

Resources Development Act of 1986 which comprises this chapter.

Statutory Notes and Related Subsidiaries

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (e)(2) of this section is listed on page 70), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

WETLANDS ENHANCEMENT OPPORTUNITIES

Pub. L. 101-640, title IV, § 409, Nov. 28, 1990, 104 Stat. 4648, provided that: “Not later than January 20, 1992, the Secretary shall transmit to Congress a list which specifically identifies opportunities of enhancing wetlands in connection with construction and operation of water resource projects.”

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101-640, set out as a note under section 2201 of this title.

§ 2317a. Cooperative agreements

(a) In general

For the purpose of expediting the cost-effective design and construction of wetlands restoration that is part of an authorized water resources project, the Secretary may enter into cooperative agreements under section 6305 of title 31 with nonprofit organizations with expertise in wetlands restoration to carry out such design and construction on behalf of the Secretary.

(b) Limitations

(1) Per project limit

A cooperative agreement under this section may not obligate the Secretary to pay the nonprofit organization more than \$1,000,000 for any single wetlands restoration project.

(2) Annual limit

The total value of work carried out under cooperative agreements under this section may not exceed \$5,000,000 in any fiscal year.

(Pub. L. 110-114, title II, § 2015, Nov. 8, 2007, 121 Stat. 1076.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, 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 Pub. L. 110-114, set out as a note under section 2201 of this title.

§ 2317b. Mitigation banks and in-lieu fee arrangements

(1) In general

Not later than 180 days after December 16, 2016, the Secretary shall issue implementation

guidance that provides for the consideration in water resources development feasibility studies of the entire amount of potential in-kind credits available at mitigation banks approved by the Secretary and in-lieu fee programs with an approved service area that includes the location of the projected impacts of the water resources development project.

(2) Requirements

All potential mitigation bank and in-lieu fee credits that meet the criteria under paragraph (1) shall be considered a reasonable alternative for planning purposes if—

(A) the applicable mitigation bank—

(i) has an approved mitigation banking instrument; and

(ii) has completed a functional analysis of the potential credits using the approved Corps of Engineers certified habitat assessment model specific to the region; and

(B) the Secretary determines that the use of such banks or in-lieu fee programs provide reasonable assurance that the statutory (and regulatory) mitigation requirements for a water resources development project are met, including monitoring or demonstrating mitigation success.

(3) Effect

Nothing in this subsection—

(A) modifies or alters any requirement for a water resources development project to comply with applicable laws or regulations, including section 2283 of this title; or

(B) shall be construed as to limit mitigation alternatives or require the use of mitigation banks or in-lieu fee programs.

(Pub. L. 110-114, title II, § 2036(c), Nov. 8, 2007, 121 Stat. 1094; Pub. L. 114-322, title I, § 1163, Dec. 16, 2016, 130 Stat. 1669.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Pub. L. 114-322 amended section generally. Prior to amendment, section related to use of the mitigation bank for certain water resources projects that involved wetlands mitigation.

Statutory Notes and Related Subsidiaries

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110-114, set out as a note under section 2201 of this title.

§ 2318. Flood plain management

(a) Exclusion of elements from benefit-cost analysis

The Secretary shall not include in the benefit base for justifying Federal flood damage reduction projects—

(1)(A) any new or substantially improved structure (other than a structure necessary for

conducting a water-dependent activity) built in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation after July 1, 1991; or

(B) in the case of a county substantially located within the 100-year flood plain, any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 10-year flood plain after July 1, 1991; and

(2) any structure which becomes located in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation or in the 10-year flood plain, as the case may be, by virtue of constrictions placed in the flood plain after July 1, 1991.

(b) Flood damage reduction benefits

(1) In general

In calculating the benefits of a proposed project for nonstructural flood damage reduction, the Secretary shall calculate the benefits of the nonstructural project using methods similar to those used for calculating the benefits of structural projects, including similar treatment in calculating the benefits from losses avoided.

(2) Avoidance of double counting

In carrying out paragraph (1), the Secretary should avoid double counting of benefits.

