

thority of any State over the siting, construction, monitoring, or managing of artificial reefs within its boundaries.

(Pub. L. 98-623, title II, §208, Nov. 8, 1984, 98 Stat. 3398.)

### 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.)

#### 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.

#### 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

Section 1(a) of Pub. L. 99-662 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.’”

Section 215 of title II of Pub. L. 99-662 provided that: “This title [enacting subchapter II of this chapter] may be cited as the ‘Harbor Development and Navigation Improvement Act of 1986.’”

#### 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, provided that:

“(a) IN GENERAL.—The Secretary, after public notice, may accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army.

“(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 eval-

uation 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.—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.”

#### 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

Section 948 of Pub. L. 99-662 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.”

#### “SECRETARY” DEFINED

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.”

## 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 November 17, 1986, 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 45 feet; plus

(C) 50 percent of the cost of construction of the portion of the project which has a depth in excess of 45 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 45 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) of this section. 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) of this section;

(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.)

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

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.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 13(b) of Pub. L. 100-676 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

Section 201(f) of Pub. L. 104-303 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

Section 201(g) of Pub. L. 104-303 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

Section 216 of Pub. L. 102-580 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.

**§ 2212. Inland waterway transportation****(a) Construction**

One-half 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. One-half 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) 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.)

## REFERENCES IN TEXT

Title III of this Act, referred to in subsecs. (a)(1) and (c)(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 (c)(2), is section 844 of Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4177, which is not classified to the Code.

**§ 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) Nonstructural flood control projects****(1) In general**

The non-Federal share of the cost of nonstructural flood control measures 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 of the project.

**(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) of this section 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 Re-

port 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**

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.

**(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**

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.

**(l) Delay of 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.

**(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) of this section, 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).<sup>1</sup>

(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.)

## 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, 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.

The Flood Control Act of 1946, referred to in subsec. (g)(2)(A), is act July 24, 1946, ch. 596, 60 Stat. 641, as amended. 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

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.”

## EFFECTIVE DATE OF 1996 AMENDMENT

Section 202(a)(1)(B) of Pub. L. 104-303 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

<sup>1</sup> See References in Text note below.

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.”

Section 202(b)(2) of Pub. L. 104-303 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.]

Section 210(b) of Pub. L. 104-303 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

Section 305(b) of Pub. L. 101-640 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.”

### § 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) of this section 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) of this section 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) of this section.

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) of this section, 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) of this section with respect to such work not later than 6 months after guidelines are issued under subsection (a) of this section.

#### (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) of this section in accordance with the guidelines issued under subsection (a) of this section. 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.)

## REFERENCES IN TEXT

This Act, referred to in subsecs. (b) and (c), 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.

**§ 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-Fed-

eral 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 sec-

tion 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.)

#### 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.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 203(b) of Pub. L. 104-303 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

Section 203(c) of Pub. L. 104-303 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.)

#### 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 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-ventible project purposes and 10 percent of the construction costs allocated to ventible 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.)

#### 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 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.)

#### 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 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.)

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, as amended, 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 of this title; the Civil Functions Appropriations Act, 1936, Public Law 75-208<sup>1</sup>; section 1962d-5a of title 42; sections 2214, 2231, and 2232 of this title; section 426i-1 of this title; section 701b-13 of this title; and any other specific project authority, shall be limited to total credits and reimbursements for all applica-

ble projects not to exceed \$100,000,000 in each fiscal year.

(Pub. L. 109-103, title I, §102, Nov. 19, 2005, 119 Stat. 2253.)

REFERENCES IN TEXT

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.

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.

**§ 2222. Use of other Federal funds**

The non-Federal interest for a water resources study or project 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 the Federal agency that provides the funds determines that the funds are authorized to be used to carry out the study or project.

(Pub. L. 110-114, title II, §2007, Nov. 8, 2007, 121 Stat. 1073.)

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.

“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.

SUBCHAPTER II—HARBOR DEVELOPMENT

**§ 2231. Studies of projects by non-Federal interests**

**(a) Submission to Secretary**

A non-Federal interest may on its own undertake a feasibility study of a proposed harbor or inland harbor project and submit it to the Secretary. To assist non-Federal interests, the Secretary shall, as soon as practicable, promulgate guidelines for studies of harbors or inland harbors to provide sufficient information for the formulation of studies.

**(b) Review by Secretary**

The Secretary shall review each study submitted under subsection (a) of this section for the

<sup>1</sup> See References in Text note below.

purpose of determining whether or not such study and the process under which such study was developed comply with Federal laws and regulations applicable to feasibility studies of navigation projects for harbors or inland harbors.

**(c) Submission to Congress**

Not later than 180 days after receiving any study submitted under subsection (a) of this section, the Secretary shall transmit to the Congress, in writing, the results of such review and any recommendations the Secretary may have concerning the project described in such plan and design.

**(d) Credit and reimbursement**

If a project for which a study has been submitted under subsection (a) of this section is authorized by any provision of Federal law enacted after the date of such submission, the Secretary shall credit toward the non-Federal share of the cost of construction of such project an amount equal to the portion of the cost of developing such study that would be the responsibility of the United States if such study were developed by the Secretary.

(Pub. L. 99-662, title II, §203, Nov. 17, 1986, 100 Stat. 4098.)

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.

**§ 2232. Construction of projects by non-Federal interests**

**(a) Authority**

In addition to projects undertaken pursuant to sections 201 and 202 of this title, any non-Federal interest is authorized to undertake navigational improvements in harbors or inland harbors of the United States, subject to obtaining any permits required pursuant to Federal and State laws in advance of the actual construction of such improvements.

