

Water Resources Development Act of 1986

[Public Law 99–662, Enacted November 17, 1986]

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

【Currency: This publication is a compilation of the text of Public Law 99–662. 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).】

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Water Resources Development Act of 1986”.

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TITLE I—COST SHARING

SEC. 101. 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 the date of enactment of the Water Resources Reform and Development Act of 2014 (Public Law 113–121) 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 55 feet; plus

(C) 50 percent of the cost of construction of the portion of the project which has a depth in excess of 55 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 106. 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 906(c), 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 204, 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 the date of the enactment of this paragraph.

(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 the date of the enactment of this Act 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 55 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 the date of the enactment of this paragraph shall be determined in accordance with subsection (a). The Federal share of operating and maintaining such facilities shall be determined in accordance with paragraph (1).

(c) EROSION OR SHOALING ATTRIBUTABLE TO FEDERAL NAVIGATION WORKS.—Costs of constructing projects or measures for the prevention or mitigation of erosion or shoaling damages attributable to Federal navigation works shall be shared in the same proportion as the cost sharing provisions applicable to the project causing such erosion or shoaling. The non-Federal interests for the

project causing the erosion or shoaling shall agree to operate and maintain such measures.

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

(e) AGREEMENT.—Before initiation of construction of a project to which this section applies, the Secretary and the non-Federal interests shall enter into a cooperative agreement according to the provisions of section 221 of the Flood Control Act of 1970. 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 or construction, operation, and maintenance of such project;

(2) hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors;

(3) provide to the Federal Government the non-Federal share of all other costs of construction of such project; and

(4) in the case of a deep-draft harbor, be responsible for the non-Federal share of operation and maintenance required by subsection (b) of this section.

(f) CONSIDERATION OF FUNDING REQUIREMENTS AND EQUITABLE APPORTIONMENT.—The Secretary shall ensure, to the extent practicable, that—

(1) funding requirements for operation and maintenance dredging of commercial navigation harbors are considered before Federal funds are obligated for payment of the Federal share of costs associated with the construction of dredged material disposal facilities in accordance with subsections (a) and (b);

(2) funds expended for such construction are apportioned equitably in accordance with regional needs; and

(3) use of a dredged material disposal facility designed, constructed, managed, or operated by a private entity is not precluded if, consistent with economic and environmental considerations, the facility is the least-cost alternative.

[33 U.S.C. 2211]

SEC. 102. INLAND WATERWAY TRANSPORTATION.

(a) CONSTRUCTION.—75 percent of the costs of construction—

(1) of each project authorized by title III of this Act,

(2) of the project authorized by section 1103(j) of this Act, 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. 25 percent of such costs shall be paid only from amounts appropriated from the Inland Waterways Trust

Fund. For purposes of this subsection, the term “construction” shall include planning, designing, engineering, surveying, the acquisition of all lands, easements, and rights-of-way necessary for the project, including lands for disposal of dredged material, and relocations necessary for the project.

(b) OPERATON AND MAINTENANCE.—The Federal share of the cost of operation and maintenance of any project for navigation on the inland waterways is 100 percent.

(c) FLOODGATES ON THE INLAND WATERWAYS.—

(1) OPERATION AND MAINTENANCE CARRIED OUT BY THE SECRETARY.—Notwithstanding any other provision of law, the Secretary shall be responsible for the operation and maintenance, including repair, of any flood gate, as well as any pumping station constructed within the channel as a single unit with that flood gate, that—

(A) was constructed as of the date of enactment of the Water Resources Reform and Development Act of 2014 as a feature of an authorized hurricane and storm damage reduction project; and

(B) crosses an inland or intracoastal waterway described in section 206 of the Inland Waterways Revenue Act of 1978 (33 U.S.C. 1804).

(2) NON-FEDERAL COST SHARE.—The non-Federal share of the cost of operation, maintenance, repair, rehabilitation, and replacement of any structure under this subsection shall be 35 percent.

(d) AUTHORIZATIONS FROM GENERAL FUND.—Any Federal responsibility—

(1) with respect to a project authorized by title III or section 1103(j), 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.

[33 U.S.C. 2212]

SEC. 103. 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 non-structural 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 dur-

ing 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 106. The preceding sentence does not modify the requirement of paragraph (1)(A) of this subsection.

(b) PROJECTS USING NONSTRUCTURAL, NATURAL, OR NATURE-BASED FEATURES.—

(1) IN GENERAL.—The non-Federal share of the cost of a flood risk management or hurricane and storm damage risk reduction measure using a nonstructural feature, or a natural feature or nature-based feature (as those terms are defined in section 1184(a) of the Water Resources Development Act of 2016 (33 U.S.C. 2289a(a))), shall be 35 percent of the cost of such measures. The non-Federal interests for any such measures shall be required to provide all lands, easements, rights-of-way, dredged material disposal areas, and relocations necessary for the project, but shall not be required to contribute any amount in cash during construction for a nonstructural feature if the costs of land, easements, rights-of-way, dredged material disposal areas, and relocations for such feature are estimated to exceed 35 percent.

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

(c) OTHER PURPOSES.—The non-Federal share of the cost assigned to other project purposes shall be as follows:

(1) hydroelectric power: 100 percent, except that the marketing of such power and the recovery of costs of constructing, operating, maintaining, and rehabilitating such projects shall be in accordance with existing law: *Provided*, That after the date of enactment of this Act, the Secretary shall not submit to Congress any proposal for the authorization of any water resources project that has a hydroelectric power component un-

less such proposal contains the comments of the appropriate Power Marketing Administrator designated pursuant to section 302 of the Department of Energy Organization Act (Public Law 95-91) 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 906.

(d) CERTAIN OTHER COSTS ASSIGNED TO PROJECT PURPOSES.—

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

- (2) PERIODIC NOURISHMENT.—
 - (A) IN GENERAL.—In the case of a project authorized for construction after December 31, 1999, except for a project for which a District Engineer's Report is completed by that date, the non-Federal cost of the periodic nourishment of the project, or any measure for shore protection or beach erosion control for the project, that is carried out—
 - (i) after January 1, 2001, shall be 40 percent;
 - (ii) after January 1, 2002, shall be 45 percent; and
 - (iii) after January 1, 2003, shall be 50 percent.

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

(C) BENEFITS TO FEDERALLY OWNED SHORES.—All costs assigned to the protection of federally owned shores for periodic nourishment measures shall be borne by the United States.

(e) APPLICABILITY.—

(1) IN GENERAL.—This section applies to any project (including any small project which is not specifically authorized by Congress and for which the Secretary has not approved funding before the date of enactment of this Act), 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) DEFINITION OF SEPARABLE ELEMENT.—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 the date of enactment of this Act.

(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 Blackwater 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 906(c), the non-Federal interests for a project to which this section applies shall provide all lands, easements, rights-of-way, and dredged material disposal areas required for the project and perform all necessary relocations, except to the extent limited by any provision of this section. The value of any contribution under the preceding sentence shall be included in the non-Federal share of the project specified in this section.

(j) AGREEMENT.—

(1) REQUIREMENT FOR AGREEMENT.—

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

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

(2) ELEMENTS OF AGREEMENT.—The agreement required pursuant to paragraph (1) shall be in accordance with the requirements of section 221 of the Flood Control Act of 1970 (84 Stat. 1818) and shall provide for the rights and duties of the United States and the non-Federal interest with respect to the construction, operation, and maintenance of the project, including, but not limited to, provisions specifying that, in the event the non-Federal interest fails to provide the required non-Federal share of costs for such work, the Secretary—

(A) shall terminate or suspend work on the project unless the Secretary determines that continuation of the work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests in connection with the project; and

(B) may terminate or adjust the rights and privileges of the non-Federal interest to project outputs under the terms of the agreement.

(k) PAYMENT OPTIONS.—

(1) IN GENERAL.—Except as otherwise provided in this section, the Secretary may permit the full non-Federal contribution to be made without interest during construction of the project or separable element, or with interest at a rate determined pursuant to section 106 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 recalculations of the interest rate at five-year intervals.

(2) RENEGOTIATION OF TERMS.—

(A) IN GENERAL.—At the request of a non-Federal interest, the Secretary and the non-Federal interest may renegotiate the terms and conditions of an eligible deferred payment, including—

- (i) permitting the non-Federal contribution to be made without interest, pursuant to paragraph (1);
- (ii) recalculation of the interest rate;
- (iii) full or partial forgiveness of interest accrued during the period of construction; and

(iv) a credit against construction interest for a non-Federal investment that benefits the completion or performance of the project or separable element.

(B) ELIGIBLE DEFERRED PAYMENT.—An eligible deferred payment agreement under subparagraph (A) is an agreement for which—

(i) the non-Federal contribution was made with interest;

(ii) the period of project construction exceeds 10 years from the execution of a project partnership agreement or appropriation of funds; and

(iii) the construction interest exceeds \$45,000,000.

(3) CREDIT FOR NON-FEDERAL CONTRIBUTION.—

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

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

(4) TREATMENT OF PRE-PAYMENT.—

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

(i) the non-Federal interest made a payment of at least \$200,000,000 for that eligible deferred payment agreement on or before September 30, 2021;

(ii) the non-Federal interest made a payment of an additional \$200,000,000 for that eligible deferred payment agreement on or before September 30, 2023; and

(iii) the non-Federal interest repays the balance of remaining principal by June 1, 2032.

(B) REPAYMENT OPTIONS.—Repayment of a non-Federal interest's¹ contribution under subparagraph (A)(iii) may be satisfied through the provision by the non-Federal interest of fish and wildlife mitigation for one or more projects or separable elements, if the Secretary determines that—

(i) the non-Federal interest has incurred costs for the provision of mitigation that—

¹ Section 1358(2) of division A of Public Law 118-272 provides for an amendment to subparagraph (B) by inserting “interest’s” after “non-Federal”. The amendment was carried out to the first occurrence of “non-Federal”.

(I) equal or exceed the amount of the required repayment; and

(II) are in excess of any required non-Federal contribution for the project or separable element for which the mitigation is provided; and

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

(C) REFUND OF CREDIT.—Any agreement made that applied credits to satisfy the terms of a pre-payment made under subsection (k)(4)(A) that resulted in total payment in excess of the amount now required under subsection (k)(4)(A) shall be modified to indicate that the excess credits continue to apply toward any remaining principal of the respective project, or at the request of the non-Federal interest, the agreement shall be modified to retroactively transfer back those excess credits to the non-Federal interest such that those credits may be applied by the non-Federal interest to any cost-shared project identified by the non-Federal interest.

(5) CONGRESSIONAL NOTIFICATION.—

(A) IN GENERAL.—Upon receipt of a request for a renegotiation of terms by a non-Federal interest under paragraph (2), the Secretary shall submit to the Committee on Transportation and Infrastructure of the House and the Committee on Environment and Public Works of the Senate a report 30 days after enactment and quarterly thereafter regarding the status of the request.

(B) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary should respond to any request for a renegotiation of terms submitted under paragraph (2) in a timely manner.

(l) DELAY OF PAYMENT.—

(1) INITIAL PAYMENT.—At the request of any non-Federal interest the Secretary may permit such non-Federal interest to delay the initial payment of any non-Federal contribution under this section or section 101 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 106.

(2) INTEREST.—

(A) IN GENERAL.—At the request of any non-Federal interest, the Secretary may waive the accrual of interest on any non-Federal cash contribution under this section or section 101 for a project for a period of not more than 1 year if the Secretary determines that—

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

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

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

(m) ABILITY TO PAY.—

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

(2) CRITERIA.—The Secretary shall determine the ability of a non-Federal interest to pay under this subsection by considering—

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

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

(C) the financial capabilities of the non-Federal interest for the project;

(D) the extent to which the non-Federal interest is an economically disadvantaged community (as defined pursuant to section 160 of the Water Resources Development Act of 2020 (33 U.S.C. 2201 note)); and

(E) any additional criteria relating to the non-Federal interest's financial ability to carry out its cost-sharing responsibilities determined appropriate by the Secretary.

(3) PROCEDURES.—For purposes of carrying out paragraph (2), the Secretary shall develop procedures—

(A) to allow a non-Federal interest to identify the amount such non-Federal interest would likely be able to pay; and

(B) for a non-Federal interest to submit a request to the Secretary to reduce the required non-Federal share.

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

(5) EXCEPTION.—This subsection shall not apply to project costs greater than the national economic development plan.

(6) REPORT.—

(A) IN GENERAL.—Not less frequently than annually, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report describing all determinations of the Secretary under this subsection regarding the ability of a non-Federal interest to pay.

(B) CONTENTS.—The Secretary shall include in each report required under subparagraph (A) a description, for the applicable year, of—

(i) requests by a non-Federal interest to reduce the non-Federal share required in a cost-sharing agreement, including—

(I) the name of the non-Federal interest that submitted to the Secretary a request for a determination under this subsection; and

(II) the name and location of the project;

(ii) the determination of the Secretary with respect to each such request;

(iii) the basis for each such determination; and

(iv) the adjusted share of the costs of the project of the non-Federal interest, if applicable.

(C) INCLUSION IN CHIEF'S REPORT.—The Secretary may include a determination to reduce the non-Federal share required in a cost-sharing agreement for construction of a project in the report of the Chief of Engineers for the project.

(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).

【33 U.S.C. 2213】

SEC. 104. GENERAL CREDIT FOR FLOOD CONTROL.

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

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

(c) CREDITING OF NON-FEDERAL SHARE.—The guidelines established under subsection (a) shall provide for crediting the cost of work carried out by the non-Federal interests against the non-Fed-

eral share of the cost of an authorized project for flood control as follows:

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

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

In no event may work which was carried out more than 5 years before the date of enactment of this Act be considered under this subsection, unless otherwise provided in this Act.

(d) PROCEDURE FOR WORK DONE BEFORE DATE OF ENACTMENT.—The Secretary shall consider, under subsections (b) and (c), work carried out before the date of enactment of this Act by non-Federal interests on a project for flood control, if the non-Federal interests apply to the Secretary for consideration of such work not later than March 31, 1987. The Secretary shall make determinations under subsections (b) and (c) with respect to such work not later than 6 months after guidelines are issued under subsection (a).

(e) PROCEDURE FOR WORK DONE AFTER DATE OF ENACTMENT.—The Secretary shall consider work carried out after the date of enactment of this Act by non-Federal interests on a project for flood control under subsections (b) and (c) in accordance with the guidelines issued under subsection (a). The guidelines shall require prior approval by the Secretary of any flood control work carried out after the date of enactment of this Act 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 215(a) of the Flood Control Act of 1968.

(g) CASH CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the requirement of section 103(a)(1)(A).

[33 U.S.C. 2214]

SEC. 105. 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 101(e) or 103(j) with respect to the project.

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

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

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

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

(3) DETAILED PROJECT REPORTS.—The requirements of this subsection that apply to a feasibility study also shall apply to a study that results in a detailed project report, except that—

(A) the first \$100,000 of the costs of a study that results in a detailed project report shall be a Federal expense; and

(B) paragraph (1)(C)(ii) shall not apply to such a study.

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

(c) DESIGN.—Costs of design of a water resources project shall be shared in the same percentage as the purposes of such project.

(d) DEFINITIONS.—In this section, the following definitions apply:

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

(2) FEASIBILITY STUDY.—The term “feasibility study” means a study that results in a feasibility report under section 905, 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.

[33 U.S.C. 2215]

SEC. 106. 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.

[33 U.S.C. 2216]

SEC. 107. LIMITATION ON APPLICABILITY OF CERTAIN PROVISIONS IN REPORTS.

If any provision in any report designated by this Act recommends that a State contribute in cash 5 percent of the construction costs allocated to non-vendible project purposes and 10 percent of the construction costs allocated to vendible project purposes,

such provision shall not apply to the project recommended in such report.

【33 U.S.C. 2217】

SEC. 108. GENERAL APPLICABILITY OF COST SHARING.

Unless otherwise specified, the cost sharing provisions of this title 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 title, shall be the share of such cost otherwise provided by law.

【33 U.S.C. 2218】

SEC. 109. DEFINITIONS.

For purposes of this title, terms shall have the meanings given by section 214 of this Act.

【33 U.S.C. 2219】

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TITLE II—HARBOR DEVELOPMENT

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SEC. 203. 【33 U.S.C. 2231】 STUDY OF WATER RESOURCES DEVELOPMENT PROJECTS BY NON-FEDERAL INTERESTS.

