

“(F) regularly monitor and audit each eligible project being constructed by an Indian Tribe under this section to ensure that the construction activities are carried out in compliance with the plans approved by the Secretary and that the construction costs are reasonable.

“(2) DETAILED PROJECT SCHEDULE.—Not later than 180 days after entering into an agreement under paragraph (1)(D), each Indian Tribe, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule, based on estimated funding levels, that lists all deadlines for each milestone in the construction of the eligible project.

“(3) TECHNICAL ASSISTANCE.—On the request of an Indian Tribe, the Secretary may provide technical assistance to the Indian Tribe, if the Indian Tribe contracts with and compensates the Secretary for the technical assistance relating to—

“(A) any study, engineering activity, and design activity for construction carried out by the Indian Tribe under this section; and

“(B) expeditiously obtaining any permits necessary for the eligible project.

“(e) COST SHARE.—Nothing in this section affects the cost-sharing requirement applicable on the day before the date of enactment of this Act to an eligible project carried out under this section.

“(f) IMPLEMENTATION GUIDANCE.—

“(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue guidance for the implementation of the pilot program under this section that, to the extent practicable, identifies—

“(A) the metrics for measuring the success of the pilot program;

“(B) a process for identifying future eligible projects to participate in the pilot program;

“(C) measures to address the risks of an Indian Tribe constructing eligible projects under the pilot program, including which entity bears the risk for eligible projects that fail to meet Corps of Engineers standards for design or quality;

“(D) the laws and regulations that an Indian Tribe must follow in carrying out an eligible project under the pilot program; and

“(E) which entity bears the risk in the event that an eligible project carried out under the pilot program fails to be carried out in accordance with the project authorization or this section.

“(2) NEW PROJECT PARTNERSHIP AGREEMENTS.—The Secretary may not enter into a project partnership agreement under this section until the date on which the Secretary issues the guidance under paragraph (1).

“(g) REPORT.—

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

“(A) a description of the progress of Indian Tribes in meeting milestones in detailed project schedules developed pursuant to subsection (d)(2); and

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

“(2) UPDATE.—Not later than 5 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an update to the report under paragraph (1).

“(3) FAILURE TO MEET DEADLINE.—If the Secretary fails to submit a report by the required deadline under this subsection, the Secretary shall submit to the Committee on Environment and Public Works of

the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a detailed explanation of why the deadline was missed and a projected date for submission of the report.

“(h) ADMINISTRATION.—All laws and regulations that would apply to the Secretary if the Secretary were carrying out the eligible project shall apply to an Indian Tribe carrying out an eligible project under this section.

“(i) TERMINATION OF AUTHORITY.—The authority to commence an eligible project under this section terminates on December 31, 2029.

“(j) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts appropriated for a specific eligible project, there is authorized to be appropriated to the Secretary to carry out this section, including the costs of administration of the Secretary, \$15,000,000 for each of fiscal years 2024 through 2029.”

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–541, set out as a note under section 2201 of this title.

**§ 2270. Subsurface drain systems research and development**

Subject to the availability of appropriations, the Secretary, acting through the Director of the Engineer Research and Development Center and, where appropriate, in consultation with other Federal agencies, shall carry out research and development activities relating to the use of subsurface drain systems as—

- (1) a flood risk-reduction measure; or
- (2) a coastal storm risk-reduction measure.

(Pub. L. 116–260, div. AA, title II, § 227, Dec. 27, 2020, 134 Stat. 2698.)

**Editorial Notes**

CODIFICATION

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

**Statutory Notes and Related Subsidiaries**

“SECRETARY” DEFINED

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

**SUBCHAPTER V—GENERAL PROVISIONS**

**§ 2280. Maximum cost of projects**

**(a) In general**

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

- (1) may be increased by the Secretary for modifications which do not materially alter the scope or functions of the project as authorized, but not by more than 20 percent of the total cost stated for the project in this Act, in

any later law, or in an amendment made by this Act or any later law; and

(2) shall be automatically increased for—

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

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

#### (b) Contributions by non-Federal interests

Notwithstanding subsection (a), in accordance with section 701h of this title, the Secretary may accept funds from a non-Federal interest for any authorized water resources development project that has exceeded its maximum cost under subsection (a), and use such funds to carry out such project, if the use of such funds does not increase the Federal share of the cost of such project.