**(b) Studies and engineering**

When requested by an appropriate non-Federal interest the Secretary is authorized to undertake all necessary studies and engineering for any construction to be undertaken under the terms of subsection (a) of this section, and provide technical assistance in obtaining all necessary permits, if the non-Federal interest contracts with the Secretary to furnish the United States funds for such studies and engineering during the period that they are conducted.

**(c) Completion of studies**

The Secretary is authorized to complete and transmit to the appropriate non-Federal interest any study for improvements to harbors or inland harbors of the United States which were initiated prior to November 17, 1986, or, upon the request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest. The Secretary is further authorized to complete and transmit to the appropriate non-Federal in-

terest 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. Studies under this subsection shall be completed without regard to the requirements of subsection (b) of this section.

**(d) Authority to carry out improvement**

Any non-Federal interest which has requested and received from the Secretary pursuant to subsection (b) or (c) of this section, the completed study and engineering for an improvement to a harbor or an inland harbor, or separable element thereof, for the purpose of constructing such improvement and for which improvement a final environmental impact statement has been filed, shall be authorized to carry out the terms of the plan for such improvement. Any plan of improvement proposed to be implemented in accordance with this subsection shall be deemed to satisfy the requirements for obtaining the appropriate permits required under the Secretary's authority and such permits shall be granted subject to the non-Federal interest's acceptance of the terms and conditions of such permits: Provided, That the Secretary determines that the applicable regulatory criteria and procedures have been satisfied. The Secretary shall monitor any project for which permits are granted under this subsection in order to ensure that such project is constructed (and, in those cases where such activities will not be the responsibility of the Secretary, operated and maintained) in accordance with the terms and conditions of such permits.

**(e) Reimbursement**

**(1) General rule**

Subject to the enactment of appropriation Acts, the Secretary is authorized to reimburse any non-Federal interest an amount equal to the estimate of Federal share, without interest, of the cost of any authorized harbor or inland harbor improvement, or separable element thereof, including any small navigation project approved pursuant to section 577 of this title, constructed under the terms of this section if—

(A) after authorization of the project (or, in the case of a small navigation project, after completion of a favorable project report by the Corps of Engineers) and before initiation of construction of the project or separable element—

(i) the Secretary approves the plans of construction of such project by such non-Federal interest, and

(ii) such non-Federal interest enters into an agreement to pay the non-Federal share, if any, of the cost of operation and maintenance of such project; and

(B) the Secretary finds before approval of the plans of construction of the project that the project, or separable element, is economically justified and environmentally acceptable.

**(2) Matters to be considered in reviewing plans**

In reviewing such plans, the Secretary shall consider budgetary and programmatic prior-

ities, potential impacts on the cost of dredging projects nationwide, and other factors that the Secretary deems appropriate.

### (3) Monitoring

The Secretary shall regularly monitor and audit any project for a harbor or inland harbor constructed under this subsection by a non-Federal interest in order to ensure that such construction is in compliance with the plans approved by the Secretary, and that costs are reasonable. No reimbursement shall be made unless and until the Secretary has certified that the work for which reimbursement is requested has been performed in accordance with applicable permits and the approved plans.

### (f) Operation and maintenance

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

(1) the Secretary determines, before construction, that the improvements, or separable elements thereof, are economically justified, environmentally acceptable, and consistent with the purposes of this subchapter;

(2) the Secretary certifies that the project is constructed in accordance with applicable permits and the appropriate engineering and design standards; and

(3) the Secretary does not find that the project, or separable element thereof, is no longer economically justified or environmentally acceptable.

### (g) Demonstration of non-Federal interests acting as agent of Secretary

For the purpose of demonstrating the potential advantages and efficiencies of non-Federal management of projects, the Secretary may approve as many as two proposals pursuant to which the non-Federal interests will undertake part or all of a harbor project authorized by Congress as the agent of the Secretary by utilizing its own personnel or by procuring outside services, so long as the cost of doing so will not exceed the cost of the Secretary undertaking the project.

(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.)

#### REFERENCES IN TEXT

Sections 201 and 202 of this title, referred to in subsec. (a), are sections 201 and 202 of title II of Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4089, 4091, which are not classified to the Code.

This subchapter, referred to in subsec. (f)(1), was in the original “this title” which, in addition to this subchapter, consisted of sections 201 and 202 of Pub. L. 99-662, which are not classified to the Code.

#### AMENDMENTS

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).

#### DEMONSTRATION OF CONSTRUCTION OF FEDERAL PROJECT BY NON-FEDERAL INTERESTS

Section 404 of Pub. L. 101-640 provided that:

“(a) IN GENERAL.—For purposes of demonstrating the safety benefits and economic efficiencies which would accrue as a consequence of non-Federal management of harbor improvement projects, the Secretary shall enter into agreements with 2 non-Federal interests pursuant to which the non-Federal interests will undertake part or all of a harbor project authorized by law, by utilizing their own personnel or by procuring outside services, if the cost of doing so will not exceed the cost of the Secretary undertaking the project. If proposals for such agreements meet the criteria of section 204 of the Water Resources Development Act of 1986 [33 U.S.C. 2232], the agreements shall be entered into not later than 1 year after the date of the enactment of this Act [Nov. 28, 1990].

“(b) LIMITATION.—At least 1 project carried out pursuant to this section shall pertain to improvements to a major ship channel which carries a substantial volume of both passenger and cargo traffic.

“(c) REPORT.—The Secretary shall transmit to Congress a report regarding the safety benefits and economic efficiencies accrued from entering into agreements with non-Federal interests under this section.”

### § 2233. 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) of this section, 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) of this section 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) of this section. 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) of this section, 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) of this section 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) of this section, 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 inter-

est 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.)

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 Saint Lawrence Seaway Development Corporation.

