

## **FLOOD CONTROL ACT OF 1941 (Secs 5 and 7)**

[Act Aug. 18, 1941, ch. 377]

[As Amended Through P.L. 118-272, Enacted January 4, 2025]

【Currency: This publication is a compilation of the text of chapter 377 of the 77th Congress. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

**SEC. 5. [33 USC 701n]** (a)(1) That there is authorized an emergency fund to be expended in preparation for emergency response to any natural disaster, in flood fighting and rescue operations, or in the repair or restoration of any flood control work threatened or destroyed by flood, including the strengthening, raising, extending, realigning, or other modification thereof as may be necessary in the discretion of the Chief of Engineers for the adequate functioning of the work for flood control and subject to the condition that the Chief of Engineers may include modifications to the structure or project, or in implementation of nonstructural alternatives to the repair or restoration of such flood control work if requested by the non-Federal sponsor; in the emergency protection of federally authorized hurricane or shore protection being threatened when in the discretion of the Chief of Engineers such protection is warranted to protect against imminent and substantial loss to life and property; in the repair and restoration of any federally authorized hurricane or shore protective structure or project damaged or destroyed by wind, wave, or water action of other than an ordinary nature to the pre-storm level of protection, to the design level of protection, or, notwithstanding the authorized dimensions of the structure or project, to a level sufficient to meet the authorized purpose of such structure or project, whichever provides greater protection, when, in the discretion of the Chief of Engineers, such repair and restoration is warranted for the adequate functioning of the structure or project for hurricane or shore protection, including to ensure the structure or project is functioning adequately to protect against projected changes in wave action or height or storm surge (including changes that result from relative sea level change over the useful life of the structure or project), subject to the condition that the Chief of Engineers may, if requested by the non-Federal sponsor, include modifications to the structure or project (including the addition of new project features) to address major deficiencies, increase resilience, increase benefits

from the reduction of damages from inundation, wave action, or erosion, or implement nonstructural alternatives to the repair or restoration of the structure. The emergency fund may also be expended for emergency dredging for restoration of authorized project depths for Federal navigable channels and waterways made necessary by flood, drought, earthquake, or other natural disasters. In any case in which the Chief of Engineers is otherwise performing work under this section in an area for which the Governor of the affected State has requested a determination that an emergency exists or a declaration that a major disaster exists under the Disaster Relief and Emergency Assistance Act, the Chief of Engineers is further authorized to perform on public and private lands and waters for a period of ten days following the Governor's request any emergency work made necessary by such emergency or disaster which is essential for the preservation of life and property, including, but not limited to, channel clearance, emergency shore protection, clearance and removal of debris and wreckage endangering public health and safety, and temporary restoration of essential public facilities and services. The Chief of Engineers, in the exercise of his discretion, is further authorized to provide emergency supplies of clean water, on such terms as he determines to be advisable, to any locality which he finds is confronted with a source of contaminated water causing or likely to cause a substantial threat to the public health and welfare of the inhabitants of the locality. The appropriation of such moneys for the initial establishment of this fund and for its replenishment on an annual basis, is authorized: *Provided*, That pending the appropriation of sums to such emergency fund, the Secretary of the Army may allot, from existing flood-control appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized, such appropriations to be reimbursed from the appropriation herein authorized when made. The Chief of Engineers is authorized, in the prosecution of work in connection with rescue operations, or in conducting other flood emergency work, to acquire on a rental basis such motor vehicles, including passenger cars and buses, as in his discretion are deemed necessary.

(2) COST AND BENEFIT FEASIBILITY ASSESSMENT.—

(A) CONSIDERATION OF BENEFITS.—In preparing a cost and benefit feasibility assessment for any emergency project described in paragraph (1), the Chief of Engineers shall consider the benefits to be gained by such project for the protection of—

- (i) residential establishments;
- (ii) commercial establishments, including the protection of inventory; and
- (iii) agricultural establishments, including the protection of crops.

(B) SPECIAL CONDITIONS.—

(i) AUTHORITY TO CARRY OUT WORK.—The Chief of Engineers may carry out repair or restoration work described in paragraph (1) that does not produce benefits greater than the cost if—

- (I) the non-Federal sponsor agrees to pay, or provide contributions equal to, an amount suffi-

cient to make the remaining costs of the project equal to the estimated value of the benefits of the repair or restoration work; and

(II) the Secretary determines that—

(aa) the damage to the structure was not a result of negligent operation or maintenance; and

(bb) repair of the project could benefit another Corps project.

(ii) TREATMENT OF PAYMENTS AND CONTRIBUTIONS.—Non-Federal payments or contributions pursuant to clause (i) shall be in addition to any non-Federal payments or contributions required by the Chief of Engineers that are applicable to the remaining costs of the repair or restoration work.

