreement under this subsection may include the management of sediments from the maintenance dredging of Federal water resources projects that do not have partnership agreements.

(ii) Payments

A partnership agreement under this subsection may allow the non-Federal interest to receive reimbursable payments from the Federal Government for commitments made by the non-Federal interest for disposal or placement capacity at dredged material processing, treatment, contaminant reduction, or disposal facilities.

(C) Credit

A partnership agreement under this subsection may allow costs incurred by the non-Federal interest before execution of the partnership agreement to be credited in accordance with section 1962d–5b of title 42.

(5) Credit

(A) Effect on existing agreements

Nothing in this subsection supersedes or modifies an agreement in effect on November 8, 2007, between the Federal Government and any non-Federal interest for the cost-sharing, construction, and operation and maintenance of a water resources project.

(B) Credit for funds

Subject to the approval of the Secretary and in accordance with law (including regulations and policies) in effect on November 8, 2007, a non-Federal interest for a water resources project may receive credit for funds provided for the acquisition, design, construction, management, or operation of a dredged material processing, treatment, contaminant reduction, or disposal facility to the extent the facility is used to manage dredged material from the project.

(C) Non-Federal interest responsibilities

A non-Federal interest entering into a partnership agreement under this subsection for a facility shall—

- (i) be responsible for providing all necessary lands, easements, relocations, and rights-of-way associated with the facility; and
- (ii) receive credit toward the non-Federal share of the cost of the project with respect to which the agreement is being entered into for those items.

(d) Public-private partnerships

(1) In general

The Secretary may carry out a program to evaluate and implement opportunities for public-private partnerships in the design, construction, management, or operation and maintenance of dredged material processing, treatment, contaminant reduction, or disposal facilities in connection with construction or maintenance of Federal navigation projects. If a non-Federal interest is a sponsor of the project, the Secretary shall consult with the non-Federal interest in carrying out the program with respect to the project.

(2) Private financing

(A) Agreements

In carrying out this subsection, the Secretary may enter into an agreement with a non-Federal interest with respect to a project, a private entity, or both for the acquisition, design, construction, management, or operation and maintenance of a dredged material processing, treatment, contaminant reduction, or disposal facility (including any facility used to demonstrate potential beneficial uses of dredged material) using funds provided in whole or in part by the private entity.

(B) Reimbursement

If any funds provided by a private entity are used to carry out a project under this subsection, the Secretary may reimburse the private entity over a period of time agreed to by the parties to the agreement through the payment of subsequent user fees. Such fees may include the payment of a disposal or tipping fee for placement of suitable dredged material at the facility.

(C) Amount of fees

User fees paid pursuant to subparagraph (B) shall be sufficient to repay funds contributed by the private entity plus a reasonable return on investment approved by the Secretary in cooperation with the non-Federal interest with respect to the project and the private entity.

(D) Federal share

The Federal share of such fees shall be equal to the percentage of the total cost that would otherwise be borne by the Federal Government as required pursuant to existing cost-sharing requirements, including section 2213 of this title and section 2326 of this title.

(E) Budget Act compliance

Any spending authority (as defined in section 651(c)(2) of title 2) authorized by this section shall be effective only to such extent and in such amounts as are provided in appropriation Acts.

(Pub. L. 104–303, title II, §217, Oct. 12, 1996, 110 Stat. 3694; Pub. L. 110–114, title II, §2005, Nov. 8, 2007, 121 Stat. 1071; Pub. L. 116–260, div. AA, title I, §145, Dec. 27, 2020, 134 Stat. 2654.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Budget Act, referred to in subsec. (d)(2)(E) heading, probably means the Congressional Budget Act of 1974, titles I through IX of Pub. L. 93–344, July 12, 1974, 88 Stat. 297. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2020—Subsec. (a). Pub. L. 116–260, §145(1), inserted "or replacement capacity" after "Additional capacity" in heading.

Subsec. (a)(1). Pub. L. 116–260, §145(2), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "At the request of a non-Federal interest with respect to a project, the Secretary may provide additional capacity at a dredged material disposal facility constructed by the Secretary beyond the capacity that would be required for project purposes if the non-Federal interest agrees to pay, during the period of construction, all costs associated with the construction of the additional capacity."

Subsec. (a)(2). Pub. L. 116–260, §145(3), inserted "under paragraph (1)(A)(i)" after "additional capacity".

Subsec. (a)(3), (4). Pub. L. 116–260, §145(4), added pars. (3) and (4).

2007—Subsec. (c). Pub. L. 110–114, §2005(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110–114, §2005(1), redesignated subsec. (c) as (d).

Subsec. (d)(1). Pub. L. 110–114, §2005(3), inserted "and maintenance" after "operation" and "processing, treatment, contaminant reduction, or" after "dredged material".

Subsec. (d)(2)(A). Pub. L. 110–114, §2005(3), inserted "and maintenance" after "operation" and "processing, treatment, contaminant reduction, or" after "of a dredged material".

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104–303, set out as a note under section 2201 of this title.

§2326b. Sediment management

(a) In general

The Secretary may enter into cooperation agreements with non-Federal interests with respect to navigation projects, or other appropriate non-Federal entities, for the development of long-term management strategies for controlling sediments at such projects.

(b) Contents of strategies

Each strategy developed under subsection (a) shall—

(1) include assessments of sediment rates and composition, sediment reduction options, dredging practices, long-term management of any dredged material disposal facilities, remediation of such facilities, and alternative disposal and reuse options;

(2) include a timetable for implementation of the strategy; and

(3) incorporate relevant ongoing planning efforts, including remedial action planning, dredged material management planning, harbor and waterfront development planning, and watershed management planning.

(c) Consultation

In developing strategies under subsection (a), the Secretary shall consult with interested Federal agencies, States, and Indian tribes and provide an opportunity for public comment.

(d) Dredged material disposal

(1) Study

The Secretary shall conduct a study to determine the feasibility of constructing and operating an underwater confined dredged material disposal site in the Port of New York-New Jersey that could accommodate as much as 250,000 cubic yards of dredged material for the purpose of demonstrating the feasibility of an underwater confined disposal pit as an environmentally suitable method of containing certain sediments.

(2) Report

The Secretary shall transmit to Congress a report on the results of the study conducted under paragraph (1), together with any recommendations of the Secretary that may be developed in a strategy under subsection (a).

(e) Great Lakes tributary model

(1) In general

In consultation and coordination with the Great Lakes States, the Secretary shall develop a tributary sediment transport model for each major river system or set of major river systems depositing sediment into a Great Lakes federally authorized commercial harbor, channel maintenance project site, or Area of Concern identified under the Great Lakes Water Quality Agreement of 1978. Such model may be developed as a part of a strategy developed under subsection (a).

(2) Requirements for models

In developing a tributary sediment transport model under this subsection, the Secretary shall build on data and monitoring information generated in earlier studies and programs of the Great Lakes and their tributaries.

(3) Report

Not later than December 31, 2003, the Secretary shall transmit to Congress a report on the Secretary's activities under this subsection.

(f) "Great Lakes States" defined

In this section, the term "Great Lakes States" means the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin.

(g) Coastal mapping

The Secretary shall develop and carry out a plan for the recurring mapping of coastlines that are experiencing rapid change, including such coastlines in—

- (1) Alaska;
- (2) Hawaii; and
- (3) any territory or possession of the United States.

(h) Authorization of appropriations**(1) In general**

There is authorized to be appropriated to the Secretary to carry out this section \$5,000,000 for each of fiscal years 1998 through 2001.

(2) Great Lakes tributary model

In addition to amounts made available under paragraph (1), there is authorized to be appropriated to carry out subsection (e) \$5,000,000 for each of fiscal years 2002 through 2012.

(3) Coastal mapping

In addition to amounts made available under paragraph (1), there is authorized to be appropriated to carry out subsection (g) with respect to Alaska, Hawaii, and the territories and possessions of the United States, \$10,000,000, to remain available until expended.

(Pub. L. 104–303, title V, §516, Oct. 12, 1996, 110 Stat. 3763; Pub. L. 106–541, title V, §505, Dec. 11, 2000, 114 Stat. 2645; Pub. L. 110–114, title V, §5013, Nov. 8, 2007, 121 Stat. 1195; Pub. L. 116–260, div. AA, title I, §148, Dec. 27, 2020, 134 Stat. 2656.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2020—Subsecs. (g), (h). Pub. L. 116–260, §148(1), (2), added subsec. (g) and redesignated former subsec. (g) as (h).

Subsec. (h)(3). Pub. L. 116–260, §148(3), added par. (3).

2007—Subsec. (g)(2). Pub. L. 110–114 substituted "through 2012" for "through 2006".

2000—Subsec. (e)(3). Pub. L. 106–541, §505(1), added par. (3).

Subsec. (g). Pub. L. 106–541, §505(2), designated existing provisions as par. (1), inserted heading, realigned margins, and added par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES**DREDGED MATERIAL MANAGEMENT PLANS**

Pub. L. 115–270, title I, §1116, Oct. 23, 2018, 132 Stat. 3776, provided that:

"(a) IN GENERAL.—For purposes of dredged material management plans initiated after the date of enactment of this Act [Oct. 23, 2018], the Secretary [of the Army] shall expedite the dredged material management plan process in order that such plans make maximum use of existing information, studies, and innovative dredged material management practices, and avoid any redundant information collection and studies.

"(b) REPORT.—Not later than 60 days after the date of enactment of this Act, the Secretary shall submit to Congress a report on how the Corps of Engineers intends to meet the requirements of subsection (a)."

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Pub. L. 106–53, title V, §540, Aug. 17, 1999, 113 Stat. 350, provided that:

"(a) IN GENERAL.—The Secretary shall conduct a study to analyze the economic and environmental benefits and costs of potential sediment management and contaminant reduction measures.

"(b) COOPERATIVE AGREEMENTS.—In conducting the study, the Secretary may enter into cooperative agreements with non-Federal interests to investigate, develop, and support measures for sediment management and reduction of sources of contaminant that affect navigation in the Port of New York-New Jersey and the environmental conditions of the New York-New Jersey Harbor estuary."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104–303, set out as a note under section 2201 of this title.

§2326c. Reservoir sediment**(a) In general**

Not later than 180 days after October 23, 2018, and after providing public notice, the Secretary shall, using available funds, accept services provided by a non-Federal interest or commercial entity for removal of sediment captured behind a dam owned or operated by the United States and under the jurisdiction of the Secretary for the purpose of restoring the authorized storage capacity of the project concerned.

(b) Requirements

In carrying out this section, the Secretary shall—

- (1) review the services of the non-Federal interest or commercial entity to ensure that the services are consistent with the authorized purposes of the project concerned;
- (2) ensure that the non-Federal interest or commercial entity will indemnify the United States for, or has entered into an agreement approved by the Secretary to address, any adverse impact to the dam as a result of such services; and
- (3) require the non-Federal interest or commercial entity, prior to initiating the services and upon completion of the services, to conduct sediment surveys to determine the pre- and post-services sediment profile and sediment quality.

(c) Limitation**(1) In general**

The Secretary may not accept services under subsection (a) if the Secretary, after consultation with the Chief of Engineers, determines that accepting the services is not advantageous to the United States.

(2) Report to Congress

If the Secretary makes a determination under paragraph (1), the Secretary shall provide to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate written notice describing the reasoning for the determination.

(d) Disposition of removed sediment

In exchange for providing services under subsection (a), a non-Federal interest or commercial entity is authorized to retain, use, recycle, sell, or otherwise dispose of any sediment removed in connection with the services and the Corps of Engineers may not seek any compensation for the value of the sediment.

(e) Congressional notification

Prior to accepting services provided by a non-Federal interest or commercial entity under this section, the Secretary shall provide to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate written notice of the acceptance of the services.

(f) Report to Congress

Not later than 3 years after October 23, 2018, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing the results of the program under this section.

(Pub. L. 106–541, title II, §215, Dec. 11, 2000, 114 Stat. 2594; Pub. L. 114–322, title I, §1115(a), Dec. 16, 2016, 130 Stat. 1638; Pub. L. 115–270, title I, §1146, Oct. 23, 2018, 132 Stat. 3786.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2000, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–270, §1146(1), substituted "October 23, 2018" for "December 16, 2016" and "shall, using available funds, accept" for "shall establish, using available funds, a pilot program to accept".

Subsec. (b)(4). Pub. L. 115–270, §1146(2), struck out par. (4) which read as follows: "limit the number of dams for which services are accepted to 10."

Subsec. (f). Pub. L. 115–270, §1146(3), added subsec. (f) and struck out former subsec. (f). Prior to amendment, text read as follows: "Upon completion of services at the 10 dams allowed under subsection (b)(4), the Secretary shall make publicly available and submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report documenting the results of the services."

2016—Pub. L. 114–322 amended section generally. Prior to amendment, section related to a program for direct marketing of dredged material and a pilot program for dredged material recycling.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–541, set out as a note under section 2201 of this title.

§2326d. Alternative projects to maintenance dredging

The Secretary may enter into agreements to assume the operation and maintenance costs of an alternative project to maintenance dredging for a Federal navigation channel if the costs of the operation and maintenance of the alternative project, and any remaining costs necessary for maintaining the Federal navigation channel, are less than the costs of maintaining such channel without the alternative project.

(Pub. L. 114–322, [title I](#), [§1106](#), [Dec. 16, 2016](#), 130 Stat. 1634.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114–322, set out as a note under section 2201 of this title.

§2326e. Non-Federal interest dredging authority

(a) In general

The Secretary may permit a non-Federal interest to carry out, for an authorized navigation project (or a separable element of an authorized navigation project), such maintenance activities as are necessary to ensure that the project is maintained to not less than the minimum project dimensions.

(b) Cost limitations

Except as provided in this section and subject to the availability of appropriations, the costs incurred by a non-Federal interest in performing the maintenance activities described in subsection (a) shall be eligible for reimbursement, not to exceed an amount that is equal to the estimated Federal cost for the performance of the maintenance activities, with any reimbursement subject to the non-Federal interest complying with all Federal laws and regulations that would apply to such maintenance activities if carried out by the Secretary.

(c) Agreement

Before initiating maintenance activities under this section, a non-Federal interest shall enter into an agreement with the Secretary that specifies, for the performance of the maintenance activities, the terms and conditions that are acceptable to the non-Federal interest and the Secretary.

(d) Provision of equipment

In carrying out maintenance activities under this section, a non-Federal interest shall—

- (1) provide equipment at no cost to the Federal Government; and
- (2) hold and save the United States free from any and all damage that arises from the use of the equipment of the non-Federal interest, except for damage due to the fault or negligence of a contractor of the Federal Government.

(e) Reimbursement eligibility limitations

Costs that are eligible for reimbursement under this section are the costs of maintenance activities directly related to the costs associated with operation and maintenance of a dredge based on the lesser of—

- (1) the costs associated with operation and maintenance of the dredge during the period of time that the dredge is being used in the performance of work for the Federal Government during a given fiscal year; or
- (2) the actual fiscal year Federal appropriations that are made available for the portion of the maintenance activities for which the dredge was used.

(f) Audit

Not earlier than 5 years after December 16, 2016, the Secretary may conduct an audit on any maintenance activities for an authorized navigation project (or a separable element of an authorized navigation project) carried out under this section to determine if permitting a non-Federal interest to carry out maintenance activities under this section has resulted in—

- (1) improved reliability and safety for navigation; and
- (2) cost savings to the Federal Government.

(g) Termination of authority

The authority of the Secretary under this section terminates on the date that is 10 years after December 16, 2016.

(Pub. L. 114–322, [title I](#), [§1113](#), [Dec. 16, 2016](#), 130 Stat. 1637.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114–322, set out as a note under section 2201 of this title.

§2326f. Maintenance dredging data

(a) In general

The Secretary shall establish, maintain, and make publicly available a database on maintenance dredging carried out by the Secretary, which shall include information on maintenance dredging carried out by Federal and non-Federal vessels.

(b) Scope

The Secretary shall include in the database maintained under subsection (a), for each maintenance dredging project and contract, estimated and actual data on—

- (1) the volume of dredged material removed;
- (2) the initial cost estimate of the Corps of Engineers;
- (3) the total cost, including a separate line item for all Federal costs associated with the disposal of dredged material;
- (4) the party and vessel carrying out the work; and
- (5) the number of private contractor bids received and the bid amounts, including bids that did not win the final contract award.

(Pub. L. 114–322, [title I](#), [§1133](#), [Dec. 16, 2016](#), 130 Stat. 1654; Pub. L. 117–263, [div. H](#), [title LXXXI](#), [§8207](#), [Dec. 23, 2022](#), 136 Stat. 3756.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—Subsec. (b)(3). Pub. L. 117–263 inserted ", including a separate line item for all Federal costs associated with the disposal of dredged material" before semicolon at end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114–322, set out as a note under section 2201 of this title.

§2326g. Beneficial use of dredged material; dredged material management plans**(a) National policy on the beneficial use of dredged material****(1) In general**

It is the policy of the United States for the Corps of Engineers to maximize the beneficial use, in an environmentally acceptable manner, of suitable dredged material obtained from the construction or operation and maintenance of water resources development projects.

(2) Placement of dredged materials**(A) In general**

In evaluating the placement of dredged material obtained from the construction or operation and maintenance of water resources development projects, the Secretary shall consider—

- (i) the suitability of the dredged material for a full range of beneficial uses; and
- (ii) the economic and environmental benefits, efficiencies, and impacts (including the effects on living coral) of using the dredged material for beneficial uses, including, in the case of beneficial use activities that involve more than one water resources development project, the benefits, efficiencies, and impacts that result from the combined activities.

(B) Calculation of Federal standard**(i) Determination**

The economic benefits and efficiencies from the beneficial use of dredged material considered by the Secretary under subparagraph (A) shall be included in any determination relating to the "Federal standard" by the Secretary under section 335.7 of title 33, Code of Federal Regulations, for the placement or disposal of such material.

(ii) Reports

The Secretary shall submit to Congress—

- (I) a report detailing the method and all of the factors utilized by the Corps of Engineers to determine the Federal standard referred to in clause (i); and
- (II) for each evaluation under subparagraph (A), a report displaying the calculations for economic and environmental benefits and efficiencies from the beneficial use of dredged material (including, where appropriate, the utilization of alternative dredging equipment and dredging disposal methods) considered by the Secretary under such subparagraph for the placement or disposal of such material.

(C) Omitted

(Pub. L. 116–260, div. AA, title I, §125(a), Dec. 27, 2020, 134 Stat. 2636.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter. Section is comprised of section 125(a) of div. AA of Pub. L. 116–260. Par. (2)(C) of section 125(a) of div. AA of Pub. L. 116–260 amended section 2326 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

§2326h. Five-year regional dredged material management plans**(1) In general**

Not later than 1 year after December 27, 2020, and annually thereafter, the District Commander of each district of the Corps of Engineers that obtains dredged material through the construction or operation and maintenance of a water resources development project shall, at Federal expense, develop and submit to the Secretary a 5-year dredged material management plan in coordination with relevant State agencies and stakeholders.

