

113TH CONGRESS  
1ST SESSION

# H. R. 2293

To amend the Flood Control Act of 1970 with respect to credit for in-kind contributions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2013

Ms. MATSUI (for herself and Mr. LAMALFA) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend the Flood Control Act of 1970 with respect to credit for in-kind contributions, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Flood Control Credit  
5       Act of 2013”.

6       **SEC. 2. TRANSFER OF EXCESS WORK-IN-KIND CREDIT.**

7       (a) IN GENERAL.—Subject to subsection (b), the Sec-  
8       retary of the Army may apply credit for in-kind contribu-  
9       tions provided by a non-Federal interest that is in excess  
10      of the required non-Federal cost-share for a water re-

1 sources study or project, including credit for in-kind con-  
2 tributions provided to accelerate completion of a water re-  
3 sources study or project, toward the required non-Federal  
4 cost-share for a different water resources study or project.

5 (b) RESTRICTIONS.—

6 (1) IN GENERAL.—Except for subsection  
7 (a)(4)(D)(i) of that section, the requirements of sec-  
8 tion 221 of the Flood Control Act of 1970 (42  
9 U.S.C. 1962d–5b) (as amended by section 3 of this  
10 Act) shall apply to any credit under this section.

11 (2) CONDITIONS.—Credit in excess of the non-  
12 Federal cost-share for a study or project may be ap-  
13 proved under this section only if—

14 (A) the non-Federal interest submits a  
15 comprehensive plan to the Secretary that identi-  
16 fies—

17 (i) the studies and projects for which  
18 the non-Federal interest intends to provide  
19 in-kind contributions for credit that is in  
20 excess of the non-Federal cost share for  
21 the study or project; and

22 (ii) the studies and projects to which  
23 that excess credit would be applied;

24 (B) the Secretary approves the comprehen-  
25 sive plan; and

1           (C) the total amount of credit does not ex-  
2           ceed the total non-Federal cost-share for the  
3           studies and projects in the approved com-  
4           prehensive plan.

5           (c) ADDITIONAL CRITERIA.—In evaluating a request  
6 to apply credit in excess of the non-Federal cost-share for  
7 a study or project toward a different study or project, the  
8 Secretary shall consider whether applying that credit  
9 will—

10           (1) help to expedite the completion of a project  
11 or group of projects;

12           (2) reduce costs to the Federal Government;  
13 and

14           (3) aid the completion of a project that provides  
15 significant flood risk reduction or environmental  
16 benefits.

17           (d) REPORT.—

18           (1) DEADLINES.—

19           (A) IN GENERAL.—Not later than 2 years  
20 after the date of enactment of this Act, the Sec-  
21 retary shall submit to the Committee on Trans-  
22 portation and Infrastructure of the House of  
23 Representatives and the Committee on Environ-  
24 ment and Public Works of the Senate an in-

1           terim report on the use of the authority under  
2           this section.

3           (B) FINAL REPORT.—Not later than 5  
4           years after the date of enactment of this Act,  
5           the Secretary shall submit to the Committee on  
6           Transportation and Infrastructure of the House  
7           of Representatives and the Committee on Envi-  
8           ronment and Public Works of the Senate a final  
9           report on the use of the authority under this  
10          section.

11          (2) INCLUSIONS.—The reports described in  
12          paragraph (1) shall include—

13                 (A) a description of the use of the author-  
14                 ity under this section during the reporting pe-  
15                 riod;

16                 (B) an assessment of the impact of the au-  
17                 thority under this section on the time required  
18                 to complete projects; and

19                 (C) an assessment of the impact of the au-  
20                 thority under this section on other water re-  
21                 sources projects.

