

- (1) affects, modifies, or changes—
 - (A) the authority of a State to manage, use, or allocate the water resources of that State;
 - (B) any water right in existence on January 4, 2025;
 - (C) any existing water supply agreements between the Secretary and the non-Federal interest;
 - (D) the authorized purposes of a water resources development project; or
 - (E) any existing Corps of Engineers authorities;
- (2) preempts or affects any State water law or interstate compact governing water;
- (3) diminishes the other priorities and the primary or secondary missions of the Corps of Engineers; or
- (4) shall be interpreted to supersede or modify any written agreement between the Federal Government and a non-Federal interest that is in effect on January 4, 2025.

(Pub. L. 118–272, div. A, title I, § 1161, Jan. 4, 2025, 138 Stat. 3046.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Grace F. Napolitano Priority for Water Supply, Water Conservation, and Drought Resiliency Act of 2024 and also as part of the Water Resources Development Act of 2024 and the Thomas R. Carper Water Resources Development Act of 2024, 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 1002 of div. A of Pub. L. 118–272, set out as a note under section 2201 of this title.

§ 2282. Feasibility reports

(a) Preparation of reports

(1) In general

In the case of any water resources project-related study authorized to be undertaken by the Secretary that results in recommendations concerning a project or the operation of a project and that requires specific authorization by Congress in law or otherwise, the Secretary shall prepare a feasibility report, subject to section 2215 of this title.

(2) Contents of feasibility reports

A feasibility report shall describe, with reasonable certainty, the economic, environmental, and social benefits and detriments of the recommended plan and alternative plans considered by the Secretary and the engineering features (including hydrologic and geologic information), the public acceptability, and the purposes, scope, and scale of the recommended plan. A feasibility report shall also include the views of other Federal agencies and non-Federal agencies with regard to the recommended plan, a description of a non-structural alternative to the recommended plan when such plan does not have significant

nonstructural features, and a description of the Federal and non-Federal participation in such plan, and shall demonstrate that States, other non-Federal interests, and Federal agencies have been consulted in the development of the recommended plan. 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 November 17, 1986;
- (B) any study for a project, which project is authorized for construction by this Act and is not subject to section 903(b);¹
- (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

¹ See References in Text note below.

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 January 4, 2025, 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 2282c(a)(2) of this title.

(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 2281 of this title, 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 June 10, 2014, 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 June 10, 2014, 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 June 10, 2014, 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 date² 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).

(Pub. L. 99-662, title IX, § 905, Nov. 17, 1986, 100 Stat. 4185; Pub. L. 106-541, title II, § 222(a), Dec. 11, 2000, 114 Stat. 2597; Pub. L. 110-114, title II, § 2043(b), Nov. 8, 2007, 121 Stat. 1101; Pub. L. 113-121, title I, § 1002(a)-(c), June 10, 2014, 128 Stat. 1198; Pub. L. 116-260, div. AA, title I, § 117, Dec. 27, 2020, 134 Stat. 2628; Pub. L. 117-263, div. H, title LXXXI, § 8156, Dec. 23, 2022, 136 Stat. 3738; Pub. L. 118-272, div. A, title I, § 1142, Jan. 4, 2025, 138 Stat. 3033.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(3)(B), is Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

Section 903(b), referred to in subsec. (a)(3)(B), is section 903(b) of Pub. L. 99-662, title IX, Nov. 17, 1986, 100 Stat. 4184, which is not classified to the Code.

The Water Resources Development Act of 2000, referred to in subsec. (a)(4), is Pub. L. 106-541, Dec. 11,

2000, 114 Stat. 2572. Title VI of the Act is not classified to the Code. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 2201 of this title and Tables.

Section 160 of the Water Resources Development Act of 2020, referred to in subsec. (b)(1)(A)(i)(I), is section 160 of div. AA of Pub. L. 116-260, which is set out as a note under section 2201 of this title.

AMENDMENTS

2025—Subsec. (b)(1). Pub. L. 118-272, § 1142(1), amended par. (1) generally. Prior to amendment, par. (1) related to feasibility reports for studies that benefit economically disadvantaged communities and other communities.