(Pub. L. 99-662, title IX, § 902, Nov. 17, 1986, 100 Stat. 4183; Pub. L. 100-676, § 3(b), Nov. 17, 1988, 102 Stat. 4014; Pub. L. 113-121, title I, § 1023, June 10, 2014, 128 Stat. 1228.)

#### Editorial Notes

##### REFERENCES IN TEXT

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

The date of enactment of this Act, referred to in subsec. (a), is the date of enactment of Pub. L. 99-662, which was approved Nov. 17, 1986.

The Water Resources Development Act of 1988, referred to in subsec. (a), is Pub. L. 100-676, Nov. 17, 1988, 102 Stat. 4012. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2201 of this title and Tables.

##### AMENDMENTS

2014—Pub. L. 113-121 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1988—Pub. L. 100-676, § 3(b)(1), substituted “with respect to a project for water resources development and conservation and related purposes authorized to be carried out by the Secretary in this Act or in a law enacted after the date of the enactment of this Act, including the Water Resources Development Act of 1988, or in an amendment made by this Act or any later law with respect to such a project” for “in this Act, or an amendment made by this Act, for a project”.

Par. (1). Pub. L. 100-676, § 3(b)(2), inserted “, in any later law,” after “in this Act”, and “or any later law” after “by this Act”.

Par. (2). Pub. L. 100-676, § 3(b)(3), (4), inserted “or any later law” after “of this Act” in subpars. (A) and (B).

#### Statutory Notes and Related Subsidiaries

##### CONTINUATION OF CONSTRUCTION

Pub. L. 117-263, div. H, title LXXXI, § 8155, Dec. 23, 2022, 136 Stat. 3736, provided that:

“(a) CONTINUATION OF CONSTRUCTION.—

“(1) IN GENERAL.—Upon the transmittal of an initial notification pursuant to subsection (b)(1) with re-

spect to a water resources development project, the Secretary [of the Army] shall not, solely on the basis of the maximum cost requirements under section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280)—

“(A) defer the initiation or continuation of construction of the water resources development project during the covered period; or

“(B) terminate during or after the covered period, a contract for design or construction of the water resources development project that was entered into prior to or during the covered period.

“(2) RESUMPTION OF CONSTRUCTION.—The Secretary shall, upon the transmittal of an initial notification pursuant to subsection (b)(1) with respect to a water resources development project for which construction was deferred, during the period beginning on October 1, 2021, and ending on the date of enactment of this Act [Dec. 23, 2022], because the cost of such project exceeded the maximum cost permitted under section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280), resume construction of the project.

“(b) NOTIFICATION.—

“(1) INITIAL NOTIFICATION.—Not later than 30 days after the Chief of Engineers makes a determination that a water resources development project exceeds, or is expected to exceed, the maximum cost of the project permitted under section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280), the Chief of Engineers shall transmit a written notification concurrently to the Secretary and to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives for each such determination.

“(2) SUPPLEMENTAL NOTIFICATION.—Not later than 60 days after the Chief of Engineers transmits an initial notification required under paragraph (1), the Chief shall transmit concurrently to the Secretary and to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a supplemental notification that includes, based on information available to the Corps of Engineers on the date of the supplemental notification—

“(A) an estimate of the expected increase in the cost of the project that is in excess of the authorized maximum cost for the project;

“(B) a description of the reason for the increased cost of the project; and

“(C) the expected timeline for submission of a post-authorization change report for the project in accordance with section 1132 of the Water Resources Development Act of 2016 (33 U.S.C. 2282e).

“(3) TRANSMITTAL.—The notifications described in paragraphs (1) and (2) may not be delayed as a result of consideration being given to changes in policy or priority with respect to project consideration.

“(c) DEFERRAL OF CONSTRUCTION.—After expiration of the covered period, the Secretary shall not enter into any new contract, or exercise any option in a contract, for construction of a water resources development project if the project exceeds the maximum cost of the project permitted under section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280), until the date on which Congress authorizes an increase in the cost of the project.