(2) Scope

Each plan developed under this subsection shall include—

- (A) a dredged material budget for each watershed or littoral system within the district;
- (B) an estimate of the amount of dredged material likely to be obtained through the construction or operation and maintenance of all water resources development projects projected to be carried out within the district during the 5-year period following submission of the plan, and the estimated timing for obtaining such dredged material;
- (C) an identification of potential water resources development projects projected to be carried out within the district during such 5-year period that are suitable for, or that require, the placement of dredged material, and an estimate of the amount of dredged material placement capacity of such projects;
- (D) an evaluation of—
 - (i) the suitability of the dredged material for a full range of beneficial uses; and
 - (ii) the economic and environmental benefits, efficiencies, and impacts (including the effects on living coral) of using the dredged material for beneficial uses, including, in the case of beneficial use activities that involve more than one water resources development project, the benefits, efficiencies, and impacts that result from the combined activities;
- (E) the district-wide goals for beneficial use of the dredged material, including any expected cost savings from aligning and coordinating multiple projects (including projects across Corps districts) in the use of the dredged material; and
- (F) a description of potential beneficial use projects identified through stakeholder solicitation and coordination.

(3) Public comment

In developing each plan under this subsection, each District Commander shall provide notice and an opportunity for public comment, including a solicitation for stakeholders to identify beneficial use projects, in order to ensure, to the extent practicable, that beneficial use of dredged material is not foregone in a particular fiscal year or dredging cycle.

(4) Public availability

Upon submission of each plan to the Secretary under this subsection, each District Commander shall make the plan publicly available, including on a publicly available website.

(5) Transmission to Congress

As soon as practicable after receiving a plan under subsection (a), the Secretary shall transmit the plan to Congress.

(6) Regional sediment management plans

A plan developed under this section—

- (A) shall be in addition to regional sediment management plans prepared under section 2326(a) of this title; and
- (B) shall not be subject to the limitations in section 2326(g) of this title.

(Pub. L. 116–260, div. AA, title I, §125(c), Dec. 27, 2020, 134 Stat. 2638.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

§2327. Definition of rehabilitation for inland waterway projects

For purposes of laws relating to navigation on inland and intracoastal waterways of the United States, the term "rehabilitation" means—

- (1) major project feature restoration—

- (A) which consists of structural work on an inland navigation facility operated and maintained by the Corps of Engineers;
- (B) which will significantly extend the physical life of the feature;
- (C) which is economically justified by a benefit-cost analysis;
- (D) which will take at least 2 years to complete; and
- (E)(i) which is initially funded before October 1, 1994, and will require at least \$5,000,000 in capital outlays; or
- (ii) which is initially funded on or after such date and will require at least \$20,000,000 in capital outlays; and

(2) structural modification of a major project component (not exhibiting reliability problems)—

- (A) which will enhance the operational efficiency of such component or any other major component of the project by increasing benefits beyond the original project design; and
- (B) which will require at least \$1,000,000 in capital outlays.

Such term does not include routine or deferred maintenance. The dollar amounts referred to in paragraphs (1) and (2) shall be adjusted annually according to the economic assumption published each year as guidance in the Annual Program and Budget Request for Civil Works Activities of the Corps of Engineers.

(Pub. L. 102–580, [title II, §205, Oct. 31, 1992](#), 106 Stat. 4827; Pub. L. 113–121, [title II, §2006\(a\)\(4\), June 10, 2014](#), 128 Stat. 1268.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2014—Par. (1)(E)(ii). Pub. L. 113–121 substituted "\$20,000,000" for "\$8,000,000".

§2327a. Rehabilitation of Corps of Engineers constructed pump stations

(a) Definitions

In this section:

(1) Eligible pump station

The term "eligible pump station" means a pump station—

- (A) that is a feature of—
 - (i) a federally authorized flood or coastal storm risk management project; or
 - (ii) an integrated flood risk reduction system that includes a federally authorized flood or coastal storm risk management project; and
- (B) the failure of which the Secretary has determined would demonstrably impact the function of the federally authorized flood or coastal storm risk management project.

(2) Rehabilitation

(A) In general

The term "rehabilitation", with respect to an eligible pump station, means to address a major deficiency of the eligible pump station caused by long-term degradation of the foundation, construction materials, or engineering systems or components of the eligible pump station.

(B) Inclusions

The term "rehabilitation", with respect to an eligible pump station, includes—

- (i) the incorporation into the eligible pump station of—
 - (I) current design standards;
 - (II) efficiency improvements; and
 - (III) associated drainage; and
- (ii) increasing the capacity of the eligible pump station, subject to the condition that the increase shall—
 - (I) significantly decrease the risk of loss of life and property damage; or
 - (II) decrease total lifecycle rehabilitation costs for the eligible pump station.

(b) Authorization

The Secretary may carry out rehabilitation of an eligible pump station, if the Secretary determines that—

- (1) the eligible pump station has a major deficiency; and
- (2) the rehabilitation is feasible.

(c) Cost sharing

The non-Federal interest for the eligible pump station shall—

- (1) provide 35 percent of the cost of rehabilitation of an eligible pump station carried out under this section; and
- (2) provide all land, easements, rights-of-way, and necessary relocations associated with the rehabilitation described in subparagraph (A), at no cost to the Federal Government.

(d) Agreement required

The rehabilitation of an eligible pump station pursuant to this section shall be initiated only after a non-Federal interest has entered into a binding agreement with the Secretary—

- (1) to pay the non-Federal share of the costs of rehabilitation under subsection (c); and
- (2) to pay 100 percent of the operation and maintenance costs of the rehabilitated eligible pump station, in accordance with regulations promulgated by the Secretary.

(e) Treatment

The rehabilitation of an eligible pump station pursuant to this section shall not be considered to be a separable element of the associated flood risk management project constructed by the Corps of Engineers.

(f) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$60,000,000, to remain available until expended.

(g) Prioritization

To the maximum extent practicable, the Secretary shall prioritize the rehabilitation of eligible pump stations under this section that benefit economically disadvantaged communities, as defined by the Secretary under section 160 of the Water Resources Development Act of 2020 (33 U.S.C. 2201 note), including economically disadvantaged communities located in urban and rural areas.

(Pub. L. 116–260, [div. AA, title I, §133, Dec. 27, 2020](#), 134 Stat. 2647; Pub. L. 117–263, [div. H, title LXXXI, §8152, Dec. 23, 2022](#), 136 Stat. 3733.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 160 of the Water Resources Development Act of 2020, referred to in subsec. (g), is section 160 of div. AA of Pub. L. 116–260, which is set out as a note under section 2201 of this title.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—Subsec. (a)(1). Pub. L. 117–263, §8152(1), added par. (1) and struck out former par. (1) which defined eligible pump station.

Subsec. (b). Pub. L. 117–263, §8152(2), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: "The Secretary may carry out rehabilitation of an eligible pump station, if the Secretary determines that the rehabilitation is feasible."

Subsec. (g). Pub. L. 117–263, §8152(3), added subsec. (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

§2328. Challenge cost-sharing program for management of recreation facilities

(a) In general

The Secretary is authorized to develop and implement a program to share the cost of managing recreation facilities and natural resources at water resource development projects under the Secretary's jurisdiction.

(b) Cooperative agreements

To implement the program under this section, the Secretary is authorized to enter into cooperative agreements with non-Federal public and private entities to provide for operation and management of recreation facilities and natural resources at civil works projects under the Secretary's jurisdiction where such facilities and resources are being maintained at complete Federal expense.

(c) User fees

(1) Collection of fees

(A) In general

The Secretary may allow a non-Federal public entity that has entered into an agreement pursuant to subsection (b) to collect user fees for the use of developed recreation sites and facilities, whether developed or constructed by that entity or the Department of the Army.

(B) Use of visitor reservation services

A non-Federal public entity described in subparagraph (A) may use, to manage fee collections and reservations under this section, any visitor reservation service that the Secretary has provided for by contract or interagency agreement, subject to such terms and conditions as the Secretary determines to be appropriate.

(2) Use of fees

A non-Federal public entity that collects user fees under paragraph (1)—

(A) may retain up to 100 percent of the fees collected, as determined by the Secretary; and

(B) notwithstanding section 460d–3(b)(4) of title 16, shall use any retained amount for operation, maintenance, and management activities at the recreation site at which the fee is collected.

(3) Terms and conditions

The authority of a non-Federal public entity under this subsection shall be subject to such terms and conditions as the Secretary determines necessary to protect the interests of the United States.

(d) Contributions

For purposes of carrying out this section the Secretary may accept contributions of funds, materials, and services from non-Federal public and private entities. Any funds received by the Secretary under this section shall be deposited into the account in the Treasury of the United States entitled "Contributions and Advances, Rivers and Harbors, Corps of Engineers (8862)" and shall be available until expended to carry out the purposes of this section.

(Pub. L. 102–580, [title II, §225, Oct. 31, 1992](#), 106 Stat. 4838; Pub. L. 104–303, [title II, §236\(b\), Oct. 12, 1996](#), 110 Stat. 3705; Pub. L. 114–322, [title I, §1155, Dec. 16, 2016](#), 130 Stat. 1663.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Subsecs. (c), (d). Pub. L. 114–322 added subsec. (c) and redesignated former subsec. (c) as (d).

1996—Subsec. (c). Pub. L. 104–303 substituted "(8862)" for "(8662)".

RECREATION PARTNERSHIP INITIATIVE

Pub. L. 104–303, [title V, §519, Oct. 12, 1996](#), 110 Stat. 3765, as amended by Pub. L. 106–53, [title III, §350\(a\), Aug. 17, 1999](#), 113 Stat. 310, provided that:

"(a) IN GENERAL.—The Secretary shall promote Federal, non-Federal, and private sector cooperation in creating public recreation opportunities and developing the necessary supporting infrastructure at water resources projects of the Corps of Engineers.

"(b) INFRASTRUCTURE IMPROVEMENTS.—

"(1) RECREATION INFRASTRUCTURE IMPROVEMENTS.—In determining the feasibility of the public-private cooperative under subsection (a), the Secretary shall provide such infrastructure improvements as are necessary to support a potential private recreational development at the Raystown Lake Project, Pennsylvania, generally in accordance with the Master Plan Update (1994) for the project.

"(2) AGREEMENT.—The Secretary shall enter into an agreement with an appropriate non-Federal public entity to ensure that the infrastructure improvements constructed by the Secretary on non-project lands pursuant to paragraph (1) are transferred to and operated and maintained by the non-Federal public entity.

"(3) ENGINEERING AND DESIGN SERVICES.—The Secretary may perform engineering and design services for project infrastructure expected to be associated with the development of the site at Raystown Lake, Hesston, Pennsylvania.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$3,000,000.

"(c) REPORT.—Not later than December 31, 1998, the Secretary shall transmit to Congress a report on the results of the cooperative efforts carried out under this section, including the improvements required by subsection (b)."

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102–580, set out as a note under section 2201 of this title.

§2328a. Special use permits

(a) Special use permits

(1) In general

The Secretary may issue special permits for uses such as group activities, recreation events, motorized recreation vehicles, and such other specialized recreation uses as the Secretary determines to be appropriate, subject to such terms and conditions as the Secretary determines to be in the best interest of the Federal Government.

(2) Fees

(A) In general

In carrying out this subsection, the Secretary may—

(i) establish and collect fees associated with the issuance of the permits described in paragraph (1); or

(ii) accept in-kind services in lieu of those fees.

(B) Outdoor recreation equipment

The Secretary may establish and collect fees for the provision of outdoor recreation equipment and services for activities described in paragraph (1) at public recreation areas located at lakes and reservoirs operated by the Corps of Engineers.

(C) Use of fees

Any fees generated pursuant to this subsection shall be—

(i) retained at the site collected; and

(ii) available for use, without further appropriation, solely for administering the special permits under this subsection and carrying out related operation and maintenance activities at the site at which the fees are collected.

(b) Cooperative management

(1) Program

(A) In general

Subject to subparagraph (B), the Secretary may enter into an agreement with a State or local government to provide for the cooperative management of a public recreation area if—

(i) the public recreation area is located—

(I) at a lake or reservoir operated by the Corps of Engineers; and

(II) adjacent to or near a State or local park or recreation area; and

(ii) the Secretary determines that cooperative management between the Corps of Engineers and a State or local government agency of a portion of the Corps of Engineers recreation area or State or local park or recreation area will allow for more effective and efficient management of those areas.

(B) Restriction

The Secretary may not transfer administration responsibilities for any public recreation area operated by the Corps of Engineers.

(2) Acquisition of goods and services

The Secretary may acquire from or provide to a State or local government with which the Secretary has entered into a cooperative agreement under paragraph (1) goods and services to be used by the Secretary and the State or local government in the cooperative management of the areas covered by the agreement.

(3) Administration

The Secretary may enter into 1 or more cooperative management agreements or such other arrangements as the Secretary determines to be appropriate, including leases or licenses, with non-Federal interests to share the costs of operation, maintenance, and management of recreation facilities and natural resources at recreation areas that are jointly managed and funded under this subsection.

(c) Use of funds

(1) In general

If the Secretary determines that it is in the public interest for purposes of enhancing recreation opportunities at Corps of Engineers water resources development projects, the Secretary may use funds made available to the Secretary to support activities carried out by State, local, and tribal governments and such other public or private nonprofit entities as the Secretary determines to be appropriate.

(2) Cooperative agreements

Any use of funds pursuant to this subsection shall be carried out through the execution of a cooperative agreement, which shall contain such terms and conditions as the Secretary determines to be necessary in the public interest.

(Pub. L. 113–121, [title I, §1047, June 10, 2014](#), 128 Stat. 1255.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

Section is comprised of section 1047 of Pub. L. 113–121. Subsecs. (d) and (e) of section 1047 of Pub. L. 113–121 amended sections 569c and 2339 of this title, respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2329. International outreach program

(a) Authorization

(1) In general

The Secretary may engage in activities to inform the United States of technological innovations abroad that could significantly improve water resources development in the United States.

(2) Inclusions

Activities under paragraph (1) may include—

- (A) development, monitoring, assessment, and dissemination of information about foreign water resources projects that could significantly improve water resources development in the United States;
- (B) research, development, training, and other forms of technology transfer and exchange; and
- (C) offering technical services that cannot be readily obtained in the private sector to be incorporated into water resources projects if the costs for assistance will be recovered under the terms of each project.

(b) Cooperation

The Secretary may carry out the provisions of this section in cooperation with Federal departments and agencies, State and local agencies, authorities, institutions, corporations (profit or nonprofit), foreign governments, or other organizations.

(c) Funding

The funds to carry out the provisions of this section shall include funds deposited in a special account with the Secretary of the Treasury for such purposes by any cooperating entity or organization according to cost-sharing agreements proscribed by the Secretary. Reimbursement for services provided under this section shall be credited to the appropriation concerned.

(Pub. L. 102–580, [title IV, §401, Oct. 31, 1992](#), 106 Stat. 4862; Pub. L. 114–322, [title I, §1138, Dec. 16, 2016](#), 130 Stat. 1657.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–322 amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized the Secretary to engage in activities to inform the United States maritime industry and port authorities of technological innovations abroad that could significantly improve waterborne transportation in the United States, both inland and deep draft.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102–580, set out as a note under section 2201 of this title.

§2330. Aquatic ecosystem restoration

(a) General authority

(1) In general

The Secretary may carry out a project to restore and protect an aquatic ecosystem or estuary if the Secretary determines that the project—

- (A)(i) will improve the quality of the environment and is in the public interest; or
- (ii) will improve the elements and features of an estuary (as defined in section 2902 of this title); and
- (B) is cost-effective.

(2) Dam removal

A project under this section may include removal of a dam.

(3) Anadromous fish habitat and passage

(A) Measures

A project under this section may include measures to improve habitat or passage for anadromous fish, including—

- (i) installing fish bypass structures on small water diversions;
- (ii) modifying tide gates; and
- (iii) restoring or reconnecting floodplains and wetlands that are important for anadromous fish habitat or passage.

(B) Benefits

A project that includes measures under this paragraph shall be formulated to maximize benefits for the anadromous fish species benefitted by the project.

(b) Cost sharing

(1) In general

Non-Federal interests shall provide 35 percent of the cost of construction of any project carried out under this section, including provision of all lands, easements, rights-of-way, and necessary relocations.

(2) Form

Before October 1, 2003, the Federal share of the cost of a project under this section may be provided in the form of reimbursements of project costs.

(c) Agreements

(1) In general

Construction of a project under this section shall be initiated only after a non-Federal interest has entered into a binding agreement with the Secretary to pay the non-Federal share of the costs of construction required by this section and to pay 100 percent of any operation, maintenance, and replacement and rehabilitation costs with respect to the project in accordance with regulations prescribed by the Secretary.

(2) Nonprofit entities

Notwithstanding section 1962d–5b of title 42, for any project carried out under this section, a non-Federal interest may include a nonprofit entity, with the consent of the affected local government.

(d) Cost limitation

Not more than \$10,000,000 in Federal funds may be allotted under this section for a project at any single locality.

(e) Use of natural and nature-based features
In carrying out a project to restore and protect an aquatic ecosystem or estuary under subsection (a), the Secretary shall consider, and may include, with the consent of the non-Federal interest, a natural feature or nature-based feature, as such terms are defined in section 2289a of this title, if the Secretary determines that inclusion of such features is consistent with the requirements of subsection (a).

(f) Funding
There is authorized to be appropriated to carry out this section \$62,500,000 for each fiscal year.

(g) Prioritization
The Secretary shall give projects that include measures described in subsection (a)(3) equal priority for implementation as other projects under this section.
(Pub. L. 104–303, [title II, §206, Oct. 12, 1996](#), 110 Stat. 3679; Pub. L. 106–53, [title II, §210, Aug. 17, 1999](#), 113 Stat. 287; Pub. L. 110–114, [title II, §2020, Nov. 8, 2007](#), 121 Stat. 1078; Pub. L. 113–121, [title I, §1030\(g\), June 10, 2014](#), 128 Stat. 1232; Pub. L. 115–270, [title I, §§1149\(a\), 1157\(f\), Oct. 23, 2018](#), 132 Stat. 3787, 3794; Pub. L. 116–260, [div. AA, title I, §126\(a\), Dec. 27, 2020](#), 134 Stat. 2640.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2020—Subsec. (a)(3). Pub. L. 116–260, §126(a)(1), added par. (3).
Subsec. (g). Pub. L. 116–260, §126(a)(2), added subsec. (g).
2018—Subsec. (e). Pub. L. 115–270, §1149(a)(2), added subsec. (e). Former subsec. (e) redesignated (f).
Subsec. (f). Pub. L. 115–270, §§1149(a)(1), 1157(f), redesignated subsec. (e) as (f) and substituted "\$62,500,000" for "\$50,000,000".
2014—Subsec. (d). Pub. L. 113–121 substituted "\$10,000,000" for "\$5,000,000".
2007—Subsec. (a). Pub. L. 110–114, §2020(1), added subsec. (a) and struck out former subsec. (a), which read as follows:
"(a) GENERAL AUTHORITY.—The Secretary may carry out an aquatic ecosystem restoration and protection project if the Secretary determines that the project—
"(1) will improve the quality of the environment and is in the public interest; and
"(2) is cost-effective."
Subsec. (e). Pub. L. 110–114, §2020(2), substituted "\$50,000,000" for "\$25,000,000".
1999—Subsec. (b). Pub. L. 106–53, §210(1), designated existing provisions as par. (1), inserted heading, and added par. (2).
Subsec. (c). Pub. L. 106–53, §210(2), designated existing provisions as par. (1), inserted heading, and added par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104–303, set out as a note under section 2201 of this title.

§2330a. Monitoring ecosystem restoration

(a) In general
In conducting a feasibility study for a project (or a component of a project) for ecosystem restoration, the Secretary shall ensure that the recommended project includes, as an integral part of the project, a plan for monitoring the success of the ecosystem restoration.