22 **SEC. 3. CREDIT FOR IN-KIND CONTRIBUTIONS.**

23          (a) IN GENERAL.—Section 221(a)(4) of the Flood  
24          Control Act of 1970 (42 U.S.C. 1962d–5b(a)(4)) is  
25          amended—

1           (1) in subparagraph (A), in the matter pre-  
2           ceding clause (i) by inserting “or a project under an  
3           environmental infrastructure assistance program”  
4           after “law”;

5           (2) in subparagraph (C), by striking “In any  
6           case” and all that follows through the period at the  
7           end and inserting the following:

8                   “(i) CONSTRUCTION.—

9                           “(I) IN GENERAL.—In any case  
10                           in which the non-Federal interest is to  
11                           receive credit under subparagraph (A)  
12                           for the cost of construction carried  
13                           out by the non-Federal interest before  
14                           execution of a partnership agreement  
15                           and that construction has not been  
16                           carried out as of the date of enact-  
17                           ment of this subparagraph, the Sec-  
18                           retary and the non-Federal interest  
19                           shall enter into an agreement under  
20                           which the non-Federal interest shall  
21                           carry out such work prior to the non-  
22                           Federal interest initiating construc-  
23                           tion or issuing a written notice to pro-  
24                           ceed for the construction.

1                   “(II) ELIGIBILITY.—Construc-  
2                   tion that is carried out after the exe-  
3                   cution of an agreement to carry out  
4                   work described in subclause (I) and  
5                   any design activities that are required  
6                   for that construction, even if the de-  
7                   sign activity is carried out prior to the  
8                   execution of the agreement to carry  
9                   out work, shall be eligible for credit.

10                   “(ii) PLANNING.—

11                   “(I) IN GENERAL.—In any case  
12                   in which the non-Federal interest is to  
13                   receive credit under subparagraph (A)  
14                   for the cost of planning carried out by  
15                   the non-Federal interest before execu-  
16                   tion of a feasibility cost sharing agree-  
17                   ment, the Secretary and the non-Fed-  
18                   eral interest shall enter into an agree-  
19                   ment under which the non-Federal in-  
20                   terest shall carry out such work prior  
21                   to the non-Federal interest initiating  
22                   that planning.

23                   “(II) ELIGIBILITY.—Planning  
24                   that is carried out by the non-Federal  
25                   interest after the execution of an

1 agreement to carry out work described  
2 in subclause (I) shall be eligible for  
3 credit.”;

4 (3) in subparagraph (D)(iii), by striking “sec-  
5 tions 101 and 103” and inserting “sections  
6 101(a)(2) and 103(a)(1)(A) of the Water Resources  
7 Development Act of 1986 (33 U.S.C. 2211(a)(2); 33  
8 U.S.C. 2213(a)(1)(A))”;

9 (4) by redesignating subparagraph (E) as sub-  
10 subparagraph (H);

11 (5) by inserting after subparagraph (D) the fol-  
12 lowing:

13 “(E) ANALYSIS OF COSTS AND BENE-  
14 FITS.—In the evaluation of the costs and bene-  
15 fits of a project, the Secretary shall not con-  
16 sider construction carried out by a non-Federal  
17 interest under this subsection as part of the fu-  
18 ture without project condition.

19 “(F) TRANSFER OF CREDIT BETWEEN  
20 SEPARABLE ELEMENTS OF A PROJECT.—Credit  
21 for in-kind contributions provided by a non-  
22 Federal interest, under this section or section  
23 104 of the Water Resources Development Act  
24 of 1986 (33 U.S.C. 2214), that are in excess of  
25 the non-Federal cost share for an authorized

1           separable element of a project may be applied  
2           toward the non-Federal cost share for a dif-  
3           ferent authorized separable element of the same  
4           project or toward another authorized project,  
5           within the same watershed, for which the non-  
6           Federal interest has a cost share responsibility.

7           “(G) APPLICATION OF CREDIT.—To the  
8           extent that credit for in-kind contributions, as  
9           limited by subparagraph (D), and credit for re-  
10          quired land, easements, rights-of-way, dredged  
11          material disposal areas, and relocations pro-  
12          vided by the non-Federal interest exceed the  
13          non-Federal share of the cost of construction of  
14          a project other than a navigation project, the  
15          Secretary shall reimburse the difference to the  
16          non-Federal interest, subject to the availability  
17          of funds.”; and

18          (6) in subparagraph (H) (as redesignated by  
19          paragraph (4))—

20                 (A) in clause (i), by inserting “, and to  
21                 water resources projects authorized prior to the  
22                 date of enactment of the Water Resources De-  
23                 velopment Act of 1986 (Public Law 99–662), if  
24                 correction of design deficiencies is necessary”  
25                 before the period at the end; and

1 (B) by striking clause (ii) and inserting the  
2 following:

3 “(ii) AUTHORIZATION IN AD-  
4 DITION TO SPECIFIC CREDIT  
5 PROVISION.—In any case in  
6 which a specific provision of law  
7 authorizes credit for in-kind con-  
8 tributions provided by a non-Fed-  
9 eral interest before the date of  
10 execution of a partnership agree-  
11 ment, the Secretary may apply  
12 the authority provided in this  
13 paragraph to allow credit for in-  
14 kind contributions provided by  
15 the non-Federal interest on or  
16 after the date of execution of the  
17 partnership agreement.”.