Subsec. (b)(2)(B). Pub. L. 118-272, § 1142(2)(B)(i), substituted “\$300,000” for “\$200,000”.

Subsec. (b)(2)(C). Pub. L. 118-272, § 1142(2)(A), (B)(ii), (C), added subpar. (C).

Subsec. (b)(4). Pub. L. 118-272, § 1142(3), added par. (4) and struck out former par. (4) which related to treatment of timing and cost of determination of Federal interest.

Subsec. (b)(6). Pub. L. 118-272, § 1142(4), added par. (6).

2022—Subsec. (b)(1)(B). Pub. L. 117-263 amended subpar. (B) generally. Prior to amendment, subpar. (B) related to feasibility reports for studies benefitting certain other communities.

2020—Subsec. (b). Pub. L. 116-260 added subsec. (b). A prior subsec. (b) was repealed by Pub. L. 113-121, title I, § 1002(a)(1). See 2014 Amendment note below.

2014—Subsec. (a)(1). Pub. L. 113-121, § 1002(a)(2), struck out “perform a reconnaissance study and” after “shall”.

Subsec. (a)(2). Pub. L. 113-121, § 1002(b), inserted at end “A feasibility report shall include a preliminary analysis of the Federal interest and the costs, benefits, and environmental impacts of the project.”

Subsec. (b). Pub. L. 113-121, § 1002(a)(1), struck out subsec. (b) which related to performing reconnaissance studies prior to initiating feasibility studies.

Subsec. (g). Pub. L. 113-121, § 1002(c), added subsec. (g).

2007—Subsec. (a). Pub. L. 110-114, § 2043(b)(1), designated first sentence of existing provisions as par. (1) and inserted subsec. (a) and par. (1) headings, substituted “the Secretary that results in recommendations concerning a project or the operation of a project and that requires specific authorization by Congress in law or otherwise, the Secretary shall perform a reconnaissance study and” for “the Secretary, the Secretary shall” in par. (1), designated second and third sentences of existing provisions as par. (2) and inserted heading, substituted “A feasibility report” for “Such feasibility report” and “The feasibility report” in par. (2), added pars. (3) and (4), and struck out last sentence of existing provisions which read as follows: “This subsection shall not apply to (1) any study with respect to which a report has been submitted to Congress before November 17, 1986, (2) any study for a project, which project is authorized for construction by this Act and is not subject to section 903(b), (3) any study for a project which is authorized under any of the following sections: section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), section 2 of the Flood Control Act of August 28, 1946 (33 U.S.C. 701r), section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577), section 3 of the Act entitled ‘An Act authorizing Federal participation in the cost of protecting the shores of publicly owned property’, approved August 13, 1946 (33 U.S.C. 426g), and section 111 of the River and Harbor Act of 1968 (33 U.S.C. 426i), and (4) general studies not intended to lead to recommendation of a specific water resources project.”

Subsec. (b). Pub. L. 110-114, § 2043(b)(2)(A), inserted heading.

Subsecs. (c) to (f). Pub. L. 110-114, § 2043(b)(2)(B)-(E), added subsec. (c), redesignated former subsecs. (c) to (e) as (d) to (f), respectively, and inserted headings in subsecs. (d) and (e).

2000—Subsec. (e). Pub. L. 106-541 added subsec. (e).

² So in original. Probably should be preceded by “the”.

Statutory Notes and Related Subsidiaries

SUMMARY OF ANALYSIS

Pub. L. 116-260, div. AA, title I, §116(b), Dec. 27, 2020, 134 Stat. 2628, provided that: “To the maximum extent practicable, the Secretary [of the Army] shall include in each feasibility report developed under section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282) for a project that contains a flood risk management or hurricane and storm damage risk reduction element, a summary of the natural feature or nature-based feature alternatives, along with their long-term costs and benefits, that were evaluated in the development of the feasibility report, and, if such alternatives were not included in the recommended plan, an explanation of why such alternatives were not included in the recommended plan.”