(b) Monitoring plan
The monitoring plan shall—
(1) include a description of the monitoring activities to be carried out, the criteria for ecosystem restoration success, and the estimated cost and duration of the monitoring; and
(2) specify that the monitoring shall continue until such time as the Secretary determines that the criteria for ecosystem restoration success will be met.

(c) Cost share
For a period of 10 years from completion of construction of a project (or a component of a project) for ecosystem restoration, the Secretary shall consider the cost of carrying out the monitoring as a project cost. If the monitoring plan under subsection (b) requires monitoring beyond the 10-year period, the cost of monitoring shall be a non-Federal responsibility.

(d) Inclusions
A monitoring plan under subsection (b) shall include a description of—
(1) the types and number of restoration activities to be conducted;
(2) the physical action to be undertaken to achieve the restoration objectives of the project;
(3) the functions and values that will result from the restoration plan; and
(4) a contingency plan for taking corrective actions in cases in which monitoring demonstrates that restoration measures are not achieving ecological success in accordance with criteria described in the monitoring plan.

(e) Conclusion of operation and maintenance responsibility
The responsibility of a non-Federal interest for operation and maintenance of the nonstructural and nonmechanical elements of a project, or a component of a project, for ecosystem restoration shall cease 10 years after the date on which the Secretary makes a determination of success under subsection (b)(2).

(f) Federal obligations
The Secretary is not responsible for the operation or maintenance of any components of a project with respect to which a non-Federal interest is released from obligations under subsection (e).
(Pub. L. 110–114, [title II, §2039, Nov. 8, 2007](#), 121 Stat. 1100; Pub. L. 114–322, [title I, §1161, Dec. 16, 2016](#), 130 Stat. 1668.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Subsecs. (d) to (f). Pub. L. 114–322 added subsecs. (d) to (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2330b. Fish hatcheries

(a) In general
Notwithstanding any other provision of law, the Secretary may operate a fish hatchery for the purpose of restoring a population of fish species located in the region surrounding the fish hatchery that is listed as a threatened species or an endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or a similar State law.

(b) Costs
A non-Federal entity, another Federal agency, or a group of non-Federal entities or other Federal agencies shall be responsible for 100 percent of the additional costs associated with managing a fish hatchery for the purpose described in subsection (a) that are not authorized as of December 16, 2016, for the fish hatchery.
(Pub. L. 114–322, [title I, §1168, Dec. 16, 2016](#), 130 Stat. 1671.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (a), is Pub. L. 93–205, [Dec. 28, 1973](#), 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114–322, set out as a note under section 2201 of this title.

§2330c. Aquatic ecosystem restoration

(a) Definition of eligible entity

In this section, the term "eligible entity" means—

- (1) any State, Indian Tribe, irrigation district, or water district;
- (2) any State, regional, or local authority, the members of which include 1 or more organizations with water or power delivery authority;
- (3) any other entity or organization that owns a facility that is eligible for upgrade, modification or removal under this section;
- (4) any nonprofit conservation organization, acting in partnership with any entity listed in paragraphs (1) through (3), with respect to a project involving land or infrastructure owned by the entity; and
- (5) an agency established under State law for the joint exercise of powers or a combination of entities described in paragraphs (1) through (4).

(b) General authority

(1) In general

Subject to the requirements of this section and paragraph (2), on request of any eligible entity the Secretary may negotiate and enter into an agreement on behalf of the United States to fund the design, study, and construction of an aquatic ecosystem restoration and protection project in a Reclamation State if the Secretary determines that the project is likely to improve the health of fisheries, wildlife or aquatic habitat, including through habitat restoration and improved fish passage via the removal or bypass of barriers to fish passage.

(2) Exception

With respect to an aquatic ecosystem restoration and protection project under this section that removes a dam or modifies a dam in a manner that reduces storage or diversion capacity, the Secretary may only negotiate and enter into an agreement to fund—

- (A) the design or study of such project if the Secretary has received consent from the owner of the applicable dam; or
- (B) the construction of such project if the Secretary—
 - (i) identifies any eligible entity that receives water or power from the facility that is under consideration for removal or modification at the time of the request;
 - (ii) notifies each eligible entity identified in clause (i) that the dam removal or modification project has been requested; and
 - (iii) does not receive, by the date that is 120 days after the date on which all eligible entities have been notified under clause (ii), written objection from 1 or more eligible entities that collectively receive 1/3 or more of the water or power delivered from the facility that is under consideration for removal or modification at the time of the request.

(c) Requirements

(1) In general

The Secretary shall accept and consider public comment prior to initiating design, study or development of a project under this section.

(2) Preconditions

Construction of a project under this section shall be a voluntary project initiated only after—

- (A) an eligible entity has entered into an agreement with the Secretary to pay no less than 35 percent of the costs of project construction;
- (B) an eligible entity has entered an agreement to pay 100 percent of any operation, maintenance, and replacement and rehabilitation costs with respect to the project;
- (C) the Secretary determines the proposed project—
 - (i) will not result in an unmitigated adverse impact on fulfillment of existing water delivery obligations consistent with historical operations and applicable contracts;
 - (ii) will not result in an unmitigated adverse effect on the environment;
 - (iii) is consistent with the responsibilities of the Secretary—
 - (I) in the role as trustee for federally recognized Indian Tribes; and
 - (II) to ensure compliance with any applicable international and Tribal treaties and agreements and interstate compacts and agreements;
 - (iv) is in the financial interest of the United States based on a determination that the project advances Federal objectives including environmental enhancement objectives in a Reclamation State; and
 - (v) complies with all applicable Federal and State law, including environmental laws; and
- (D) the Secretary has complied with all applicable environmental laws, including—
 - (i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
 - (ii) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and
 - (iii) subtitle III of title 54.

(d) Funding

There is authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2022 through 2026, to remain available until expended.

(e) Effects

(1) In general

Nothing in this section supersedes or limits any existing authority provided, or responsibility conferred, by any provision of law.

(2) Effect on state water law

Nothing in this section preempts or affects any—

- (A) State water law; or
- (B) interstate compact governing water.

(f) Compliance required

The Secretary shall comply with applicable State water laws in carrying out this section.

(g) Priority for projects providing regional benefits and assistance for aging assets

When funding projects under this section, the Secretary shall prioritize projects that—

- (1) are jointly developed and supported by a diverse array of stakeholders including representatives of irrigated agricultural production, hydroelectric production, potable water purveyors and industrial water users, Indian Tribes, commercial fishing interests, and nonprofit conservation organizations;
- (2) affect water resources management in 2 or more river basins while providing regional benefits not limited to fisheries restoration;
- (3) are a component of a broader strategy or plan to replace aging facilities with 1 or more alternate facilities providing similar benefits; and
- (4) contribute to the restoration of anadromous fish species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(Pub. L. 116–260, div. FF, title XI, §1109, Dec. 27, 2020, 134 Stat. 3244.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c)(2)(D)(i), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Endangered Species Act of 1973, referred to in subsecs. (c)(2)(D)(ii) and (g)(4), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

CODIFICATION

Section was enacted as part of Consolidated Appropriations Act, 2021, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

Pub. L. 116–260, div. FF, title XI, §1115, Dec. 27, 2020, 134 Stat. 3251, provided that: "In this title [enacting this section and sections 390g–9 and 1477 of Title 43, Public Lands, and amending sections 1015 and 1015a of Title 16, Conservation, sections 1645 and 1647b of Title 25, Indians, sections 10362 and 10364 of Title 42, The Public Health and Welfare, section 510b of Title 43, and provisions set out as notes under sections 10301 and 10364 of Title 42]:

"(1) INDIAN TRIBE.—The term 'Indian Tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

"(2) RECLAMATION STATE.—The term 'Reclamation State' means a State or territory described in the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 391).

"(3) SECRETARY.—The term 'Secretary' means the Secretary of the Interior."

[The first paragraph of 43 U.S.C. 391 is comprised of act [June 17, 1902, ch. 1093, §1 \(part\)](#), 32 Stat. 388. The second paragraph of 43 U.S.C. 391 is comprised of act [June 12, 1906, ch. 3288](#), 34 Stat. 259, as amended. See Codification note under section 391 of Title 43, Public Lands.]

§2330d. Public recreational amenities in ecosystem restoration projects

At the request of a non-Federal interest, the Secretary is authorized to study the incorporation of public recreational amenities, including facilities for hiking, biking, walking, and waterborne recreation, into a project for ecosystem restoration, including a project carried out under section 2330 of this title, if the incorporation of such amenities would be consistent with the ecosystem restoration purposes of the project.

(Pub. L. 117–263, [div. H, title LXXXI, §8105, Dec. 23, 2022](#), 136 Stat. 3699.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2022, and also as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 8002 of Pub. L. 117–263, set out as a note under section 2201 of this title.

§2331. Use of continuing contracts for construction of certain projects

(a) In general

Notwithstanding any other provision of law, the Secretary shall not implement a fully allocated funding policy with respect to a water resource project if initiation of construction has occurred but sufficient funds are not available to complete the project.

(b) Continuing contracts

The Secretary shall enter into a continuing contract for a project described in subsection (a).

(c) Initiation of construction clarified

For the purposes of this section, initiation of construction for a project occurs on the date of enactment of an Act that appropriates funds for the project from 1 of the following appropriation accounts:

- (1) Construction, General.
- (2) Operation and Maintenance, General.
- (3) Flood Control, Mississippi River and Tributaries.

(Pub. L. 106–53, [title II, §206, Aug. 17, 1999](#), 113 Stat. 286.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–53, set out as a note under section 2201 of this title.

§2331a. Initiating work on separable elements

With respect to a water resources development project that has received construction funds in the previous 6-year period, for purposes of initiating work on a separable element of the project—

- (1) no new start or new investment decision shall be required; and
- (2) the work shall be treated as ongoing work.

(Pub. L. 114–322, [title I, §1146, Dec. 16, 2016](#), 130 Stat. 1659.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

§2332. Shoreline and riverine protection and restoration

(a) In general

The Secretary may carry out studies and projects to—

- (1) reduce flood and hurricane and storm damage hazards; or
- (2) restore the natural functions and values of rivers and shorelines throughout the United States.

(b) Studies and projects

(1) Authority

(A) Studies

In carrying out subsection (a), the Secretary may carry out studies to identify appropriate measures for—

- (i) the reduction of flood and hurricane and storm damage hazards, including measures for erosion mitigation and bank stabilization; or
- (ii) the conservation and restoration of the natural functions and values of rivers and shorelines.

(B) Projects

Subject to subsection (f)(2), in carrying out subsection (a), the Secretary may design and implement projects described in subsection (a).

(2) Consultation and coordination

The studies and projects carried out under this section shall be conducted, to the maximum extent practicable, in consultation and coordination with the Federal Emergency Management Agency and other appropriate Federal agencies, and in consultation and coordination with appropriate State and local agencies and tribes.

(3) Nonstructural approaches

The studies and projects shall emphasize, to the maximum extent practicable and appropriate, nonstructural approaches to preventing or reducing flood and hurricane and storm damages, including the use of natural features or nature-based features.

(4) Participation

The studies and projects shall be conducted, to the maximum extent practicable, in cooperation with State and local agencies and tribes to ensure the coordination of local flood and hurricane and storm damage reduction or riverine, shoreline, and wetland restoration studies with projects that conserve, restore, and manage hydrologic and hydraulic regimes and restore the natural functions and values of floodplains and coastal barriers.

(c) Cost-sharing requirements

(1) Studies

Studies conducted under this section shall be subject to cost sharing in accordance with section 2215 of this title, except that the first \$200,000 of the costs of a study conducted under this section shall be at Federal expense.

(2) Environmental restoration and nonstructural projects

(A) In general

Design and construction of a project under this section that includes a nonstructural measure, a natural feature or nature-based feature, or an environmental restoration measure, shall be subject to cost sharing in accordance with section 2213 of this title, except that the non-Federal share of the cost to design and construct such a project benefitting an economically disadvantaged community (including economically disadvantaged communities located in urban and rural areas) shall be 10 percent.

(B) Items provided by non-Federal interests

The non-Federal interests shall provide all land, easements, rights-of-way, dredged material disposal areas, and relocations necessary for such projects.

(C) Credit

The value of such land, easements, rights-of-way, dredged material disposal areas, and relocations shall be credited toward the payment required under this paragraph.

(3) Structural flood control or hurricane and storm damage reduction projects

Any structural flood control or hurricane and storm damage reduction projects carried out under this section shall be subject to cost sharing in accordance with section 2213 of this title, except that the non-Federal share of the cost to design and construct such a project benefitting an economically disadvantaged community (including economically disadvantaged communities located in urban and rural areas) shall be 10 percent.

(4) Operation and maintenance

The non-Federal interests shall be responsible for all costs associated with operating, maintaining, replacing, repairing, and rehabilitating all projects carried out under this section.

(d) Project justification

Notwithstanding any requirement for economic justification established under section 1962–2 of title 42, the Secretary may implement a project under this section if the Secretary determines that the project—

- (1) will significantly reduce potential flood, hurricane and storm, or erosion damages;
- (2) will improve the quality of the environment; and
- (3) is justified considering all costs and beneficial outputs of the project.

(e) Areas for Examination

(1) In general

In carrying out this section, the Secretary shall examine appropriate locations, including—

- (A) Pima County, Arizona, at Paseo De Las Iglesias and Rillito River;
- (B) Coachella Valley, Riverside County, California;
- (C) Los Angeles and San Gabriel Rivers, California;
- (D) Murrieta Creek, California;
- (E) Napa River Valley watershed, California, at Yountville, St. Helena, Calistoga, and American Canyon;
- (F) Santa Clara basin, California, at Upper Guadalupe River and Tributaries, San Francisquito Creek, and Upper Penitencia Creek;
- (G) Pond Creek, Kentucky;
- (H) Red River of the North, Minnesota, North Dakota, and South Dakota;
- (I) Connecticut River, New Hampshire;
- (J) Pine Mount Creek, New Jersey;
- (K) Southwest Valley, Albuquerque, New Mexico;
- (L) Upper Delaware River, New York;
- (M) Briar Creek, North Carolina;
- (N) Chagrin River, Ohio;
- (O) Mill Creek, Cincinnati, Ohio;
- (P) Tillamook County, Oregon;
- (Q) Willamette River basin, Oregon;
- (R) Blair County, Pennsylvania, at Altoona and Frankstown Township;
- (S) Delaware River, Pennsylvania;
- (T) Schuylkill River, Pennsylvania;
- (U) Providence County, Rhode Island;
- (V) Shenandoah River, Virginia;
- (W) Lincoln Creek, Wisconsin;
- (X) Perry Creek, Iowa;
- (Y) Lester, St. Louis, East Savanna, and Floodwood Rivers, Duluth, Minnesota;
- (Z) Lower Hudson River and tributaries, New York;
- (AA) Susquehanna River watershed, Bradford County, Pennsylvania;
- (BB) Clear Creek, Harris, Galveston, and Brazoria Counties, Texas;
- (CC) Ascension Parish, Louisiana;
- (DD) East Baton Rouge Parish, Louisiana;
- (EE) Iberville Parish, Louisiana;
- (FF) Livingston Parish, Louisiana; and
- (GG) Pointe Coupee Parish, Louisiana.

(2) Priority projects

In carrying out this section, the Secretary shall prioritize projects for the following locations:

- (A) Delaware beaches and watersheds, Delaware.
- (B) Louisiana Coastal Area, Louisiana.
- (C) Great Lakes Shores and Watersheds.
- (D) Oregon Coastal Area and Willamette River basin, Oregon.
- (E) Upper Missouri River Basin.
- (F) Ohio River Tributaries and their watersheds, West Virginia.
- (G) Chesapeake Bay watershed and Maryland beaches, Maryland.
- (H) City of Southport, North Carolina.
- (I) Maumee River, Ohio.
- (J) Los Angeles and San Gabriel Rivers, California.
- (K) Kentucky River and its tributaries and watersheds.

(f) Procedure

(1) All projects

The Secretary shall not implement any project under this section until—

- (A) the Secretary submits to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a written notification describing the project and the determinations made under subsection (d)(1); and
- (B) 21 calendar days have elapsed after the date on which the notification was received by the committees.

(2) Projects requiring specific authorization

If the Federal share of the cost to design and construct a project under this section exceeds \$15,000,000, the Secretary may only carry out the project if Congress enacts a law authorizing the Secretary to carry out the project.

(g) Definitions

In this section:

(1) Economically disadvantaged community

The term "economically disadvantaged community" has the meaning given the term as defined by the Secretary under section 160 of the Water Resources Development Act of 2020 (33 U.S.C. 2201 note).

(2) Natural feature; nature-based feature

The terms "natural feature" and "nature-based feature" have the meanings given those terms in section 2289a(a) of this title.

(Pub. L. 106–53, title II, §212, Aug. 17, 1999, 113 Stat. 288; Pub. L. 106–541, title II, §227, Dec. 11, 2000, 114 Stat. 2599; Pub. L. 110–114, title V, §5005, Nov. 8, 2007, 121 Stat. 1192; Pub. L. 117–263, div. H, title LXXXI, §8103(a), Dec. 23, 2022, 136 Stat. 3696.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 160 of the Water Resources Development Act of 2020, referred to in subsec. (g)(1), is section 160 of div. AA of Pub. L. 116–260, which is set out as a note under section 2201 of this title.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—Pub. L. 117–263, §8103(a)(1), substituted "Shoreline and riverine protection and restoration" for "Flood mitigation and riverine restoration program" in section catchline.

Subsec. (a). Pub. L. 117–263, §8103(a)(2), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The Secretary may undertake a program for the purpose of conducting projects to reduce flood hazards and restore the natural functions and values of rivers throughout the United States."

Subsec. (b)(1). Pub. L. 117–263, §8103(a)(3)(A) added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "In carrying out the program, the Secretary may conduct studies to identify appropriate flood damage reduction, conservation, and restoration measures and may design and implement projects described in subsection (a)."

Subsec. (b)(3). Pub. L. 117–263, §8103(a)(3)(B), substituted "flood and hurricane and storm damages, including the use of natural features or nature-based features" for "flood damages".

Subsec. (b)(4). Pub. L. 117–263, §8103(a)(3)(C), inserted "and hurricane and storm" after "flood", ", shoreline," after "riverine", and "and coastal barriers" after "floodplains".

Subsec. (c)(1). Pub. L. 117–263, §8103(a)(4)(A), inserted ", except that the first \$200,000 of the costs of a study conducted under this section shall be at Federal expense" before period at end.

Subsec. (c)(2). Pub. L. 117–263, §8103(a)(4)(B)(i), struck out "flood control" after "nonstructural" in heading.

Subsec. (c)(2)(A). Pub. L. 117–263, §8103(a)(4)(B)(ii), added subpar. (A) and struck out former subpar. (A). Prior to amendment, text read as follows: "The non-Federal interests shall pay 35 percent of the cost of any environmental restoration or nonstructural flood control project carried out under this section."

Subsec. (c)(3). Pub. L. 117–263, §8103(a)(4)(C), inserted "or hurricane and storm damage reduction" after "flood control" in heading and text, and substituted "section 2213 of this title, except that the non-Federal share of the cost to design and construct such a project benefitting an economically disadvantaged community (including economically disadvantaged communities located in urban and rural areas) shall be 10 percent" for "section 2213(a) of this title" in text.

Subsec. (d). Pub. L. 117–263, §8103(a)(5), added subsec. (d) and struck out former subsec. (d) which related to project justification.