(Pub. L. 99-662, title II, §206, Nov. 17, 1986, 100 Stat. 4102.)

**§ 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)<sup>1</sup> 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)<sup>1</sup> of this section.

**(b) Jurisdiction**

(1) The district court of the United States for the district in which is located a non-Federal in-

<sup>1</sup> See References in Text note below.

terest 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)<sup>2</sup> 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, consignor, 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, consignor, 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.)

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, as amended, 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.”

**§ 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.)

<sup>2</sup> So in original. No par. (2) has been enacted.

**§ 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 Saint 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.

(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.)

## AMENDMENTS

1990—Subsec. (a)(2). Pub. L. 101-640 substituted “up to 100 percent” for “not more than 40 percent”.

**§ 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.

## 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 comple-

tion 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

Section 412 of Pub. L. 101-640 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 5¼ 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 Saint 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.)

#### 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

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,”.

#### 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.

#### 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, 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 community served by the harbor and navigation improvement; and

(3) the long-term viability of the community 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, 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 local population; and

(5) social and cultural value to the community.

(Pub. L. 110-114, title II, § 2006, Nov. 8, 2007, 121 Stat. 1073.)

#### 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.

#### “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.

### SUBCHAPTER III—INLAND WATERWAY TRANSPORTATION SYSTEM

## § 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

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.

### (c) Administration

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 en-

gaged 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.)

#### REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### AMENDMENTS

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”.

### 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.)

#### 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 under section 2201 of this title and Tables.

#### 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 \$50,000,000 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 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.

#### (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),<sup>1</sup> 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.)

#### 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

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).

#### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual,

<sup>1</sup> See References in Text note below.

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.

#### § 2264. Deauthorization of studies

(a) Notwithstanding section 3003 of Public Law 104-66 (31 U.S.C. 1113 note; 109 Stat. 734), not later than one year after November 17, 1986, and annually thereafter, the Secretary shall submit to Congress a list of incomplete water resources studies which have been authorized, but for which no funds have been appropriated during the 5 full fiscal years preceding the submission of such list. For each such study the Secretary shall include the following information:

- (1) the date of authorization and the manner in which the study was authorized;
- (2) a description of the purposes of the study;
- (3) a description of funding that has been made available for the study;
- (4) a description of any work that has been performed in carrying out the study and the results and conclusions, if any, of such work; and
- (5) a description of any work that remains to be done in carrying out the study and the time necessary for and estimated cost of completing such work.

(b) Each study included in a list under subsection (a) of this section is not authorized on and after the 90th day following the submission to Congress of such list if no funds have been appropriated for such study after the list is submitted and before such 90th day.

(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.)

#### AMENDMENTS

1999—Subsec. (a). Pub. L. 106-109, in first sentence, substituted “Notwithstanding section 3003 of Public Law 104-66 (31 U.S.C. 1113 note; 109 Stat. 734), not” for “Not”.

#### § 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.

(Pub. L. 99-662, title VII, § 728, Nov. 17, 1986, 100 Stat. 4164.)

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; and
- (6) drought preparedness.

**(b) Cooperation**

An assessment under subsection (a) of this section 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) of this section, 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; and
- (10) White River Basin, Arkansas and Missouri.

**(e) Acceptance of contributions**

In carrying out an assessment under subsection (a) of this section, the Secretary may accept contributions, in cash or in kind, from Fed-

eral, 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.)

AMENDMENTS

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.”

**§ 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.)

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.

“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 450b 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 and study and determine the feasibility of carrying out 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) Matters to be studied**

A study conducted under paragraph (1) may address—

(A) projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources;

(B) watershed assessments and planning activities; and

(C) such other projects as the Secretary, in cooperation with Indian tribes and the heads of other Federal agencies, determines to be appropriate.

**(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 studies conducted under subsection (b) of this section.

**(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 carrying out projects studied under subsection (b) of this section.

**(d) Cost sharing**

**(1) Ability to pay**

**(A) In general**

Any cost-sharing agreement for a study under subsection (b) of this section shall be subject to the ability of the non-Federal interest to pay.

**(B) Use of procedures**

The ability of a non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.

**(2) Credit**

The Secretary may credit toward the non-Federal share of the costs of a study under subsection (b) of this section 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.

**(e) Authorization of appropriations**

There is authorized to be appropriated to carry out subsection (b) of this section \$5,000,000 for each of fiscal years 2002 through 2012, of which not more than \$1,000,000 may be used with respect to any 1 Indian tribe.

(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.)

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

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”.

“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.

SUBCHAPTER V—GENERAL PROVISIONS

**§ 2280. Maximum cost of projects**

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.

(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.)

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 under section 2201 of this title and Tables.

The date of enactment of this Act, referred to in text, 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 text, 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

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).

**§ 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 environ-

ment), 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.)

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”.

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.

**§ 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 perform a reconnaissance study and 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 non-structural 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.

**(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);<sup>1</sup>

(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) Reconnaissance studies**

Before initiating any feasibility study under subsection (a) of this section after November 17, 1986, the Secretary shall first perform, at Federal expense, a reconnaissance study of the water resources problem in order to identify potential solutions to such problem in sufficient detail to enable the Secretary to determine whether or not planning to develop a project should proceed to the preparation of a feasibility report. Such reconnaissance study shall include a preliminary analysis of the Federal interest, costs, benefits, and environmental impacts of such project, and an estimate of the costs of preparing the feasibility report. The duration of a reconnaissance study shall normally be no more than twelve months, but in all cases is to be limited to eighteen months.

**(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.

<sup>1</sup> See References in Text note below.

**(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) of this section, 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) of this section.

(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.)

## 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

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 sub-

ject 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).

## 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.”

### § 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) bench-

mark 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 non-structural 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.