NATURAL INFRASTRUCTURE

Pub. L. 115-270, title I, §1149(c), Oct. 23, 2018, 132 Stat. 3787, as amended by Pub. L. 116-260, div. AA, title I, §116(a), Dec. 27, 2020, 134 Stat. 2627, provided that: “In carrying out a feasibility report developed under section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282) for a project for flood risk management or hurricane and storm damage risk reduction, the Secretary [of the Army] shall consider the use of both traditional and natural feature or nature-based feature alternatives (as such terms are defined in section 1184 of the Water Resources Development Act of 2016 (32 U.S.C. 2289a)), alone or in conjunction with each other, if those alternatives are practicable.”

CONTINUATION OF STUDIES

Pub. L. 113-121, title I, §1002(d), June 10, 2014, 128 Stat. 1199, provided that: “The Secretary [of the Army] shall continue to carry out a study for which a reconnaissance level investigation has been initiated before the date of enactment of this Act [June 10, 2014] as if this section [amending this section], including the amendments made by this section, had not been enacted.”

EXPEDITED COMPLETION OF REPORTS

Pub. L. 113-121, title I, §1003, June 10, 2014, 128 Stat. 1199, provided that: “The Secretary [of the Army] shall—

- “(1) expedite the completion of any on-going feasibility study for a project initiated before the date of enactment of this Act [June 10, 2014]; and
- “(2) if the Secretary determines that the project is justified in a completed report, proceed directly to preconstruction planning, engineering, and design of the project in accordance with section 910 of the Water Resources Development Act of 1986 (33 U.S.C. 2287).”

NATIONAL ACADEMY OF SCIENCES STUDY

Pub. L. 106-541, title II, §216, Dec. 11, 2000, 114 Stat. 2595, provided that:

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

- “(1) ACADEMY.—The term ‘Academy’ means the National Academy of Sciences.
- “(2) METHOD.—The term ‘method’ means a method, model, assumption, or other pertinent planning tool used in conducting an economic or environmental analysis of a water resources project, including the formulation of a feasibility report.
- “(3) FEASIBILITY REPORT.—The term ‘feasibility report’ means each feasibility report, and each associated environmental impact statement and mitigation plan, prepared by the Corps of Engineers for a water resources project.
- “(4) WATER RESOURCES PROJECT.—The term ‘water resources project’ means a project for navigation, a project for flood control, a project for hurricane and storm damage reduction, a project for emergency streambank and shore protection, a project for ecosystem restoration and protection, and a water re-

sources project of any other type carried out by the Corps of Engineers.

“(b) INDEPENDENT PEER REVIEW OF PROJECTS.—

“(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Dec. 11, 2000], the Secretary [of the Army] shall contract with the Academy to study, and make recommendations relating to, the independent peer review of feasibility reports.

“(2) STUDY ELEMENTS.—In carrying out a contract under paragraph (1), the Academy shall study the practicality and efficacy of the independent peer review of the feasibility reports, including—

- “(A) the cost, time requirements, and other considerations relating to the implementation of independent peer review; and
- “(B) objective criteria that may be used to determine the most effective application of independent peer review to feasibility reports for each type of water resources project.

“(3) ACADEMY REPORT.—Not later than 1 year after the date of a contract under paragraph (1), the Academy shall submit to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Environment and Public Works of the Senate a report that includes—

- “(A) the results of the study conducted under paragraphs (1) and (2); and
- “(B) in light of the results of the study, specific recommendations, if any, on a program for implementing independent peer review of feasibility reports.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$1,000,000, to remain available until expended.

“(c) INDEPENDENT PEER REVIEW OF METHODS FOR PROJECT ANALYSIS.—

“(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Dec. 11, 2000], the Secretary [of the Army] shall contract with the Academy to conduct a study that includes—

- “(A) a review of state-of-the-art methods;
- “(B) a review of the methods currently used by the Secretary;

“(C) a review of a sample of instances in which the Secretary has applied the methods identified under subparagraph (B) in the analysis of each type of water resources project; and

“(D) a comparative evaluation of the basis and validity of state-of-the-art methods identified under subparagraph (A) and the methods identified under subparagraphs (B) and (C).

“(2) ACADEMY REPORT.—Not later than 1 year after the date of a contract under paragraph (1), the Academy shall transmit to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Environment and Public Works of the Senate a report that includes—

- “(A) the results of the study conducted under paragraph (1); and
- “(B) in light of the results of the study, specific recommendations for modifying any of the methods currently used by the Secretary for conducting economic and environmental analyses of water resources projects.