Subsec. (e). Pub. L. 117–263, §8103(a)(6), substituted "Areas for Examination" for "Priority areas" in subsec. heading, designated existing provisions as par. (1) and inserted par. heading, redesignated former pars. (1) to (33) as subpars. (AA) to (GG), respectively, of par. (1) and realigned margins, and added par. (2).

Subsec. (f). Pub. L. 117–263, §8103(a)(7), (8), redesignated subsec. (h) as (f) and struck out former subsec. (f) which related to program review.

Subsec. (f)(2). Pub. L. 117–263, §8103(a)(9), added par. (2) and struck out former par. (2) which related to projects exceeding \$15,000,000.

Subsec. (g). Pub. L. 117–263, §8103(a)(7), (10), added subsec. (g) and struck out former subsec. (g). Prior to amendment, text read as follows: "Not more than \$30,000,000 may be expended by the United States on any single project under this section."

Subsec. (h). Pub. L. 117–263, §8103(a)(8), redesignated subsec. (h) as (f).

Subsec. (i). Pub. L. 117–263, §8103(a)(7), struck out subsec. (i) which related to authorization of appropriations.

2007—Subsec. (e)(23). Pub. L. 110–114, §5005(a)(1), struck out "and" at end.

Subsec. (e)(29) to (33). Pub. L. 110–114, §5005(a), added pars. (29) to (33).

Subsec. (i)(1). Pub. L. 110–114, §5005(b), substituted "section \$20,000,000" for "section—

"(A) \$20,000,000 for fiscal year 2001;

"(B) \$30,000,000 for fiscal year 2002; and

"(C) \$50,000,000 for each of fiscal years 2003 through 2005".

2000—Subsec. (e)(24) to (28). Pub. L. 106–541 added pars. (24) to (28).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–53, set out as a note under section 2201 of this title.

§2333. Irrigation diversion protection and fisheries enhancement assistance

(a) In general

The Secretary may provide technical planning and design assistance to non-Federal interests and may conduct other site-specific studies to formulate and evaluate fish screens, fish passages devices, and other measures to decrease the incidence of juvenile and adult fish inadvertently entering irrigation systems.

(b) Cooperation

Measures under subsection (a)—

- (1) shall be developed in cooperation with Federal and State resource agencies; and
- (2) shall not impair the continued withdrawal of water for irrigation purposes.

(c) Priority

In providing assistance under subsection (a), the Secretary shall give priority based on—

- (1) the objectives of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
- (2) cost-effectiveness; and
- (3) the potential for reducing fish mortality.

(d) Non-Federal share

(1) In general

The non-Federal share of the cost of measures under subsection (a) shall be 50 percent.

(2) In-kind contributions

Not more than 50 percent of the non-Federal contribution may be made through the provision of services, materials, supplies, or other in-kind contributions.

(e) No construction activity

This section does not authorize any construction activity.

(f) Report

Not later than 2 years after August 17, 1999, the Secretary shall submit to Congress a report on—

- (1) fish mortality caused by irrigation water intake devices;
- (2) appropriate measures to reduce fish mortality;
- (3) the extent to which those measures are currently being employed in arid States;
- (4) the construction costs associated with those measures; and
- (5) the appropriate Federal role, if any, to encourage the use of those measures.

(Pub. L. 106–53, title V, §515, Aug. 17, 1999, 113 Stat. 344.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (c)(1), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified generally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–53, set out as a note under section 2201 of this title.

§2334. Innovative technologies for watershed restoration

The Secretary shall examine using, and, if appropriate, encourage the use of, innovative treatment technologies, including membrane technologies, for watershed and environmental restoration and protection projects involving water quality.

(Pub. L. 106–53, title V, §516, Aug. 17, 1999, 113 Stat. 344.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–53, set out as a note under section 2201 of this title.

§2335. Coastal aquatic habitat management**(a) In general**

The Secretary may cooperate with the Secretaries of Agriculture and the Interior, the Administrators of the Environmental Protection Agency and the National Oceanic and Atmospheric Administration, other appropriate Federal, State, and local agencies, and affected private entities, in the development of a management strategy to address problems associated with toxic microorganisms and the resulting degradation of ecosystems in the tidal and nontidal wetlands and waters of the United States.

(b) Assistance

As part of the management strategy, the Secretary may provide planning, design, and other technical assistance to each participating State in the development and implementation of nonregulatory measures to mitigate environmental problems and restore aquatic resources.

(c) Cost sharing

The Federal share of the cost of measures undertaken under this section shall not exceed 65 percent.

(d) Operation and maintenance

The non-Federal share of operation and maintenance costs for projects constructed with assistance provided under this section shall be 100 percent.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$7,000,000 for the period beginning with fiscal year 2000.

(Pub. L. 106–53, title V, §559, Aug. 17, 1999, 113 Stat. 354.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–53, set out as a note under section 2201 of this title.

§2336. Abandoned and inactive noncoal mine restoration**(a) In general**

The Secretary may provide technical, planning, and design assistance to Federal and non-Federal interests for carrying out projects to address water quality problems caused by drainage and related activities from abandoned and inactive noncoal mines.

(b) Specific measures

Assistance provided under subsection (a) may be in support of projects for the purposes of—

- (1) managing drainage from abandoned and inactive noncoal mines;
- (2) restoring and protecting streams, rivers, wetlands, other waterbodies, and riparian areas degraded by drainage from abandoned and inactive noncoal mines; and
- (3) demonstrating management practices and innovative and alternative treatment technologies to minimize or eliminate adverse environmental effects associated with drainage from abandoned and inactive noncoal mines.

(c) Non-Federal share

The non-Federal share of the cost of assistance under subsection (a) shall be 50 percent, except that the Federal share with respect to projects located on land owned by the United States, on land held in trust by the Secretary of the Interior on behalf of, and for the benefit of, an Indian Tribe, or on restricted land of any Indian Tribe, shall be 100 percent.

(d) Effect on authority of Secretary of the Interior

Nothing in this section affects the authority of the Secretary of the Interior under title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 et seq.).

(e) Technology database for reclamation of abandoned mines

The Secretary may provide assistance to non-Federal and nonprofit entities to develop, manage, and maintain a database of conventional and innovative, cost-effective technologies for reclamation of abandoned and inactive noncoal mine sites. Such assistance shall be provided through the Restoration of Abandoned Mine Sites Program managed by the Albuquerque District Office of the Corps of Engineers.

(f) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$50,000,000.

(Pub. L. 106–53, title V, §560, Aug. 17, 1999, 113 Stat. 354; Pub. L. 108–137, title I, §118, Dec. 1, 2003, 117 Stat. 1836; Pub. L. 110–114, title II, §2025, Nov. 8, 2007, 121 Stat. 1079; Pub. L. 116–260, div. AA, title III, §302, Dec. 27, 2020, 134 Stat. 2703; Pub. L. 117–263, div. H, title LXXXI, §8390, Dec. 23, 2022, 136 Stat. 3831.)

EDITORIAL NOTES**REFERENCES IN TEXT**

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (d), is Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445. Title IV of the Act is classified generally to subchapter IV (§1231 et seq.) of chapter 25 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—Subsec. (c). Pub. L. 117–263, §8390(1), inserted ", on land held in trust by the Secretary of the Interior on behalf of, and for the benefit of, an Indian Tribe, or on restricted land of any Indian Tribe," after "land owned by the United States".

Subsec. (e). Pub. L. 117–263, §8390(2), substituted "Restoration" for "Rehabilitation" and "Albuquerque" for "Sacramento".

Subsec. (f). Pub. L. 117–263, §8390(3), substituted "\$50,000,000" for "\$30,000,000".

2020—Subsec. (f). Pub. L. 116–260 substituted "\$30,000,000" for "\$20,000,000".

2007—Subsec. (f). Pub. L. 110–114 substituted "\$20,000,000" for "\$7,500,000".

2003—Subsec. (f). Pub. L. 108–137 substituted "\$7,500,000" for "\$5,000,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–53, set out as a note under section 2201 of this title.

§2337. Property protection program

(a) In general

The Secretary may carry out a program to reduce vandalism and destruction of property at water resources development projects under the jurisdiction of the Department of the Army.

(b) Provision of rewards

In carrying out the program, the Secretary may provide rewards (including cash rewards) to individuals who provide information or evidence leading to the arrest and prosecution of individuals causing damage to Federal property.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$500,000 for fiscal year 2001 and each fiscal year thereafter.

(Pub. L. 106–541, [title II, §205](#), Dec. 11, 2000, 114 Stat. 2590.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2000, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–541, set out as a note under section 2201 of this title.

§2338. Reburial and conveyance authority**(a) Definition of Indian tribe**

In this section, the term "Indian tribe" has the meaning given the term in section 5304 of title 25.

(b) Reburial**(1) Reburial areas**

In consultation with affected Indian tribes, the Secretary may identify and set aside areas at civil works projects of the Department of the Army that may be used to rebury Native American remains that

— (A) have been discovered on project land; and

(B) have been rightfully claimed by a lineal descendant or Indian tribe in accordance with applicable Federal law.

(2) Reburial

In consultation with and with the consent of the lineal descendant or the affected Indian tribe, the Secretary may recover and rebury, at Federal expense, the remains at the areas identified and set aside under subsection (b)(1).

(c) Conveyance authority**(1) In general**

Subject to paragraph (2), notwithstanding any other provision of law, the Secretary may convey to an Indian tribe for use as a cemetery an area at a civil works project that is identified and set aside by the Secretary under subsection (b)(1).

(2) Retention of necessary property interests

In carrying out paragraph (1), the Secretary shall retain any necessary right-of-way, easement, or other property interest that the Secretary determines to be necessary to carry out the authorized purposes of the project.

(Pub. L. 106–541, [title II, §208](#), Dec. 11, 2000, 114 Stat. 2590.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2000, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–541, set out as a note under section 2201 of this title.

§2339. Assistance programs**(a) Conservation and recreation management**

To further training and educational opportunities about water resources development projects under the jurisdiction of the Secretary, the Secretary may enter into cooperative agreements with non-Federal public and nonprofit entities for services relating to natural resources conservation or recreation management.

(b) Rural community assistance

In carrying out studies and projects under the jurisdiction of the Secretary, the Secretary may enter into cooperative agreements with multistate regional private nonprofit rural community assistance entities for services, including water resource assessment, community participation, planning, development, and management activities.

(c) Youth service and conservation corps organizations

The Secretary, to the maximum extent practicable, shall enter into cooperative agreements with qualified youth service and conservation corps organizations for services relating to projects under the jurisdiction of the Secretary and shall do so in a manner that ensures the maximum participation and opportunities for such organizations.

(d) Cooperative agreements

A cooperative agreement entered into under this section shall not be considered to be, or treated as being, a cooperative agreement to which chapter 63 of title 31 applies.

(Pub. L. 106–541, [title II, §213](#), Dec. 11, 2000, 114 Stat. 2593; Pub. L. 113–121, [title I, §1047\(e\)](#), June 10, 2014, 128 Stat. 1257; Pub. L. 114–322, [title I, §1101](#), Dec. 16, 2016, 130 Stat. 1632.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2000, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Subsecs. (c), (d). Pub. L. 114–322 added subsec. (c) and redesignated former subsec. (c) as (d).

2014—Subsec. (a). Pub. L. 113–121 substituted "about" for "at".

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–541, set out as a note under section 2201 of this title.

§2339a. Cooperative agreements with Indian tribes

The Secretary may enter into a cooperative agreement with an Indian tribe (or a designated representative of an Indian tribe) to carry out authorized activities of the Corps of Engineers to protect fish, wildlife, water quality, and cultural resources.

(Pub. L. 113–121, [title I, §1031\(b\)](#), June 10, 2014, 128 Stat. 1233.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2340. Revision of project partnership agreement; cost sharing**(a) Federal allocation**

Upon authorization by law of an increase in the maximum amount of Federal funds that may be allocated for a water resources project or an increase in the total cost of a water resources project authorized to be carried out by the Secretary, the Secretary shall enter into a revised partnership agreement for the project to take into account the change in Federal participation in the project.

(b) Cost sharing

An increase in the maximum amount of Federal funds that may be allocated for a water resources project, or an increase in the total cost of a water resources project, authorized to be carried out by the Secretary shall not affect any cost-sharing requirement applicable to the project.

(c) Cost estimates

The estimated Federal and non-Federal costs of water resources projects authorized to be carried out by the Secretary before, on, or after November 8, 2007, are for informational purposes only and shall not be interpreted as affecting the cost-sharing responsibilities established by law.

(Pub. L. 110–114, [title II](#), §2008, Nov. 8, 2007, 121 Stat. 1073.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**REFERENCE TO PARTNERSHIP AGREEMENT DEEMED REFERENCE TO COOPERATION AGREEMENT**

Reference to partnership agreement deemed to be reference to cooperation agreement, see section 2003(f)(3) of Pub. L. 110–114, set out as a note under section 1962d–5b of Title 42, The Public Health and Welfare.

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2341. Expedited actions for emergency flood damage reduction

The Secretary shall expedite any authorized planning, design, and construction of any project for flood damage reduction for an area that, within the preceding 5 years, has been subject to flooding that resulted in the loss of life and caused damage of sufficient severity and magnitude to warrant a declaration of a major disaster by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(Pub. L. 110–114, [title II](#), §2009, Nov. 8, 2007, 121 Stat. 1074.)

EDITORIAL NOTES**REFERENCES IN TEXT**

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93–288, [May 22, 1974](#), 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2341a. Prioritization**(a) Prioritization of hurricane and storm damage risk reduction efforts****(1) Priority**

For authorized projects and ongoing feasibility studies with a primary purpose of hurricane and storm damage risk reduction, the Secretary shall give funding priority to projects and ongoing studies that—

- (A) address an imminent threat to life and property;
- (B) prevent storm surge from inundating populated areas;
- (C) restore or prevent the loss of coastal wetlands that help reduce the impact of storm surge;
- (D) protect emergency hurricane evacuation routes or shelters;
- (E) prevent adverse impacts to publicly owned or funded infrastructure and assets;
- (F) minimize disaster relief costs to the Federal Government; and
- (G) address hurricane and storm damage risk reduction in an area for which the President declared a major disaster in accordance with section 5170 of title 42.

(2) Expedited consideration of currently authorized projects

Not later than 180 days after December 16, 2016, the Secretary shall—

- (A) submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a list of all—
 - (i) ongoing hurricane and storm damage reduction feasibility studies that have signed feasibility cost-share agreements and have received Federal funds since 2009; and
 - (ii) authorized hurricane and storm damage reduction projects;

- (B) identify those projects on the list required under subparagraph (A) that meet the criteria described in paragraph (1); and
- (C) provide a plan for expeditiously completing the projects identified under subparagraph (B), subject to available funding.

(b) Prioritization of ecosystem restoration efforts**(1) In general**

For authorized projects with a primary purpose of ecosystem restoration, the Secretary shall give funding priority to projects—

- (A) that—
 - (i) address an identified threat to public health, safety, or welfare;
 - (ii) preserve or restore ecosystems of national significance; or
 - (iii) preserve or restore habitats of importance for federally protected species, including migratory birds; and

- (B) for which the restoration activities will contribute to other ongoing or planned Federal, State, or local restoration initiatives.

(2) Expedited consideration of currently authorized programmatic authorities

Not later than 180 days after December 16, 2016, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that contains—

- (A) a list of all programmatic authorities for aquatic ecosystem restoration or improvement of the environment that—
 - (i) were authorized or modified in the Water Resources Development Act of 2007 (Public Law 110–114; 121 Stat. 1041) or any subsequent Act; and

(ii) that meet the criteria described in paragraph (1); and

(B) a plan for expeditiously completing the projects under the authorities described in subparagraph (A), subject to available funding.
(Pub. L. 113–121, [title I, §1011](#), June 10, 2014, 128 Stat. 1217; Pub. L. 114–322, [title I, §1322\(a\)](#), Dec. 16, 2016, 130 Stat. 1706.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Water Resources Development Act of 2007, referred to in subsec. (b)(2)(A)(i), is Pub. L. 110–114, [Nov. 8, 2007](#), 121 Stat. 1041. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Subsec. (a)(1)(C). Pub. L. 114–322, §1322(a)(1)(A), inserted "restore or" before "prevent the loss".
Subsec. (a)(2). Pub. L. 114–322, §1322(a)(1)(B)(i), substituted "December 16, 2016" for "June 10, 2014" in introductory provisions.
Subsec. (a)(2)(A)(ii). Pub. L. 114–322, §1322(a)(1)(B)(ii), struck out before semicolon at end "that—"
"(I) have been authorized for more than 20 years but are less than 75 percent complete; or
"(II) are undergoing a post-authorization change report, general reevaluation report, or limited reevaluation report".
Subsec. (b). Pub. L. 114–322, §1322(a)(2), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), redesignated former subpars. (A) to (C) of former par. (1) as cls. (i) to (iii), respectively, of subpar. (A) of par. (1), and added par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2341b. Prioritization of certain projects

The Secretary shall give priority to a project for flood risk management if—

- (1) there is an executed project partnership agreement for the project; and
- (2) the project is located in an area—
 - (A) with respect to which—
 - (i) there has been a loss of life due to flood events; and
 - (ii) the President has declared that a major disaster or emergency exists under section 5170 of title 42; or

(B) that is at significant risk for catastrophic flooding.

(Pub. L. 114–322, [title I, §1144](#), Dec. 16, 2016, 130 Stat. 1659.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114–322, set out as a note under section 2201 of this title.

§2341c. Criteria for funding environmental infrastructure projects

(a) In general

Not later than 180 days after December 27, 2020, the Secretary shall develop specific criteria for the evaluation and ranking of individual environmental assistance projects authorized by Congress (including projects authorized pursuant to environmental assistance programs) for the Secretary to carry out.

(b) Minimum criteria

For the purposes of carrying out this section, the Secretary shall evaluate, at a minimum—

- (1) the nature and extent of the positive and negative local economic impacts of the project, including—
 - (A) the benefits of the project to the local economy;
 - (B) the extent to which the project will enhance local development;
 - (C) the number of jobs that will be directly created by the project; and
 - (D) the ability of the non-Federal interest to pay the applicable non-Federal share of the cost of the project;
- (2) the demographics of the location in which the project is to be carried out, including whether the project serves—
 - (A) a rural community; or
 - (B) an economically disadvantaged community, including an economically disadvantaged minority community;
- (3) the amount of appropriations a project has received;
- (4) the funding capability of the Corps of Engineers with respect to the project;
- (5) whether the project could be carried out under other Federal authorities at an equivalent cost to the non-Federal interest; and
- (6) any other criteria that the Secretary considers to be appropriate.

(c) Inclusion in guidance

The Secretary shall include the criteria developed under subsection (a) in the annual Civil Works Direct Program Development Policy Guidance of the Secretary.

(d) Report to Congress

For fiscal year 2022, and biennially thereafter, in conjunction with the President's annual budget submission to Congress under section 1105(a) of title 31, the Secretary shall submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives a report that identifies the Secretary's ranking of individual environmental assistance projects authorized by Congress for the Secretary to carry out, in accordance with the criteria developed under this section.

(Pub. L. 116–260, [div. AA, title I, §137](#), Dec. 27, 2020, 134 Stat. 2650.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

DEFINITIONS

For definition of "economically disadvantaged community" as used in this section, see section 160 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

§2342. Access to water resource data

(a) In general

Using available funds, the Secretary shall make publicly available, including on the Internet, all data in the custody of the Corps of Engineers on—

- (1) the planning, design, construction, operation, and maintenance of water resources development projects; and
- (2) water quality and water management of projects owned, operated, or managed by the Corps of Engineers.