#### (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.)

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.

“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.

**§ 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 fish and wildlife losses created by such project, or (B) a determination by the Secretary that such project will have negligible adverse impact on fish and wildlife. 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. In carrying out this subsection, the Secretary shall consult with appropriate Federal and non-Federal agencies.

**(2) Design of mitigation projects**

The Secretary shall design mitigation projects 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 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) 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;
- (iv) 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 objec-

tives 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

(v) 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) of this section 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.

(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.)

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, as amended, 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 act Mar. 10, 1934, ch. 55, 48 Stat. 401, as amended, which is classified generally to sections 661 to 666c of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 16 and Tables.

AMENDMENTS

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”.

CONCURRENT MITIGATION

Pub. L. 106-541, title II, § 224(b), Dec. 11, 2000, 114 Stat. 2598, provided that:

“(1) INVESTIGATION.—

“(A) IN GENERAL.—The Comptroller General shall conduct an investigation of the effectiveness of the concurrent mitigation requirements of section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283). In carrying out the investigation, the Comptroller General shall determine—

“(i) whether or not there are instances in which less than 50 percent of required mitigation is completed before initiation of project construction and the number of such instances; and

“(ii) the extent to which mitigation projects restore natural hydrologic conditions, restore native vegetation, and otherwise support native fish and wildlife species.

“(B) SPECIAL RULE.—In carrying out subparagraph (A)(ii), the Comptroller General shall—

“(i) establish a panel of independent scientists, comprised of individuals with expertise and experience in applicable scientific disciplines, to assist the Comptroller General; and

“(ii) assess methods used by the Corps of Engineers to monitor and evaluate mitigation projects, and compare Corps of Engineers mitigation project design, construction, monitoring, and evaluation practices with those used in other publicly and privately financed mitigation projects.

“(2) REPORT.—Not later than 1 year after the date of enactment of this Act [Dec. 11, 2000], the Comptroller General shall transmit to Congress a report on the results of the investigation.”

**§ 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) 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.)

#### 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.

#### “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.

### § 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.)

#### 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.

#### “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.)

#### 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.

#### “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<sup>1</sup> 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.)

### § 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.)

#### 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 engi-

<sup>1</sup> So in original. Probably should be capitalized.

neering, 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.)

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.

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. Review of cost effectiveness of design**

During the design of each water resources project which has a total cost in excess of \$10,000,000, which is authorized before, on, or after November 17, 1986, and undertaken by the Secretary, and on which construction has not been initiated as of November 17, 1986, the Secretary shall require a review of the cost effectiveness of such design. The review shall employ cost control techniques which will ensure that such project is designed in the most cost-effective way for the life of the project.

(Pub. L. 99-662, title IX, §911, Nov. 17, 1986, 100 Stat. 4189.)

**§ 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.)

**§ 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.)

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) of this section.

(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.)

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) of this section" 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.<sup>1</sup>

(Pub. L. 99-662, title IX, §918, Nov. 17, 1986, 100 Stat. 4192.)

#### 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.

### § 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.)

#### REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (a), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, as amended, 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

<sup>1</sup> See References in Text note below.

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.)

#### 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.)

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.”

**§ 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. 460f–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.)

REFERENCES IN TEXT

The Federal Water Project Recreation Act, referred to in text, is Pub. L. 89-72, July 9, 1965, 79 Stat. 213, as amended, which is classified principally to part C (§ 460f–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 460f–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.)

REFERENCES IN TEXT

The Watershed Protection and Flood Prevention Act, referred to in text, is act Aug. 4, 1954, ch. 656, 68 Stat. 666, as amended, which is classified generally 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.

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.)

**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****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 lo-

cated 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.)

**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 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.)

**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 under section 2201 of this title and Tables.

**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 treat-

ed 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.)

#### 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 Angelina 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 re-entrant 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 Saint 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 Saint 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)<sup>1</sup> 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)<sup>1</sup> 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 be-

<sup>1</sup> See References in Text note below.

tween 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.)

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.

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.

**§ 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) of this section shall be 25 percent. Not more than 80 percent of the non-Federal share may be in kind, including a facility, supply, or service that is necessary to carry out the modification or measure. Not more than \$5,000,000 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 \$40,000,000 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.)

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 subsecs. (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

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 subsecs. (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 subsecs. (c) and (d). Former subsecs. (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) of this section” for “program conducted under subsection (b) of this section”.

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**

The Secretary shall waive local cost-sharing requirements up to \$200,000 for all studies and projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(Pub. L. 99-662, title XI, § 1156, Nov. 17, 1986, 100 Stat. 4256.)

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.)

REFERENCES IN TEXT

Public Law 83-566, as amended, referred to in text, is act Aug. 4, 1954, ch. 656, 68 Stat. 666, as amended, known as the Watershed Protection and Flood Prevention Act, which is classified generally 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.

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.)

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.

“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. Collaborative research and development**

**(a) In general**

For the purpose of improving the state of engineering and construction in the United States and consistent with the civil works mission of the Army Corps of Engineers, the Secretary is authorized to utilize Army Corps of Engineers laboratories and research centers to undertake, on a cost-shared basis, collaborative research and development with non-Federal entities, including State and local government, colleges and universities, and corporations, partnerships, sole proprietorships, and trade associations which are incorporated or established under the laws of any of the several States of the United States or the District of Columbia.

**(b) Pre-agreement temporary protection of technology**

**(1) In general**

If the Secretary determines that information developed as a result of research and development activities conducted by the Corps of Engineers is likely to be subject to a cooperative research and development agreement within 2 years of its development and that such information would be a trade secret or commercial or financial information that would be privileged or confidential if the information had been obtained from a non-Federal party participating in a cooperative research and development agreement under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a), the Secretary may provide appropriate protection against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5, until the earlier of the date the Secretary enters into such an agreement with respect to such technology or the last day of the 2-year period beginning on the date of such determination.