(a) **SUBMISSION TO SECRETARY.**—

(1) **IN GENERAL.**—A non-Federal interest may undertake and submit to the Secretary—

(A) a federally authorized feasibility study of a proposed water resources development project; or

(B) upon the determination of the Secretary that the modifications are consistent with the authorized purposes of the project, a feasibility study on modifications to a water resources development project constructed by the Corps of Engineers or constructed by a non-Federal interest pursuant to section 204.

(2) **GUIDELINES.**—To assist non-Federal interests, the Secretary shall issue guidelines for the formulation of feasibility studies of water resources development projects undertaken by non-Federal interests that—

(A) provide clear, concise, and transparent guidance for the non-Federal interest to use in developing a feasibility study that complies with requirements that would apply to a feasibility study undertaken by the Secretary;

(B) provide sufficient information for the formulation of the studies, including processes and procedures related to reviews and assistance under subsection (e);

(C) provide guidance to a non-Federal interest on obtaining support from the Secretary to complete elements of a feasibility study that may be considered inherently governmental and required to be done by a Federal agency; and

(D) provide contacts for employees of the Corps of Engineers that a non-Federal interest may use to initiate coordination with the Secretary and identify at what stages coordination may be beneficial.

(3) DETERMINATION.—If a non-Federal interest requests to undertake a feasibility study on a modification to a constructed water resources development project under paragraph (1)(B), the Secretary shall expeditiously provide to the non-Federal interest the determination required under such paragraph with respect to whether conceptual modifications, as presented by the non-Federal interest, are consistent with the authorized purposes of the project.

(b) REVIEW BY SECRETARY.—

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

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

(A) determines that the feasibility study complies with all of the requirements that would apply to a feasibility study undertaken by the Secretary; and

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

(3) INITIATION OF REVIEW.—

(A) REQUEST.—

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

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

(B) DEADLINE.—Not later than 10 days after the Secretary receives a study submission under subsection (a) or receives a request under subparagraph (A), the Secretary shall begin the required analyses, reviews, and compliance processes.

(C) ADDITIONAL INFORMATION REQUIRED.—The Secretary shall notify a non-Federal interest if, upon initial review of a submission received under subsection (a) or a receipt of a request under subparagraph (A), the Secretary requires additional information to perform the required analyses, reviews, and compliance processes and include in

such notification a detailed description of the required information.

(4) NOTIFICATION.—Upon receipt of a study submission under subsection (a) or receipt of a request under paragraph (3)(A), the Secretary shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate of the submission or request and a timeline for completion of the required analyses, reviews, and compliance processes and shall notify the non-Federal interest of such timeline.

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

(c) SUBMISSION TO CONGRESS.—

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

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

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

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

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

(d) CREDIT.—

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

(2) MAXIMUM AMOUNT.—Any credit provided to a non-Federal interest under this subsection may not exceed the Federal share of the cost for a feasibility study initiated by the Sec-

retary under section 1001(a)(2) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282c(a)).

(e) REVIEW AND TECHNICAL ASSISTANCE.—

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

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

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

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

(5) SAVINGS PROVISION.—The provision of technical assistance by the Secretary under paragraph (2)—

(A) shall not be considered to be an approval or endorsement of the feasibility study; and

(B) shall not affect the responsibilities of the Secretary under subsections (b) and (c).

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary \$1,000,000 for each fiscal year to carry out this section.

SEC. 204. [33 U.S.C. 2232] CONSTRUCTION OF WATER RESOURCES DEVELOPMENT PROJECTS BY NON-FEDERAL INTERESTS.

(a) WATER RESOURCES DEVELOPMENT PROJECT DEFINED.—In this section, the term “water resources development project” means a project recommendation that results from—

(1) a feasibility report, as such term is defined in section 7001(f) of the Water Resources Reform and Development Act of 2014;

(2) a completed feasibility study developed under section 203; or

(3) a final feasibility study for water resources development and conservation and other purposes that is specifically authorized by Congress to be carried out by the Secretary.

(b) AUTHORITY.—

(1) IN GENERAL.—A non-Federal interest may carry out a federally authorized water resources development project, or separable element thereof—

(A) in accordance with a plan approved by the Secretary for the project or separable element; and

(B) subject to any conditions that the Secretary may require, including any conditions specified under section 203(c)(3).

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

(A) obtain any permit or approval required in connection with the project or separable element under Federal or State law, except as provided in paragraph (3); and

(B) ensure that a final environmental impact statement or environmental assessment, as appropriate, for the project or separable element has been filed.

(3) PERMIT EXCEPTION.—

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

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

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

(4) DATA SHARING.—

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

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

(C) LIMITATION.—Nothing in this paragraph obligates the Secretary to share any data or documentation that the Secretary considers to be proprietary information.

(c) STUDIES AND ENGINEERING.—

(1) IN GENERAL.—When requested by a non-Federal interest carrying out a project or separable element of a project

under this section, the Secretary shall undertake all necessary studies, engineering, and technical assistance on construction for any project or separable element of a project under this section, and provide technical assistance in obtaining all necessary permits for the construction, if the non-Federal interest contracts with the Secretary to provide funds to the United States for the studies, engineering, or technical assistance.

(2) NO WAIVER.—Nothing in this section may be construed to waive any requirement of section 3142 of title 40, United States Code.

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

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

(d) CREDIT OR REIMBURSEMENT.—

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

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

(i) the Secretary approves the plan for construction of the project or separable element of the project by the non-Federal interest;

(ii) the Secretary determines, before approval of the plan, that the project or separable element of the project is feasible; and

(iii) the non-Federal interest enters into a written agreement with the Secretary under section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), including an agreement to pay the non-Federal share, if any, of the cost of operation and maintenance of the project; and

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

(2) APPLICATION OF CREDIT.—The Secretary may apply credit toward—

(A) the non-Federal share of authorized separable elements of the same project; or

(B) subject to the requirements of this section and section 1020 of the Water Resources Reform and Development Act of 2014, at the request of the non-Federal interest, the non-Federal share of a different water resources development project.

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

(A) Congress has authorized construction of the project or separable element of the project;

(B) the Secretary certifies that the project, discrete segment of the project, or separable element of the project has been constructed in accordance with—

- (i) all applicable permits or approvals; and
- (ii) this section; and

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

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

(A) the construction is carried out in compliance with the requirements of this section; and

(B) the costs of the construction are reasonable.

(5) DISCRETE SEGMENTS.—

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

(i) except as provided in clause (ii), the Secretary determines that the discrete segment satisfies the requirements of paragraphs (1) through (4) in the same manner as the project or separable element; and

(ii) notwithstanding paragraph (1)(A)(ii), the Secretary determines, before the approval of the plan under paragraph (1)(A)(i), that the discrete segment is technically feasible and environmentally acceptable.

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

(i) the construction of the discrete segment for which credit or reimbursement is requested is complete; and

(ii) the construction is consistent with the authorization of the applicable water resources development project, or separable element thereof, and the plan approved under paragraph (1)(A)(i).

(C) WRITTEN AGREEMENT.—

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

(I) identify any discrete segment that the non-Federal interest may carry out; and

(II) agree to the completion of the water resources development project, or separable element thereof, with respect to which the discrete seg-

ment is a part and establish a timeframe for such completion.

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

(D) **DISCRETE SEGMENT DEFINED.**—In this paragraph, the term “discrete segment” means a physical portion of a water resources development project to be carried out, or separable element thereof—

(i) described by a non-Federal interest in a written agreement required under paragraph (1)(A)(iii); and

(ii) that the non-Federal interest can operate and maintain, independently and without creating a hazard, in advance of final completion of the water resources development project, or separable element thereof.

(6) **EXCLUSIONS.**—The Secretary may not provide credit or reimbursement for—

(A) activities required by the non-Federal interest to initiate design and construction that would otherwise not be required by the Secretary; or

(B) delays incurred by the non-Federal interest resulting in project cost increases.

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

(f) **OPERATION AND MAINTENANCE.**—

(1) **ASSUMPTION OF MAINTENANCE.**—Whenever a non-Federal interest carries out improvements to a federally authorized harbor or inland harbor, the Secretary shall be responsible for operation and maintenance in accordance with section 101(b) if—

(A) before construction of the improvements—

(i) the Secretary determines that the improvements are feasible and consistent with the purposes of this title; and

(ii) the Secretary and the non-Federal interest execute a written agreement relating to operation and maintenance of the improvements;

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

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

(2) FEDERAL FINANCIAL PARTICIPATION IN THE COSTS OF A LOCALLY PREFERRED PLAN.—In the case of improvements determined by the Secretary pursuant to paragraph (1)(A)(i) to deviate from the national economic development plan, the Secretary shall be responsible for all operation and maintenance costs of such improvements, as described in section 101(b), including costs in excess of the costs of the national economic development plan, if the Secretary determines that the improvements satisfy the requirements of paragraph (1).

SEC. 205. 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 204 or this section, shall initiate procedures to establish a schedule for consolidating Federal, State, and local agency environmental assessments, project reviews, and issuance of all permits for the construction of the project, including associated access channels, berthing areas, and onshore port-related facilities, before the initiation of construction. The non-Federal interest shall submit, with the notice of intent, studies and documentation, including environmental reviews, that may be required by Federal law for decisionmaking on the proposed project. A State shall not be required to participate in carrying out this section.

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

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

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

when the information and data will be provided to the appropriate Federal, State, or local agency.

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

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

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

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

(i) REPORT ON TIMESAVINGS METHODS.—Not later than one year after the date of enactment of this Act, 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.

[33 U.S.C. 2233]

SEC. 206. NONAPPLICABILITY TO SAINT LAWRENCE SEAWAY.

Sections 203, 204, and 205 do not apply to any harbor or inland harbor project for that portion of the Saint Lawrence Seaway administered by the Great Lakes St. Lawrence Seaway Development Corporation.

[33 U.S.C. 2234]

SEC. 207. CONSTRUCTION IN USABLE INCREMENTS.

Any navigation project for a harbor or inland harbor authorized by this title or any other provision of law enacted before, on, or after the date of enactment of this title may be constructed in usable increments.

[33 U.S.C. 2235]

SEC. 208. 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 101 of this Act; or

(ii) to finance the cost of construction and operation and maintenance of a navigation project for a harbor under section 204 or 205 of this Act; 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 title, 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) 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) of this section.

(b) JURISDICTION.—(1) The district court of the United States for the district in which is located a non-Federal interest that levies port or harbor dues under this section has original and exclusive jurisdiction over any matter arising out of or concerning, the imposition, computation, collection, and enforcement of port or harbor dues by a non-Federal interest under this section.

(2) Any person who suffers legal wrong or is adversely affected or aggrieved by the imposition by a non-Federal interest of a proposed scheme or schedule of port or harbor dues under this section may, not later than 180 days after the date of hearing under subsection (a)(5)(A)(iii) of this section, commence an action to seek judicial review of that proposed scheme or schedule in the appropriate district court under paragraph (1).

(3) On petition of the Attorney General or any other party, that district court may—

(A) grant appropriate injunctive relief to restrain an action by that non-Federal interest violating the conditions of consent in subsection (a) of this section;

(B) order the refund of any port or harbor dues not lawfully collected; and

(C) grant other appropriate relief or remedy.

(c) COLLECTION OF DUTIES.—

(1) 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 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) 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 App. 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.

[33 U.S.C. 2236]

SEC. 209. 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.

[33 U.S.C. 2237]

SEC. 210. AUTHORIZATION OF APPROPRIATIONS.

(a) TRUST FUND.—There are authorized to be appropriated out of the Harbor Maintenance Trust Fund, established by section 9505 of the Internal Revenue Code of 1954, for each fiscal year such sums as may be necessary to pay—

(1) 100 percent of the eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Great Lakes St. Lawrence Seaway Development Corporation for such fiscal year; and

(2) up to 100 percent of the eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States.

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

(c) OPERATION AND MAINTENANCE OF HARBOR PROJECTS.—

(1) IN GENERAL.—To the maximum extent practicable, the Secretary shall make expenditures to pay for operation and

maintenance costs of the harbors and inland harbors referred to in subsection (a)(2), including expenditures of funds appropriated from the Harbor Maintenance Trust Fund, based on an equitable allocation of funds among all such harbors and inland harbors.

(2) CRITERIA.—

(A) IN GENERAL.—In determining an equitable allocation of funds under paragraph (1), the Secretary shall—

- (i) consider the information obtained in the assessment conducted under subsection (e);
- (ii) consider the national and regional significance of harbor operations and maintenance; and
- (iii) as appropriate, consider national security and military readiness needs.

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

(3) EMERGING HARBOR PROJECTS.—

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

(B) ADDITIONAL USES AT EMERGING HARBORS.—

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

(ii) ELIGIBLE EMERGING HARBORS.—The Secretary may use funds as authorized under clause (i) at an emerging harbor that—

(I) supports commercial activities, including commercial fishing operations, commercial fish processing operations, recreational and sport fishing, and commercial boat yards; or

(II) supports activities of the Secretary of the department in which the Coast Guard is operating.

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

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

(d) PRIORITIZATION.—

(1) PRIORITY.—

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

(B) ADDITIONAL CONSIDERATIONS.—For each fiscal year, of the priority funds available, the Secretary shall use—

(i) not less than 5 percent of such funds for underserved harbor projects; and

(ii) not less than 10 percent of such funds for projects that are located within the Great Lakes Navigation System.

(C) UNDERSERVED HARBORS.—In determining which underserved harbor projects shall receive funds under this paragraph, the Secretary shall consider—

(i) the total quantity of commerce supported by the water body on which the project is located; and

(ii) the minimum width and depth that—

(I) would be necessary at the underserved harbor project to provide sufficient clearance for fully loaded commercial vessels using the underserved harbor project to maneuver safely; and

(II) does not exceed the constructed width and depth of the authorized navigation project.

(2) EXPANDED USES.—

(A) DEFINITION OF ELIGIBLE HARBOR OR INLAND HARBOR DEFINED.—In this paragraph, the term “eligible harbor or inland harbor” means a harbor or inland harbor at which the total amount of harbor maintenance taxes collected in the immediately preceding 3 fiscal years exceeds the value of the work carried out for the harbor or inland harbor using amounts from the Harbor Maintenance Trust Fund during those 3 fiscal years.

(B) USE OF EXPANDED USES FUNDS.—

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

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

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

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

(ii) the total amount of harbor maintenance taxes collected at that harbor or inland harbor in the immediately preceding 3 fiscal years.

(3) REMAINING FUNDS.—

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

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

(i) use the criteria specified in subsection (c)(2)(A); and

(ii) make amounts available in accordance with the requirements of paragraph (1)(A).

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

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

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

(e) ASSESSMENT OF HARBORS AND INLAND HARBORS.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, and biennially thereafter, the Secretary shall assess, and issue a report to Congress on, the operation and maintenance needs and uses of the harbors and inland harbors referred to in subsection (a)(2).

(2) ASSESSMENT OF HARBOR NEEDS AND ACTIVITIES.—

(A) TOTAL OPERATION AND MAINTENANCE NEEDS OF HARBORS.—In carrying out paragraph (1), the Secretary shall identify—

(i) the total future costs required to achieve and maintain the constructed width and depth for the har-

bors and inland harbors referred to in subsection (a)(2); and

(ii) the total expected costs for uses described in subsection (c)(3)(B) and expanded uses at eligible harbors or inland harbors referred to in subsection (d)(2).

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

(i) commercial navigation, including the movement of goods;

(ii) domestic trade;

(iii) international trade;

(iv) commercial fishing;

(v) subsistence, including use by Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) for subsistence and ceremonial purposes;

(vi) use as a harbor of refuge;

(vii) transportation of persons;

(viii) purposes relating to domestic energy production, including the fabrication, servicing, or supply of domestic offshore energy production facilities;

(ix) activities of the Secretary of the department in which the Coast Guard is operating;

(x) activities of the Secretary of the Navy;

(xi) public health and safety related equipment for responding to coastal and inland emergencies;

(xii) recreation purposes; and

(xiii) other authorized purposes.

(C) OPPORTUNITIES FOR BENEFICIAL USE OF DREDGED MATERIALS.—In carrying out paragraph (1), the Secretary shall identify potential opportunities for the beneficial use of dredged materials obtained from harbors and inland harbors referred to in subsection (a)(2), including projects eligible under section 1122 of the Water Resources Development Act of 2016 (130 Stat. 1645; 33 U.S.C. 2326 note).