(b) Limitation

Nothing in this section may be construed to compel or authorize the disclosure of data or other information determined by the Secretary to be confidential information, privileged information, law enforcement information, national security information, infrastructure security information, personal information, or information the disclosure of which is otherwise prohibited by law.

(c) Timing

The Secretary shall ensure that data is made publicly available under subsection (a) as quickly as practicable after the data is generated by the Corps of Engineers.

(d) Partnerships

In carrying out this section, the Secretary may develop partnerships, including through cooperative agreements, with State, tribal, and local governments and other Federal agencies.

(Pub. L. 110–114, title II, §2017, Nov. 8, 2007, 121 Stat. 1077; Pub. L. 114–322, title I, §1135, Dec. 16, 2016, 130 Stat. 1656.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Pub. L. 114–322 amended section generally. Prior to amendment, section related to access to water resource data.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DATA TRANSPARENCY

Pub. L. 116–260, div. AA, title I, §158(b), Dec. 27, 2020, 134 Stat. 2662, provided that: "The Secretary [of the Army] shall prioritize making publicly available water resources data in the custody of the Corps of Engineers, as authorized by section 2017 of the Water Resources Development Act of 2007 (33 U.S.C. 2342)."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2343. Independent peer review

(a) Project studies subject to independent peer review

(1) In general

Project studies shall be subject to a peer review by an independent panel of experts as determined under this section.

(2) Scope

The peer review may include a review of the economic and environmental assumptions and projections, project evaluation data, economic analyses, environmental analyses, engineering analyses, formulation of alternative plans, methods for integrating risk and uncertainty, models used in evaluation of economic or environmental impacts of proposed projects, and any biological opinions of the project study.

(3) Project studies subject to peer review

(A) Mandatory

A project study shall be subject to peer review under paragraph (1) if—

- (i) the project has an estimated total cost of more than \$200,000,000, including mitigation costs, and is not determined by the Chief of Engineers to be exempt from peer review under paragraph (6);
- (ii) the Governor of an affected State requests a peer review by an independent panel of experts; or
- (iii) the Chief of Engineers determines that the project study is controversial considering the factors set forth in paragraph (4).

(B) Discretionary

(i) Agency request

A project study shall be considered by the Chief of Engineers for peer review under this section if the head of a Federal or State agency charged with reviewing the project study determines that the project is likely to have a significant adverse impact on environmental, cultural, or other resources under the jurisdiction of the agency after implementation of proposed mitigation plans and requests a peer review by an independent panel of experts.

(ii) Deadline for decision

A decision of the Chief of Engineers under this subparagraph whether to conduct a peer review shall be made within 21 days of the date of receipt of the request by the head of the Federal or State agency under clause (i).

(iii) Reasons for not conducting peer review

If the Chief of Engineers decides not to conduct a peer review following a request under clause (i), the Chief shall make publicly available, including on the Internet, the reasons for not conducting the peer review.

(iv) Appeal to Chairman of Council on Environmental Quality

A decision by the Chief of Engineers not to conduct a peer review following a request under clause (i) shall be subject to appeal by a person referred to in clause (i) to the Chairman of the Council on Environmental Quality if such appeal is made within the 30-day period following the date of the decision being made available under clause (iii). A decision of the Chairman on an appeal under this clause shall be made within 30 days of the date of the appeal.

(4) Factors to consider

In determining whether a project study is controversial under paragraph (3)(A)(iii), the Chief of Engineers shall consider if—

- (A) there is a significant public dispute as to the size, nature, or effects of the project; or
- (B) there is a significant public dispute as to the economic or environmental costs or benefits of the project.

(5) Project studies excluded from peer review

The Chief of Engineers may exclude a project study from peer review under paragraph (1)—

- (A) if the project study does not include an environmental impact statement and is a project study subject to peer review under paragraph (3)(A)(i) that the Chief of Engineers determines—
 - (i) is not controversial;
 - (ii) has no more than negligible adverse impacts on scarce or unique cultural, historic, or tribal resources;
 - (iii) has no substantial adverse impacts on fish and wildlife species and their habitat prior to the implementation of mitigation measures; and
 - (iv) has, before implementation of mitigation measures, no more than a negligible adverse impact on a species listed as endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the critical habitat of such species designated under such Act;
- (B) if the project study—
 - (i) involves only the rehabilitation or replacement of existing hydropower turbines, lock structures, or flood control gates within the same footprint and for the same purpose as an existing water resources project;
 - (ii) is for an activity for which there is ample experience within the Corps of Engineers and industry to treat the activity as being routine; and
 - (iii) has minimal life safety risk; or

(C) if the project study does not include an environmental impact statement and is a project study pursued under section 701s of this title, section 701g of this title, section 701r of this title, section 577(a) of this title, section 426g of this title, section 426i of this title, section 603a of this title, section 2309a of this title, or section 2330 of this title.

(6) Determination of total cost

For purposes of determining the estimated total cost of a project under paragraph (3)(A), the total cost shall be based upon the reasonable estimates of the Chief of Engineers at the completion of the reconnaissance study for the project. If the reasonable estimate of total costs is subsequently determined to be in excess of the amount in paragraph (3)(A), the Chief of Engineers shall make a determination whether a project study is required to be reviewed under this section.

(b) Timing of peer review

(1) In general

The Chief of Engineers shall determine the timing of a peer review of a project study under subsection (a). In all cases, the peer review shall occur during the period beginning on the date of the signing of the feasibility cost-sharing agreement for the study and ending on the date established under subsection (e)(1)(A) for the peer review and shall be accomplished concurrent with the conducting of the project study.

(2) Factors to consider

In any case in which the Chief of Engineers has not initiated a peer review of a project study, the Chief of Engineers shall consider, at a minimum, whether to initiate a peer review at the time that—

- (A) the without-project conditions are identified;
- (B) the array of alternatives to be considered are identified; and
- (C) the preferred alternative is identified.

(3) Reasons for timing

If the Chief of Engineers does not initiate a peer review for a project study at a time described in paragraph (2), the Chief shall—

- (A) not later than 7 days after the date on which the Chief of Engineers determines not to initiate a peer review—
 - (i) notify the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of that decision; and
 - (ii) make publicly available, including on the Internet, the reasons for not conducting the review; and
- (B) include the reasons for not conducting the review in the decision document for the project study.

(4) Limitation on multiple peer review

Nothing in this subsection shall be construed to require the Chief of Engineers to conduct multiple peer reviews for a project study.

(c) Establishment of panels**(1) In general**

For each project study subject to peer review under subsection (a), as soon as practicable after the Chief of Engineers determines that a project study will be subject to peer review, the Chief of Engineers shall contract with the National Academy of Sciences or a similar independent scientific and technical advisory organization or an eligible organization to establish a panel of experts to conduct a peer review for the project study.

(2) Membership

A panel of experts established for a project study under this section shall be composed of independent experts who represent a balance of areas of expertise suitable for the review being conducted.

(3) Limitation on appointments

The National Academy of Sciences or any other organization the Chief of Engineers contracts with under paragraph (1) to establish a panel of experts shall apply the National Academy of Science's policy for selecting committee members to ensure that members selected for the panel of experts have no conflict with the project being reviewed.

(4) Congressional and public notification

Following the identification of a project study for peer review under this section, but prior to initiation of the review by the panel of experts, the Chief of Engineers shall, not later than 7 days after the date on which the Chief of Engineers determines to conduct a review—

- (A) notify the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the review conducted under this section; and
- (B) make publicly available, including on the Internet, information on—
 - (i) the dates scheduled for beginning and ending the review;
 - (ii) the entity that has the contract for the review; and
 - (iii) the names and qualifications of the panel of experts.

(d) Duties of panels

A panel of experts established for a peer review for a project study under this section shall—

- (1) conduct the peer review for the project study;
- (2) assess the adequacy and acceptability of the economic, engineering, and environmental methods, models, and analyses used by the Chief of Engineers;
- (3) receive from the Chief of Engineers the public written and oral comments provided to the Chief of Engineers;
- (4) provide timely written and oral comments to the Chief of Engineers throughout the development of the project study, as requested; and
- (5) submit to the Chief of Engineers a final report containing the panel's economic, engineering, and environmental analysis of the project study, including the panel's assessment of the adequacy and acceptability of the economic, engineering, and environmental methods, models, and analyses used by the Chief of Engineers, to accompany the publication of the report of the Chief of Engineers for the project.

(e) Duration of project study peer reviews**(1) Deadline**

A panel of experts established under this section shall—

- (A) complete its peer review under this section for a project study and submit a report to the Chief of Engineers under subsection (d)(5) not more than 60 days after the last day of the public comment period for the draft project study; or, if the Chief of Engineers determines that a longer period of time is necessary, such period of time determined necessary by the Chief of Engineers; and
- (B) terminate on the date of initiation of the State and agency review required by section 701–1 of this title.

(2) Failure to meet deadline

If a panel of experts does not complete its peer review of a project study under this section and submit a report to the Chief of Engineers under subsection (d)(5) on or before the deadline established by paragraph (1) for the peer review, the Chief of Engineers shall complete the project study without delay.

(f) Recommendations of panel**(1) Consideration by the Chief of Engineers**

After receiving a report on a project study from a panel of experts under this section and before entering a final record of decision for the project, the Chief of Engineers shall consider any recommendations contained in the report and prepare a written response for any recommendations adopted or not adopted.

(2) Public availability and submission to Congress

After receiving a report on a project study from a panel of experts under this section, the Chief of Engineers shall make available to the public, including on the Internet, and submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

- (A) a copy of the report not later than 7 days after the date on which the report is delivered to the Chief of Engineers; and
- (B) a copy of any written response of the Chief of Engineers on recommendations contained in the report not later than 3 days after the date on which the response is delivered to the Chief of Engineers.

(3) Inclusion in project study

A report on a project study from a panel of experts under this section and the written response of the Chief of Engineers shall be included in the final decision document for the project study.

(g) Costs**(1) In general**

The costs of a panel of experts established for a peer review under this section—

- (A) shall be a Federal expense; and
- (B) shall not exceed \$500,000.

(2) Waiver

The Chief of Engineers may waive the \$500,000 limitation contained in paragraph (1)(B) in cases that the Chief of Engineers determines appropriate.

(h) Applicability

This section shall apply to—

- (1) project studies initiated during the 2-year period preceding November 8, 2007, and for which the array of alternatives to be considered has not been identified; and
- (2) project studies initiated during the period beginning on November 8, 2007, and ending 17 years after November 8, 2007.

(i) Reports**(1) Initial report**

Not later than 3 years after November 8, 2007, the Chief of Engineers shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the implementation of this section.

(2) Additional report

Not later than 6 years after November 8, 2007, the Chief of Engineers shall update the report under paragraph (1) taking into account any further information on implementation of this section and submit such updated report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(j) Nonapplicability of chapter 10 of title 5

Chapter 10 of title 5 shall not apply to a peer review panel established under this section.

(k) Savings clause

Nothing in this section shall be construed to affect any authority of the Chief of Engineers to cause or conduct a peer review of a water resources project existing on November 8, 2007.

(l) Definitions

In this section, the following definitions apply:

- (1) Project study

The term "project study" means—

(A) a feasibility study or reevaluation study for a water resources project, including the environmental impact statement prepared for the study; and

(B) any other study associated with a modification of a water resources project that includes an environmental impact statement, including the environmental impact statement prepared for the study.
- (2) Affected State

The term "affected State", as used with respect to a water resources project, means a State all or a portion of which is within the drainage basin in which the project is or would be located and would be economically or environmentally affected as a consequence of the project.
- (3) Eligible organization

The term "eligible organization" means an organization that—

(A) is described in section 501(c)(3), and exempt from Federal tax under section 501(a), of title 26;

(B) is independent;

(C) is free from conflicts of interest;

(D) does not carry out or advocate for or against Federal water resources projects; and

(E) has experience in establishing and administering peer review panels.
- (4) Total cost

The term "total cost", as used with respect to a water resources project, means the cost of construction (including planning and designing) of the project. In the case of a project for hurricane and storm damage reduction or flood damage reduction that includes periodic nourishment over the life of the project, the term includes the total cost of the nourishment.
- (Pub. L. 110–114, title II, §2034, Nov. 8, 2007, 121 Stat. 1086; Pub. L. 113–121, title I, §1044, June 10, 2014, 128 Stat. 1250; Pub. L. 115–270, title I, §1141, Oct. 23, 2018, 132 Stat. 3785; Pub. L. 117–286, §4(a)(203), Dec. 27, 2022, 136 Stat. 4328.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (a)(5)(A)(iv), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—

Subsec. (j). Pub. L. 117–286 substituted "chapter 10 of title 5" for "FACA" in heading and "Chapter 10 of title 5" for "The Federal Advisory Committee Act (5 U.S.C. App.)" in text.

2018—

Subsec. (h)(2). Pub. L. 115–270 substituted "17 years" for "12 years".

2014—

Subsec. (a)(3)(A)(i). Pub. L. 113–121, §1044(a), substituted "\$200,000,000" for "\$45,000,000".

Subsec. (b)(3), (4). Pub. L. 113–121, §1044(b), added par. (3) and redesignated former par. (3) as (4).

Subsec. (c)(4). Pub. L. 113–121, §1044(c), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: "Upon identification of a project study for peer review under this section, but prior to initiation of the review, the Chief of Engineers shall notify the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the review."

Subsec. (f)(2), (3). Pub. L. 113–121, §1044(d), added pars. (2) and (3) and struck out former par. (2) which related to public availability and transmittal to Congress of a report on a project study from a panel of experts under this section.

Subsec. (h)(2). Pub. L. 113–121, §1044(e), substituted "12 years" for "7 years".

§2344. Safety assurance review

(a) Projects subject to safety assurance review

The Chief of Engineers shall ensure that the design and construction activities for hurricane and storm damage reduction and flood damage reduction projects are reviewed by independent experts under this section if the Chief of Engineers determines that a review by independent experts is necessary to assure public health, safety, and welfare.

(b) Factors

In determining whether a review of design and construction of a project is necessary under this section, the Chief of Engineers shall consider whether—

(1) the failure of the project would pose a significant threat to human life;

(2) the project involves the use of innovative materials or techniques;

(3) the project design lacks redundancy; or

(4) the project has a unique construction sequencing or a reduced or overlapping design construction schedule.

(c) Safety assurance review

(1) Initiation of review

At the appropriate point in the development of detailed engineering and design specifications for each water resources project subject to review under this section, the Chief of Engineers shall initiate a safety assurance review by independent experts on the design and construction activities for the project.

(2) Selection of reviewers

A safety assurance review under this section shall include participation by experts selected by the Chief of Engineers from among individuals who are distinguished experts in engineering, hydrology, or other appropriate disciplines. The Chief of Engineers shall apply the National Academy of Science's policy for selecting reviewers to ensure that reviewers have no conflict of interest with the project being reviewed.

(3) Compensation

An individual serving as an independent reviewer under this section shall be compensated at a rate of pay to be determined by the Secretary and shall be allowed travel expenses.

(d) Scope of safety assurance reviews

A safety assurance review under this section shall include a review of the design and construction activities prior to the initiation of physical construction and periodically thereafter until construction activities are completed on a regular schedule sufficient to inform the Chief of Engineers on the adequacy, appropriateness, and acceptability of the design and construction activities for the purpose of assuring public health, safety, and welfare. The Chief of Engineers shall ensure that reviews under this section do not create any unnecessary delays in design and construction activities.

(e) Safety assurance review record

The written recommendations of a reviewer or panel of reviewers under this section and the responses of the Chief of Engineers shall be available to the public, including through electronic means on the Internet.

(f) Applicability

This section shall apply to any project in design or under construction on November 8, 2007, and to any project with respect to which design or construction is initiated during the period beginning on November 8, 2007, and ending 7 years after November 8, 2007.

(g) Nonapplicability of chapter 10 of title 5

Chapter 10 of title 5 shall not apply to a safety assurance review conducted under this section.

(Pub. L. 110–114, title II, §2035, Nov. 8, 2007, 121 Stat. 1091; Pub. L. 113–121, title III, §3028, June 10, 2014, 128 Stat. 1305; Pub. L. 117–286, §4(a)(204), Dec. 27, 2022, 136 Stat. 4328.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—

Subsec. (g). Pub. L. 117–286 substituted "chapter 10 of title 5" for "FACA" in heading and "Chapter 10 of title 5" for "The Federal Advisory Committee Act (5 U.S.C. App.)" in text.

2014—

Subsec. (g). Pub. L. 113–121 added subsec. (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2345. Electronic submission and tracking of permit applications

(a) Development of electronic system

(1) In general

The Secretary shall research, develop, and implement an electronic system to allow the electronic preparation and submission of applications for permits and requests for jurisdictional determinations under the jurisdiction of the Secretary.

(2) Inclusion

The electronic system required under paragraph (1) shall address—

- (A) applications for standard individual permits;
- (B) applications for letters of permission;
- (C) joint applications with States for State and Federal permits;
- (D) applications for emergency permits;
- (E) applications or requests for jurisdictional determinations; and
- (F) preconstruction notification submissions, when required for a nationwide or other general permit.

(3) Improving existing data systems

The Secretary shall seek to incorporate the electronic system required under paragraph (1) into existing systems and databases of the Corps of Engineers to the maximum extent practicable.

(4) Protection of information

The electronic system required under paragraph (1) shall provide for the protection of personal, private, privileged, confidential, and proprietary information, and information the disclosure of which is otherwise prohibited by law.

(b) System requirements

The electronic system required under subsection (a) shall—

- (1) enable an applicant or requester to prepare electronically an application for a permit or request;
- (2) enable an applicant or requester to submit to the Secretary, by email or other means through the Internet, the completed application form or request;
- (3) enable an applicant or requester to submit to the Secretary, by email or other means through the Internet, data and other information in support of the permit application or request;
- (4) provide an online interactive guide to provide assistance to an applicant or requester at any time while filling out the permit application or request; and
- (5) enable an applicant or requester (or a designated agent) to track the status of a permit application or request in a manner that will—
 - (A) allow the applicant or requester to determine whether the application is pending or final and the disposition of the request;
 - (B) allow the applicant or requester to research previously submitted permit applications and requests within a given geographic area and the results of such applications or requests; and
 - (C) allow identification and display of the location of the activities subject to a permit or request through a map-based interface.

(c) Documentation

All permit decisions and jurisdictional determinations made by the Secretary shall be in writing and include documentation supporting the basis for the decision or determination. The Secretary shall prescribe means for documenting all decisions or determinations to be made by the Secretary.

(d) Record of determinations

(1) In general

The Secretary shall maintain, for a minimum of 5 years, a record of each permit decision and jurisdictional determination made by the Secretary, including documentation supporting the basis of the decision or determination.

(2) Archiving of information

The Secretary shall explore and implement an appropriate mechanism for archiving records of permit decisions and jurisdictional determinations, including documentation supporting the basis of the decisions and determinations, after the 5-year maintenance period described in paragraph (1).

(e) Availability of determinations

(1) In general

The Secretary shall make the records of all permit decisions and jurisdictional determinations made by the Secretary available to the public for review and reproduction.

(2) Protection of information

The Secretary shall provide for the protection of personal, private, privileged, confidential, and proprietary information, and information the disclosure of which is prohibited by law, which may be excluded from disclosure.