“(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$2,000,000. Such sums shall remain available until expended.”

ENGINEERING CONSULTING SERVICES

Pub. L. 106-541, title II, §219, Dec. 11, 2000, 114 Stat. 2596, provided that: “In conducting a feasibility study for a water resources project, the Secretary [of the Army], to the maximum extent practicable, should not employ a person for engineering and consulting services if the same person is also employed by the non-Federal interest for such services unless there is only 1 qualified and responsive bidder for such services.”

DEFINITIONS

For definition of “economically disadvantaged community” as used in subsec. (b) of this section, see section 160 of div. AA of Pub. L. 116-260, set out as a note under section 2201 of this title.

§ 2282a. Planning**(a) Omitted****(b) Planning process improvements**

The Chief of Engineers—

(1) shall adopt a risk analysis approach to project cost estimates for water resources projects; and

(2) not later than one year after November 8, 2007, shall—

(A) issue procedures for risk analysis for cost estimation for water resources projects; and

(B) submit to Congress a report that includes any recommended amendments to section 2280 of this title.

(c) Benchmarks**(1) In general**

Not later than 12 months after November 8, 2007, the Chief of Engineers shall establish benchmarks for determining the length of time it should take to conduct a feasibility study for a water resources project and its associated review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Chief of Engineers shall use such benchmarks as a management tool to make the feasibility study process more efficient in all districts of the Corps of Engineers.

(2) Benchmark goals

The Chief of Engineers shall establish, to the extent practicable, under paragraph (1) benchmark goals for completion of feasibility studies for water resources projects generally within 2 years. In the case of feasibility studies that the Chief of Engineers determines may require additional time based on the project type, size, cost, or complexity, the benchmark goal for completion shall be generally within 4 years.

(d) Calculation of benefits and costs for flood damage reduction projects

A feasibility study for a project for flood damage reduction shall include, as part of the calculation of benefits and costs—

(1) a calculation of the residual risk of flooding following completion of the proposed project;

(2) a calculation of the residual risk of loss of human life and residual risk to human safety following completion of the proposed project;

(3) a calculation of any upstream or downstream impacts of the proposed project; and

(4) calculations to ensure that the benefits and costs associated with structural and non-structural alternatives are evaluated in an equitable manner.

(e) Centers of specialized planning expertise**(1) Establishment**

The Secretary may establish centers of expertise to provide specialized planning exper-

tise for water resources projects to be carried out by the Secretary in order to enhance and supplement the capabilities of the districts of the Corps of Engineers.

(2) Duties

A center of expertise established under this subsection shall—

(A) provide technical and managerial assistance to district commanders of the Corps of Engineers for project planning, development, and implementation;

(B) provide agency peer reviews of new major scientific, engineering, or economic methods, models, or analyses that will be used to support decisions of the Secretary with respect to feasibility studies for water resources projects;

(C) provide support for independent peer review panels under section 2343 of this title; and

(D) carry out such other duties as are prescribed by the Secretary.

(3) Deep draft navigation planning center of expertise**(A) In general**

The Secretary shall consolidate deep draft navigation expertise within the Corps of Engineers into a deep draft navigation planning center of expertise.

(B) List

Not later than 60 days after the date of the consolidation required under subparagraph (A), 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 list of the grade levels and expertise of each of the personnel assigned to the center described in subparagraph (A).

(f) Completion of Corps of Engineers reports**(1) Alternatives****(A) In general**

Feasibility and other studies and assessments for a water resources project shall include recommendations for alternatives—

(i) that, as determined in coordination with the non-Federal interest for the project, promote integrated water resources management; and

(ii) for which the non-Federal interest is willing to provide the non-Federal share for the studies or assessments.

(B) Constraints

The alternatives contained in studies and assessments described in subparagraph (A) shall not be constrained by budgetary or other policy.

(C) Reports of Chief of Engineers

The reports of the Chief of Engineers shall identify any recommendation that is not the best technical solution to water resource needs and problems and the reason for the deviation.

(2) Report completion

The completion of a report of the Chief of Engineers for a water resources project—