(f) DEFINITIONS.—In this section:

(1) CONSTRUCTED WIDTH AND DEPTH.—The term “constructed width and depth” means the width and depth to which a project has been constructed, which may not exceed the authorized width and depth of the project.

(2) EMERGING HARBOR.—The term “emerging harbor” means a harbor or inland harbor referred to in subsection (a)(2) that transits less than 1,000,000 tons of cargo annually.

(3) EMERGING HARBOR PROJECT.—The term “emerging harbor project” means a project that is assigned to an emerging harbor.

(4) EXPANDED USES.—The term “expanded uses” means the following activities:

(A) The maintenance dredging of a berth in a harbor that is accessible to a Federal navigation project and that benefits commercial navigation at the harbor.

(B) The maintenance dredging and disposal of legacy-contaminated sediment, and sediment unsuitable for open water disposal, if—

(i) such dredging and disposal benefits commercial navigation at the harbor; and

(ii) such sediment is located in and affects the maintenance of a Federal navigation project or is located in a berth that is accessible to a Federal navigation project.

(C) An in-water improvement, if the improvement—

(i) is for the seismic reinforcement of a wharf or other berthing structure, or the repair or replacement of a deteriorating wharf or other berthing structure, at a port facility;

(ii) benefits commercial navigation at the harbor; and

(iii) is located in, or adjacent to, a berth that is accessible to a Federal navigation project.

(D) An activity to maintain slope stability at a berth in a harbor that is accessible to a Federal navigation project if such activity benefits commercial navigation at the harbor.

(5) GREAT LAKES NAVIGATION SYSTEM.—The term “Great Lakes Navigation System” includes—

(A)(i) Lake Superior;

(ii) Lake Huron;

(iii) Lake Michigan;

(iv) Lake Erie; and

(v) Lake Ontario;

(B) all connecting waters between the lakes referred to in subparagraph (A) used for commercial navigation;

(C) any navigation features in the lakes referred to in subparagraph (A) or waters described in subparagraph (B) that are a Federal operation or maintenance responsibility; and

(D) areas of the Saint Lawrence River that are operated or maintained by the Federal Government for commercial navigation.

(6) HARBOR MAINTENANCE TAX.—The term “harbor maintenance tax” means the amounts collected under section 4461 of the Internal Revenue Code of 1986.

(7) MODERATE-USE HARBOR PROJECT.—The term “moderate-use harbor project” means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2) that transits annually—

(A) more than 1,000,000 tons of cargo; but

(B) less than 10,000,000 tons of cargo.

(8) PRIORITY FUNDS.—The term “priority funds” means the difference between—

(A) the total funds that are made available under this section to pay the costs described in subsection (a)(2) for a fiscal year; and

(B) the total funds made available under this section to pay the costs described in subsection (a)(2) in fiscal year 2012.

(9) UNDERSERVED HARBOR PROJECT.—

(A) IN GENERAL.—The term “underserved harbor project” means a project that is assigned to a harbor or inland harbor referred to in subsection (a)(2)—

(i) that is a moderate-use harbor project or an emerging harbor project;

(ii) that has been maintained at less than the constructed width and depth of the project during each of the preceding 6 fiscal years; and

(iii) for which State and local investments in infrastructure have been made at those projects during the preceding 6 fiscal years.

(B) ADMINISTRATION.—For purposes of this paragraph, State and local investments in infrastructure shall include infrastructure investments made using amounts made available for activities under section 105(a)(9) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(9)).

[33 U.S.C. 2238]

[Section 211 repealed by § 412(f) of P.L. 101–640, Nov. 28, 1990, 104 Stat. 4650]

SEC. 212. 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.

[33 U.S.C. 2240]

SEC. 213. HARBOR OFFICE AT MORRO BAY, CALIFORNIA.

For reasons of navigation safety, subject to section 903(a) of this Act, the Secretary is authorized to make a grant to the non-Federal interest operating Morro Bay Harbor, California, for construction of a new harbor office at such harbor, at a total cost of \$500,000, with an estimated first Federal cost of \$375,000 and an estimated first non-Federal cost of \$125,000.

SEC. 214. DEFINITIONS.

For purposes of this title—

(1) DEEP-DRAFT HARBOR.—The term “deep-draft harbor” means a harbor which is authorized to be constructed to a depth of more than 45 feet (other than a project which is authorized by section 202 of this title).

(2) ELIGIBLE OPERATIONS AND MAINTENANCE.—(A) Except as provided in subparagraph (B), the term “eligible operations and maintenance” means all Federal operations, maintenance, repair, and rehabilitation, including (i) maintenance dredging reasonably necessary to maintain the width and nominal depth of any harbor or inland harbor; (ii) the construction of dredged material disposal facilities that are necessary for the operation and maintenance of any harbor or inland harbor; (iii) dredging and disposing of contaminated sediments that are in or that affect the maintenance of Federal navigation channels; (iv) mitigating for impacts resulting from Federal navigation operation and maintenance activities; and (v) operating and maintaining dredged material disposal facilities.

(B) As applied to the Saint Lawrence Seaway, the term “eligible operations and maintenance” means all operations, maintenance, repair, and rehabilitation, including maintenance dredging reasonably necessary to keep such Seaway or navigation improvements operated or maintained by the Great Lakes St. Lawrence Seaway Development Corporation in operation and reasonable state of repair.

(C) The term “eligible operations and maintenance” does not include providing any lands, easements, or rights-of-way, or performing relocations required for project operations and maintenance.

(3) GENERAL CARGO HARBOR.—The term “general cargo harbor” means a harbor for which a project is authorized by section 202 of this title and any other harbor which is authorized to be constructed to a depth of more than 20 feet but not more than 45 feet;

(4) HARBOR.—The term “harbor” means any channel or harbor, or element thereof, in the United States, capable of being utilized in the transportation of commercial cargo in domestic or foreign waterborne commerce by commercial vessels. The term does not include—

- (A) an inland harbor;
- (B) the Saint Lawrence Seaway;
- (C) local access or berthing channels;
- (D) channels or harbors constructed or maintained by nonpublic interests; and
- (E) any portion of the Columbia River other than the channels on the downstream side of Bonneville lock and dam.

(5) INLAND HARBOR.—The term “inland harbor” means a navigation project which is used principally for the accommodation of commercial vessels and the receipt and shipment of waterborne cargoes on inland waters. The term does not include—

- (A) projects on the Great Lakes;
- (B) projects that are subject to tidal influence;

(C) projects with authorized depths of greater than 20 feet;
 (D) local access or berthing channels; and
 (E) projects constructed or maintained by nonpublic interests.

(6) NOMINAL DEPTH.—The term “nominal depth” means, in relation to the stated depth for any navigation improvement project, such depth, including any greater depths which must be maintained for any harbor or inland harbor or element thereof included within such project in order to ensure the safe passage at mean low tide of any vessel requiring the stated depth.

(7) NON-FEDERAL INTEREST.—The term “non-Federal interest” has the meaning such term has under section 221 of the Flood Control Act of 1970 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.

[33 U.S.C. 2241]

SEC. 215. SHORT TITLE.

This title may be cited as the “Harbor Development and Navigation Improvement Act of 1986”.

[33 U.S.C. 2201 note]

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TITLE III—INLAND WATERWAY TRANSPORTATION SYSTEM

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SEC. 302. INLAND WATERWAYS USERS BOARD.

(a) ESTABLISHMENT OF USERS BOARD.—There is hereby established an Inland Waterway Users Board (hereinafter in this section referred to as the “Users Board”) composed of the eleven members selected by the Secretary, one of whom shall be designated by the Secretary as Chairman. The members shall be selected so as to represent various regions of the country and a spectrum of the primary users and shippers utilizing the inland and intracoastal waterways for commercial purposes. Due consideration shall be given to assure a balance among the members based on the ton-mile shipments of the various categories of commodities shipped on inland waterways. The Secretary of the Army shall designate, and the Secretaries of Agriculture, Transportation, and Commerce may each designate, a representative to act as an observer of the Users Board.

(b) DUTIES OF USERS BOARD.—

(1) IN GENERAL.—The Users Board shall meet not less frequently than semiannually to develop and make recommendations to the Secretary and Congress regarding the inland waterways and inland harbors of the United States.

(2) ADVICE AND RECOMMENDATIONS.—For commercial navigation features and components of the inland waterways and inland harbors of the United States, the Users Board shall provide—

(A) prior to the development of the budget proposal of the President for a given fiscal year, advice and recommendations to the Secretary regarding construction and rehabilitation priorities and spending levels;

(B) advice and recommendations to Congress regarding any feasibility report for a project on the inland waterway system that has been submitted to Congress pursuant to section 7001 of the Water Resources Reform and Development Act of 2014;

(C) advice and recommendations to Congress regarding an increase in the authorized cost of those features and components;

(D) not later than 60 days after the date of the submission of the budget proposal of the President to Congress, advice and recommendations to Congress regarding construction and rehabilitation priorities and spending levels; and

(E) advice and recommendations on the development of a long-term capital investment program in accordance with subsection (d).

(3) PROJECT DEVELOPMENT TEAMS.—The chairperson of the Users Board shall appoint a representative of the Users Board to serve as an advisor to the project development team for a qualifying project or the study or design of a commercial navigation feature or component of the inland waterways and inland harbors of the United States.

(4) INDEPENDENT JUDGMENT.—Any advice or recommendation made by the Users Board to the Secretary shall reflect the independent judgment of the Users Board.

(c) DUTIES OF SECRETARY.—The Secretary shall—

(1) communicate not less frequently than once each quarter to the Users Board the status of the study, design, or construction of all commercial navigation features or components of the inland waterways or inland harbors of the United States; and

(2) submit to the Users Board a courtesy copy of all completed feasibility reports relating to a commercial navigation feature or component of the inland waterways or inland harbors of the United States.

(d) CAPITAL INVESTMENT PROGRAM.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary, in coordination with the Users Board, shall develop and submit to Congress a report describing a 20-year program for making capital investments on the inland and intracoastal waterways based on the

application of objective, national project selection prioritization criteria.

(2) CONSIDERATION.—In developing the program under paragraph (1), the Secretary shall take into consideration the 20-year capital investment strategy contained in the Inland Marine Transportation System (IMTS) Capital Projects Business Model, Final Report published on April 13, 2010, as approved by the Users Board.

(3) CRITERIA.—In developing the plan and prioritization criteria under paragraph (1), the Secretary shall ensure, to the maximum extent practicable, that investments made under the 20-year program described in paragraph (1)—

(A) are made in all geographical areas of the inland waterways system; and

(B) ensure efficient funding of inland waterways projects.

(4) STRATEGIC REVIEW AND UPDATE.—Not later than 5 years after the date of enactment of this subsection, and not less frequently than once every 5 years thereafter, the Secretary, in coordination with the Users Board, shall—

(A) submit to Congress and make publicly available a strategic review of the 20-year program in effect under this subsection, which shall identify and explain any changes to the project-specific recommendations contained in the previous 20-year program (including any changes to the prioritization criteria used to develop the updated recommendations); and

(B) make revisions to the program, as appropriate.

(e) PROJECT MANAGEMENT PLANS.—The chairperson of the Users Board and the project development team member appointed by the chairperson under subsection (b)(3) may sign the project management plan for the qualifying project or the study or design of a commercial navigation feature or component of the inland waterways and inland harbors of the United States.

(f) ADMINISTRATION.—

(1) IN GENERAL.—The Users Board shall be subject to chapter 10 of title 5, United States Code, other than section 1013, and, with the consent of the appropriate agency head, the Users Board may use the facilities and services of any Federal agency.

(2) MEMBERS NOT CONSIDERED SPECIAL GOVERNMENT EMPLOYEES.—For the purposes of complying with chapter 10 of title 5, United States Code, the members of the Users Board shall not be considered special Government employees (as defined in section 202 of title 18, United States Code).

(3) TRAVEL EXPENSES.—Non-Federal members of the Users Board while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

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TITLE VI—WATER RESOURCES CONSERVATION AND DEVELOPMENT

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SEC. 602. LAKES PROGRAM.

(a) Subject to section 903(a) of this Act, the Secretary shall carry out programs for the removal of silt, aquatic growth, and other material in the following lakes:

- (1) Albert Lea Lake, Freeborn County, Minnesota, removal of silt and aquatic growth;
- (2) Lake George, Hobart, Indiana, and in that part of Deep River upstream of such lake through Lake Station, Indiana, removal of silt, aquatic growth, and other material and construction of silt traps or other devices to prevent and abate the deposit of sediment in Lake George and such part of Deep River;
- (3) Greenwood Lake and Belcher Creek, New Jersey, removal of silt and stumps;
- (4) Sauk Lake and its tributary streams in the vicinity of Sauk Centre, Stearns County, Minnesota, removal of silt and aquatic growth;
- (5) Deal Lake, Monmouth County, New Jersey, removal of silt and stumps and the control of pollution from nonpoint sources;
- (6) Lake Worth, Tarrant County, Texas, removal of silt and aquatic growth, including construction of silt traps and providing other devices or equipment to prevent and abate the further deposit of sediment in Lake Worth; such project shall also provide for the use of dredged material from Lake Worth for the reclamation of despoiled land;
- (7) Hamlet City Lake, Hamlet, North Carolina, removal of accumulated silt and debris including construction of silt traps and providing other devices or equipment to prevent and abate the further deposit of sediment in Hamlet City Lake;
- (8) Lake Herman, Lake County, South Dakota, removal of excess silt;
- (9) Gorton's Pond, Warwick, Rhode Island, mitigation activities recommended in the 1982 Environmental Protection Agency diagnostic feasibility study, including the installation of retention basins, the dredging of inlets and outlets in recommended areas and the disposal of dredge material, and weed harvesting and nutrient inactivation;
- (10) Wappingers Lake, New York, for removal of silt and aquatic growth;
- (11) Lake George, New York, for removal of silt and aquatic growth, stump removal, and the control of pollution;
- (12) Goodyear Lake, Otsego County, New York, removal of silt and aquatic growth;
- (13) Otsego Lake, Otsego County, New York, removal of silt and aquatic growth and measures to address high nutrient concentration;
- (14) Oneida Lake, Oneida County, New York, removal of silt and aquatic growth and nutrient monitoring;
- (15) Skaneateles and Owasco Lakes, New York, removal of silt and aquatic growth and prevention of sediment deposit;

- (16) Twin Lakes, Paris, Illinois, removal of silt and excess aquatic vegetation, including measures to address excessive sedimentation, high nutrient concentration, and shoreline erosion;
- (17) Clear Lake, Lake County, California, removal of silt and aquatic growth and measures to address excessive sedimentation and high nutrient concentration;
- (18) Flints Pond, Hollis, Hillsborough County, New Hampshire, removal of silt and aquatic growth and measures to address excessive sedimentation;
- (19) Osgood Pond, Milford, Hillsborough County, New Hampshire, removal of silt and aquatic growth and measures to address excessive sedimentation;
- (20) Kinkaid Lake, Jackson County, Illinois, removal of silt and aquatic growth and measures to address excessive sedimentation;
- (21) McCarter Pond, Borough of Fairhaven, New Jersey, removal of silt and measures to address water quality;
- (22) Rogers Pond, Franklin Township, New Jersey, removal of silt and restoration of structural integrity;
- (23) Greenwood Lake, New York and New Jersey, removal of silt and aquatic growth;
- (24) Lake Rodgers, Creedmoor, North Carolina, removal of silt and excessive nutrients and restoration of structural integrity;
- (25) Lake Sakakawea, North Dakota, removal of silt and aquatic growth and measures to address excessive sedimentation;
- (26) Lake Luxembourg, Pennsylvania;
- (27) Lake Fairlee, Vermont, removal of silt and aquatic growth and measures to address excessive sedimentation;
- (28) Lake Morley, Vermont, removal of silt and aquatic growth and measures to address excessive sedimentation;
- (29) Ellis Pond and Guild Pond, Norwood, Massachusetts;
- (30) Memorial Pond, Walpole, Massachusetts;
- (31) Salisbury Pond, Worcester, Massachusetts;
- (32) Baisley Pond, New York;
- (33) Legacy Park, Decatur, Georgia;
- (34) White Rock Lake, Dallas, Texas;
- (35) East Lake Tohopekaliga, Florida;
- (36) Dillon Lake, Ohio;
- (37) Hillcrest Pond, Pennsylvania;
- (38) Falcon Lake, Zapata County, Texas; and
- (39) Lake Casa Blanca, Webb County, Texas.