(f) Deadline for electronic system implementation

(1) In general

The Secretary shall develop and implement, to the maximum extent practicable, the electronic system required under subsection (a) not later than 2 years after December 23, 2022.

(2) Update on electronic system implementation

The Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a quarterly update describing the status of the implementation of this section.

(g) Applicability

The requirements described in subsections (c), (d), and (e) shall apply to permit applications and requests for jurisdictional determinations submitted to the Secretary after December 16, 2016.

(h) Limitation

This section shall not preclude the submission to the Secretary, acting through the Chief of Engineers, of a physical copy of a permit application or a request for a jurisdictional determination.

(Pub. L. 110–114, title II, §2040, Nov. 8, 2007, 121 Stat. 1100; Pub. L. 114–322, title I, §1134(a), Dec. 16, 2016, 130 Stat. 1654; Pub. L. 117–263, div. H, title LXXXI, §8226, Dec. 23, 2022, 136 Stat. 3764.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2022—Subsec. (f)(1). Pub. L. 117–263, §8226(1), substituted "December 23, 2022" for "December 16, 2016".
Subsec. (f)(2). Pub. L. 117–263, §8226(2), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: "Not later than 180 days after the expiration of the deadline under paragraph (1), the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report describing the measures implemented and barriers faced in carrying out this section."
2016—Pub. L. 114–322 amended section generally. Prior to amendment, section related to electronic submission of permit applications.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2346. Project administration

(a) Project tracking

The Secretary shall assign a unique tracking number to each water resources project under the jurisdiction of the Secretary to be used by each Federal agency throughout the life of the project.

(b) Report repository

(1) In general

The Secretary shall provide to the Library of Congress a copy of each final feasibility study, final environmental impact statement, final reevaluation report, final post-authorization change report, record of decision, and report to Congress prepared by the Corps of Engineers.

(2) Availability to public

Each document described in paragraph (1) shall be made available to the public, and an electronic copy of each document shall be made permanently available to the public through the Internet.

(Pub. L. 110–114, title II, §2041, Nov. 8, 2007, 121 Stat. 1100; Pub. L. 114–322, title I, §1136(b), Dec. 16, 2016, 130 Stat. 1657.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Subsec. (b)(1). Pub. L. 114–322 inserted "final post-authorization change report," after "final reevaluation report,".

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2347. Coordination and scheduling of Federal, State, and local actions**(a) Notice of intent**

Upon request of the non-Federal interest in the form of a written notice of intent to construct or modify a non-Federal water supply, wastewater infrastructure, flood damage reduction, storm damage reduction, ecosystem restoration, or navigation project that requires the approval of the Secretary, the Secretary shall initiate, subject to subsection (c), procedures to establish a schedule for consolidating Federal, State, and local agency and Indian tribe environmental assessments, project reviews, and issuance of all permits for the construction or modification of the project. All States and Indian tribes having jurisdiction over the proposed project shall be invited by the Secretary, but shall not be required, to participate in carrying out this section with respect to the project.

(b) Coordination

The Secretary shall seek, to the extent practicable, to consolidate hearing and comment periods, procedures for data collection and report preparation, and the environmental review and permitting processes associated with the project and related activities. The Secretary shall notify, to the extent possible, the non-Federal interest of its responsibilities for data development and information that may be necessary to process each permit required for the project, including a schedule when the information and data should be provided to the appropriate Federal, State, or local agency or Indian tribe.

(c) Costs of coordination

The costs incurred by the Secretary to establish and carry out a schedule to consolidate Federal, State, and local agency and Indian tribe environmental assessments, project reviews, and permit issuance for a project under this section shall be paid by the non-Federal interest.

(d) Report on timesavings methods

Not later than 3 years after November 8, 2007, the Secretary shall prepare and transmit to Congress a report estimating the time required for the issuance of all Federal, State, local, and tribal permits for the construction of non-Federal projects for water supply, wastewater infrastructure, flood damage reduction, storm damage reduction, ecosystem restoration, and navigation.

(Pub. L. 110–114, [title II](#), [§2044](#), [Nov. 8, 2007](#), 121 Stat. 1102.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**LOCAL GOVERNMENT RESERVOIR PERMIT REVIEW**

Pub. L. 115–270, [title I](#), [§1119](#), [Oct. 23, 2018](#), 132 Stat. 3777, as amended by Pub. L. 116–260, [div. AA](#), [title III](#), [§343](#), [Dec. 27, 2020](#), 134 Stat. 2715, provided that:

"(a) IN GENERAL.—During the 10-year period after the date of enactment of this section [Oct. 23, 2018], the Secretary [of the Army] shall expedite review of applications for covered permits, if the permit applicant is a local governmental entity with jurisdiction over an area for which—

"(1) any portion of the water resources available to the area served by the local governmental entity is polluted by chemicals used at a formerly used defense site under the jurisdiction of the Department of Defense that is undergoing (or is scheduled to undergo) environmental restoration under chapter 160 of title 10, United States Code; and

"(2) mitigation of the pollution described in paragraph (1) is ongoing.

"(b) COVERED PERMIT DEFINED.—In this section, the term 'covered permit' means a permit to be issued by the Secretary to modify a reservoir, with respect to which not less than 80 percent of the water rights are held for drinking water supplies, in order to accommodate projected water supply needs of an area with a population of less than 80,000.

"(c) LIMITATIONS.—Nothing in this section affects any obligation to comply with the provisions of any Federal law, including—

"(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

"(2) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

§2347a. Determination of project completion**(a) In general**

The Secretary shall notify the applicable non-Federal interest when construction of a water resources project or a functional portion of the project is completed so the non-Federal interest may commence responsibilities, as applicable, for operating and maintaining the project.

(b) Non-Federal interest appeal of determination**(1) In general**

Not later than 7 days after receiving a notification under subsection (a), the non-Federal interest may appeal the completion determination of the Secretary in writing with a detailed explanation of the basis for questioning the completeness of the project or functional portion of the project.

(2) Independent review**(A) In general**

On notification that a non-Federal interest has submitted an appeal under paragraph (1), the Secretary shall contract with 1 or more independent, non-Federal experts to evaluate whether the applicable water resources project or functional portion of the project is complete.

(B) Timeline

An independent review carried out under subparagraph (A) shall be completed not later than 180 days after the date on which the Secretary receives an appeal from a non-Federal interest under paragraph (1).

(Pub. L. 113–121, [title I](#), [§1010](#), [June 10, 2014](#), 128 Stat. 1217.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2347b. Purpose and need**(a) Purpose and need statements****(1) In general**

Not later than 90 days after the date of receipt of a complete application for a water storage project, the District Engineer shall develop and provide to the applicant a purpose and need statement that describes—

(A) whether the District Engineer concurs with the assessment of the purpose of and need for the water storage project proposed by the applicant; and

(B) in any case in which the District Engineer does not concur as described in subparagraph (A), an assessment by the District Engineer of the purpose of and need for the project.

(2) Effect on environmental impact statements

No environmental impact statement or environmental assessment required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall substantially commence with respect to a water storage project until the date on which the District Engineer provides to the applicant a purpose and need statement as required under paragraph (1).

(b) Appeals request

A non-Federal interest may use the administrative appeals process described in part 331 of title 33, Code of Federal Regulations (or any succeeding regulation), in relation to a decision of the Secretary related to an application for a water storage project.

(Pub. L. 115–270, [title I, §1126](#), Oct. 23, 2018, 132 Stat. 3779.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(2), is Pub. L. 91–190, [Jan. 1, 1970](#), 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2018, and also as part of the America's Water Infrastructure Act of 2018, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 102 of Pub. L. 115–270, set out as a note under section 2201 of this title.

§2347c. Small water storage projects

(a) In general

The Secretary shall carry out a program to study and construct new, or enlarge existing, small water storage projects, in partnership with a non-Federal interest.

(b) Requirements

To be eligible to participate in the program under this section, a small water storage project shall—

- (1) in the case of a new small water storage project, have a water storage capacity of not less than 2,000 acre-feet and not more than 30,000 acre-feet;
- (2) in the case of an enlargement of an existing small water storage project, be for an enlargement of not less than 1,000 acre-feet and not more than 30,000 acre-feet;
- (3) provide—
 - (A) flood risk management benefits;
 - (B) ecological benefits; or
 - (C) water management, water conservation, or water supply; and
- (4) be—
 - (A) economically justified, environmentally acceptable, and technically feasible; or
 - (B) in the case of a project providing ecological benefits, cost-effective with respect to such benefits.

(c) Scope

In carrying out the program under this section, the Secretary shall give preference to a small water storage project located in a State with a population of less than 1,000,000.

(d) Expedited projects

For the 10-year period beginning on December 27, 2020, the Secretary shall expedite small water storage projects under this section for which applicable Federal permitting requirements have been completed.

(e) Use of data

In conducting a study under this section, to the maximum extent practicable, the Secretary shall—

- (1) as the Secretary determines appropriate, consider and utilize any applicable hydrologic, economic, or environmental data that is prepared for a small water storage project under State law as the documentation, or part of the documentation, required to complete State water plans or other State planning documents relating to water resources management; and
- (2) consider information developed by the non-Federal interest in relation to another study, to the extent the Secretary determines such information is applicable, appropriate, or otherwise authorized by law.

(f) Cost share

(1) Study

The Federal share of the cost of a study conducted under this section shall be—

- (A) 100 percent for costs not to exceed \$100,000; and
- (B) 50 percent for any costs above \$100,000.

(2) Construction

A small water storage project carried out under this section shall be subject to the cost-sharing requirements applicable to projects under section 2213 of this title, including—

- (A) municipal and industrial water supply: 100 percent non-Federal;
- (B) agricultural water supply: 35 percent non-Federal; and
- (C) recreation, including recreational navigation: 50 percent of separable costs and, in the case of any harbor or inland harbor or channel project, 50 percent of joint and separable costs allocated to recreational navigation.

(g) OMRRR responsibility

The costs of operation, maintenance, repair, and replacement and rehabilitation for a small water storage project constructed under this section shall be the responsibility of the non-Federal interest.

(h) Individual project limit

Not more than \$65,000,000 in Federal funds may be made available to a small water storage project under this section.

(i) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$130,000,000 annually through fiscal year 2030.

(Pub. L. 116–260, [div. AA, title I, §155](#), Dec. 27, 2020, 134 Stat. 2660.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

§2348. Project acceleration

(a) Definitions

In this section:

(1) Environmental impact statement

The term "environmental impact statement" means the detailed statement of environmental impacts of a project required to be prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Environmental review process

(A) In general

The term "environmental review process" means the process of preparing an environmental impact statement, environmental assessment, categorical exclusion, or other document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for a project study.

(B) Inclusions

The term "environmental review process" includes the process for and completion of any environmental permit, approval, review, or study required for a project study under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) Federal jurisdictional agency

The term "Federal jurisdictional agency" means a Federal agency with jurisdiction delegated by law, regulation, order, or otherwise over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a project study under applicable Federal laws (including regulations).

(4) Federal lead agency

The term "Federal lead agency" means the Corps of Engineers.

(5) Project

The term "project" means a water resources development project to be carried out by the Secretary.

(6) Project sponsor

The term "project sponsor" has the meaning given the term "non-Federal interest" in section 1962d–5b(b) of title 42.

(7) Project study

The term "project study" means a feasibility study for a project carried out pursuant to section 2282 of this title.

(b) Applicability

(1) In general

This section—

(A) shall apply to each project study that is initiated after June 10, 2014, and for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) may be applied, to the extent determined appropriate by the Secretary, to other project studies initiated after June 10, 2014, and for which an environmental review process document is prepared under that Act.

(2) Flexibility

Any authority granted under this section may be exercised, and any requirement established under this section may be satisfied, for the conduct of an environmental review process for a project study, a class of project studies, or a program of project studies.

(3) List of project studies

(A) In general

The Secretary shall annually prepare, and make publicly available, a separate list of each study that the Secretary has determined—

(i) meets the standards described in paragraph (1); and

(ii) does not have adequate funding to make substantial progress toward the completion of the project study.

(B) Inclusions

The Secretary shall include for each project study on the list under subparagraph (A) a description of the estimated amounts necessary to make substantial progress on the project study.

(c) Project review process

(1) In general

The Secretary shall develop and implement a coordinated environmental review process for the development of project studies.

(2) Coordinated review

The coordinated environmental review process described in paragraph (1) shall require that any review, analysis, opinion, statement, permit, license, or other approval or decision issued or made by a Federal, State, or local governmental agency or an Indian tribe for a project study described in subsection (b) be conducted, to the maximum extent practicable, concurrently with any other applicable governmental agency or Indian tribe.

(3) Timing

The coordinated environmental review process under this subsection shall be completed not later than the date on which the Secretary, in consultation and concurrence with the agencies identified under subsection (e), establishes with respect to the project study.

(d) Lead agencies

(1) Joint lead agencies

(A) In general

At the discretion of the Secretary and subject to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the requirements of section 1506.8 of title 40, Code of Federal Regulations (or successor regulations), including the concurrence of the proposed joint lead agency, a project sponsor may serve as the joint lead agency.

(B) Project sponsor as joint lead agency

A project sponsor that is a State or local governmental entity may—

(i) with the concurrence of the Secretary, serve as a joint lead agency with the Federal lead agency for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) prepare any environmental review process document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) required in support of any action or approval by the Secretary if—

(I) the Secretary provides guidance in the preparation process and independently evaluates that document;

(II) the project sponsor complies with all requirements applicable to the Secretary under—

(aa) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(bb) any regulation implementing that Act; and

(cc) any other applicable Federal law; and

(III) the Secretary approves and adopts the document before the Secretary takes any subsequent action or makes any approval based on that document, regardless of whether the action or approval of the Secretary results in Federal funding.

(2) Duties

The Secretary shall ensure that—

(A) the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection; and

(B) any environmental document prepared by the project sponsor is appropriately supplemented to address any changes to the project the Secretary determines are necessary.

(3) Adoption and use of documents

Any environmental document prepared in accordance with this subsection shall be adopted and used by any Federal agency making any determination related to the project study to the same extent that the Federal agency could adopt or use a document prepared by another Federal agency under—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).

(4) Roles and responsibility of lead agency

With respect to the environmental review process for any project study, the Federal lead agency shall have authority and responsibility—

(A) to take such actions as are necessary and proper and within the authority of the Federal lead agency to facilitate the expeditious resolution of the environmental review process for the project study; and

(B) to prepare or ensure that any required environmental impact statement or other environmental review document for a project study required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is completed in accordance with this section and applicable Federal law.

(e) Participating and cooperating agencies

(1) Identification of jurisdictional agencies

With respect to carrying out the environmental review process for a project study, the Secretary shall identify, as early as practicable in the environmental review process, all Federal, State, and local government agencies and Indian tribes that may—

(A) have jurisdiction over the project;

(B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(2) State authority

If the environmental review process is being implemented by the Secretary for a project study within the boundaries of a State, the State, consistent with State law, may choose to participate in the process and to make subject to the process all State agencies that—

(A) have jurisdiction over the project;

(B) are required to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) are required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(3) Invitation

(A) In general

The Federal lead agency shall invite, as early as practicable in the environmental review process, any agency identified under paragraph (1) to become a participating or cooperating agency, as applicable, in the environmental review process for the project study.

(B) Deadline

An invitation to participate issued under subparagraph (A) shall set a deadline by which a response to the invitation shall be submitted, which may be extended by the Federal lead agency for good cause.

(4) Procedures

Section 1501.6 of title 40, Code of Federal Regulations (as in effect on June 10, 2014) shall govern the identification and the participation of a cooperating agency.

(5) Federal cooperating agencies

Any Federal agency that is invited by the Federal lead agency to participate in the environmental review process for a project study shall be designated as a cooperating agency by the Federal lead agency unless the invited agency informs the Federal lead agency, in writing, by the deadline specified in the invitation that the invited agency—

- (A)(i)(I) has no jurisdiction or authority with respect to the project;
- (II) has no expertise or information relevant to the project; or
- (III) does not have adequate funds to participate in the project; and
- (ii) does not intend to submit comments on the project; or
- (B) does not intend to submit comments on the project.

(6) Administration

A participating or cooperating agency shall comply with this section and any schedule established under this section.

(7) Effect of designation

Designation as a participating or cooperating agency under this subsection shall not imply that the participating or cooperating agency—

- (A) supports a proposed project; or
- (B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(8) Concurrent reviews

Each participating or cooperating agency shall—

- (A) carry out the obligations of that agency under other applicable law concurrently and in conjunction with the required environmental review process, unless doing so would prevent the participating or cooperating agency from conducting needed analysis or otherwise carrying out those obligations; and
- (B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

(f) Programmatic compliance**(1) In general**

The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that—

- (A) eliminates repetitive discussions of the same issues;
- (B) focuses on the actual issues ripe for analyses at each level of review;
- (C) establishes a formal process for coordinating with participating and cooperating agencies, including the creation of a list of all data that is needed to carry out an environmental review process; and
- (D) complies with—
 - (i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
 - (ii) all other applicable laws.

(2) Requirements

In carrying out paragraph (1), the Secretary shall—

- (A) as the first step in drafting guidance under that paragraph, consult with relevant Federal, State, and local governmental agencies, Indian tribes, and the public on the appropriate use and scope of the programmatic approaches;
- (B) emphasize the importance of collaboration among relevant Federal, State, and local governmental agencies, and Indian tribes in undertaking programmatic reviews, especially with respect to including reviews with a broad geographical scope;
- (C) ensure that the programmatic reviews—
 - (i) promote transparency, including of the analyses and data used in the environmental review process, the treatment of any deferred issues raised by Federal, State, and local governmental agencies, Indian tribes, or the public, and the temporal and special scales to be used to analyze those issues;
 - (ii) use accurate and timely information in the environmental review process, including—
 - (I) criteria for determining the general duration of the usefulness of the review; and
 - (II) the timeline for updating any out-of-date review;
 - (iii) describe—
 - (I) the relationship between programmatic analysis and future tiered analysis; and
 - (II) the role of the public in the creation of future tiered analysis; and
- (iv) are available to other relevant Federal, State, and local governmental agencies, Indian tribes, and the public;
- (D) allow not fewer than 60 days of public notice and comment on any proposed guidance; and
- (E) address any comments received under subparagraph (D).

(g) Coordinated reviews**(1) Coordination plan****(A) Establishment****(i) In general**

The Federal lead agency shall, after consultation with and with the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable, establish a plan for coordinating public and agency participation in, and comment on, the environmental review process for a project study or a category of project studies.

(ii) Incorporation

The plan established under clause (i) shall be incorporated into the project schedule milestones set under section 2282(g)(2) of this title.

(B) Schedule**(i) In general**

As soon as practicable but not later than 45 days after the close of the public comment period on a draft environmental impact statement, the Federal lead agency, after consultation with and the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable, shall establish, as part of the coordination plan established in subparagraph (A), a schedule for completion of the environmental review process for the project study.

(ii) Factors for consideration

In establishing a schedule, the Secretary shall consider factors such as—

- (I) the responsibilities of participating and cooperating agencies under applicable laws;
- (II) the resources available to the project sponsor, joint lead agency, and other relevant Federal and State agencies, as applicable;
- (III) the overall size and complexity of the project;
- (IV) the overall schedule for and cost of the project; and
- (V) the sensitivity of the natural and historical resources that could be affected by the project.