(c) Counties substantially located within 100-year flood plain

For the purposes of subsection (a), a county is substantially located within the 100-year flood plain—

(1) if the county is comprised of lands of which 50 percent or more are located in the 100-year flood plain; and

(2) if the Secretary determines that application of the requirement contained in subsection (a)(1)(A) with respect to the county would unreasonably restrain continued economic development or unreasonably limit the availability of needed flood control measures.

(d) Cost sharing

Not later than January 1, 1992, the Secretary shall transmit to Congress a report on the feasibility and advisability of increasing the non-Federal share of costs for new projects in areas where new or substantially improved structures and other constrictions are built or placed in the 100-year flood plain or the 10-year flood plain, as the case may be, after the initial date of the affected governmental unit's entry into the regular program of the national flood insurance program of the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.].

(e) Regulations

Not later than 6 months after the date on which a report is transmitted to Congress under subsection (c), the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall issue regulations to implement subsection (a). Such regulations shall define key terms, such as new or substantially improved structure, constriction, 10-year flood plain, and 100-year flood plain.

(f) Applicability

The provisions of this section shall not apply to any project, or separable element thereof, for

which a final report of the Chief of Engineers has been forwarded to the Secretary before the last day of the 6-month period beginning on the date on which regulations are issued pursuant to subsection (a) but not later than July 1, 1993.

(Pub. L. 101-640, title III, § 308, Nov. 28, 1990, 104 Stat. 4638; Pub. L. 106-53, title II, § 219(a), Aug. 17, 1999, 113 Stat. 294.)

Editorial Notes

REFERENCES IN TEXT

The National Flood Insurance Act of 1968, referred to in subsec. (d), is title XIII of Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 572, which is classified principally to chapter 50 (§4001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-53, § 219(a)(1), inserted “Exclusion of elements from” before “benefit-cost” in heading.

Subsecs. (b) to (d). Pub. L. 106-53, § 219(a)(2), (3), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 106-53, § 219(a)(2), (4), redesignated subsec. (d) as (e) and substituted “subsection (c)” for “subsection (b)”. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106-53, § 219(a)(2), redesignated subsec. (e) as (f).

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

References to the Director of the Federal Emergency Management Agency to be considered to refer and apply to the Administrator of the Federal Emergency Management Agency, see section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REEVALUATION OF FLOOD CONTROL PROJECTS

Pub. L. 106-53, title II, § 219(b), Aug. 17, 1999, 113 Stat. 295, provided that: “At the request of a non-Federal interest for a flood control project, the Secretary shall conduct a reevaluation of a project authorized before the date of enactment of this Act [Aug. 17, 1999] to consider nonstructural alternatives in light of the amendments made by subsection (a) [amending this section].”

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101-640, set out as a note under section 2201 of this title.

§ 2319. Reservoir management

The Secretary shall ensure that, in developing or revising reservoir operating manuals of the Corps of Engineers, the Corps shall provide significant opportunities for public participation, including opportunities for public hearings. The Secretary shall issue regulations to implement this section, including a requirement that all appropriate informational materials relating to proposed management decisions of the Corps be made available to the public sufficiently in advance of public hearings. Not later than January 1, 1992, the Secretary shall transmit to Congress a report on measures taken pursuant to this section.

(Pub. L. 101-640, title III, §310, Nov. 28, 1990, 104 Stat. 4639; Pub. L. 104-303, title II, §233, Oct. 12, 1996, 110 Stat. 3704.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-303, §233(1), struck out heading and text of subsec. (a). Text read as follows: “Not later than 2 years after November 28, 1990, the Secretary shall establish for major reservoirs under the jurisdiction of the Corps of Engineers a technical advisory committee to provide to the Secretary and Corps of Engineers recommendations on reservoir monitoring and options for reservoir research. The Secretary shall determine the membership of the committee, except that the Secretary may not appoint more than 6 members and shall ensure a predominance of members with appropriate academic, technical, or scientific qualifications. Members shall serve without pay, and the Secretary shall provide any necessary facilities, staff, and other support services in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.)”