(3) EXTENDED ASSISTANCE.—Upon request by a locality receiving assistance under the fourth sentence of paragraph (1), the Secretary shall, subject to the availability of appropriations, enter into an agreement with the locality to provide such assistance beyond the time period otherwise provided for by the Secretary under such sentence.

(4) NONSTRUCTURAL ALTERNATIVES DEFINED.—In this subsection, the term “nonstructural alternatives” includes efforts to restore or protect natural resources, including streams, rivers, floodplains, wetlands, or coasts, if those efforts will reduce flood risk.

(5) FEASIBILITY STUDY.—

(A) DETERMINATION.—Not later than 180 days after receiving, from a non-Federal sponsor of a project to repair or rehabilitate a flood control work described in paragraph (1), a request to initiate a feasibility study to further modify the relevant flood control work to provide for an increased level of protection, the Secretary shall provide to the non-Federal sponsor a written decision on whether the Secretary has the authority under section 216 of the Flood Control Act of 1970 (33 U.S.C. 549a) to undertake the requested feasibility study.

(B) RECOMMENDATION.—If the Secretary determines under subparagraph (B) that the Secretary does not have the authority to undertake the requested feasibility study, the Secretary shall include the request for a feasibility study in the annual report submitted under section 7001 of the Water Resources Reform and Development Act of 2014.

(b)(1) The Secretary, upon a written request for assistance under this paragraph made by any farmer, rancher, or political subdivision within a distressed area, and after a determination by the Secretary that (A) as a result of the drought such farmer, rancher, or political subdivision has an inadequate supply of water, (B) an adequate supply of water can be made available to such farmer, rancher, or political subdivision through the construction of a well, and (C) as a result of the drought such well could not be constructed by a private business, the Secretary, subject to paragraph (3) of this subsection, may enter into an agreement with

such farmer, rancher, or political subdivision for the construction of such well.

(2) The Secretary, upon a written request for assistance under this paragraph made by any farmer, rancher, or political subdivision within a distressed area, and after a determination by the Secretary that as a result of the drought such farmer, rancher, or political subdivision has an inadequate supply of water and water cannot be obtained by such farmer, rancher, or political subdivision, the Secretary may transport water to such farmer, rancher, or political subdivision by methods which include, but are not limited to, small-diameter emergency water lines and tank trucks, until such time as the Secretary determines that an adequate supply of water is available to such farmer, rancher, or political subdivision.

(3)(A) Any agreement entered into by the Secretary pursuant to paragraph (1) of this subsection shall require the farmer, rancher, or political subdivision for whom the well is constructed to pay to the United States the reasonable cost of such construction, with interest, over such number of years, not to exceed thirty, as the Secretary deems appropriate. The rate of interest shall be that rate which the Secretary determines would apply if the amount to be repaid was a loan made pursuant to section 7(b)(2) of the Small Business Act.

(B) The Secretary shall not construct any well pursuant to this subsection unless the farmer, rancher, or political subdivision for whom the well is being constructed has obtained, prior to construction, all necessary State and local permits.

(4) The Federal share for the transportation of water pursuant to paragraph (2) of this subsection shall be 100 per centum.

(5) For purposes of this subsection—

(A) the term “construction” includes construction, reconstruction, or repair;

(B) the term “distressed area” means an area which the Secretary determines due to drought conditions has an inadequate water supply which is causing, or is likely to cause, a substantial threat to the health and welfare of the inhabitants of the area including threat of damage or loss of property;

(C) the term “political subdivision” means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over the water supply of such public body;

(D) the term “reasonable cost” means the lesser of (i) the cost to the Secretary of constructing a well pursuant to this subsection exclusive of the cost of transporting equipment used in the construction of wells, or (ii) the cost to a private business of constructing such well;

(E) the term “Secretary” means the Secretary of the Army, acting through the Chief of Engineers; and

(F) the term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.<sup>1</sup>

<sup>1</sup> The Trust Territory of the Pacific Islands has terminated.

## (c) ELIGIBILITY.—

(1) LEVEE OWNER'S MANUAL.—Not later than 1 year after the date of the enactment of this subsection, in accordance with chapter 5 of title 5, United States Code, the Secretary of the Army shall prepare a manual describing the maintenance and upkeep responsibilities that the Corps of Engineers requires of a non-Federal interest in order for the non-Federal interest to receive Federal assistance under this section. The Secretary shall provide a copy of the manual at no cost to each non-Federal interest that is eligible to receive Federal assistance under this section.