(b) The non-Federal share of the cost of each project and activity carried out under this section shall be 25 percent.

(c) The Secretary shall report to the Administrator of the Environmental Protection Agency the plans for and results of the program under subsection (a) and activities under subsection (f), together with such recommendations as the Secretary determines necessary to carry out the program for freshwater lakes under section 314 of the Federal Water Pollution Control Act.

(d) **NONPROFIT ENTITIES.**—Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), for any project car-

ried out under this section, a non-Federal interest may include a nonprofit entity with the consent of the affected local government.

(e) There is authorized to be appropriated \$40,000,000 for fiscal years beginning after September 30, 1986, to carry out this section. Not more than \$8,000,000 may be obligated for any project under subsection (a).

(f) CENTER FOR LAKE EDUCATION AND RESEARCH, OTSEGO LAKE, NEW YORK.—

(1) IN GENERAL.—The Secretary shall construct an environmental education and research facility at Otsego Lake, New York. The purpose of the Center shall be to—

(A) conduct nationwide research on the impacts of water quality and water quantity on lake hydrology and the hydrologic cycle;

(B) develop technologies and strategies for monitoring and improving water quality in the Nation's lakes; and

(C) provide public education regarding the biological, economic, recreational, and aesthetic value of the Nation's lakes.

(2) USE OF RESEARCH.—The results of research and education activities carried out at the Center shall be applied to the program under subsection (a) and to other Federal programs, projects, and activities that are intended to improve or otherwise affect lakes.

(3) BIOLOGICAL MONITORING STATION.—A central function of the Center shall be to research, develop, test, and evaluate biological monitoring technologies and techniques for potential use at lakes listed in subsection (a) and throughout the Nation.

(4) CREDIT.—The non-Federal sponsor shall receive credit for lands, easements, rights-of-way, and relocations toward its share of project costs.

(5) AUTHORIZATION OF APPROPRIATIONS.—In addition to sums authorized by subsection (d), there is authorized to be appropriated to carry out this subsection \$3,000,000. Such sums shall remain available until expended.

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TITLE VII—WATER RESOURCES STUDIES

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SEC. 704. [33 U.S.C. 2263 note] STUDY OF CORPS CAPABILITY TO CON- SERVE FISH AND WILDLIFE.

(a) 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 the date of enactment of this Act 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 \$120,000,000 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 New York, the vicinity of Buffalo, New York;

(B) the construction of a reef for fish habitat in the Atlantic Florida Ocean in the vicinity of Fort Lauderdale, Florida;

(C) the construction of a reef for fish habitat in Lake Ontario in the vicinity of the town of Newfane, New York; and

(D) the restoration and rehabilitation of habitat for fish, including native oysters, in the Chesapeake Bay and its tributaries in Virginia and Maryland, including—

(i) the construction of oyster bars and reefs;

(ii) the rehabilitation of existing marginal habitat;

(iii) the use of appropriate alternative substrate material in oyster bar and reef construction;

(iv) the construction and upgrading of oyster hatcheries; and

(v) activities relating to increasing the output of native oyster broodstock for seeding and monitoring of restored sites to ensure ecological success.

(3) RESTORATION AND REHABILITATION ACTIVITIES.—The restoration and rehabilitation activities described in paragraph (2)(D) shall be—

(A) for the purpose of establishing permanent sanctuaries and harvest management areas; and

(B) consistent with plans and strategies for guiding the restoration of the Chesapeake Bay oyster resource and fishery.

(4) COST SHARING.—

(A) IN GENERAL.—The non-Federal share of the cost of any project under this subsection shall be 25 percent.

(B) FORM.—The non-Federal share may be provided through in-kind services, including—

(i) the provision by the non-Federal interest of shell stock material that is determined by the Secretary to be suitable for use in carrying out the project; and

(ii) in the case of a project carried out under paragraph (2)(D) after the date of enactment of this clause, land conservation or restoration efforts undertaken by the non-Federal interest that the Secretary determines provide water quality benefits that—

(I) enhance the viability of oyster restoration efforts;

(II) are integral to the project; and

(III) are cost effective.

(C) APPLICABILITY.—The non-Federal interest shall be credited with the value of in-kind services provided on or after October 1, 2000, for a project described in paragraph (1) completed on or after that date, if the Secretary determines that the work is integral to the project.

(5) DEFINITION OF ECOLOGICAL SUCCESS.—In this subsection, the term “ecological success” means—

(A) achieving a tenfold increase in native oyster biomass by the year 2010, from a 1994 baseline; and

(B) the establishment of a sustainable fishery as determined by a broad scientific and economic consensus.

* * * * *

SEC. 729. [33 U.S.C. 2267a] WATERSHED AND RIVER BASIN ASSESSMENTS.

(a) IN GENERAL.—The Secretary may assess the water resources needs of river basins and watersheds of the United States, including needs relating to—

- (1) ecosystem protection and restoration;
- (2) flood damage reduction;
- (3) navigation and ports;
- (4) watershed protection;
- (5) water supply;
- (6) drought preparedness;
- (7) sea level rise;
- (8) coastal storm damage reduction; and
- (9) streambank and shoreline protection.

(b) COOPERATION.—An assessment under subsection (a) shall be carried out in cooperation and coordination with—

- (1) the Secretary of the Interior;
- (2) the Secretary of Agriculture;
- (3) the Secretary of Commerce;
- (4) the Administrator of the Environmental Protection Agency; and
- (5) the heads of other appropriate agencies.

(c) CONSULTATION.—In carrying out an assessment under subsection (a), the Secretary shall consult with Federal, tribal, State, interstate, and local governmental entities.

(d) PRIORITY RIVER BASINS AND WATERSHEDS.—In selecting river basins and watersheds for assessment under this section, the Secretary shall give priority to—

- (1) the Delaware River basin;
- (2) the Kentucky River basin;
- (3) the Potomac River basin;
- (4) the Susquehanna River basin;
- (5) the Willamette River basin;
- (6) Tuscarawas River Basin, Ohio;
- (7) Sauk River Basin, Snohomish and Skagit Counties, Washington;
- (8) Niagara River Basin, New York;
- (9) Genesee River Basin, New York;
- (10) White River Basin, Arkansas and Missouri;
- (11) New York-New Jersey Watershed Basin, which encompasses all the watersheds that flow into the New York-New Jersey Harbor and their associated estuaries, including the Hudson, Mohawk, Raritan, Passaic, Hackensack, and Bronx River Watersheds and the Hudson River Estuary;
- (12) Mississippi River Watershed;
- (13) Chattahoochee River Basin, Alabama, Florida, and Georgia;
- (14) the Walla Walla River Basin;
- (15) the San Francisco Bay Basin;
- (16) Connecticut River Watershed, Connecticut, Massachusetts, New Hampshire, and Vermont;
- (17) Lower Rouge River Watershed, Michigan; and
- (18) Grand River Watershed, Michigan.

(e) ACCEPTANCE OF CONTRIBUTIONS.—In carrying out an assessment under subsection (a), the Secretary may accept contributions, in cash or in kind, from Federal, tribal, State, interstate, and local governmental entities to the extent that the Secretary determines that the contributions will facilitate completion of the assessment.

(f) COST-SHARING REQUIREMENTS.—

- (1) NON-FEDERAL SHARE.—The non-Federal share of the costs of an assessment carried out under this section on or after December 11, 2000, shall be 25 percent.
- (2) CREDIT.—
 - (A) IN GENERAL.—Subject to subparagraph (B), the Secretary may credit toward the non-Federal share of an assessment under this section the cost of services, materials, supplies, or other in-kind contributions provided by the non-Federal interests for the assessment.
 - (B) MAXIMUM AMOUNT OF CREDIT.—The credit under subparagraph (A) may not exceed an amount equal to 25 percent of the costs of the assessment.

(g) FEASIBILITY REPORT ON PROJECT SPECIFIC RECOMMENDATIONS FROM ASSESSMENTS.—

- (1) IN GENERAL.—At the request of a non-Federal interest for an assessment completed under this section, the Secretary is authorized to prepare a feasibility report, in accordance with the requirements of section 905, recommending the construction or modification of a water resources development project to address a water resources need of a river basin or watershed of the United States identified in the assessment.

(2) PRIORITY WATERSHEDS.—In carrying out this subsection, the Secretary shall give priority to—

(A) the watersheds of the island of Maui, Hawaii, including the Wahikuli, Honokōwai, Kahana, Honokahua, and Honolua watersheds, including the coral reef habitat north of Lahaina off the northwestern coast of the island of Maui; and

(B) the watersheds of the Northern Mariana Islands, American Samoa, and Guam.

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TITLE VIII—PROJECT MODIFICATIONS

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SEC. 808. SOUTH PLATTE RIVER BASIN, COLORADO.

The project for flood control and other purposes on the South Platte River Basin in Colorado, authorized by the Flood Control Act of 1950 (64 Stat. 175) is modified to authorize the Secretary, upon request of and in coordination with the Colorado Department of Natural Resources and upon the Chief of Engineers' finding of feasibility and economic justification, to reassign a portion of the storage space in the Chatfield Lake project to joint flood control conservation purposes, including storage for municipal and industrial water supply, agriculture, environmental restoration, and recreation and fishery habitat protection and enhancement. Appropriate non-Federal interests shall agree to repay the cost allocated to such storage in accordance with the provisions of the Water Supply Act of 1958, the Federal Water Project Recreation Act, and such other Federal laws as the Secretary determines appropriate.

* * * * *

TITLE IX—GENERAL PROVISIONS

SEC. 901. ANNUAL OBLIGATION CEILINGS.

Notwithstanding any other provision of law, the Secretary shall, from funds appropriated, obligate no sums in excess of the sums specified in this title for the combined purpose of the “Construction, General” account and the construction component of the “Flood Control, Mississippi River and Tributaries” account:

(1) For the fiscal year ending September 30, 1987, the sum of \$1,400,000,000.

(2) For the fiscal year ending September 30, 1988, the sum of \$1,500,000,000.

(3) For the fiscal year ending September 30, 1989, the sum of \$1,600,000,000.

(4) For the fiscal year ending September 30, 1990, the sum of \$1,700,000,000.

(5) For the fiscal year ending September 30, 1991, the sum of \$1,800,000,000.

Nothing contained herein limits or otherwise amends authority conferred under section 10 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C. 621). Any amounts obligated against funds furnished or reimbursed during each such fiscal year by other Federal agencies or non-Federal interests shall

not be counted against the limitation on obligations provided for in this Act.

SEC. 902. MAXIMUM COST OF PROJECTS.

(a) IN GENERAL.—In order to insure against cost overruns, each total cost set forth with respect to a project for water resources development and conservation and related purposes authorized to be carried out by the Secretary in this Act or in a law enacted after the date of the enactment of this Act, including the Water Resources Development Act of 1988, or in an amendment made by this Act or any later law with respect to such a project shall be the maximum cost of that project, except that such maximum amount—

(1) may be increased by the Secretary for modifications which do not materially alter the scope or functions of the project as authorized, but not by more than 20 percent of the total cost stated for the project in this Act, in any later law, or in an amendment made by this Act or any later law; and

(2) shall be automatically increased for—

(A) changes in construction costs applied to unconstructed features (including real property acquisitions, preconstruction studies, planning, engineering, and design) from the date of enactment of this Act or any later law (unless otherwise specified) as indicated by engineering and other appropriate cost indexes; and

(B) additional studies, modifications and actions (including mitigation and other environmental actions) authorized by this Act or any later law or required by changes in Federal law.

(b) CONTRIBUTIONS BY NON-FEDERAL INTERESTS.—Notwithstanding subsection (a), in accordance with section 5 of the Act of June 22, 1936 (33 U.S.C. 701h), the Secretary may accept funds from a non-Federal interest for any authorized water resources development project that has exceeded its maximum cost under subsection (a), and use such funds to carry out such project, if the use of such funds does not increase the Federal share of the cost of such project.

[33 U.S.C. 2280]

SEC. 903. GENERAL REQUIREMENTS.

(a) PROCEDURE FOR CERTAIN PROJECTS AUTHORIZED FOR CONSTRUCTION.—(1) In the case of any project authorized for construction by this Act which is specifically made subject to this subsection, no construction may be commenced until the Secretary has reviewed and commented on such project and reported thereon to the Congress, or until 90 days have passed following the receipt of the proposed plan of the project from the Chief of Engineers, whichever first occurs.

(2) The Secretary shall review and comment on—

(A) at least one-third of the projects to which this subsection applies during the one-year period beginning on the date of enactment of this Act,

(B) at least two-thirds of such projects during the two-year period beginning on the date of enactment of this Act, and

(C) all of such projects during the three-year period beginning on the date of enactment of this Act.

(3) Any project to which this subsection applies on which the Secretary has not commented before the end of the 3-year period beginning on the date of enactment of this Act shall be deemed to have been approved by the Secretary for purposes of this subsection.

(b) PROCEDURE FOR PROJECTS AUTHORIZED FOR CONSTRUCTION SUBJECT TO A FAVORABLE REPORT.—Any project specifically made subject to this subsection is authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the report cited for such project, with such modifications and are recommended by the Chief of Engineers and approved by the Secretary, and with such other modifications as are recommended by the Secretary. If no report is cited for a project, the project is authorized to be prosecuted by the Secretary in accordance with a final report of the Chief of Engineers, and with such modifications as are recommended by the Secretary, and no construction on such project may be initiated until such a report is issued and approved by the Secretary.

(c) BENEFIT-COST RATIO WAIVER.—(1) In his recommendations for authorization of any project, or separable element, for flood control, the Secretary may include features that would not produce national economic development benefits greater than cost, if the non-Federal interests enter into a binding agreement requiring the non-Federal interests to pay during construction of the project or separable element an amount sufficient to make the remaining costs of that project or separable element equal to the estimated value of the national economic development benefits of that project or separable element.

(2) Non-Federal payments pursuant to paragraph (1) shall be in addition to payments required under section 103 of this Act which are applicable to the remaining costs of the project.

(d) OTHER REQUIREMENTS.—Sections 201 and 202 and the fourth sentence of section 203 of the Flood Control Act of 1968 shall apply to all projects authorized by this Act.

SEC. 904. MATTERS TO BE ADDRESSED IN PLANNING.

(a) IN GENERAL.—Enhancing national economic development (including benefits to particular regions of the Nation not involving the transfer of economic activity to such regions from other regions), the quality of the total environment (including preservation and enhancement of the environment), the well-being of the people of the United States, the prevention of loss of life, and the preservation of cultural and historical values shall be addressed in the formulation and evaluation of water resources projects to be carried out by the Secretary, and the associated benefits and costs, both quantifiable and unquantifiable, and information regarding potential loss of human life that may be associated with flooding and coastal storm events, shall be displayed in the benefits and costs of such projects.

(b) ASSESSMENTS.—For all feasibility reports for water resources projects completed after December 31, 2007, the Secretary shall assess whether—

- (1) the water resources project and each separable element is cost-effective; and
- (2) the water resources project complies with Federal, State, and local laws (including regulations) and public policies.

[33 U.S.C. 2281]

SEC. 905. FEASIBILITY REPORTS.

(a) **PREPARATION OF REPORTS.—**

(1) **IN GENERAL.**—In the case of any water resources project-related study authorized to be undertaken by the Secretary that results in recommendations concerning a project or the operation of a project and that requires specific authorization by Congress in law or otherwise, the Secretary shall prepare a feasibility report, subject to section 105 of this Act.

(2) **CONTENTS OF FEASIBILITY REPORTS.**—A feasibility report shall describe, with reasonable certainty, the economic, environmental, and social benefits and detriments of the recommended plan and alternative plans considered by the Secretary and the engineering features (including hydrologic and geologic information), the public acceptability, and the purposes, scope, and scale of the recommended plan. A feasibility report shall also include the views of other Federal agencies and non-Federal agencies with regard to the recommended plan, a description of a nonstructural alternative to the recommended plan when such plan does not have significant non-structural features, and a description of the Federal and non-Federal participation in such plan, and shall demonstrate that States, other non-Federal interests, and Federal agencies have been consulted in the development of the recommended plan. A feasibility report shall include a preliminary analysis of the Federal interest and the costs, benefits, and environmental impacts of the project.

(3) **APPLICABILITY.**—This subsection shall not apply to—

(A) any study with respect to which a report has been submitted to Congress before the date of enactment of this Act;

(B) any study for a project, which project is authorized for construction by this Act and is not subject to section 903(b);

(C) any study for a project which does not require specific authorization by Congress in law or otherwise; and

(D) general studies not intended to lead to recommendation of a specific water resources project.