18 (b) APPLICABILITY.—Section 2003(e) of the Water  
19 Resources Development Act of 2007 (42 U.S.C. 1962d–  
20 5b note) is amended by inserting “, or construction of de-  
21 sign deficiency corrections on the project,” after “con-  
22 struction on the project”.

23 (c) EFFECTIVE DATE.—The amendments made by  
24 subsections (a) and (b) take effect on November 8, 2007.

25 (d) GUIDELINES.—

1           (1) IN GENERAL.—Not later than 1 year after  
2 the date of enactment of this Act, the Secretary of  
3 the Army shall update any guidance or regulations  
4 for carrying out section 221(a)(4) of the Flood Con-  
5 trol Act of 1970 (42 U.S.C. 1962d–5b(a)(4)) (as  
6 amended by subsection (a)) that are in existence on  
7 the date of enactment of this Act or issue new  
8 guidelines, as determined to be appropriate by the  
9 Secretary.

10           (2) INCLUSIONS.—Any guidance, regulations, or  
11 guidelines updated or issued under paragraph (1)  
12 shall include, at a minimum—

13                   (A) the milestone for executing an in-kind  
14 memorandum of understanding for construction  
15 by a non-Federal interest;

16                   (B) criteria and procedures for evaluating  
17 a request to execute an in-kind memorandum of  
18 understanding for construction by a non-Fed-  
19 eral interest that is earlier than the milestone  
20 under subparagraph (A) for that execution; and

21                   (C) criteria and procedures for determining  
22 whether work carried out by a non-Federal in-  
23 terest is integral to a project.

24           (3) PUBLIC AND STAKEHOLDER PARTICIPA-  
25 TION.—Before issuing any new or revised guidance,

1 regulations, or guidelines or any subsequent updates  
2 to those documents, the Secretary shall—

3 (A) consult with affected non-Federal in-  
4 terests;

5 (B) publish the proposed guidelines devel-  
6 oped under this subsection in the Federal Reg-  
7 ister; and

8 (C) provide the public with an opportunity  
9 to comment on the proposed guidelines.

10 (e) INTERIM PERIOD.—During the period beginning  
11 on the date of enactment of this Act and ending on the  
12 date on which guidance, regulations, or guidelines are up-  
13 dated or issued under subsection (d), the Secretary shall  
14 process credit under section 104 of the Water Resources  
15 Development Act of 1986 (33 U.S.C. 2214), upon request  
16 of a non-Federal interest, if—

17 (1) the applicable non-Federal work meets the  
18 requirements for credit under section 104; and

19 (2) the applicable non-Federal work does not  
20 meet the requirements for credit under existing  
21 guidelines for section 221 of the Flood Control Act  
22 of 1970 (42 U.S.C. 1962d–5b).

23 (f) AVAILABILITY OF CREDIT.—Credit for in-kind  
24 contributions authorized under section 221 of the Flood  
25 Control Act of 1970 (42 U.S.C. 1962d–5b) or section 104

1 of the Water Resources Development Act of 1986 (33  
2 U.S.C. 2214) shall be available for work performed by a  
3 non-Federal interest on any separable element of a project  
4 following the identification by the Secretary of project al-  
5 ternatives as part of a feasibility study or a general or  
6 limited reevaluation report.

7 (g) OTHER CREDIT.—Nothing in section 221(a)(4)  
8 of the Flood Control Act of 1970 (42 U.S.C. 1962d–  
9 5b(a)(4)) (as amended by subsection (a)) affects any eligi-  
10 bility for credit under section 104 of the Water Resources  
11 Development of 1986 (33 U.S.C. 2214) that was approved  
12 by the Secretary prior to the date of enactment of this  
13 Act.

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