(iii) Modifications

The Secretary may—

- (I) lengthen a schedule established under clause (i) for good cause; and
- (II) shorten a schedule only with concurrence of the affected participating and cooperating agencies and the project sponsor or joint lead agency, as applicable.

(iv) Dissemination

A copy of a schedule established under clause (i) shall be—

- (I) provided to each participating and cooperating agency and the project sponsor or joint lead agency, as applicable; and
- (II) made available to the public.

(2) Comment deadlines

The Federal lead agency shall establish the following deadlines for comment during the environmental review process for a project study:

(A) Draft environmental impact statements

For comments by Federal and States¹ agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of the draft environmental impact statement, unless—

- (i) a different deadline is established by agreement of the Federal lead agency, the project sponsor or joint lead agency, as applicable, and all participating and cooperating agencies; or
- (ii) the deadline is extended by the Federal lead agency for good cause.

(B) Other environmental review processes

For all other comment periods established by the Federal lead agency for agency or public comments in the environmental review process, a period of not more than 30 days after the date on which the materials on which comment is requested are made available, unless—

- (i) a different deadline is established by agreement of the Federal lead agency, the project sponsor, or joint lead agency, as applicable, and all participating and cooperating agencies; or
- (ii) the deadline is extended by the Federal lead agency for good cause.

(3) Deadlines for decisions under other laws

In any case in which a decision under any Federal law relating to a project study, including the issuance or denial of a permit or license, is required to be made by the date described in subsection (h)

- (5)(B)(ii), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—
- (A) as soon as practicable after the 180-day period described in subsection (h)(5)(B)(ii), an initial notice of the failure of the Federal agency to make the decision; and
- (B) every 60 days thereafter until such date as all decisions of the Federal agency relating to the project study have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

(4) Involvement of the public

Nothing in this subsection reduces any time period provided for public comment in the environmental review process under applicable Federal law (including regulations).

(5) Transparency reporting

(A) Reporting requirements

Not later than 1 year after June 10, 2014, the Secretary shall establish and maintain an electronic database and, in coordination with other Federal and State agencies, issue reporting requirements to make publicly available the status and progress with respect to compliance with applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.) and any other Federal, State, or local approval or action required for a project study for which this section is applicable.

(B) Project study transparency

Consistent with the requirements established under subparagraph (A), the Secretary shall publish the status and progress of any Federal, State, or local decision, action, or approval required under applicable laws for each project study for which this section is applicable.

(h) Issue identification and resolution

(1) Cooperation

The Federal lead agency, the cooperating agencies, and any participating agencies shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of the environmental review process or result in the denial of any approval required for the project study under applicable laws.

(2) Federal lead agency responsibilities

(A) In general

The Federal lead agency shall make information available to the cooperating agencies and participating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration.

(B) Data sources

The information under subparagraph (A) may be based on existing data sources, including geographic information systems mapping.

(3) Cooperating and participating agency responsibilities

Based on information received from the Federal lead agency, cooperating and participating agencies shall identify, as early as practicable, any issues of concern regarding the potential environmental or socioeconomic impacts of the project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project study.

(4) Accelerated issue resolution and elevation

(A) In general

On the request of a participating or cooperating agency or project sponsor, the Secretary shall convene an issue resolution meeting with the relevant participating and cooperating agencies and the project sponsor or joint lead agency, as applicable, to resolve issues that may—

- (i) delay completion of the environmental review process; or
- (ii) result in denial of any approval required for the project study under applicable laws.

(B) Meeting date

A meeting requested under this paragraph shall be held not later than 21 days after the date on which the Secretary receives the request for the meeting, unless the Secretary determines that there is good cause to extend that deadline.

(C) Notification

On receipt of a request for a meeting under this paragraph, the Secretary shall notify all relevant participating and cooperating agencies of the request, including the issue to be resolved and the date for the meeting.

(D) Elevation of issue resolution

If a resolution cannot be achieved within the 30 day-period beginning on the date of a meeting under this paragraph and a determination is made by the Secretary that all information necessary to resolve the issue has been obtained, the Secretary shall forward the dispute to the heads of the relevant agencies for resolution.

(E) Convention by Secretary

The Secretary may convene an issue resolution meeting under this paragraph at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under subparagraph (A).

(5) Financial penalty provisions

(A) In general

A Federal jurisdictional agency shall complete any required approval or decision for the environmental review process on an expeditious basis using the shortest existing applicable process.

(B) Failure to decide

(i) In general

If a Federal jurisdictional agency fails to render a decision required under any Federal law relating to a project study that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, statement, opinion, or other approval by the date described in clause (ii), the amount of funds made available to support the office of the head of the Federal jurisdictional agency shall be reduced by an amount of funding equal to the amounts specified in subclause (I) or (II) and those funds shall be made available to the division of the Federal jurisdictional agency charged with rendering the decision by not later than 1 day after the applicable date under clause (ii), and once each week thereafter until a final decision is rendered, subject to subparagraph (C)—

- (I) \$20,000 for any project study requiring the preparation of an environmental assessment or environmental impact statement; or
- (II) \$10,000 for any project study requiring any type of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) other than an environmental assessment or environmental impact statement.

(ii) Description of date

The date referred to in clause (i) is the later of—

- (I) the date that is 180 days after the date on which an application for the permit, license, or approval is complete; and
- (II) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) Limitations

(i) In general

No transfer of funds under subparagraph (B) relating to an individual project study shall exceed, in any fiscal year, an amount equal to 1 percent of the funds made available for the applicable agency office.

(ii) Failure to decide

The total amount transferred in a fiscal year as a result of a failure by an agency to make a decision by an applicable deadline shall not exceed an amount equal to 5 percent of the funds made available for the applicable agency office for that fiscal year.

(iii) Aggregate

Notwithstanding any other provision of law, for each fiscal year, the aggregate amount of financial penalties assessed against each applicable agency office under the Water Resources Reform and Development Act of 2014 and any other Federal law as a result of a failure of the agency to make a decision by an applicable deadline for environmental review, including the total amount transferred under this paragraph, shall not exceed an amount equal to 9.5 percent of the funds made available for the agency office for that fiscal year.

(D) No fault of agency

(i) In general

A transfer of funds under this paragraph shall not be made if the applicable agency described in subparagraph (A) notifies, with a supporting explanation, the Federal lead agency, cooperating agencies, and project sponsor, as applicable, that—

- (I) the agency has not received necessary information or approvals from another entity in a manner that affects the ability of the agency to meet any requirements under Federal, State, or local law;
- (II) significant new information, including from public comments, or circumstances, including a major modification to an aspect of the project, requires additional analysis for the agency to make a decision on the project application; or
- (III) the agency lacks the financial resources to complete the review under the scheduled time frame, including a description of the number of full-time employees required to complete the review, the amount of funding required to complete the review, and a justification as to why not enough funding is available to complete the review by the deadline.

(ii) Lack of financial resources

If the agency provides notice under clause (i)(III), the Inspector General of the agency shall—

- (I) conduct a financial audit to review the notice; and

(II) not later than 90 days after the date on which the review described in subclause (I) is completed, submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the notice.

(E) Limitation

The Federal agency from which funds are transferred pursuant to this paragraph shall not reprogram funds to the office of the head of the agency, or equivalent office, to reimburse that office for the loss of the funds.

(F) Effect of paragraph

Nothing in this paragraph affects or limits the application of, or obligation to comply with, any Federal, State, local, or tribal law.

(i) Memorandum of agreements for early coordination

(1) Sense of Congress

It is the sense of Congress that—

(A) the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process should cooperate with each other, State agencies, and Indian tribes on environmental review and project delivery activities at the earliest practicable time to avoid delays and duplication of effort later in the process, prevent potential conflicts, and ensure that planning and project development decisions reflect environmental values; and

(B) the cooperation referred to in subparagraph (A) should include the development of policies and the designation of staff that advise planning agencies and project sponsors of studies or other information foreseeably required for later Federal action and early consultation with appropriate State and local agencies and Indian tribes.

(2) Technical assistance

If requested at any time by a State or project sponsor, the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process, shall, to the maximum extent practicable and appropriate, as determined by the agencies, provide technical assistance to the State or project sponsor in carrying out early coordination activities.

(3) Memorandum of agency agreement

If requested at any time by a State or project sponsor, the Federal lead agency, in consultation with other Federal agencies with relevant jurisdiction in the environmental review process, may establish memoranda of agreement with the project sponsor, Indian tribe, State and local governments, and other appropriate entities to carry out the early coordination activities, including providing technical assistance in identifying potential impacts and mitigation issues in an integrated fashion.

(j) Limitations

Nothing in this section preempts or interferes with—

(1) any obligation to comply with the provisions of any Federal law, including—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) any other Federal environmental law;

(2) the reviewability of any final Federal agency action in a court of the United States or in the court of any State;

(3) any requirement for seeking, considering, or responding to public comment; or

(4) any power, jurisdiction, responsibility, duty, or authority that a Federal, State, or local governmental agency, Indian tribe, or project sponsor has with respect to carrying out a project or any other provision of law applicable to projects.

(k) Timing of claims

(1) Timing

(A) In general

Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or other approval issued by a Federal agency for a project study shall be barred unless the claim is filed not later than 3 years after publication of a notice in the Federal Register announcing that the permit, license, or other approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law that allows judicial review.

(B) Applicability

Nothing in this subsection creates a right to judicial review or places any limit on filing a claim that a person has violated the terms of a permit, license, or other approval.

(2) New information

(A) In general

The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under title 40, Code of Federal Regulations (including successor regulations).

(B) Separate action

The preparation of a supplemental environmental impact statement or other environmental document, if required under this section, shall be considered a separate final agency action and the deadline for filing a claim for judicial review of the action shall be 3 years after the date of publication of a notice in the Federal Register announcing the action relating to such supplemental environmental impact statement or other environmental document.

(l) Categorical exclusions

(1) In general

Not later than 180 days after June 10, 2014, the Secretary shall—

(A) survey the use by the Corps of Engineers of categorical exclusions in projects since 2005;

(B) publish a review of the survey that includes a description of—

(i) the types of actions that were categorically excluded or could be the basis for developing a new categorical exclusion; and

(ii) any requests previously received by the Secretary for new categorical exclusions; and

(C) solicit requests from other Federal agencies and project sponsors for new categorical exclusions.

(2) New categorical exclusions

Not later than 1 year after June 10, 2014, if the Secretary has identified a category of activities that merit establishing a categorical exclusion that did not exist on the day before June 10, 2014, based on the review under paragraph (1), the Secretary shall publish a notice of proposed rulemaking to propose that new categorical exclusion, to the extent that the categorical exclusion meets the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (or successor regulation).

(m) Review of project acceleration reforms

(1) In general

The Comptroller General of the United States shall—

(A) assess the reforms carried out under this section; and

(B) not later than 5 years and not later than 10 years after June 10, 2014, submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes the results of the assessment.

(2) Contents

The reports under paragraph (1) shall include an evaluation of impacts of the reforms carried out under this section on—

(A) project delivery;

(B) compliance with environmental laws; and

(C) the environmental impact of projects.

(n) Performance measurement

The Secretary shall establish a program to measure and report on progress made toward improving and expediting the planning and environmental review process.

(o) Implementation guidance

The Secretary shall prepare, in consultation with the Council on Environmental Quality and other Federal agencies with jurisdiction over actions or resources that may be impacted by a project, guidance documents that describe the coordinated environmental review processes that the Secretary intends to use to implement this section for the planning of projects, in accordance with the civil works program of the Corps of Engineers and all applicable law.

(Pub. L. 110–114, [title II, §2045](#), Nov. 8, 2007, 121 Stat. 1103; Pub. L. 113–121, [title I, §1005\(a\)\(1\)](#), June 10, 2014, 128 Stat. 1199.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(1), (2), (b)(1), (d)(1), (3)(A), (4)(B), (f)(1)(D)(i), (g)(5)(A), (h)(5)(B), and (j)(1)(A), is Pub. L. 91–190, [Jan. 1, 1970](#), 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Water Resources Reform and Development Act of 2014, referred to in subsec. (h)(5)(C)(iii), is Pub. L. 113–121, [June 10, 2014](#), 128 Stat. 1193. For complete classification of this Act to the Code, see Short Title of 2014 Amendment note set out under section 2201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2014—Pub. L. 113–121 amended section generally. Prior to amendment, section related to project streamlining.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

¹ *So in original. Probably should be "State".*

§2348a. NEPA reporting**(a) Definitions**

In this section:

(1) Categorical exclusion

The term "categorical exclusion" has the meaning given the term in section 1508.1 of title 40, Code of Federal Regulations (or a successor regulation).

(2) Environmental assessment

The term "environmental assessment" has the meaning given the term in section 1508.1 of title 40, Code of Federal Regulations (or a successor regulation).

(3) Environmental impact statement

The term "environmental impact statement" means a detailed written statement required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(4) Finding of no significant impact

The term "finding of no significant impact" has the meaning given the term in section 1508.1 of title 40, Code of Federal Regulations (or a successor regulation).

(5) Project study

The term "project study" means a feasibility study for a project carried out pursuant to section 2282 of this title for which a categorical exclusion may apply, or an environmental assessment or an environmental impact statement is required, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) Reports**(1) NEPA data****(A) In general**

The Secretary shall carry out a process to track, and annually submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, a report containing the information described in subparagraph (B).

(B) Information described

The information referred to in subparagraph (A) is, with respect to the Corps of Engineers—

- (i) the number of project studies for which a categorical exclusion was used during the reporting period;
- (ii) the number of project studies for which the decision to use a categorical exclusion, to prepare an environmental assessment, or to prepare an environmental impact statement is pending on the date on which the report is submitted;
- (iii) the number of project studies for which an environmental assessment was issued during the reporting period, broken down by whether a finding of no significant impact, if applicable, was based on mitigation;
- (iv) the length of time the Corps of Engineers took to complete each environmental assessment described in clause (iii);
- (v) the number of project studies pending on the date on which the report is submitted for which an environmental assessment is being drafted;
- (vi) the number of project studies for which an environmental impact statement was issued during the reporting period;
- (vii) the length of time the Corps of Engineers took to complete each environmental impact statement described in clause (vi); and
- (viii) the number of project studies pending on the date on which the report is submitted for which an environmental impact statement is being drafted.

(2) Public access to NEPA reports

The Secretary shall make each annual report required under paragraph (1) publicly available (including on a publicly available website).

(Pub. L. 117–263, div. H, title LXXXI, §8134, Dec. 23, 2022, 136 Stat. 3721.)

EDITORIAL NOTES**REFERENCES IN TEXT**

The National Environmental Policy Act of 1969, referred to in subsec. (a)(5), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2022, and also as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 8002 of Pub. L. 117–263, set out as a note under section 2201 of this title.

§2349. Categorical exclusions in emergencies

For the repair, reconstruction, or rehabilitation of a water resources project that is in operation or under construction when damaged by an event or incident that results in a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall treat such repair, reconstruction, or rehabilitation activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations (or successor regulations), if the repair or reconstruction activity is—

- (1) in the same location with the same capacity, dimensions, and design as the original water resources project as before the declaration described in this section; ¹ and
- (2) commenced within a 2-year period beginning on the date of a declaration described in this section.

(Pub. L. 113–121, title I, §1005(b), June 10, 2014, 128 Stat. 1212.)

EDITORIAL NOTES**REFERENCES IN TEXT**

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

This section, referred to in par. (1), means section 1005 of title I of Pub. L. 113–121, which amended this section and section 2348 of this title.

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

¹ *See References in Text note below.*

§2350. Corrosion prevention

(a) In general

To the greatest extent practicable, the Secretary shall encourage and incorporate corrosion prevention activities at water resources development projects.

(b) Activities

In carrying out subsection (a), the Secretary, to the greatest extent practicable, shall ensure that contractors performing work for water resources development projects—

- (1) use best practices to carry out corrosion prevention activities in the field;
- (2) use industry-recognized standards and corrosion mitigation and prevention methods when—
 - (A) determining protective coatings;
 - (B) selecting materials; and
 - (C) determining methods of cathodic protection, design, and engineering for corrosion prevention;

- (3) use certified coating application specialists and cathodic protection technicians and engineers;
- (4) use best practices in environmental protection to prevent environmental degradation and to ensure careful handling of all hazardous materials;
- (5) demonstrate a history of employing industry-certified inspectors to ensure adherence to best practices and standards; and
- (6) demonstrate a history of compliance with applicable requirements of the Occupational Safety and Health Administration.

(c) Corrosion prevention activities defined

In this section, the term "corrosion prevention activities" means—

- (1) the application and inspection of protective coatings for complex work involving steel and cementitious structures, including structures that will be exposed in immersion;
- (2) the installation, testing, and inspection of cathodic protection systems; and
- (3) any other activities related to corrosion prevention the Secretary determines appropriate.

(d) Report

In the first annual report submitted to Congress after December 16, 2016, in accordance with section 556 of this title, and section 2295(b) of this title, the Secretary shall report on the corrosion prevention activities encouraged under this section, including—

- (1) a description of the actions the Secretary has taken to implement this section; and
- (2) a description of the projects utilizing corrosion prevention activities, including which activities were undertaken.

(Pub. L. 113–121, [title I, §1033](#), June 10, 2014, 128 Stat. 1233; Pub. L. 114–322, [title I, §1142](#), Dec. 16, 2016, 130 Stat. 1658.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Subsec. (d). Pub. L. 114–322 added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2351. Durability, sustainability, and resilience

In carrying out the activities of the Corps of Engineers, the Secretary, to the maximum extent practicable, shall encourage the use of durable and sustainable materials and resilient construction techniques that—

- (1) allow a water resources infrastructure project—
 - (A) to resist hazards due to a major disaster; and
 - (B) to continue to serve the primary function of the water resources infrastructure project following a major disaster;
- (2) reduce the magnitude or duration of a disruptive event to a water resources infrastructure project; and
- (3) have the absorptive capacity, adaptive capacity, and recoverability to withstand a potentially disruptive event.

(Pub. L. 113–121, [title III, §3022](#), June 10, 2014, 128 Stat. 1301.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§2351a. Operation and maintenance of existing infrastructure

The Secretary shall improve the reliability, and operation and maintenance of, existing infrastructure of the Corps of Engineers, and, as necessary, improve its resilience to cyber-related threats.

(Pub. L. 115–270, [title I, §1113](#), Oct. 23, 2018, 132 Stat. 3775.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2018, and also as part of the America's Water Infrastructure Act of 2018, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 102 of Pub. L. 115–270, set out as a note under section 2201 of this title.

§2351b. Federal breakwaters and jetties

(a) In general

In carrying out repair or maintenance activity of a Federal jetty or breakwater associated with an authorized navigation project, the Secretary shall, notwithstanding the authorized dimensions of the jetty or breakwater, ensure that such repair or maintenance activity is sufficient to meet the authorized purpose of such project, including ensuring that any harbor or inland harbor associated with the project is protected from projected changes in wave action or height (including changes that result from relative sea level change over the useful life of the project).

(b) Classification of activity

The Secretary may not classify any repair or maintenance activity of a Federal jetty or breakwater carried out under subsection (a) as major rehabilitation of such jetty or breakwater—

- (1) if the Secretary determines that—

- (A) projected changes in wave action or height, including changes that result from relative sea level change, will diminish the functionality of the jetty or breakwater to meet the authorized purpose of the project; and
(B) such repair or maintenance activity is necessary to restore such functionality; or

(2) if—

- (A) the Secretary has not carried out regular and routine Federal maintenance activity at the jetty or breakwater; and
(B) the structural integrity of the jetty or breakwater is degraded as a result of a lack of such regular and routine Federal maintenance activity.