“(d) STATUTORY CONSTRUCTION.—Nothing in this section waives the obligation of the Secretary to submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a post-authorization change report recommending an increase in the authorized cost of a project if the project otherwise would exceed the maximum cost of the project permitted under section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280).

“(e) DEFINITION OF COVERED PERIOD.—In this section, the term ‘covered period’ means the period beginning on the date of enactment of this Act [Dec. 23, 2022] and ending on December 31, 2024.”

**§ 2281. Matters to be addressed in planning****(a) In general**

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

**(b) Assessments**

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

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

(Pub. L. 99-662, title IX, § 904, Nov. 17, 1986, 100 Stat. 4185; Pub. L. 101-640, title III, § 315, Nov. 28, 1990, 104 Stat. 4641; Pub. L. 104-303, title II, § 231, Oct. 12, 1996, 110 Stat. 3704; Pub. L. 110-114, title II, § 2033(a), Nov. 8, 2007, 121 Stat. 1084.)

**Editorial Notes**

## AMENDMENTS

2007—Pub. L. 110-114 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1996—Pub. L. 104-303 inserted “and information regarding potential loss of human life that may be associated with flooding and coastal storm events,” after “unquantifiable.”

1990—Pub. L. 101-640 inserted “(including preservation and enhancement of the environment)” after “environment”.

**Statutory Notes and Related Subsidiaries**

## RURAL PROJECT EVALUATION AND SELECTION CRITERIA

Pub. L. 102-580, title II, § 214, Oct. 31, 1992, 106 Stat. 4831, directed Comptroller General, not later than 18 months after Oct. 31, 1992, to report to Congress with specific legislative and other recommendations on improving the equitable distribution of water resources development projects in rural areas, prior to repeal by Pub. L. 104-316, title I, § 117, Oct. 19, 1996, 110 Stat. 3835.

**§ 2281a. Tribal Liaison****(a) In general**

Beginning not later than 1 year after December 23, 2022, the District Commander for each Corps of Engineers district that contains a Tribal community shall have on staff a Tribal Liaison.

**(b) Duties**

Each Tribal Liaison shall make recommendations to the applicable District Commander regarding, and be responsible for—

(1) removing barriers to access to, and participation in, Corps of Engineers programs for Tribal communities, including by improving implementation of section 2213(m) of this title;

(2) improving outreach to, and engagement with, Tribal communities about relevant Corps of Engineers programs and services;

(3) identifying and engaging with Tribal communities suffering from water resources challenges;

(4) improving, expanding, and facilitating government-to-government consultation between Tribal communities and the Corps of Engineers;

(5) coordinating and implementing all relevant Tribal consultation policies and associated guidelines, including the requirements of section 2356 of title;

(6) training and tools to facilitate the ability of Corps of Engineers staff to effectively engage with Tribal communities in a culturally competent manner, especially in regards to lands of ancestral, historic, or cultural significance to a Tribal community, including burial sites; and

(7) such other issues identified by the Secretary.

**(c) Uniformity**

Not later than 120 days after December 23, 2022, the Secretary shall finalize guidelines for—

(1) a position description for Tribal Liaisons; and

(2) required qualifications for Tribal Liaisons, including experience and expertise relating to Tribal communities and water resource issues.

**(d) Funding**

Funding for the position of Tribal Liaison shall be allocated from the budget line item provided for the expenses necessary for the supervision and general administration of the civil works program, and filling the position shall not be dependent on any increase in this budget line item.

**(e) Definitions**

In this section:

**(1) Tribal community**

The term “Tribal community” means a community of people who are recognized and defined under Federal law as indigenous people of the United States.

**(2) Tribal Liaison**

The term “Tribal Liaison” means a permanent employee of a Corps of Engineers district whose primary responsibilities are to—

(A) serve as a direct line of communication between the District Commander and the Tribal communities within the boundaries of the Corps of Engineers district; and

(B) ensure consistency in government-to-government relations.

(Pub. L. 117-263, div. H, title LXXXI, § 8112, Dec. 23, 2022, 136 Stat. 3704.)

**Editorial Notes**

## CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2022, and also as part of the James