**(2) Treatment**

Any technology covered by this section that becomes the subject of a cooperative research and development agreement shall be accorded the protection provided under section 12(c)(7)(B) of such Act (15 U.S.C. 3710a(c)(7)(B))

as if such technology had been developed under a cooperative research and development agreement.

**(c) Administrative provisions**

In carrying out this section, the Secretary may consider the recommendations of a non-Federal entity in identifying appropriate research or development projects and may enter into a cooperative research and development agreement, as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a); except that in such agreement, the Secretary may agree to provide not more than 50 percent of the cost of any research or development project selected by the Secretary under this section. Not less than 5 percent of the non-Federal entity's share of the cost of any such project shall be paid in cash.

**(d) Applicability of other laws**

The research, development, or utilization of any technology pursuant to an agreement under subsection (c) of 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-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701-3714).

**(e) Authorization of appropriations**

To carry out the purposes of this section, there is authorized to be appropriated to the Secretary of the Army civil works funds \$3,000,000 for fiscal year 1989, \$4,000,000 for fiscal year 1990, \$5,000,000 for fiscal year 1991, and \$6,000,000 for each fiscal year thereafter.

**(f) Funding from other Federal sources**

The Secretary may accept and expend additional funds from other Federal programs, including other Department of Defense programs, 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.)

REFERENCES IN TEXT

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (d), is Pub. L. 96-480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§ 3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

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

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).

#### 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-Wydler 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-Wydler 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.)

#### 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.

#### "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.)

#### 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.

#### "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, materials, or methods which the Secretary determines are previously undemonstrated or are too new to be considered standard practice.

(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.)

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

1999—Subsecs. (b) to (d). Pub. L. 106-53 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

DESIGN-BUILD CONTRACTING

Pub. L. 106-541, title II, § 221, Dec. 11, 2000, 114 Stat. 2596, provided that:

"(a) PILOT PROGRAM.—The Secretary [of the Army] may 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.

"(b) DESIGN-BUILD DEFINED.—In this section, the term 'design-build' means an agreement between the Federal Government and a contractor that provides for both the design and construction of a project by a single contract.

"(c) REPORT.—Not later than 4 years after the date of enactment of this Act [Dec. 11, 2000], the Secretary shall 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 non-exclusive, 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.)

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.”

“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.

**§ 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.)

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.

“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.

**§ 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.)

## 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.

## “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) of this section.

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) of this section, 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) of this section.

**(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) of this section. 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) of this section.

**(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.)

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.

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

Section 409 of Pub. L. 101-640 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.)

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.

"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. Wetlands mitigation**

**(1) In general**

In carrying out a water resources project that involves wetlands mitigation and that has impacts that occur within the service area of a mitigation bank, the Secretary, where appropriate, shall first consider the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605) or other applicable Federal law (including regulations).

**(2) Service area**

To the maximum extent practicable, the service area of the mitigation bank under paragraph

(1) shall be in the same watershed as the affected habitat.

**(3) Responsibility for monitoring**

**(A) In general**

Purchase of credits from a mitigation bank for a water resources project relieves the Secretary and the non-Federal interest from responsibility for monitoring or demonstrating mitigation success.

**(B) Applicability**

The relief of responsibility under subparagraph (A) applies only in any case in which the Secretary determines that monitoring of mitigation success is being conducted by the Secretary or by the owner or operator of the mitigation bank.

(Pub. L. 110–114, title II, § 2036(c), Nov. 8, 2007, 121 Stat. 1094.)

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.

“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) of this section, 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) of this section 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) of this section, the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall issue regulations to implement subsection (a) of this section. 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) of this section 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.)

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, as amended, 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).

#### 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.)

#### 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.

#### “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) of this section shall apply to maintenance, repair, rehabilitation, or reconstruction for which physical construction is initiated after May 1, 1988.

**(2) Limitation**

Subsections (b) and (c) of this section 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.)

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.

“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 hydroelectric facilities**

Activities currently performed by personnel under the direction of the Secretary in connection with the operation and maintenance of hydroelectric power generating facilities at Corps of Engineers water resources projects are to be considered as inherently governmental functions and not commercial activities. 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.

(Pub. L. 101-640, title III, §314, Nov. 28, 1990, 104 Stat. 4641.)

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.

“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) of this section, 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) of this section, the Secretary shall provide affected State, tribal, and Federal agencies with a copy of the proposed determinations under subsection (a) of this section. 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.)

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).

“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.

**§ 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.)

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.

“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) of this section, or any part thereof, by contract.

**(c) Omitted**

(Pub. L. 101-640, title III, §318, Nov. 28, 1990, 104 Stat. 4641.)

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.

“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 other Federal agencies, 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 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.

**(d) Funding**

There is authorized to be appropriated to carry out this section \$1,000,000 for fiscal year 2008 and each fiscal year thereafter. The Secretary may accept and expend additional funds from other Federal agencies, 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.)

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

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 sec-

tion \$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.

#### 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) of this section.

#### (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 2,000,000 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) of this section, 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) of this section 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 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.

(Pub. L. 101-640, title III, §322, Nov. 28, 1990, 104 Stat. 4643.)

#### 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.

#### “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) of 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 water resources projects described in subsection (a) of this section.

(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.)

#### 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)”.

#### “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.

### § 2326. Regional sediment management

#### (a) In general

##### (1) Sediment use

For sediment obtained through the construction, operation, or maintenance of an authorized Federal water resources project, 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 Sec-

retary, for use in the construction, repair, modification, or rehabilitation of projects associated with Federal water resources projects for purposes listed in paragraph (3).