(Pub. L. 117–263, div. H, title LXXXI, §8101, Dec. 23, 2022, 136 Stat. 3695.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2022, and also as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 8002 of Pub. L. 117–263, set out as a note under section 2201 of this title.

§2352. Funding to process permits

(a) Funding to process permits

(1) Definitions

In this subsection:

(A) Natural gas company

The term "natural gas company" has the meaning given the term in section 16451 of title 42, except that the term also includes a person engaged in the transportation of natural gas in intrastate commerce.

(B) Public-utility company

The term "public-utility company" has the meaning given the term in section 16451 of title 42.

(C) Railroad carrier

The term "railroad carrier" has the meaning given the term in section 20102 of title 49.

(2) Permit processing

(A) In general

The Secretary, after public notice, may accept and expend funds contributed by a non-Federal public entity or a public-utility company, natural gas company, or railroad carrier to expedite the evaluation of a permit of that entity, company, or carrier related to a project or activity for a public purpose under the jurisdiction of the Department of the Army.

(B) Mitigation bank instrument processing

An activity carried out by the Secretary to expedite evaluation of a permit described in subparagraph (A) may include the evaluation of an instrument for a mitigation bank if—

- (i) the non-Federal public entity, public-utility company, natural gas company, or railroad carrier applying for the permit described in that subparagraph is the sponsor of the mitigation bank; and
(ii) expediting evaluation of the instrument is necessary to expedite evaluation of the permit described in that subparagraph.

(3) Effect on other entities

To the maximum extent practicable, the Secretary shall ensure that expediting the evaluation of a permit through the use of funds accepted and expended under this section does not adversely affect the timeline for evaluation (in the Corps district in which the project or activity is located) of permits under the jurisdiction of the Department of the Army of other entities that have not contributed funds under this section.

(4) GAO study

Not later than December 31, 2022, the Comptroller General of the United States shall carry out a followup study of the implementation by the Secretary of the authority provided under paragraph (2) to public-utility companies, natural gas companies, and railroad carriers, including an evaluation of the compliance with the requirements of this section and, with respect to a permit for those entities, the requirements of applicable Federal laws.

(b) Effect on permitting

(1) In general

In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally.

(2) Impartial decisionmaking

In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall—

- (A) be reviewed by—
(i) the District Commander, or the Commander's designee, of the Corps District in which the project or activity is located; or
(ii) the Commander of the Corps Division in which the District is located if the evaluation of the permit is initially conducted by the District Commander; and

(B) utilize the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

(c) Limitation on use of funds

None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).

(d) Public availability

(1) In general

The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public in a common format, including on the Internet, and in a manner that distinguishes final permit decisions under this section from other final actions of the Secretary.

(2) Decision document

The Secretary shall—

- (A) use a standard decision document for evaluating all permits using funds accepted under this section; and
(B) make the standard decision document, along with all final permit decisions, available to the public, including on the Internet.

(3) Agreements

The Secretary shall make all active agreements to accept funds under this section available on a single public Internet site.

(e) Reporting

(1) In general

The Secretary shall prepare an annual report on the implementation of this section, which, at a minimum, shall include for each district of the Corps of Engineers that accepts funds under this section—

- (A) a comprehensive list of any funds accepted under this section during the previous fiscal year;
(B) a comprehensive list of the permits reviewed and approved using funds accepted under this section during the previous fiscal year, including a description of the size and type of resources impacted and the mitigation required for each permit; and
(C) a description of the training offered in the previous fiscal year for employees that is funded in whole or in part with funds accepted under this section.

(2) Submission

Not later than 90 days after the end of each fiscal year, the Secretary shall—

- (A) submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives the annual report described in paragraph (1); and
(B) make each report received under subparagraph (A) available on a single publicly accessible Internet site.

(Pub. L. 106–541, title II, §214, Dec. 11, 2000, 114 Stat. 2594; Pub. L. 108–137, title I, §114, Dec. 1, 2003, 117 Stat. 1836; Pub. L. 109–99, §1, Nov. 11, 2005, 119 Stat. 2169; Pub. L. 109–209, §1, Mar. 24, 2006, 120 Stat. 318; Pub. L. 109–434, §1, Dec. 20, 2006, 120 Stat. 3197; Pub. L. 110–114, title II, §2002, Nov. 8, 2007, 121 Stat. 1067; Pub. L. 111–120, §1, Dec. 22, 2009, 123 Stat. 3478; Pub. L. 111–315, §1, Dec. 18, 2010, 124 Stat. 3450; Pub. L. 113–121, title I, §1006, June 10, 2014, 128 Stat. 1212; Pub. L. 114–322, title I, §1125, Dec. 16, 2016, 130 Stat. 1648; Pub. L. 115–270, title I, §1145, Oct. 23, 2018, 132 Stat. 3785; Pub. L. 117–263, div. H, title LXXXI, §8135, Dec. 23, 2022, 136 Stat. 3722.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2000, and not as part of the Water Resources Development Act of 1986 which comprises this chapter. Section was formerly classified as a note under section 2201 of this title.

AMENDMENTS

2022—Subsec. (a)(2). Pub. L. 117–263 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

2018—Subsec. (a)(3). Pub. L. 115–270, §1145(1), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: "The authority provided under paragraph (2) to a public-utility company, natural gas company, or railroad carrier shall expire on the date that is 10 years after June 10, 2014."

Subsec. (a)(4), (5). Pub. L. 115–270 redesignated par. (5) as (4) and substituted "December 31, 2022" for "4 years after June 10, 2014" and "carry out a followup study" for "carry out a study".

2016—Subsec. (a)(1)(C). Pub. L. 114–322, §1125(1), added subpar. (C).

Subsec. (a)(2). Pub. L. 114–322, §1125(2), substituted ", natural gas company, or railroad carrier" for "or natural gas company" and ", company, or carrier" for "or company".

Subsec. (a)(3). Pub. L. 114–322, §1125(3), substituted ", natural gas company, or railroad carrier" for "or natural gas company" and "10 years" for "7 years".

Subsec. (a)(5). Pub. L. 114–322, §1125(4), substituted ", natural gas companies, and railroad carriers, including an evaluation of the compliance with the requirements of this section and, with respect to a permit for those entities, the requirements of applicable Federal laws" for "and natural gas companies".

2014—Subsec. (a)(1), (2). Pub. L. 113–121, §1006(1)(A), (B), substituted "Funding to process permits" for "In general" in subsec. heading, added par. (1), redesignated text of subsec. (a) as par. (2), inserted heading, and inserted "or a public-utility company or natural gas company" after "non-Federal public entity" and "or company" after "that entity".

Subsec. (a)(3) to (5). Pub. L. 113–121, §1006(1)(C), added pars. (3) to (5).

Subsecs. (d), (e). Pub. L. 113–121, §1006(2), added subsecs. (d) and (e) and struck out former subsecs. (d) and (e) which read as follows:

"(d) PUBLIC AVAILABILITY.—The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public, including on the Internet.

"(e) DURATION OF AUTHORITY.—The authority provided under this section shall be in effect from October 1, 2000, through December 31, 2016."

2010—Subsec. (a). Pub. L. 111–315, §1(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The Secretary, after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army."

Subsec. (b). Pub. L. 111–315, §1(3), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: "In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally."

Subsecs. (c) to (e). Pub. L. 111–315, §1(2)–(4), added subsecs. (c) and (d), redesignated former subsec. (c) as (e), and, in subsec. (e), substituted "2016" for "2010".

2009—Subsec. (c). Pub. L. 111–120 substituted "2010" for "2009".

2007—Subsec. (c). Pub. L. 110–114 substituted "2009" for "2008".

2006—Subsec. (c). Pub. L. 109–434 substituted "December 31, 2008" for "December 31, 2006".

Pub. L. 109–209 substituted "December 31, 2006" for "March 31, 2006".

2005—Subsec. (a). Pub. L. 109–99, §1(1), substituted "The" for "In fiscal years 2001 through 2005, the".

Subsec. (c). Pub. L. 109–99, §1(2), added subsec. (c).

2003—Subsec. (a). Pub. L. 108–137 substituted "2005" for "2003".

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–541, set out as a note under section 2201 of this title.

§2353. Structural health monitoring**(a) In general**

The Secretary shall design and develop a structural health monitoring program to assess and improve the condition of infrastructure constructed and maintained by the Corps of Engineers, including research, design, and development of systems and frameworks for—

- (1) response to flood and earthquake events;
- (2) predisaster mitigation measures;
- (3) lengthening the useful life of the infrastructure; and
- (4) identifying risks due to sea level rise.

(b) Consultation and considerations

In developing the program under subsection (a), the Secretary shall—

- (1) consult with academic and other experts; and
- (2) consider models for maintenance and repair information, the development of degradation models for real-time measurements and environmental inputs, and research on qualitative inspection data as surrogate sensors.

(Pub. L. 114–322, title I, §1151, Dec. 16, 2016, 130 Stat. 1661.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114–322, set out as a note under section 2201 of this title.

§2353a. Aging infrastructure**(a) Definitions**

In this section:

(1) Aging infrastructure

The term "aging infrastructure" means a water resources development project of the Corps of Engineers, or any other water resources, water storage, or irrigation project of another Federal agency, that is greater than 75 years old.

(2) Enhanced inspection

The term "enhanced inspection" means an inspection that uses current or innovative technology, including Light Detection and Ranging (commonly known as "LiDAR"), ground penetrating radar, subsurface imaging, or subsurface geophysical techniques, to detect whether the features of the aging infrastructure are structurally sound and can operate as intended, or are at risk of failure.

(b) Contracts for enhanced inspection**(1) In general**

The Secretary may carry out enhanced inspections of aging infrastructure, pursuant to a contract with the owner or operator of the aging infrastructure.

(2) Certain circumstances

Subject to the availability of appropriations, or funds available pursuant to subsection (d), the Secretary shall enter into a contract described in paragraph (1), if—

- (A) the owner or operator of the aging infrastructure requests that the Secretary carry out the enhanced inspections; and
- (B) the inspection is at the full expense of such owner or operator.

(c) Limitation

The Secretary shall not require a non-Federal entity associated with a project under the jurisdiction of another Federal agency to carry out corrective or remedial actions in response to an enhanced inspection carried out under this section.

(d) Funding

The Secretary is authorized to accept funds from an owner or operator of aging infrastructure, and may use such funds to carry out an enhanced inspection pursuant to a contract entered into with such owner or operator under this section.

(Pub. L. 116–260, div. AA, title I, §138, Dec. 27, 2020, 134 Stat. 2651.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

§2354. Easements for electric, telephone, or broadband service facilities**(a) Definition of water resources development project**

In this section, the term "water resources development project" means a project under the administrative jurisdiction of the Corps of Engineers that is subject to part 327 of title 36, Code of Federal Regulations (or successor regulations).

(b) No consideration for easements

The Secretary may not collect consideration for an easement across water resources development project land for the electric, telephone, or broadband service facilities of nonprofit organizations eligible for financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.).

(c) Administrative expenses

Nothing in this section affects the authority of the Secretary under section 2695 of title 10 or under section 9701 of title 31 to collect funds to cover reasonable administrative expenses incurred by the Secretary.

(Pub. L. 114–322, [title I, §1172](#), Dec. 16, 2016, 130 Stat. 1671.)

EDITORIAL NOTES**REFERENCES IN TEXT**

The Rural Electrification Act of 1936, referred to in subsec. (b), is act [May 20, 1936, ch. 432](#), 49 Stat. 1363, which is classified generally to chapter 31 (§901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114–322, set out as a note under section 2201 of this title.

§2355. Prior project authorization

In any case in which a project under the jurisdiction of the Secretary is budgeted under a different business line than the business line under which the project was originally authorized, the Secretary shall ensure that the project is carried out in accordance with any requirements that apply to the business line under which the project was originally authorized.

(Pub. L. 115–270, [title I, §1127](#), Oct. 23, 2018, 132 Stat. 3780.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2018, and also as part of the America's Water Infrastructure Act of 2018, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 102 of Pub. L. 115–270, set out as a note under section 2201 of this title.

§2356. Project consultation**(a) Reports required**

Not later than 180 days after December 27, 2020, the Secretary shall submit the following reports:

- (1) The report required under section 1214 of the Water Resources Development Act of 2018 (132 Stat. 3809).
- (2) The report required under section 1120(a)(3) of the Water Resources Development Act of 2016 (130 Stat. 1643).

(b) Environmental justice updates**(1) In general**

In the formulation of water development resources projects, the Secretary shall comply with any existing Executive order regarding environmental justice in effect as of December 27, 2020, to address any disproportionate and adverse human health or environmental effects on minority communities, low-income communities, and Indian Tribes.

(2) Update

Not later than 1 year after December 27, 2020, the Secretary shall review, and shall update, where appropriate, any policies, regulations, and guidance of the Corps of Engineers necessary to implement any Executive order described in paragraph (1) with respect to water resources development projects.

(3) Requirements

In updating the policies, regulations, or guidance under paragraph (2), the Secretary shall—

- (A) provide notice to interested non-Federal stakeholders, including representatives of minority communities, low-income communities, and Indian Tribes;
- (B) provide opportunities for interested stakeholders to comment on potential updates of policies, regulations, or guidance;
- (C) consider the recommendations from the reports submitted under subsection (a); and
- (D) promote the meaningful involvement of minority communities, low-income communities, and Indian Tribes.

(c) Community engagement

In carrying out a water resources development project, the Secretary shall, to the extent practicable—

- (1) promote the meaningful involvement of minority communities, low-income communities, and Indian Tribes;
- (2) provide guidance and technical assistance to such communities or Tribes to increase understanding of the project development and implementation activities, regulations, and policies of the Corps of Engineers; and
- (3) cooperate with State, Tribal, and local governments with respect to activities carried out pursuant to this subsection.

(d) Tribal lands and consultation

In carrying out water resources development projects, the Secretary shall, to the extent practicable and in accordance with the Tribal Consultation Policy affirmed and formalized by the Secretary on November 1, 2012 (or a successor policy)—

- (1) promote meaningful involvement with Indian Tribes specifically on any Tribal lands near or adjacent to any water resources development projects, for purposes of identifying lands of ancestral, cultural, or religious importance;
- (2) consult with Indian Tribes specifically on any Tribal areas near or adjacent to any water resources development projects, for purposes of identifying lands, waters, and other resources critical to the livelihood of the Indian Tribes; and
- (3) cooperate with Indian Tribes to avoid, or otherwise find alternate solutions with respect to, such areas.

(Pub. L. 116–260, [div. AA, title I, §112](#), Dec. 27, 2020, 134 Stat. 2625.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1214 of the Water Resources Development Act of 2018, referred to in subsec. (a)(1), is section 1214 of Pub. L. 115–270, [title I, Oct. 23, 2018](#), 132 Stat. 3768, which is not classified to the Code.

Section 1120(a)(3) of the Water Resources Development Act of 2016, referred to in subsec. (a)(2), is section 1120(a)(3) of Pub. L. 114–322, [title I, Dec. 16, 2016](#), 130 Stat. 1632, which is not classified to the Code.

CODIFICATION

Section was enacted as a part of the Water Resources Development Act of 2020, and not as a part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116–260, set out as a note under section 2201 of this title.

§2357. Managed aquifer recharge study and working group**(a) Assessment****(1) In general**

The Secretary shall, in consultation with applicable non-Federal interests, conduct a national assessment of carrying out managed aquifer recharge projects to address drought, water resiliency, and aquifer depletion at authorized water resources development projects.

(2) Requirements

In carrying out paragraph (1), the Secretary shall—

- (A) assess and identify opportunities to support non-Federal interests, including Tribal communities, in carrying out managed aquifer recharge projects; and
- (B) assess preliminarily local hydrogeologic conditions relevant to carrying out managed aquifer recharge projects.

(3) Coordination

In carrying out paragraph (1), the Secretary shall coordinate, as appropriate, with the heads of other Federal agencies, States, regional governmental agencies, units of local government, experts in managed aquifer recharge, and Tribes.

(b) Feasibility studies**(1) Authorization**

The Secretary is authorized to carry out feasibility studies, at the request of a non-Federal interest, of managed aquifer recharge projects in areas that are experiencing, or have recently experienced, prolonged drought conditions, aquifer depletion, or water supply scarcity.

(2) Limitation

The Secretary may carry out not more than 10 feasibility studies under this subsection.

(3) Use of information

The Secretary shall, to the maximum extent practicable, use information gathered from the assessment conducted under subsection (a) in identifying and selecting feasibility studies to carry out under this subsection.

(4) Cost share

The Federal share of the cost of a feasibility study carried out under this subsection shall be 90 percent.

(c) Working group**(1) In general**

Not later than 180 days after December 23, 2022, the Secretary shall establish a managed aquifer recharge working group made up of subject matter experts within the Corps of Engineers and relevant non-Federal stakeholders.

(2) Composition

In establishing the working group under paragraph (1), the Secretary shall ensure that members of the working group have expertise working with—

- (A) projects providing water supply storage to meet regional water supply demand, particularly in regions experiencing drought;
- (B) the protection of groundwater supply, including promoting infiltration and increased recharge in groundwater basins, and groundwater quality;
- (C) aquifer storage, recharge, and recovery wells;
- (D) dams that provide recharge enhancement benefits;
- (E) groundwater hydrology;
- (F) conjunctive use water systems; and
- (G) agricultural water resources, including the use of aquifers for irrigation purposes.

(3) Duties

The working group established under this subsection shall—

- (A) advise the Secretary regarding the development and execution of the assessment under subsection (a) and any feasibility studies under subsection (b);
- (B) assist Corps of Engineers offices at the headquarter, division, and district levels with raising awareness of non-Federal interests of the potential benefits of carrying out managed aquifer recharge projects; and
- (C) assist with the development of the report required to be submitted under subsection (d).

(d) Report to Congress

Not later than 2 years after December 23, 2022, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on managed aquifer recharge that includes—

- (1) the results of the assessment conducted under subsection (a) and any feasibility studies carried out under subsection (b), including data collected under such assessment and studies and any recommendations on managed aquifer recharge opportunities for non-Federal interests, States, local governments, and Tribes;
- (2) a status update on the implementation of the recommendations included in the report of the U.S. Army Corps of Engineers Institute for Water Resources entitled "Managed Aquifer Recharge and the U.S. Army Corps of Engineers: Water Security through Resilience", published in April 2020 (2020–WP–01); and
- (3) an evaluation of the benefits of creating a new or modifying an existing planning center of expertise for managed aquifer recharge, and identify potential locations for such a center of expertise, if feasible.

(e) Savings provision

Nothing in this section affects the non-Federal share of the cost of construction of a managed aquifer recharge project under section 2213 of this title or any other provision of law.

(f) Definitions

In this section:

(1) Managed aquifer recharge

The term "managed aquifer recharge" means the intentional banking and treatment of water in aquifers for storage and future use.

(2) Managed aquifer recharge project

The term "managed aquifer recharge project" means a project to incorporate managed aquifer recharge features into a water resources development project.

(Pub. L. 117–263, div. H, title LXXXI, §8108, Dec. 23, 2022, 136 Stat. 3700.)

EDITORIAL NOTES**CODIFICATION**

Section was enacted as part of the Water Resources Development Act of 2022, and also as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES**"SECRETARY" DEFINED**

Secretary means the Secretary of the Army, see section 8002 of Pub. L. 117–263, set out as a note under section 2201 of this title.