(4) **FEASIBILITY REPORT DEFINED.**—In this subsection, the term “feasibility report” means each feasibility report, and any associated environmental impact statement and mitigation plan, prepared by the Corps of Engineers for a water resources project. The term includes a project implementation report prepared under title VI of the Water Resources Development Act of 2000 (114 Stat. 2680–2694), a general reevaluation report, and a limited reevaluation report.

(b) **FEDERAL INTEREST DETERMINATION.—**

(1) **IN GENERAL.—**

(A) IDENTIFICATION.—As part of the submission of a work plan to Congress pursuant to the joint explanatory statement for an annual appropriations Act or as part of the submission of a spend plan to Congress for a supplemental appropriations Act under which the Corps of Engineers receives funding, the Secretary shall identify the studies in the plan—

(i) for which the Secretary plans to prepare a feasibility report under subsection (a) that will benefit—

(I) an economically disadvantaged community (as defined by the Secretary under section 160 of the Water Resources Development Act of 2020 (33 U.S.C. 2201 note)); or

(II) a community other than a community described in subclause (I); and

(ii) that are designated as a new start under the work plan.

(B) DETERMINATION.—

(i) IN GENERAL.—After identifying the studies under subparagraph (A) and subject to subparagraph (C), the Secretary shall, with the consent of the applicable non-Federal interest for the study, first determine the Federal interest in carrying out the study and the projects that may be proposed in the study.

(ii) FEASIBILITY COST SHARE AGREEMENT.—The Secretary may make a determination under clause (i) prior to the execution of a feasibility cost share agreement between the Secretary and the non-Federal interest.

(C) LIMITATION.—For each fiscal year, the Secretary may not make a determination under subparagraph (B) for more than 20 studies identified under subparagraph (A)(i)(II).

(D) APPLICATION.—

(i) IN GENERAL.—Subject to clause (ii) and with the consent of the non-Federal interest, the Secretary may use the authority provided under this subsection for a study in a work plan submitted to Congress prior to the date of enactment of this paragraph if the study otherwise meets the requirements described in subparagraph (A).

(ii) LIMITATION.—Subparagraph (C) shall apply to the use of authority under clause (i).

(2) COST SHARE.—The costs of a determination under paragraph (1)—

(A) shall be at Federal expense;

(B) shall not exceed \$300,000; and

(C) shall be paid from the funding provided for the study in the applicable work plan described in that paragraph.

(3) DEADLINE.—A determination under paragraph (1) shall be completed by not later than 120 days after the date on which funds are made available to the Secretary to carry out the determination.

(4) TREATMENT.—The cost of a determination under paragraph (1) shall not be included for purposes of the maximum total cost under section 1001(a)(2) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282c(a)(2)).

(5) REPORT TO NON-FEDERAL INTEREST.—If, based on a determination under paragraph (1), the Secretary determines that a study or project is not in the Federal interest because the project will not result, or is unlikely to result, in a recommended plan that will produce national economic development benefits greater than cost, but may result in a technically sound and environmentally acceptable plan that is otherwise consistent with section 904 of the Water Resources Development Act of 1986 (33 U.S.C. 2281), the Secretary shall issue a report to the non-Federal interest with recommendations on how the non-Federal interest might modify the proposal such that the project could be in the Federal interest and feasible.

(6) POST-DETERMINATION WORK.—A study under this section shall continue after a determination under paragraph (1)(B)(i) without a new investment decision.

(c) PROJECTS NOT SPECIFICALLY AUTHORIZED BY CONGRESS.—In the case of any water resources project-related study authorized to be undertaken by the Secretary without specific authorization by Congress in law or otherwise, the Secretary shall prepare a detailed project report.

(d) INDIAN TRIBES.—For purposes of studies undertaken pursuant to this section, the Secretary is authorized to consider benefits which may accrue to Indian tribes as a result of a project resulting from such a study.

(e) STANDARD AND UNIFORM PROCEDURES AND PRACTICES.—The Secretary shall undertake such measures as are necessary to ensure that standard and uniform procedures and practices are followed by each district office (and each division office for any area in which there is no district office) of the United States Army Corps of Engineers in the preparation of feasibility reports on water resources projects.

(f) ENHANCED PUBLIC PARTICIPATION.—

(1) IN GENERAL.—The Secretary shall establish procedures to enhance public participation in the development of each feasibility study under subsection (a), including, if appropriate, establishment of a stakeholder advisory group to assist the Secretary with the development of the study.

(2) MEMBERSHIP.—If the Secretary provides for the establishment of a stakeholder advisory group under this subsection, the membership of the advisory group shall include balanced representation of social, economic, and environmental interest groups, and such members shall serve on a voluntary, uncompensated basis.

(3) LIMITATION.—Procedures established under this subsection shall not delay development of any feasibility study under subsection (a).

(g) DETAILED PROJECT SCHEDULE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall determine a set of milestones needed for the completion of a feasibility

study under this subsection, including all major actions, report submissions and responses, reviews, and comment periods.

(2) DETAILED PROJECT SCHEDULE MILESTONES.—Each District Engineer shall, to the maximum extent practicable, establish a detailed project schedule, based on full funding capability, that lists all deadlines for milestones relating to feasibility studies in the District developed by the Secretary under paragraph (1).

(3) NON-FEDERAL INTEREST NOTIFICATION.—Each District Engineer shall submit by certified mail the detailed project schedule under paragraph (2) to each relevant non-Federal interest—

(A) for projects that have received funding from the General Investigations Account of the Corps of Engineers in the period beginning on October 1, 2009, and ending on the date of enactment of this subsection, not later than 180 days after the establishment of milestones under paragraph (1); and

(B) for projects for which a feasibility cost-sharing agreement is executed after the establishment of milestones under paragraph (1), not later than 90 days after the date on which the agreement is executed.

(4) CONGRESSIONAL AND PUBLIC NOTIFICATION.—Beginning in the first full fiscal year after the date of enactment of this subsection, the Secretary shall—

(A) submit an annual report that lists all detailed project schedules under paragraph (2) and an explanation of any missed deadlines to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives; and

(B) make publicly available, including on the Internet, a copy of the annual report described in subparagraph (A) not later than 14 days after date on which a report is submitted to Congress.

(5) FAILURE TO ACT.—If a District Engineer fails to meet any of the deadlines in the project schedule under paragraph (2), the District Engineer shall—

(A) not later than 30 days after each missed deadline, submit to the non-Federal interest a report detailing—

(i) why the District Engineer failed to meet the deadline; and

(ii) a revised project schedule reflecting amended deadlines for the feasibility study; and

(B) not later than 30 days after each missed deadline, make publicly available, including on the Internet, a copy of the amended project schedule described in subparagraph (A)(ii).

[33 U.S.C. 2282]

SEC. 906. FISH AND WILDLIFE MITIGATION.

(a)(1) In the case of any water resources project which is authorized to be constructed by the Secretary before, on, or after the date of enactment of this Act, construction of which has not com-

menced as of the date of enactment of this Act, 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 the date of enactment of this Act 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)(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 the date of enactment of this Act or on which at least 10 percent of the physical construction on the project has been completed as of the date of enactment of this Act; 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) Costs incurred after the date of enactment of this Act, 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 the date of enactment of this Act, such costs shall not be recovered without the consent of the non-Federal interests or until such contracts are complied with or renegotiated.

(d) MITIGATION PLANS AS PART OF PROJECT PROPOSALS.—

(1) IN GENERAL.—After November 17, 1986, the Secretary shall not submit any proposal for the authorization of any water resources project to Congress in any report, and shall not select a project alternative in any report, unless such report contains (A) a recommendation with a specific plan to mitigate for damages to ecological resources, including terrestrial and aquatic resources, and fish and wildlife losses created by such project, or (B) a determination by the Secretary that such project will have negligible adverse impact on ecological resources and fish and wildlife without the implementation of mitigation measures. Specific mitigation plans shall ensure that impacts to bottomland hardwood forests are mitigated in-kind, and other habitat types are mitigated to not less than in-kind conditions, to the extent possible. If the Secretary determines that mitigation to in-kind conditions is not possible, the Secretary shall identify in the report the basis for that determination and the mitigation measures that will be implemented to meet the requirements of this section and the goals of section 307(a)(1) of the Water Resources Development Act of 1990 (33 U.S.C. 2317(a)(1)). In carrying out this subsection, the Secretary shall consult with appropriate Federal and non-Federal agencies.

(2) SELECTION AND DESIGN OF MITIGATION PROJECTS.—The Secretary shall select and design mitigation projects using a watershed approach to reflect contemporary understanding of the science of mitigating the adverse environmental impacts of water resources projects¹.

(3) MITIGATION REQUIREMENTS.—

(A) IN GENERAL.—To mitigate losses to flood damage reduction capabilities and fish and wildlife resulting from a water resources project, the Secretary shall ensure that the mitigation plan for each water resources project complies with, at a minimum, the mitigation standards and policies established pursuant to the regulatory programs administered by the Secretary.

(B) INCLUSIONS.—A specific mitigation plan for a water resources project under paragraph (1) shall include, at a minimum—

(i) a plan for monitoring the implementation and ecological success of each mitigation measure, including the cost and duration of any monitoring, and, to the extent practicable, a designation of the entities that will be responsible for the monitoring;

(ii) the criteria for ecological success by which the mitigation will be evaluated and determined to be successful based on replacement of lost functions and values of the habitat, including hydrologic and vegetative characteristics;

(iii) for projects where mitigation will be carried out by the Secretary—

¹ Clause (iii) of section 1040(a)(1)(B) of Public Law 113–121 amends paragraph (2) by inserting “using a watershed approach” after “projects”. The word “projects” appears more than one time in paragraph (2). Such amendment was executed to the first occurrence of the word “projects” in order to effectuate the probable intent of Congress.

(I) a description of the land and interest in land to be acquired for the mitigation plan;

(II) the basis for a determination that the land and interests are available for acquisition; and

(III) a determination that the proposed interest sought does not exceed the minimum interest in land necessary to meet the mitigation requirements for the project;

(iv) for projects where mitigation will be carried out through a third party mitigation arrangement in accordance with subsection (i)—

(I) a description of the third party mitigation instrument to be used; and

(II) the basis for a determination that the mitigation instrument can meet the mitigation requirements for the project;

(v) a description of—

(I) the types and amount of restoration activities to be conducted;

(II) the physical action to be undertaken to achieve the mitigation objectives within the watershed in which such losses occur and, in any case in which the mitigation will occur outside the watershed, a detailed explanation for undertaking the mitigation outside the watershed; and

(III) the functions and values that will result from the mitigation plan; and

(vi) a contingency plan for taking corrective actions in cases in which monitoring demonstrates that mitigation measures are not achieving ecological success in accordance with criteria under clause (ii).

(C) RESPONSIBILITY FOR MONITORING.—In any case in which it is not practicable to identify in a mitigation plan for a water resources project the entity responsible for monitoring at the time of a final report of the Chief of Engineers or other final decision document for the project, such entity shall be identified in the partnership agreement entered into with the non-Federal interest under section 221 of Flood Control Act of 1970 (42 U.S.C. 1962d-5b).

(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) In those cases when the Secretary, as part of any report to Congress, recommends activities to enhance fish and wildlife resources, the fish 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) 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) The provisions of subsections (a), (b), and (d) shall be deemed to supplement the responsibility and authority of the Secretary pursuant to the Fish and Wildlife Coordination Act, and nothing in this section is intended to affect that Act.

(h) PROGRAMMATIC MITIGATION PLANS.—

(1) IN GENERAL.—The Secretary may develop programmatic mitigation plans to address the potential impacts to ecological resources, fish, and wildlife associated with existing or future Federal water resources development projects.

(2) USE OF MITIGATION PLANS.—The Secretary shall, to the maximum extent practicable, use programmatic mitigation plans developed in accordance with this subsection to guide the development of a mitigation plan under subsection (d).

(3) NON-FEDERAL PLANS.—The Secretary shall, to the maximum extent practicable and subject to all conditions of this subsection, use programmatic environmental plans developed by a State, a body politic of the State, which derives its powers from a State constitution, a government entity created by State legislation, or a local government, that meet the requirements of this subsection to address the potential environmental impacts of existing or future water resources development projects.

(4) SCOPE.—A programmatic mitigation plan developed by the Secretary or an entity described in paragraph (3) to address potential impacts of existing or future water resources development projects shall, to the maximum extent practicable—

- (A) be developed on a regional, ecosystem, watershed, or statewide scale;
- (B) include specific goals for aquatic resource and fish and wildlife habitat restoration, establishment, enhancement, or preservation;
- (C) identify priority areas for aquatic resource and fish and wildlife habitat protection or restoration;
- (D) include measures to protect or restore habitat connectivity;
- (E) encompass multiple environmental resources within a defined geographical area or focus on a specific resource, such as aquatic resources or wildlife habitat; and
- (F) address impacts from all projects in a defined geographical area or focus on a specific type of project.

(5) CONSULTATION.—The scope of the plan shall be determined by the Secretary or an entity described in paragraph (3), as appropriate, in consultation with the agency with jurisdiction over the resources being addressed in the environmental mitigation plan.

(6) CONTENTS.—A programmatic environmental mitigation plan may include—

- (A) an assessment of the condition of environmental resources in the geographical area covered by the plan, including an assessment of recent trends and any potential threats to those resources;
- (B) an assessment of potential opportunities to improve the overall quality of environmental resources in the geographical area covered by the plan through strategic mitigation for impacts of water resources development projects;
- (C) standard measures for mitigating certain types of impacts, including impacts to habitat connectivity;
- (D) parameters for determining appropriate mitigation for certain types of impacts, such as mitigation ratios or criteria for determining appropriate mitigation sites;
- (E) adaptive management procedures, such as protocols that involve monitoring predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring;

(F) acknowledgment of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources; and

(G) any offsetting benefits of self-mitigating projects, such as ecosystem or resource restoration and protection.

(7) PROCESS.—Before adopting a programmatic environmental mitigation plan for use under this subsection, the Secretary shall—

(A) for a plan developed by the Secretary—

(i) make a draft of the plan available for review and comment by applicable environmental resource agencies and the public; and

(ii) consider any comments received from those agencies and the public on the draft plan; and

(B) for a plan developed under paragraph (3), determine, not later than 180 days after receiving the plan, whether the plan meets the requirements of paragraphs (4) through (6) and was made available for public comment.

(8) INTEGRATION WITH OTHER PLANS.—A programmatic environmental mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, and land use plans.

(9) CONSIDERATION IN PROJECT DEVELOPMENT AND PERMITTING.—If a programmatic environmental mitigation plan has been developed under this subsection, any Federal agency responsible for environmental reviews, permits, or approvals for a water resources development project may use the recommendations in that programmatic environmental mitigation plan when carrying out the responsibilities of the agency under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(10) PRESERVATION OF EXISTING AUTHORITIES.—Nothing in this subsection limits the use of programmatic approaches to reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(11) EFFECT.—Nothing in this subsection—

(A) requires the Secretary to undertake additional mitigation for existing projects for which mitigation has already been initiated, including the addition of fish passage to an existing water resources development project; or

(B) affects the mitigation responsibilities of the Secretary under any other provision of law.

(i) THIRD-PARTY MITIGATION ARRANGEMENTS.—

(1) ELIGIBLE ACTIVITIES.—In accordance with all applicable Federal laws (including regulations), mitigation efforts carried out under this section may include—

(A) participation in mitigation banking or other third-party mitigation arrangements, such as—

(i) the purchase of credits from commercial or State, regional, or local agency-sponsored mitigation banks; and

(ii) the purchase of credits from in-lieu fee mitigation programs; and

(B) contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands if the Secretary determines that the contributions will ensure that the mitigation requirements of this section and the goals of section 307(a)(1) of the Water Resources Development Act of 1990 (33 U.S.C. 2317(a)(1)) will be met.

(2) INCLUSION OF OTHER ACTIVITIES.—The banks, programs, and efforts described in paragraph (1) include any banks, programs, and efforts developed in accordance with applicable law (including regulations).

(3) TERMS AND CONDITIONS.—In carrying out natural habitat and wetlands mitigation efforts under this section, contributions to the mitigation effort may—

(A) take place concurrent with, or in advance of, the commitment of funding to a project; and

(B) occur in advance of project construction only if the efforts are consistent with all applicable requirements of Federal law (including regulations) and water resources development planning processes.