**(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.

**(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 \$5,000,000.

**(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 environmental purposes**

**(1) In general**

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, 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 the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetlands and control of shoreline erosion.

**(2) Federal share**

The Federal share of such incremental costs shall be determined in accordance with subsection (c).

**(e) State and regional plans**

The Secretary may—

- (1) cooperate with any State in the preparation of a comprehensive State or regional sediment management plan within the boundaries of the State;
- (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 \$30,000,000 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.)

## 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

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).

## “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.

**§ 2326a. Dredged material disposal facility partnerships****(a) Additional capacity****(1) Provided by Secretary**

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.

**(2) Cost recovery authority**

The non-Federal interest may recover the costs assigned to the additional capacity 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.

**(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 Novem-



ber 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 contrib-

uted 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.)

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, as amended. 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

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”.

“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) of this section shall—

(1) include assessments of sediment rates and composition, sediment reduction options, dredging practices, long-term management of any dredged material disposal facilities, reme-

diation 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) of this section, 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) of this section.

**(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) of this section.

**(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) 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) of this section \$5,000,000 for each of fiscal years 2002 through 2012.

(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.)

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

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).

NEW YORK-NEW JERSEY HARBOR, NEW YORK AND NEW JERSEY

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. Dredged material marketing and recycling**

**(a) Dredged material marketing**

**(1) In general**

Not later than 180 days after December 11, 2000, the Secretary shall establish a program to allow the direct marketing of dredged material to public agencies and private entities.

**(2) Limitations**

The Secretary shall not establish the program under paragraph (1) unless the Secretary determines that the program is in the interest of the United States and is economically justified, equitable, and environmentally acceptable.

**(3) Regional responsibility**

The program described in paragraph (1) may authorize each of the 8 division offices of the Corps of Engineers to market to public agencies and private entities any dredged material from projects under the jurisdiction of the regional office. Any revenues generated from any sale of dredged material to such entities

shall be deposited in the United States Treasury.

**(4) Reports**

Not later than 180 days after December 11, 2000, and annually thereafter for a period of 4 years, the Secretary shall transmit to Congress a report on the program established under paragraph (1).

**(5) Authorization of appropriations**

There is authorized to be appropriated to carry out this subsection \$2,000,000 for each fiscal year.

**(b) Dredged material recycling**

**(1) Pilot program**

The Secretary shall conduct a pilot program to provide incentives for the removal of dredged material from confined disposal facilities associated with Corps of Engineer navigation projects for the purpose of recycling the dredged material and extending the life of the confined disposal facilities.

**(2) Report**

Not later than 90 days after the date of completion of the pilot program, the Secretary shall transmit to Congress a report on the results of the program.

**(3) Authorization of appropriations**

There is authorized to be appropriated to carry out this subsection \$2,000,000, except that not to exceed \$1,000,000 may be expended with respect to any project.

(Pub. L. 106-541, title II, §215, Dec. 11, 2000, 114 Stat. 2594.)

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.

“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.

**§ 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 \$8,000,000 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.)

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.

**§ 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) 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.)

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. (c). Pub. L. 104-303 substituted “(8862)” for “(8662)”.

RECREATION PARTNERSHIP INITIATIVE

Section 519 of Pub. L. 104-303, 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).”

“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.

### § 2329. International outreach program

#### (a) In general

The Secretary is authorized 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. Such activities may include—

(1) development, monitoring, assessment, and dissemination of information about foreign water transportation and port facilities that could significantly improve water transportation in the United States;

(2) research, development, training, and other forms of technology transfer and exchange; and

(3) offering technical services which cannot be readily obtained in the private sector to be incorporated in the proposals of port authorities or other water transportation developers 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.)

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.

“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.

#### (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 \$5,000,000 in Federal funds may be allotted under this section for a project at any single locality.

**(e) Funding**

There is authorized to be appropriated to carry out this section \$50,000,000 for each fiscal year.

(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.)

## 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

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).

## “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.

(Pub. L. 110-114, title II, §2039, Nov. 8, 2007, 121 Stat. 1100.)

## 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.

## “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.

**§ 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) of this section.

**(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.)

## 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.

## “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.

**§ 2332. Flood mitigation and riverine restoration program****(a) In general**

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.

**(b) Studies and projects****(1) Authority**

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) of this section.

**(2) Consultation and coordination**

The studies and projects carried out under this section shall be conducted, to the maxi-

mum 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 damages.

**(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 damage reduction or riverine and wetland restoration studies with projects that conserve, restore, and manage hydrologic and hydraulic regimes and restore the natural functions and values of floodplains.

**(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.

**(2) Environmental restoration and non-structural flood control projects**

**(A) In general**

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.

**(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 projects**

Any structural flood control projects carried out under this section shall be subject to cost sharing in accordance with section 2213(a) of this title.

**(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**

**(1) In general**

Notwithstanding any other provision of law or 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—

(A) will significantly reduce potential flood damages;

(B) will improve the quality of the environment; and

(C) is justified considering all costs and beneficial outputs of the project.

**(2) Establishment of selection and rating criteria and policies**

**(A) In general**

Not later than 180 days after August 17, 1999, the Secretary, in cooperation with State and local agencies and tribes, shall—

(i) develop, 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, criteria for selecting and rating projects to be carried out under this section; and

(ii) establish policies and procedures for carrying out the studies and projects undertaken under this section.

**(B) Criteria**

The criteria referred to in subparagraph (A)(i) shall include, as a priority, the extent to which the appropriate State government supports the project.