## (2) SYSTEMWIDE IMPROVEMENT PLAN.—

(A) IN GENERAL.—Notwithstanding the status of compliance of a non-Federal interest with the requirements of a levee owner's manual described in paragraph (1), or any other eligibility requirement established by the Secretary related to the maintenance and upkeep responsibilities of the non-Federal interest, the Secretary shall consider the non-Federal interest to be eligible for repair and rehabilitation assistance under this section if—

(i) in coordination with the Secretary, the non-Federal interest develops a systemwide improvement plan, prior to the natural disaster, that—

(I) identifies any items of deferred or inadequate maintenance and upkeep, including any such items identified by the Secretary or through periodic inspection of the flood control work;

(II) identifies any additional measures, including repair and rehabilitation work, that the Secretary determines necessary to ensure that the flood control work performs as designed and intended;

(III) includes specific timelines for addressing such items and measures;

(IV) requires the non-Federal interest to be responsible for the cost of addressing the items and measures identified under subclauses (I) and (II); and

(ii) the Secretary—

(I) determines that the systemwide improvement plan meets the requirements of clause (i) and the Secretary, acting through the District Commander, approves such plan; and

(II) determines that the non-Federal interest makes satisfactory progress in meeting the timelines described in subclause (III) of that clause.

(B) GRANDFATHERED ENCROACHMENTS.—At the request of the non-Federal interest, the Secretary—

(i) shall review documentation developed by the non-Federal interest showing a covered encroachment does not negatively impact the integrity of the flood control work;

(ii) shall make a written determination with respect to whether removal or modification of such covered encroachment is necessary to ensure the encroachment does not negatively impact the integrity of the flood control work; and

(iii) may not determine that a covered encroachment is a deficiency requiring corrective action unless such action is necessary to ensure the encroachment does not negatively impact the integrity of the flood control work.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$1,000,000 to carry out paragraph (1).

(4) DEFINITIONS.—In this subsection, the following definitions apply:

(A) COVERED ENCROACHMENT.—The term “covered encroachment” means a permanent nonproject structure that—

(i) is located inside the boundaries of a flood control work;

(ii) is depicted on construction drawings or operation and maintenance plans for the flood control work that are signed by an engineer of record; and

(iii) is determined by the Secretary to be an encroachment of such flood control work.

(B) MAINTENANCE AND UPKEEP.—The term “maintenance and upkeep” means all maintenance and general upkeep of a levee performed on a regular and consistent basis that is not repair and rehabilitation.

(C) REPAIR AND REHABILITATION.—The term “repair and rehabilitation”—

(i) means the repair or rebuilding of a levee or other flood control structure, after the structure has been damaged by a flood, to the level of protection provided by the structure before the flood; but

(ii) does not include—

(I) any improvement to the structure; or

(II) repair or rebuilding described in clause (i) if, in the normal course of usage, the structure becomes structurally unsound and is no longer fit to provide the level of protection for which the structure was designed.

(d) INCREASED LEVEL OF PROTECTION.—In conducting repair or restoration work under subsection (a), at the request of the non-Federal sponsor, the Chief of Engineers may increase the level of protection above the level to which the system was designed, or, if the repair or restoration includes repair or restoration of a pumping station, increase the capacity of a pump, if—

(1) the Chief of Engineers determines the improvements are in the public interest, including consideration of whether—

(A) the authority under this section has been used more than once at the same location;

(B) there is an opportunity to decrease significantly the risk of loss of life and property damage; or

(C) there is an opportunity to decrease total life cycle rehabilitation costs for the project; and

(2) the non-Federal sponsor agrees to pay the difference between the cost of repair or restoration to the original design level or original capacity and the cost of achieving the higher level of protection or capacity sought by the non-Federal sponsor.

(e) NOTICE.—The Secretary shall notify and consult with the non-Federal sponsor regarding the opportunity to request implementation of nonstructural alternatives to the repair or restoration of a flood control work under subsection (a).

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SEC. 7. [33 USC 701c-3] That 75 per centum of all moneys received and deposited in the Treasury of the United States during any fiscal year on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes, including the development of hydroelectric power, shall be paid at the end of such year by the Secretary of the Treasury to the State in which such property is situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county, or counties, in which such property is situated, or for defraying any of the expenses of county government in such county or counties, including public obligations of levee and drainage districts for flood control and drainage improvements: *Provided*, That when such property is situated in more than one State or county, the distributive share to each from the proceeds of such property shall be proportional to its area therein. For the purposes of this section, the term “money” includes, but is not limited to, such bonuses, royalties and rentals (and any interest or other charge paid to the United States by reason of the late payment of any royalty, rent, bonus or other amount due to the United States) paid to the United States from a mineral lease issued under the authority of the Mineral Leasing Act for Acquired Lands or paid to the United States from a mineral lease in existence at the time of the acquisition of the land by the United States.