(4) PREFERENCE.—At the request of the non-Federal project sponsor, preference may be given, to the maximum extent practicable, to mitigating an environmental impact through the use of a mitigation bank, in-lieu fee, or other third-party mitigation arrangement, if the use of credits from the mitigation bank or in-lieu fee, or the other third-party mitigation arrangement for the project has been approved by the applicable Federal agency.

(j) USE OF FUNDS.—

(1) IN GENERAL.—The Secretary, with the consent of the applicable non-Federal interest, may use funds made available for preconstruction engineering and design after authorization of project construction to satisfy mitigation requirements through third-party arrangements or to acquire interests in land necessary for meeting mitigation requirements under this section.

(2) NOTIFICATION.—Prior to the expenditure of any funds for a project pursuant to paragraph (1), the Secretary shall notify the Committee on Appropriations and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Appropriations and the Committee on Environment and Public Works of the Senate.

(k) MEASURES.—The Secretary shall consult with interested members of the public, the Director of the United States Fish and Wildlife Service, the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, States, including State fish and game departments, and interested local governments to identify standard measures under subsection (h)(6)(C) that reflect the best available scientific information for evaluating habitat connectivity.

[33 U.S.C. 2283]

SEC. 907. 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.

[33 U.S.C. 2284]

SEC. 908. 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 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.

[33 U.S.C. 2285]

SEC. 909. RIVER BASIN AUTHORIZATIONS.

(a) In addition to previous authorizations, there is authorized to be appropriated for the prosecution of the comprehensive plan of development of each river basin or project that is referred to below by name and date of basic authorization, such sums as are necessary for the Secretary to complete the comprehensive plan of development.

Basin	Act of Congress
Alabama-Coosa River Basin	March 2, 1945
Arkansas River Basin	June 28, 1938
Arkansas-Red River Basin	November 7, 1966
Baltimore Harbor	December 31, 1970
Blue River Basin	December 31, 1970
Brazos River Basin	September 3, 1954
Central and Southern Florida	June 30, 1948
Columbia River Basin	May 17, 1950
Connecticut River Basin	June 22, 1936
Cottonwood Creek, California	December 31, 1970
Gulf Intracoastal Waterway, St. Marks, Tampa	August 13, 1968
Mississippi River and Tributaries	May 15, 1928
Missouri River Basin	June 28, 1938
North Branch Susquehanna River Basin	July 3, 1958
Ohio River Basin	June 22, 1936
Ouachita River Basin	May 17, 1950
Red Run Drain and Lower Clinton River	December 31, 1970
Red River Waterway	August 13, 1968
Sabine River Basin	December 31, 1970
Sacramento River Basin	December 22, 1944
San Joaquin River Basin	December 22, 1944
Santa Ana River Basin	June 22, 1936
South Platte River Basin	May 17, 1950

Basin	Act of Congress
Tampa Harbor	December 31, 1970
Trinity River Basin	October 27, 1965
Upper Mississippi River Basin	June 28, 1938
Wabash River Basin	August 13, 1968
White River Basin	June 28, 1938

(b) The sums authorized by this section include those necessary for the Secretary to complete local flood protection in the Columbia River Basin, as authorized by section 204 of the Flood Control Act of 1950 (64 Stat. 178).

SEC. 910. CONTINUED PLANNING AND INVESTIGATIONS.

(a) 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 the first section of the Act of December 22, 1944, and before authorization for construction of such project, the Chief of Engineers is authorized to undertake continued planning and engineering (other than preparation of plans and specifications) for such project if the Chief of Engineers finds that the project is without substantial controversy and justifies further engineering, economic, and environmental investigations and the Chief of Engineers transmits to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a statement of such findings. In the one-year period after authorization for construction of such project, the Chief of Engineers is authorized to undertake planning, engineering, and design for such project.

(b) Not later than January 15, 1987, and each January 15 thereafter, the Secretary shall prepare and transmit a report on the activities undertaken under this section in the preceding fiscal year to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(c) The authorization made by this section shall be in addition to any other authorization for planning, engineering, and design of water resources development projects and shall not be construed as a limitation on any other such authorization.

[33 U.S.C. 2287]

SECTION 912. SECTION 221 AGREEMENTS.

(a) Section 221(a) of the Flood Control Act of 1970 is amended—

(1) by inserting “, or an acceptable separable element thereof,” after “water resources project”, and by inserting “or the appropriate element of the project, as the case may be” after “for the project”; and

(2) by adding at the end the following: “In any such agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future State legislative appropriations for such performance and payment when

obligating future appropriations would be inconsistent with State constitutional or statutory limitations.”.

(b) ~~42 U.S.C. 1962d-5b note~~ (1) The Secretary may require compliance with any requirements pertaining to cooperation by non-Federal interests in carrying out any water resources project authorized before, on, or after the date of enactment of this Act.

(2) Whenever on the basis of any information available to the Secretary, the Secretary finds that any non-Federal interest is not providing cooperation required under subsection (a), the Secretary may issue an order requiring such non-Federal interest to provide such cooperation.

(3) Non-Federal interests shall be liable for interest on any payments required pursuant to section 221 of the Flood Control Act of 1970 that may fall delinquent. The interest rate to be charged on any such delinquent payment shall be at a rate, to be determined by the Secretary of the Treasury, equal to 150 percent of the average bond equivalent rate of the thirteen-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional three-month period if the period of delinquency exceeds three months.

(4) The Secretary may request the Attorney General to bring a civil action for appropriate relief, including permanent or temporary injunction, for payment of damages or, for any violation of an order issued under this section, to recover any cost incurred by the Secretary in undertaking performance of any item of cooperation under section 221(d) of the Flood Control Act of 1970, or to collect interest for which a non-Federal interest is liable under paragraph (3). Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides, or is doing business, and such court shall have jurisdiction to restrain such violation, to require compliance, to require payment of any damages, and to require payment of any costs incurred by the Secretary in undertaking performance of any such item.

(5) The Secretary is authorized to determine that no funds appropriated for operation and maintenance, including operation and maintenance of the project for flood control, Mississippi River and Tributaries, are to be used for the particular benefit of projects within the jurisdiction of any non-Federal interest when such non-Federal interest is in arrears for more than twenty-four months in the payment of charges due under an agreement entered into with the United States pursuant to section 221 of the Flood Control Act of 1970 (Public Law 91-611).

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SEC. 914. 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 therof, the Federal share of the cost of which is less than \$3,000,000.

[33 U.S.C. 2289]

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SEC. 916. FEDERAL REPAYMENT DISTRICT.

(a) The Secretary may enter into a contract providing for the payment or recovery of an appropriate share of the costs of a project under his responsibility with a Federal Project Repayment District or other political subdivision of a State prior to the construction, operation, improvement, or financing of such project. The Federal Project Repayment District shall include lands and improvements which receive identifiable benefits from the construction or operation of such project. Such districts shall be established in accordance with State law, shall have specific boundaries which may be changed from time to time based upon further evaluations of benefits, and shall have the power to recover benefits through any cost-recovery approach that is consistent with State law and satisfies the applicable cost-recovery requirement under subsection (b).

(b) Prior to execution of an agreement pursuant to subsection (a) of this section, the Secretary shall require and approve a study from the State or political subdivision demonstrating that the revenues to be derived from a contract under this section, or an agreement with a Federal Project Repayment District, will be sufficient to equal or exceed the cost recovery requirements over the term of repayment required by Federal law.

[33 U.S.C. 2291]

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SEC. 918. 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.

[33 U.S.C. 2292]

SEC. 919. PETROLEUM PRODUCT INFORMATION.

(a) The Secretary shall disclose petroleum product information to any State taxing agency making a request under subsection (b). Such information shall be disclosed for the purpose of, and only to the extent necessary in, the administration of State tax laws.

(b) Disclosure of information under this section shall be permitted only upon written request by the head of the State taxing agency and only to the representatives of such agency designated in such written request as the individuals who are to inspect or to receive the information on behalf of such agency. Any such representative shall be an employee or legal representative of such agency.

(c)(1) Requests for the disclosure of information under this section, and such disclosure, shall be made in such manner and at such time and place as shall be prescribed by the Secretary.

(2) Information disclosed to any person under this section may be provided in the form of written documents or reproductions of such documents, or by any other mode or means which the Sec-

retary determines necessary or appropriate. A reasonable fee may be prescribed for furnishing such information.

(3) Any reproduction of any document or other matter made in accordance with this subsection shall have the same legal status as the original, and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding as if it were the original, whether or not the original is in existence.

(d) The Secretary shall not disclose information to a State taxing agency of a State under this section unless such State has in effect provisions of law which—

(1) exempt such information from disclosure under a State law requiring agencies of the State to make information available to the public, or

(2) otherwise protect the confidentiality of the information.

Nothing in the preceding sentence shall be construed to prohibit the disclosure by an officer or employee of a State of information to another officer or employee of such State (or political subdivision of such State) to the extent necessary in the administration of State tax laws.

(e) For purposes of this section, the term—

(1) “petroleum product information” means information relating to petroleum products transported by vessel which is received by the Secretary (A) under section 11 of the Act entitled “An Act authorizing construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes”, approved September 22, 1922 (42 Stat. 1043; 33 U.S.C. 555), or (B) under any other legal authority; and

(2) “State taxing agency” means any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws.

(f) Section 11 of the Act entitled “An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes”, approved September 22, 1922 (42 Stat. 1043; 33 U.S.C. 555) is amended—

(1) by striking out “\$100” and inserting in lieu thereof “not more than \$5,000”; and

(2) by inserting a new sentence at the end thereof as follows: “In addition, the Secretary may assess a civil penalty of up to \$2,500, per violation, against any person or entity that fails to provide timely, accurate statements required to be submitted pursuant to this section by the Secretary.”.

[33 U.S.C. 555a]

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SEC. 923. REPROGRAMMING DURING NATIONAL EMERGENCIES.

(a) 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 (90 Stat. 1255; 50 U.S.C. 1601) 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) 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.

【33 U.S.C. 2293】

SEC. 924. 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.

【33 U.S.C. 2294】

SEC. 925. COMPILATION OF LAWS; ANNUAL REPORTS.

(a) Within one year after the date of enactment of this Act, 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) The Secretary shall prepare and submit the annual report required by section 8 of the Act of August 11, 1888, 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) 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 the date of the enactment of this Act.

【33 U.S.C. 2295】

SEC. 926. 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 the date of enactment of this Act, construction of which has not commenced before such date of enactment, 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.

【33 U.S.C. 2296】

SEC. 927. OPERATION AND MAINTENANCE ON RECREATION LANDS.

The Secretary shall not require, under section 4 of the Flood Control Act of December 22, 1944 (58 Stat. 889), and the Federal Water Project Recreation Act, 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.

【33 U.S.C. 2297】

SEC. 928. IMPACT OF PROPOSED PROJECTS ON EXISTING RECREATION FACILITIES.

Any report describing a project having recreation benefits that is submitted after the date of enactment of this Act 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.

【33 U.S.C. 2298】

SEC. 929. AGRICULTURAL BENEFITS.

Section 2 of the Watershed Protection and Flood Protection Act (68 Stat. 666; 16 U.S.C. 1002) is amended by inserting after the proviso in the paragraph relating to the definition of "works of improvement" the following: "Each such project submitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives after July 1, 1987, must contain benefits directly related to agriculture that account for at least 20 percent of the total benefits of the project.".

SEC. 930. PUBLIC ACCESS TO WATER IMPOUNDMENTS.

The Secretary of Agriculture, acting through the Administrator of the Soil Conservation Service, shall study and report to the appropriate committees of the Senate and the House of Representatives by April 1, 1988, on the feasibility, the desirability, and the public interest involved in requiring that public access be provided to any or all water impoundments that have recreation-related potential and that were authorized pursuant to the Watershed Protection and Flood Protection Act (68 Stat. 666; 16 U.S.C. 1001 et seq.).

[16 U.S.C. 1004 note]

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SEC. 935. 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.

[33 U.S.C 2299]

SEC. 936. 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.

[33 U.S.C. 2300]

SEC. 937. REPORTS ON HYDROPOWER STATISTICS.

Not later than January 15, 1988, and each January 15 thereafter, the Secretary shall transmit 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 report which—

- (1) specifies the amount of electricity generated by each water resource project constructed by the Secretary which generated electricity in the preceding fiscal year;
- (2) specifies the revenues received by the United States from the sale of electricity generated by such project; and

(3) specifies the costs of construction, operation, and maintenance of such project allocated to the generation of electricity.

In carrying out the study under this section, the Secretary shall compare the actual amount of capital costs repaid to that amount that would be required to repay capital costs. The first report submitted under this section shall specify the amounts of electricity generated, the revenues received, and the costs allocated for each such project before October 1, 1985, on a fiscal year basis in constant dollars. Each report thereafter shall specify the amounts of electricity generated, the revenues received, and the costs allocated for each such project for the preceding fiscal year.

[33 U.S.C. 2301]

SEC. 938. REPORTS ON SMALL BUSINESS CONTRACTS.

(a)(1) The Secretary shall, on an annual basis, transmit 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 report describing the number and dollar amount of contracts awarded in each industry category or subcategory broken down by Engineer District of the Army Corps of Engineers. Such report shall include the number and dollar amount of contracts (A) set aside for small business concerns; (B) awarded to small business or small disadvantaged business concerns; (C) available for competition by qualified firms of all sizes; and (D) awarded to other than small business or small disadvantaged business concerns.

(2) For purposes of this section, the term—

(A) “contract” means any contract, or any subcontract in connection with a subcontracting plan entered into pursuant to section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), which is funded through appropriations made available to the Corps of Engineers-Civil; and

(B) “industry category or subcategory” means the four digit SIC category or subcategory defined by the Small Business Administration.

(b) In the interest of efficient and cost effective operations by the Secretary, the Comptroller General of the United States shall conduct a study of the Secretary’s contracting procedures for civil works projects. Such study shall examine whether potential bidders or offerors, regardless of their size, are allowed to compete fairly in the interest of lowering cost on contracts for construction. Within two years of the date of enactment of this Act, the Comptroller General shall report his findings to Congress together with an assessment of whether contract procedures are applied uniformly among the various field offices under the Secretary’s jurisdiction. The report shall also provide recommendations on improving contracting procedures, including (1) how the Secretary can prepare proposals for construction that assure, to the greatest extent reasonable, that no potential bidder or offeror is precluded from competing fairly for contracts, (2) whether recordkeeping requirements imposed by the Secretary on contractors are appropriate in the interest of competition, and (3) the extent to which the private sector

can be used more efficiently by the Secretary in contracting for construction, architecture, engineering, surveying, and mapping.

[33 U.S.C. 2302]

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SEC. 942. TECHNICAL ASSISTANCE.

(a) Upon request of the Governor of a State, or the appropriate official of local government, the Secretary is authorized to provide designs, plans, and specifications, and such other technical assistance as he deems advisable to such State or local government for its use in carrying out—

- (1) projects for removing accumulated snags and other debris, and clearing and straightening channels in navigable streams and tributaries thereof; and
- (2) projects for renovating navigable streams and tributaries thereof by means of predominantly nonstructural methods judged by the Secretary to be cost effective, for the purpose of improved drainage, water quality, and habitat diversity.

(b) The non-Federal share of the cost of any designs, plans, specifications or technical assistance provided under subsection (a) shall be 50 percent.

[33 U.S.C. 426m]

SEC. 943. HISTORICAL PROPERTIES.

The Secretary is authorized to preserve, restore, and maintain those historic properties located on water resources 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.

[33 U.S.C. 2303]

SEC. 944. FLOOD HAZARD INFORMATION.

The Secretary, the Director of the Federal Emergency Management Agency, and the Administrator of the Soil Conservation Service shall take necessary actions, including the posting and distribution of information and the preparation and distribution of educational materials and programs, to ensure that information relating to flood hazard areas is generally available to the public.

[33 U.S.C. 709b]

SEC. 945. DREDGE VESSEL DISPOSAL.

[Section 945 was repealed by section 6 of P.L. 107-217 (116 Stat. 1062). P.L. 107-217 provided for the codification of title 40, United States Code. For disposal of dredge vessels, see 40 U.S.C. 556.]

SEC. 946. LIGHTING AT DOCKS AND BOAT LAUNCHING FACILITIES.

Whenever the Secretary considers a permit application for a dock or a boat launching facility under section 10 of the Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 403), the Secretary shall consider the needs of such facility for lighting from sunset to sunrise to make such facility's presence known within a reasonable distance.