**(e) Priority areas**

In carrying out this section, the Secretary shall examine appropriate locations, including—

(1) Pima County, Arizona, at Paseo De Las Iglesias and Rillito River;

(2) Coachella Valley, Riverside County, California;

(3) Los Angeles and San Gabriel Rivers, California;

(4) Murrieta Creek, California;

(5) Napa River Valley watershed, California, at Yountville, St. Helena, Calistoga, and American Canyon;

(6) Santa Clara basin, California, at Upper Guadalupe River and Tributaries, San Francisquito Creek, and Upper Penitencia Creek;

(7) Pond Creek, Kentucky;

(8) Red River of the North, Minnesota, North Dakota, and South Dakota;

(9) Connecticut River, New Hampshire;

(10) Pine Mount Creek, New Jersey;

(11) Southwest Valley, Albuquerque, New Mexico;

(12) Upper Delaware River, New York;

(13) Briar Creek, North Carolina;

(14) Chagrin River, Ohio;

(15) Mill Creek, Cincinnati, Ohio;

(16) Tillamook County, Oregon;

(17) Willamette River basin, Oregon;

(18) Blair County, Pennsylvania, at Altoona and Frankstown Township;

(19) Delaware River, Pennsylvania;

(20) Schuylkill River, Pennsylvania;

(21) Providence County, Rhode Island;

(22) Shenandoah River, Virginia;

(23) Lincoln Creek, Wisconsin;

(24) Perry Creek, Iowa;

(25) Lester, St. Louis, East Savanna, and Floodwood Rivers, Duluth, Minnesota;

(26) Lower Hudson River and tributaries, New York;

(27) Susquehanna River watershed, Bradford County, Pennsylvania;

(28) Clear Creek, Harris, Galveston, and Brazoria Counties, Texas;

(29) Ascension Parish, Louisiana;

(30) East Baton Rouge Parish, Louisiana;

(31) Iberville Parish, Louisiana;

(32) Livingston Parish, Louisiana; and

(33) Pointe Coupee Parish, Louisiana.

**(f) Program review**

**(1) In general**

The program established under this section shall be subject to an independent review to evaluate the efficacy of the program in achieving the dual goals of flood hazard mitigation and riverine restoration.

**(2) Report**

Not later than April 15, 2003, 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 findings of the review conducted under this subsection with any recommendations concerning continuation of the program.

**(g) Maximum Federal cost per project**

Not more than \$30,000,000 may be expended by the United States on any single project under this section.

**(h) 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) of this section; and

(B) 21 calendar days have elapsed after the date on which the notification was received by the committees.

**(2) Projects exceeding \$15,000,000**

**(A) Limitation on appropriations**

No appropriation shall be made to construct any project under this section the total Federal cost of construction of which exceeds \$15,000,000 if the project has not been approved by resolutions adopted by the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

**(B) Report**

For the purpose of securing consideration of approval under this paragraph, the Secretary shall submit a report on the proposed project, including all relevant data and information on all costs.

**(i) Authorization of appropriations**

**(1) In general**

There are authorized to be appropriated to carry out this section \$20,000,000.

**(2) Full funding**

All studies and projects carried out under this section from Army Civil Works appropria-

tions shall be fully funded within the program funding levels provided in this subsection.

(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.)

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

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).

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) of this section—

(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) of this section, 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) of this section 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.)

## 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, as amended, 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.

## “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.)

## 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.

## “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 non-regulatory 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.)

## 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.

## “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) of this section 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) of this section shall be 50 percent, except that the Federal share with respect to projects located on land owned by the United States 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 Rehabilitation of Abandoned Mine Sites Program managed by the Sacramento District Office of the Corps of Engineers.

**(f) Authorization of appropriations**

There is authorized to be appropriated to carry out this section \$20,000,000.

(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.)

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, as amended. 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

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”.

“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.)

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.

“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 450b 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) of this section.

**(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) of this section.

**(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.)

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.

“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 at 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 multi-state regional private nonprofit rural community assistance entities for services, including water resource assessment, community participation, planning, development, and management activities.

**(c) 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.)

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.

“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.

**§ 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 car-

ried 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.)

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.

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.)

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.

“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.

**§ 2342. Access to water resource data**

**(a) In general**

The Secretary shall carry out a program to provide public access to water resources and related water quality data in the custody of the Corps of Engineers.

**(b) Data**

Public access under subsection (a) shall—

(1) include, at a minimum, access to data generated in water resources project develop-

ment and regulation under section 1344 of this title; and

(2) appropriately employ geographic information system technology and linkages to water resource models and analytical techniques.

**(c) Partnerships**

To the maximum extent practicable, in carrying out activities under this section, the Secretary shall develop partnerships, including cooperative agreements, with State, tribal, and local governments and other Federal agencies.

**(d) Authorization of appropriations**

There is authorized to be appropriated to carry out this section \$3,000,000 for each fiscal year.

(Pub. L. 110-114, title II, §2017, Nov. 8, 2007, 121 Stat. 1077.)

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.

“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 \$45,000,000, 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) 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 prac-

ticable 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 notification**

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.

**(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 transmittal to Congress**

After receiving a report on a project study from a panel of experts under this section, the Chief of Engineers shall—

(A) make a copy of the report and any written response of the Chief of Engineers on recommendations contained in the report available to the public by electronic means, including the Internet; and

(B) transmit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a copy of the report, together with any such written response, on the date of a final report of the Chief of Engineers or other 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 7 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 FACA**

The Federal Advisory Committee Act (5 U.S.C. App.) 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.)

#### 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.

The Federal Advisory Committee Act, referred to in subsec. (j), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### 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.

### § 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 com-

pensated 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.

(Pub. L. 110-114, title II, §2035, Nov. 8, 2007, 121 Stat. 1091.)