Subsec. (b). Pub. L. 104-303, §233(2), struck out “(b) PUBLIC PARTICIPATION.—” before “The Secretary shall ensure”, and substituted “section” for “subsection” in two places.

Statutory Notes and Related Subsidiaries

FORECAST-INFORMED RESERVOIR OPERATIONS

Pub. L. 118-272, div. A, title I, §1162, Jan. 4, 2025, 138 Stat. 3047, provided that:

“(a) IN GENERAL.—In updating a water control manual for any reservoir constructed, owned, or operated by the Secretary [of the Army], including a reservoir for which the Secretary is authorized to prescribe regulations for the use of storage allocated for flood control or navigation pursuant to section 7 of the Act of December 22, 1944 (33 U.S.C. 709), the Secretary shall, to the maximum extent practicable, incorporate the use of forecast-informed reservoir operations, subject to the availability of appropriations.

“(b) GUIDELINES.—The Secretary, in coordination with relevant Federal and State agencies and non-Federal interests, shall issue clear and concise guidelines for incorporating the use of forecast-informed reservoir operations into water control manuals for reservoirs described in subsection (a).

“(c) ASSESSMENT.—

“(1) REQUIREMENT.—The Secretary shall carry out an assessment of geographically diverse reservoirs described in subsection (a) to determine the viability of using forecast-informed reservoir operations at such reservoirs.

“(2) PRIORITY AREAS.—In carrying out the assessment described in paragraph (1), the Secretary shall include an assessment of—

“(A) each reservoir located in the South Pacific Division of the Corps of Engineers; and

“(B) reservoirs located in each of the North-western Division and the South Atlantic Division of the Corps of Engineers.

“(3) CONSULTATION.—In carrying out this subsection, the Secretary [of the Army] shall consult with relevant Federal and State agencies and non-Federal interests.

“(d) SAVINGS PROVISION.—Nothing in this section pre-empted or affects any State water law or any interstate compact governing water, or otherwise restricts, affects, or amends any other law or the authority of any department, instrumentality, or agency of the United States related to the operation of reservoirs described in subsection (a).”

EMERGENCY DROUGHT OPERATIONS PILOT PROGRAM

Pub. L. 118-272, div. A, title I, §1164, Jan. 4, 2025, 138 Stat. 3048, provided that:

“(a) DEFINITION OF COVERED PROJECT.—In this section, the term ‘covered project’ means a project—

“(1) that is located in the State of California, the State of Nevada, or the State of Arizona; and

“(2)(A) of the Corps of Engineers for which water supply is an authorized purpose; or

“(B) for which the Secretary [of the Army] develops a water control manual under section 7 of the Act of December 22, 1944 (33 U.S.C. 709).

“(b) EMERGENCY OPERATION DURING DROUGHT.—Consistent with other authorized project purposes and in coordination with the non-Federal interest, in operating a covered project during a drought emergency in the project area, the Secretary may carry out a pilot program to operate the covered project with water supply as the primary project purpose.

“(c) UPDATES.—In carrying out this section, the Secretary may update the water control manual for a covered project to include drought operations and contingency plans.

“(d) REQUIREMENTS.—In carrying out subsection (b), the Secretary [of the Army] shall ensure that—

“(1) operations described in that subsection—

“(A) are consistent with water management deviations and drought contingency plans in the water control manual for the covered project;

“(B) impact only the flood pool managed by the Secretary; and

“(C) shall not be carried out in the event of a forecast or anticipated flood or weather event that would require flood risk management to take precedence;

“(2) to the maximum extent practicable, the Secretary uses forecast-informed reservoir operations; and

“(3) the covered project returns to the operations that were in place prior to the use of the authority provided under that subsection at a time determined by the Secretary, in coordination with the non-Federal interest.

“(e) CONTRIBUTED FUNDS.—The Secretary may receive and expend funds contributed by a non-Federal interest to carry out activities under this section.

“(f) REPORT.—

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act [Jan. 4, 2025], the Secretary [of the Army] 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 report on the pilot program carried out under this section.