[33 U.S.C. 403b]

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SEC. 948. BUDGET ACT REQUIREMENTS.

Any spending authority under this Act 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, except that such term does not include spending authority for which an exception is made under section 401(d) of such Act.

[33 U.S.C. 2201 note]

SEC. 949. SEPARABILITY.

If any provision of this Act, or the application of any provision of this Act to any person or circumstances, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

[33 U.S.C. 2304]

SEC. 950. 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.

[33 U.S.C. 2305]

SEC. 951. 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.

[33 U.S.C. 2306]

TITLE X—PROJECT DEAUTHORIZATION**SEC. 1001. [33 U.S.C. 579a] CORPS BUDGETING; PROJECT DEAUTHORIZATIONS; COMPREHENSIVE BACKLOG REPORT.**

(a) Any project authorized for construction by this Act shall not be authorized after the last day of the 5-year period beginning on the date of enactment of this Act unless during such period funds have been obligated for construction, including planning and designing, of such project.

(b)(1) Not later than one year after the date of enactment of this Act, the Secretary shall transmit to Congress a list of unconstructed projects, or unconstructed separable elements of projects, which have been authorized, but have received no obligations during the 10 full fiscal years preceding the transmittal of such list. A project or separable element included in such list is not

authorized after December 31, 1989, if the funds have not been obligated for construction of such project or element after the date of enactment of this Act and before December 31, 1989.

(2) COMPREHENSIVE CONSTRUCTION BACKLOG AND OPERATION AND MAINTENANCE REPORT.—

(A) IN GENERAL.—The Secretary, once every 2 years, shall compile and publish—

(i) a complete list of all projects and separable elements of projects of the Corps of Engineers that are authorized for construction but have not been completed;

(ii) a complete list of all feasibility studies of the Corps of Engineers that Congress has authorized the Secretary to carry out for which a Report of the Chief of Engineers has not been issued;

(iii) a complete list of all environmental infrastructure projects authorized by Congress under section 219 of the Water Resources Development Act of 1992 (106 Stat. 4835); and

(iv) a list of major Federal operation and maintenance needs of projects and properties under the control of the Corps of Engineers.

(B) REQUIRED INFORMATION.—The Secretary shall include on each list developed under clause (i), (ii), or (iii) of subparagraph (A) for each feasibility study, project, and separable element on that list—

(i) the date of authorization of the feasibility study, project, or separable element, including any subsequent modifications to the original authorization;

(ii) the original budget authority for the feasibility study, project, or separable element;

(iii) a brief description of the feasibility study, project, or separable element;

(iv) the estimated date of completion of the feasibility study, project, or separable element, assuming all capability is fully funded;

(v) the estimated total cost of completion of the feasibility study, project, or separable element;

(vi) the amount of funds spent on the feasibility study, project, or separable element, including Federal and non-Federal funds;

(vii) the amount of appropriations estimated to be required in each fiscal year during the period of construction to complete the project or separable element by the date specified under clause (iv);

(viii) the location of the feasibility study, project, or separable element;

(ix) a statement from the non-Federal interest for the project or separable element indicating the non-Federal interest's capability to provide the required local cooperation estimated to be required for the project or separable element in each fiscal year during the period of construction;

(x) the benefit-cost ratio of the project or separable element, calculated using the discount rate specified by the Office of Management and Budget for purposes of preparing the President's budget pursuant to chapter 11 of title 31, United States Code;

(xi) the benefit-cost ratio of the project or separable element, calculated using the discount rate utilized by the Corps of Engineers for water resources development project planning pursuant to section 80 of the Water Resources Development Act of 1974 (42 U.S.C. 1962d-17); and

(xii) the last fiscal year in which the project or separable element incurred obligations.

(C) REQUIRED OPERATION AND MAINTENANCE INFORMATION.—The Secretary shall include on the list developed under subparagraph (A)(iv), for each project and property under the control of the Corps of Engineers on that list—

(i) the authority under which the project was authorized or the property was acquired by the Corps of Engineers;

(ii) a brief description of the project or property;

(iii) an estimate of the Federal costs to meet the major operation and maintenance needs at the project or property; and

(iv) an estimate of unmet or deferred operation and maintenance needs at the project or property.

(D) PUBLICATION.—

(i) IN GENERAL.—For fiscal year 2020, and once every 2 years thereafter, in conjunction with the President's annual budget submission to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit a copy of the lists developed under subparagraph (A) to—

(I) the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives; and

(II) the Director of the Office of Management and Budget.

(ii) PUBLIC AVAILABILITY.—The Secretary shall make a copy of the lists available on a publicly accessible website site in a manner that is downloadable, searchable, and sortable.

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TITLE XI—MISCELLANEOUS PROGRAMS AND PROJECTS

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SEC. 1103. [33 U.S.C. 652] UPPER MISSISSIPPI RIVER PLAN.

(a)(1) This section may be cited as the "Upper Mississippi River Management Act of 1986".

(2) To ensure the coordinated development and enhancement of the Upper Mississippi River system, it is hereby declared to be the

intent of Congress to recognize that system as a nationally significant ecosystem and a nationally significant commercial navigation system. Congress further recognizes that the system provides a diversity of opportunities and experiences. The system shall be administered and regulated in recognition of its several purposes.

(b) For purposes of this section—

(1) the term “Upper Mississippi River system” and “system” mean those river reaches having commercial navigation channels on the Mississippi River main stem north of Cairo, Illinois; the Minnesota River, Minnesota; Black River, Wisconsin; Saint Croix River, Minnesota and Wisconsin; Illinois River and Waterway, Illinois; and Kaskakia River, Illinois;

(2) the term “Master Plan” means the comprehensive master plan for the management of the Upper Mississippi River system, dated January 1, 1982, prepared by the Upper Mississippi River Basin Commission and submitted to Congress pursuant to Public Law 95-502;

(3) the term “GREAT I, GREAT II, and GRRM studies” means the studies entitled “GREAT Environmental Action Team—GREAT I—A Study of the Upper Mississippi River”, dated September 1980, “GREAT River Environmental Action Team—GREAT II—A Study of the Upper Mississippi River”, dated December 1980, and “GREAT River Resource Management Study”, dated September 1982; and

(4) the term “Upper Mississippi River Basin Association” means an association of the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, formed for the purposes of cooperative effort and united assistance in the comprehensive planning for the use, protection, growth, and development of the Upper Mississippi River System.

(c)(1) Congress hereby approves the Master Plan as a guide for future water policy on the Upper Mississippi River system. Such approval shall not constitute authorization of any recommendation contained in the Master Plan.

(2) Section 101 of Public Law 95-502 is amended by striking out the last two sentences of subsection (b), striking out subsection (i), striking out the final sentence of subsection (j), and redesignating subsection “(j)” as subsection “(i)”.

(d)(1) The consent of the Congress is hereby given to the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, or any two or more of such States, to enter into negotiations for agreements, not in conflict with any law of the United States, for cooperative effort and mutual assistance in the comprehensive planning for the use, protection, growth, and development of the Upper Mississippi River system, and to establish such agencies, joint or otherwise, or designate an existing multi-State entity, as they may deem desirable for making effective such agreements. To the extent required by Article I, section 10 of the Constitution, such agreements shall become final only after ratification by an Act of Congress.

(2) The Secretary is authorized to enter into cooperative agreements with the Upper Mississippi River Basin Association or any other agency established under paragraph (1) of this subsection to promote and facilitate active State government participation in the river system management, development, and protection.

(3) For the purpose of ensuring the coordinated planning and implementation of programs authorized in subsections (e) and (h)(2) of this section, the Secretary shall enter into an interagency agreement with the Secretary of the Interior to provide for the direct participation of, and transfer of funds to, the Fish and Wildlife Service and any other agency or bureau of the Department of the Interior for the planning, design, implementation, and evaluation of such programs.

(4) The Upper Mississippi River Basin Association or any other agency established under paragraph (1) of this subsection is hereby designated by Congress as the caretaker of the master plan. Any changes to the master plan recommended by the Secretary shall be submitted to such association or agency for review. Such association or agency may make such comments with respect to such recommendations and offer other recommended changes to the master plan as such association or agency deems appropriate and shall transmit such comments and other recommended changes to the Secretary. The Secretary shall transmit such recommendations along with the comments and other recommended changes of such association or agency to the Congress for approval within 90 days of the receipt of such comments or recommended changes.

(e) PROGRAM AUTHORITY.—

(1) AUTHORITY.—

(A) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, may undertake, as identified in the master plan—

(i) a program for the planning, construction, and evaluation of measures for fish and wildlife habitat rehabilitation and enhancement; and

(ii) implementation of a long-term resource monitoring, computerized data inventory and analysis, and applied research program, including research on water quality issues affecting the Mississippi River (including elevated nutrient levels) and the development of remediation strategies.

(B) ADVISORY COMMITTEE.—In carrying out subparagraph (A)(i), the Secretary shall establish an independent technical advisory committee to review projects, monitoring plans, and habitat and natural resource needs assessments.

(2) REPORTS.—Not later than December 31, 2004, and not later than December 31 of every sixth year thereafter, the Secretary, in consultation with the Secretary of the Interior and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, shall submit to Congress a report that—

(A) contains an evaluation of the programs described in paragraph (1);

(B) describes the accomplishments of each of the programs;

(C) provides updates of a systemic habitat needs assessment; and

(D) identifies any needed adjustments in the authorization of the programs.

(3) For purposes of carrying out paragraph (1)(A)(i) of this subsection, there is authorized to be appropriated to the Secretary \$75,000,000 for fiscal year 1999 and each fiscal year thereafter.

(4) For purposes of carrying out paragraph (1)(A)(ii) of this subsection, there is authorized to be appropriated to the Secretary \$15,000,000 for each of fiscal years 1999 through 2024, and \$25,000,000 for fiscal year 2025 and each fiscal year thereafter.

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out paragraph (1)(B) \$350,000 for each of fiscal years 1999 through 2009.

(6) TRANSFER OF AMOUNTS.—For fiscal year 1999 and each fiscal year thereafter, the Secretary, in consultation with the Secretary of the Interior and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, may transfer not to exceed 20 percent of the amounts appropriated to carry out clause (i) or (ii) of paragraph (1)(A) to the amounts appropriated to carry out the other of those clauses.

(7)(A) Notwithstanding the provisions of subsection (a)(2) of this section, the costs of each project carried out pursuant to paragraph (1)(A)(i) of this subsection shall be allocated between the Secretary and the appropriate non-Federal sponsor in accordance with the provisions of section 906(e) of this Act; except that the costs of operation and maintenance of projects located on Federal lands or lands owned or operated by a State or local government shall be borne by the Federal, State, or local agency that is responsible for management activities for fish and wildlife on such lands and, in the case of any project requiring non-Federal cost sharing, the non-Federal share of the cost of the project shall be 35 percent.

(B) Notwithstanding the provisions of subsection (a)(2) of this section, the cost of implementing the activities authorized by paragraph (1)(A)(ii) of this subsection shall be allocated in accordance with the provisions of section 906 of this Act, as if such activity was required to mitigate losses to fish and wildlife.

(8) None of the funds appropriated pursuant to any authorization contained in this subsection shall be considered to be chargeable to navigation.

(f)(1) The Secretary, in consultation with any agency established under subsection (d)(1) of this section, is authorized to implement a program of recreational projects for the system substantially in accordance with the recommendations of the GREAT I, GREAT II, and GRRM studies and the master plan reports. In addition, the Secretary, in consultation with any such agency, shall, at Federal expense, conduct an assessment of the economic benefits generated by recreational activities in the system. The cost of each such project shall be allocated between the Secretary and the appropriate non-Federal sponsor in accordance with title I of this Act.

(2) For purposes of carrying out the program of recreational projects authorized in paragraph (1) of this subsection, there is authorized to be appropriated to the Secretary not to exceed \$500,000

per fiscal year for each of the first 15 fiscal years beginning after the effective date of this section.

(g) The Secretary shall, in his budget request, identify those measures developed by the Secretary, in consultation with the Secretary of Transportation and any agency established under subsection (d)(1) of this section, to be undertaken to increase the capacity of specific locks throughout the system by employing non-structural measures and making minor structural improvements.

(h)(1) The Secretary, in consultation with any agency established under subsection (d)(1) of this section, shall monitor traffic movements on the system for the purpose of verifying lock capacity, updating traffic projections, and refining the economic evaluation so as to verify the need for future capacity expansion of the system.

(2) DETERMINATION.—

(A) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, shall determine the need for river rehabilitation and environmental enhancement and protection based on the condition of the environment, project developments, and projected environmental impacts from implementing any proposals resulting from recommendations made under subsection (g) and paragraph (1) of this subsection.

(B) REQUIREMENTS.—The Secretary shall—

(i) complete the ongoing habitat needs assessment conducted under this paragraph not later than September 30, 2000; and

(ii) include in each report under subsection (e)(2) the most recent habitat needs assessment conducted under this paragraph.

(3) There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subsection.

(i)(1) The Secretary shall, as he determines feasible, dispose of dredged material from the system pursuant to the recommendations of the GREAT I, GREAT II, and GRRM studies.

(2) The Secretary shall establish and request appropriate Federal funding for a program to facilitate productive uses of dredged material. The Secretary shall work with the States which have, within their boundaries, any part of the system to identify potential users of dredged material.

(j) The Secretary is authorized to provide for the engineering, design, and construction of a second lock at locks and dam 26, Mississippi River, Alton, Illinois and Missouri, at a total cost of \$220,000,000, with a first Federal cost of \$220,000,000. Such second lock shall be one hundred and ten feet by six hundred feet and shall be constructed at or in the vicinity of the location of the replacement lock authorized by section 102 of Public Law 95-502. Section 102 of this Act shall apply to the project authorized by this subsection.

* * * * *

SEC. 1109. [42 U.S.C. 1962d-20] PROHIBITION ON GREAT LAKES DIVERSIONS.

(a) The Congress finds and declares that—

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

(1) the Great Lakes are a most important natural resource to the eight Great Lakes States and two Canadian provinces, providing water supply for domestic and industrial use, clean energy through hydropower production, an efficient transportation mode for moving products into and out of the Great Lakes region, and recreational uses for millions of United States and Canadian citizens;

(2) the Great Lakes need to be carefully managed and protected to meet current and future needs within the Great Lakes basin and Canadian provinces;

(3) any new diversions of Great Lakes water for use outside of the Great Lakes basin will have significant economic and environmental impacts, adversely affecting the use of this resource by the Great Lakes States and Canadian provinces; and

(4) four of the Great Lakes are international waters and are defined as boundary waters in the Boundary Waters Treaty of 1909 between the United States and Canada, and as such any new diversion of Great Lakes water in the United States would affect the relations of the Government of the United States with the Government of Canada.

(b) It is therefore declared to be the purpose and policy of the Congress in this section—

(1) to take immediate action to protect the limited quantity of water available from the Great Lakes system for use by the Great Lakes States and in accordance with the Boundary Waters Treaty of 1909;

(2) to encourage the Great Lakes States, in consultation with the Provinces of Ontario and Quebec, to develop and implement a mechanism that provides a common conservation standard embodying the principles of water conservation and resource improvement for making decisions concerning the withdrawal and use of water from the Great Lakes Basin;

(3) to prohibit any diversion of Great Lakes water by any State, Federal agency, or private entity for use outside the Great Lakes basin unless such diversion is approved by the Governor of each of the Great Lakes States; and

(4) to prohibit any Federal agency from undertaking any studies that would involve the transfer of Great Lakes water for any purpose for use outside the Great Lakes basin.

(c) As used in this section, the term "Great Lakes State" means each of the States of Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin.

(d) No water shall be diverted or exported from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin unless such diversion or export is approved by the Governor of each of the Great Lake States.

(e) No Federal agency may undertake any study, or expend any Federal funds to contract for any study, of the feasibility of diverting water from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin, unless such study or expenditure is approved by the Governor of each of the

Great Lakes States. The prohibition of the preceding sentence shall not apply to any study or data collection effort performed by the Corps of Engineers or other Federal agency under the direction of the International Joint Commission in accordance with the Boundary Waters Treaty of 1909.

(f) This section shall not apply to any diversion of water from any of the Great Lakes which is authorized on the date of the enactment of this Act.

* * * * *

SEC. 1113. ACEQUIAS IRRIGATION SYSTEM.