#### 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.

#### “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 of permit applications

#### (a) In general

Not later than 2 years after November 8, 2007, the Secretary shall implement a program to allow electronic submission of permit applications for permits under the jurisdiction of the Secretary.

#### (b) Limitations

This section does not preclude the submission of a physical copy.

#### (c) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$3,000,000.

(Pub. L. 110-114, title II, §2040, Nov. 8, 2007, 121 Stat. 1100.)

#### 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.

#### “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, 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.)

## 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.

## “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.)

## 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.

## “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.

**§ 2348. Project streamlining****(a) Policy**

The benefits of water resources projects are important to the Nation’s economy and environment, and recommendations to Congress regarding such projects should not be delayed due to uncoordinated or inefficient reviews or the failure to timely resolve disputes during the development of water resources projects.

**(b) Scope**

This section shall apply to each study initiated after November 8, 2007, to develop a feasibility report under section 2282 of this title, or a reevaluation report, for a water resources project if the Secretary determines that such study requires an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

**(c) Water resources project review process**

The Secretary shall develop and implement a coordinated review process for the development of water resources projects.

**(d) Coordinated reviews**

The coordinated review process under this section may provide that all reviews, analyses, opinions, permits, licenses, and approvals that must be issued or made by a Federal, State, or local government agency or Indian tribe for the development of a water resources project described in subsection (b) will be conducted, to the maximum extent practicable, concurrently and completed within a time period established by the Secretary in cooperation with the agencies identified under subsection (e) with respect to the project.

**(e) Identification of jurisdictional agencies**

With respect to the development of each water resources project, the Secretary shall identify, as soon as practicable, all Federal, State, and local government agencies and Indian tribes that may—

- (1) have jurisdiction over the project;
- (2) be required by law to conduct or issue a review, analysis, or opinion for the project; or
- (3) be required to make a determination on issuing a permit, license, or approval for the project.

**(f) State authority**

If the coordinated review process is being implemented under this section by the Secretary with respect to the development of a water resources project described in subsection (b) 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—

- (1) have jurisdiction over the project;
- (2) are required to conduct or issue a review, analysis, or opinion for the project; or
- (3) are required to make a determination on issuing a permit, license, or approval for the project.

**(g) Memorandum of understanding**

The coordinated review process developed under this section may be incorporated into a memorandum of understanding for a water resources project between the Secretary, the heads of Federal, State, and local government agencies, Indian tribes identified under subsection (e), and the non-Federal interest for the project.

**(h) Effect of failure to meet deadline****(1) Notification**

If the Secretary determines that a Federal, State, or local government agency, Indian tribe, or non-Federal interest that is participating in the coordinated review process under this section with respect to the development of a water resources project has not met a deadline established under subsection (d) for the project, the Secretary shall notify, within 30 days of the date of such determination, the agency, Indian tribe, or non-Federal interest about the failure to meet the deadline.

**(2) Agency report**

Not later than 30 days after the date of receipt of a notice under paragraph (1), the Federal, State, or local government agency, Indian tribe, or non-Federal interest involved may submit a report to the Secretary, explaining why the agency, Indian tribe, or non-Federal interest did not meet the deadline and what actions it intends to take to complete or issue the required review, analysis, or opinion or determination on issuing a permit, license, or approval.

**(3) Report to Congress**

Not later than 30 days after the date of receipt of a report under paragraph (2), the Secretary shall compile and submit a report to the Committee on Transportation and Infrastructure of the House of Representatives, the

Committee on Environment and Public Works of the Senate, and the Council on Environmental Quality, describing any deadlines identified in paragraph (1), and any information provided to the Secretary by the Federal, State, or local government agency, Indian tribe, or non-Federal interest involved under paragraph (2).

**(i) Limitations**

Nothing in this section shall preempt or interfere with—

- (1) any statutory requirement for seeking public comment;
- (2) any power, jurisdiction, or authority that a Federal, State, or local government agency, Indian tribe, or non-Federal interest has with respect to carrying out a water resources project; or
- (3) any obligation to comply with the provisions of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and the regulations issued by the Council on Environmental Quality to carry out such Act.

(Pub. L. 110–114, title II, §2045, Nov. 8, 2007, 121 Stat. 1103.)

## REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (b) and (i)(3), 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 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

## “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.

**CHAPTER 37—ORGANOTIN ANTIFOULING PAINT CONTROL****§§ 2401 to 2410. Repealed. Pub. L. 111–281, title X, § 1048, Oct. 15, 2010, 124 Stat. 3032**

Section 2401, Pub. L. 100–333, §2, June 16, 1988, 102 Stat. 605, provided findings and purposes for chapter.

Section 2402, Pub. L. 100–333, §3, June 16, 1988, 102 Stat. 605, provided definitions for chapter.

Section 2403, Pub. L. 100–333, §4, June 16, 1988, 102 Stat. 606, prohibited, with exceptions, application of antifouling paint containing organotin to any vessel less than 25 meters in length.

Section 2404, Pub. L. 100–333, §5, June 16, 1988, 102 Stat. 606, prohibited certain organotin paints and additives.

Section 2405, Pub. L. 100–333, §6, June 16, 1988, 102 Stat. 607, related to certification of antifouling paints containing organotin.

Section 2406, Pub. L. 100–333, §7, June 16, 1988, 102 Stat. 607; Pub. L. 104–106, div. A, title X, §1064(f), Feb. 10, 1996, 110 Stat. 445, related to monitoring and research of ecological effects.

Section 2407, Pub. L. 100–333, §8, June 16, 1988, 102 Stat. 608, provided for alternative antifouling research.

Section 2408, Pub. L. 100–333, §9, June 16, 1988, 102 Stat. 608, related to issuance of a final water quality criteria document.