(a)(1) The Congress finds that the irrigation ditch systems in New Mexico, known as the Acequia systems, date from the eighteenth century, and that these early engineering works have significance in the settlement and development of the western portion of the United States.

(2) The Congress, therefore, declares that the restoration and preservation of the Acequia systems has cultural and historic values to the region.

(b) **AUTHORIZATION.**—The Secretary shall carry out, without regard to economic analysis, such measures as are necessary to protect and restore the river diversion structures and associated channels attendant to the operations of the community ditch and Acequia systems in New Mexico that—

(1) are declared to be a political subdivision of the State; or

(2) belong to an Indian Tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)).

(c) **INCLUSIONS.**—The measures described in subsection (b) shall, to the maximum extent practicable—

(1) ensure greater resiliency of diversion structures, including to flow variations, prolonged drought conditions, invasive plant species, and threats from changing hydrological and climatic conditions; or

(2) support research, development, and training for innovative management solutions, including those for controlling invasive aquatic plants that affect acequias.

(d) **COST SHARING.**—

(1) **IN GENERAL.**—The non-Federal share of the cost of carrying out the measures described in subsection (b), including study costs, shall be 25 percent, except that in the case of a measure benefitting an economically disadvantaged community (as defined by the Secretary under section 160 of the Water Resources Development Act of 2020 (33 U.S.C. 2201 note)), including economically disadvantaged communities located in urban and rural areas, the Federal share of the cost of carrying out such measure shall be 90 percent.

(2) **PRE-DESIGN PLANNING COSTS.**—Notwithstanding paragraph (1), the Federal share of pre-design planning costs under this section shall be 100 percent.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out the measures described in subsection (b) \$90,000,000.

(f) PUBLIC ENTITY STATUS.—

(1) IN GENERAL.—The Secretary shall consider the historic Acequia systems (community ditches) of the southwestern United States as public entities, if these systems are chartered by the respective State laws as political subdivisions of that State or belong to an Indian Tribe within the State of New Mexico.

(2) EFFECT.—The public entity status provided under paragraph (1) shall allow the officials of the Acequia systems described in such paragraph to enter into agreements and serve as local sponsors of water-related projects of the Secretary.

* * * * *

SEC. 1117. W.D. MAYO LOCK AND DAM.

(a) IN GENERAL.—The Cherokee Nation of Oklahoma may—

(1) design and construct one or more hydroelectric generating facilities at the W.D. Mayo Lock and Dam on the Arkansas River, Oklahoma; and

(2) market the electricity generated from any such facility.

(b) PRECONSTRUCTION REQUIREMENTS.—

(1) PERMITS.—Before the date on which construction of a hydroelectric generating facility begins under subsection (a), the Cherokee Nation shall obtain any permit required under Federal or State law, except that the Cherokee Nation shall be exempt from licensing requirements that may otherwise apply to construction, operation, or maintenance of the facility under the Federal Power Act (16 U.S.C. 791a et seq.).

(2) REVIEW OF PLANS AND SPECIFICATIONS.—The Cherokee Nation may initiate the design or construction of a hydroelectric generating facility under subsection (a) only after the Secretary reviews and approves the plans and specifications for the design and construction.

(c) PAYMENT OF DESIGN AND CONSTRUCTION COSTS.—

(1) IN GENERAL.—The Secretary may accept funds offered by the Cherokee Nation and use such funds to carry out the design and construction of a hydroelectric generating facility under subsection (a).

(2) ALLOCATION OF COSTS.—The Cherokee Nation shall—

(A) bear all costs associated with the design and construction of a hydroelectric generating facility under subsection (a); and

(B) provide any funds necessary for the design and construction to the Secretary prior to the Secretary initiating any activities related to the design and construction.

(d) ASSUMPTION OF LIABILITY.—The Cherokee Nation shall—

(1) hold all title to a hydroelectric generating facility constructed under subsection (a) and may, subject to the approval of the Secretary, assign such title to a third party;

(2) be solely responsible for—

(A) the operation, maintenance, repair, replacement, and rehabilitation of the facility; and

(B) the marketing of the electricity generated by the facility; and

(3) release and indemnify the United States from any claims, causes of action, or liabilities that may arise out of any activity undertaken to carry out this section.

(e) ASSISTANCE AVAILABLE.—The Secretary may provide technical and construction management assistance requested by the Cherokee Nation relating to the design and construction of a hydroelectric generating facility under subsection (a).

(f) THIRD PARTY AGREEMENTS.—The Cherokee Nation may enter into agreements with the Secretary or a third party that the Cherokee Nation or the Secretary determines are necessary to carry out this section.

* * * * *

SEC. 1132. [33 U.S.C. 2309] GREAT LAKES MARKETING BOARD.

(a) 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)(1) There is hereby established a Board to be known as the Great Lakes Commodities Marketing Board (hereinafter in this subsection referred to as the “Board”).

(2)(A) The Board shall develop a strategy to improve the capacity of the Great Lakes region to produce, market, and transport commodities in a timely manner and to maximize the efficiency and benefits of marketing products produced in the Great Lakes region and products shipped through the Great Lakes.

(B) The strategy shall address, among other things, environmental issues relating to transportation on the Great Lakes and marketing difficulties experienced due to late harvest seasons in the Great Lakes region. The strategy shall include, as appropriate alternative storage, sales, marketing, multimodal transportation systems, and other systems, to assure optimal economic benefits to the region from agricultural and other commercial activities. The strategy shall develop—

(i) methods to improve and promote both bulk and general cargo trade through Great Lakes ports;

(ii) methods to accelerate the movement of grains and other agricultural commodities through the Great Lakes;

(iii) methods to provide needed flexibility to farmers in the Great Lakes region to market grains and other agricultural commodities; and

(iv) methods and materials to promote trade from the Great Lakes region and through Great Lakes ports, particularly with European, Mediterranean, African, Caribbean, Central American, and South American nations.

(C) In developing the strategy, the Board shall conduct and consider the results of—

- (i) an analysis of the feasibility and costs of using iron ore vessels, which are not being utilized, to move grain and other agricultural commodities on the Great Lakes;
- (ii) an economic analysis of transshipping such commodities through Montreal, Canada, and other ports;
- (iii) an analysis of the economic feasibility of storing such commodities during the non-navigation season of the Great Lakes and the feasibility of and need for construction of new storage facilities for such commodities;
- (iv) an analysis of the constraints on the flexibility of farmers in the Great Lakes region to market grains and other agricultural commodities, including harvest dates for such commodities and the availability of transport and storage facilities for such commodities; and
- (v) an analysis of the amount of grain and other agricultural commodities produced in the United States which are being diverted to Canada by rail but which could be shipped on the Great Lakes if vessels were available for shipping such products during the navigation season. (D) In developing the strategy, the Board shall consider weather problems and related costs and marketing problems resulting from the late harvest of agricultural commodities (including wheat and sunflower seeds) in the Great Lakes region.

(E) In developing the strategy, the Board shall consult United States ports on the Great Lakes and their users, including farm organizations (such as wheat growers and soybean growers), port authorities, water carrier organizations, and other interested persons.

(3) The Board shall be composed of seven members as follows:

- (A) the chairman of the Great Lakes Commission or his or her delegate,
- (B) the Secretary or his or her delegate,
- (C) the Secretary of Transportation or his or her delegate,
- (D) the Secretary of Commerce or his or her delegate,
- (E) the Administrator of the Great Lakes St. Lawrence Seaway Development Corporation or his or her delegate,
- (F) the Secretary of Agriculture or his or her delegate, and
- (G) the Administrator of the Environmental Protection Agency or his or her delegate.

(4)(A) Members of the Board shall serve for the life of the Board.

(B) Members of the Board shall serve without pay and those members who are full time officers or employees of the United States shall receive no additional pay by reason of their service on the Board, except that members of the Board shall be allowed travel or transportation expenses under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular seq. places of business and engaged in the actual performance of duties vested in the Board.

(C) Four members of the Board shall constitute a quorum but a lesser number may hold hearings.

(D) The co-chairmen of the Board shall be the Secretary or his or her delegate and the Administrator of the Great Lakes St. Lawrence Seaway Development Corporation or his or her delegate.

(E) The Board shall meet at the call of the co-chairmen or a majority of its members.

(5)(A) The Board shall, without regard to section 5311(b) of title 5, United States Code, 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) of title 5, United States Code, 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 cochairmen 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)(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 naviga-

tion, through a coordinated strategy, on the Great Lakes, and (B) to conduct investigations on a continuing basis and make recommendations for a system-wide navigation improvement program to facilitate optimum use of the Great Lakes. The advisory group shall be composed of five members representing the United States, five members representing Canada, and two members from the International Joint Commission established by the treaty between the United States and Great Britain relating to boundary waters between the United States and Canada, signed at Washington, January 11, 1909 (36 Stat. 2448). The five members representing the United States shall include the Secretary of State, one member of the Great Lakes Commodities Marketing Board (as designated by the Board), and three individuals appointed by the President representing commercial, shipping, and environmental interests, respectively.

(2) The United States representatives to the international advisory group shall serve without pay and the United States representatives to the advisory group who are full time officers or employees of the United States shall receive no additional pay by reason of their service on the advisory group, except that the United States representatives shall be allowed travel or transportation expenses under subchapter I of chapter 57 of title 5, United States Code, 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) 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.

* * * * *

SEC. 1135. PROJECT MODIFICATIONS FOR IMPROVEMENT OF ENVIRONMENT OR DROUGHT RESILIENCY.

(a) 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—

(1) 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; or

(2) providing drought resiliency.

(b) 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 provide for drought resilience or will improve the quality of the environment in the public interest.

(c) RESTORATION OF ENVIRONMENTAL QUALITY.—

(1) IN GENERAL.—If the Secretary determines that construction of a water resources project by the Secretary or operation of a water resources project constructed by the Secretary has contributed to the degradation of the quality of the environment, the Secretary may undertake measures for restoration of environmental quality and measures for enhancement of environmental quality that are associated with the restoration, through modifications either at the project site or at other locations that have been affected by the construction or operation of the project, if such measures do not conflict with the authorized project purposes.

(2) CONTROL OF SEA LAMPREY.—Congress finds that—

(A) the Great Lakes navigation system has been instrumental in the spread of sea lamprey and the associated impacts on its fishery; and

(B) the use of the authority under this subsection for control of sea lamprey at any Great Lakes basin location is appropriate.

(d) NON-FEDERAL SHARE; LIMITATION ON MAXIMUM FEDERAL EXPENDITURE.—The non-Federal share of the cost of any modifications or measures carried out or undertaken pursuant to subsection (b) or (c) shall be 25 percent. The non-Federal share may be provided in kind, including a facility, supply, or service that is necessary to carry out the modification or measure. Not more than \$15,000,000 in Federal funds may be expended on any single modification or measure carried out or undertaken pursuant to this section.

(e) The Secretary shall coordinate any actions taken pursuant to this section with appropriate Federal, State, and local agencies.

(f) [omitted]²

(g) NONPROFIT ENTITIES.—Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), 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.

² Subsection (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 (31 USC 1113 note). See, also, page 72 of House Document No. 103-7

(h) There is authorized to be appropriated not to exceed \$62,000,000 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).

(j) **DROUGHT RESILIENCE.**—Drought resilience measures carried out under this section may include—

- (1) water conservation measures to mitigate and address drought conditions;
- (2) removal of sediment captured behind a dam for the purpose of restoring or increasing the authorized storage capacity of the project concerned;
- (3) the planting of native plant species that will reduce the risk of drought and the incidence of nonnative species; and
- (4) other actions that increase drought resilience, water conservation, or water availability.

* * * * *

SEC. 1142. [42 U.S.C. 1962d-20 note] MEASUREMENTS OF LAKE MICHIGAN DIVERSIONS.

(a) Beginning October 1, 1987, the Secretary, in cooperation with the State of Illinois, shall carry out measurements and make necessary computations required by the decree of the United States Supreme Court (388 U.S. 426) relating to the diversion of water from Lake Michigan and shall coordinate the results with downstate interests. The measurements and computations shall consist of all flow measurements, gauge records, hydraulic and hydrologic computations, including periodic field investigations and measuring device calibrations, necessary to compute the amount of water diverted from Lake Michigan by the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities, not including water diverted or used by Federal installations.

(b) There are authorized to be appropriated \$1,250,000 for each of fiscal years 1999 through 2003 and \$800,000 for each fiscal year beginning after September 30, 2003, to carry out this section, including those funds necessary to maintain the measurements and computations, as well as necessary capital construction costs associated with the installation of new flow measurement devices or structures declared necessary and appropriate by the Secretary.

* * * * *

SEC. 1149. SAULT SAINTE MARIE, MICHIGAN.

The Secretary shall construct, at Federal expense, a second lock, of a width not less than 110 feet and a length not less than 1,200 feet, adjacent to the existing lock at Sault Sainte Marie, Michigan, generally in accordance with the report of the Board of Engineers for Rivers and Harbors, dated May 19, 1986, and the limited reevaluation report dated February 2004 at a total cost of \$341,714,000.

* * * * *

SEC. 1156. [33 U.S.C. 2310] COST SHARING PROVISIONS FOR THE TERRITORIES AND INDIAN TRIBES.

(a) IN GENERAL.—The Secretary shall waive local cost-sharing requirements up to \$200,000 for all studies and projects—

(1) in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, Puerto Rico, and the Trust Territory of the Pacific Islands;

(2) for any Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)); and

(3) for any organization that—

(A) is composed primarily of people who are—

(i) recognized and defined under Federal law as indigenous people of the United States; and

(ii) from a specific community; and

(B) assists in the social, cultural, and educational development of such people in that community.

(b) INFLATION ADJUSTMENT.—The Secretary shall adjust the dollar amount specified in subsection (a) on an annual basis for inflation.

(c) INCLUSION.—For purposes of this section, the term “study” includes a watershed assessment.

(d) APPLICATION.—The Secretary shall apply the waiver amount described in subsection (a) to reduce only the non-Federal share of study and project costs.

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TITLE XIV—REVENUE PROVISIONS

SEC. 1401. [26 U.S.C. 1 note] SHORT TITLE.

This title may be cited as the “Harbor Development and Navigation Improvement Act of 1986”.

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SEC. 1405. INLAND WATERWAYS TRUST FUND.

(a) * * *

* * * * *

(d) EFFECTIVE DATE.—

(1) * * *

(2) [26 U.S.C. 9506 note] INLAND WATERWAYS TRUST FUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Inland Waterways Trust Fund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Inland Waterways Trust Fund established by section 203 of the Inland Waterways Revenue Act of 1978. Any reference in any law to the Inland Waterways Trust Fund established by such section 203 shall be deemed to include (whenever appropriate) a reference to the Inland Waterways Trust Fund established by this section.

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SEC. 1406. [33 U.S.C. 988 note] REPORT ON REDUCTION OR ELIMINATION OF TOLLS ON GREAT LAKES AND SAINT LAWRENCE SEAWAY.

Not later than 2 years after the date of enactment of this Act, the Secretary of State, in consultation with the Secretary of Transportation, shall initiate discussions with the Government of Canada with the objective of reducing or eliminating all tolls on the international Great Lakes and the Saint Lawrence Seaway, and the Secretary of Transportation shall report to the Congress on the progress of such discussions and on the economic effects upon waterborne commerce in the United States of any proposed reduction or elimination in tolls.

SEC. 1407. [26 U.S.C. 4461 note] STUDY OF CARGO DIVERSION.

(a) INITIAL STUDY.—The Secretary of the Treasury, in consultation with United States ports, the Secretary of the Army, the Secretary of Transportation, the United States Trade Representative and other appropriate Federal agencies, shall conduct a study to determine the impact of the port use tax imposed under section 4461(a) of the Internal Revenue Code of 1954³ on potential diversions of cargo from particular United States ports to any port in a country contiguous to the United States. The report of the study shall be submitted to the Ways and Means Committee of the House of Representatives and the Committee on Finance of the United States Senate not later than December 1, 1988.

(b) REVIEW.—The Secretary of the Treasury may, at any time, review and revise the findings of the study conducted pursuant to subsection (a) with respect to any United States port (or to any transaction or class of transactions at such port).

(c) IMPLEMENTATION OF FINDINGS.—For purposes of section 4462(d)(2)(B) of the Internal Revenue Code of 1954³, the findings of the study or review conducted pursuant to subsections (a) and (b) of this section shall be effective 60 days after notification to the ports concerned.

³ Now known as the Internal Revenue Code of 1986.