

“(a) IN GENERAL.—In carrying out a project for the beneficial reuse of sediment to reduce storm damage to property under section 204 of the Water Resources Development Act of 1992 (33 U.S.C. 2326) that involves only a single application of sediment, the Secretary [of the Army] may grant a temporary easement necessary to facilitate the placement of sediment, if the Secretary determines that granting a temporary easement is in the interest of the United States.

“(b) LIMITATION.—If the Secretary grants a temporary easement under subsection (a) with respect to a project, that project shall no longer be eligible for future placement of sediment under section 204 of the Water Resources Development Act of 1992 (33 U.S.C. 2326).”

#### BENEFICIAL USE OF DREDGED MATERIAL

Pub. L. 114-322, title I, §1122(a)–(h), Dec. 16, 2016, 130 Stat. 1645, 1646, as amended by Pub. L. 115-270, title I, §1130, Oct. 23, 2018, 132 Stat. 3780; Pub. L. 116-260, div. AA, title I, §125(b)(1), Dec. 27, 2020, 134 Stat. 2638; Pub. L. 118-272, div. A, title I, §1130(a), Jan. 4, 2025, 138 Stat. 3018, which established a pilot program to carry out projects for various beneficial uses of dredged material and was formerly set out as a note under this section, was transferred to section 2326i of this title.

#### “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102-580, set out as a note under section 2201 of this title.

### § 2326a. Dredged material disposal facility partnerships

#### (a) Additional capacity or replacement capacity

##### (1) Provided by Secretary

###### (A) In general

Subject to subparagraph (B), at the request of a non-Federal interest with respect to a project, the Secretary may—

(i) provide additional capacity at a dredged material disposal facility constructed by the Secretary beyond the capacity that would be required for project purposes; or

(ii) permit the use of dredged material disposal facility capacity required for project purposes by the non-Federal interest if the Secretary determines that replacement capacity can be constructed at the facility or another facility or site before such capacity is needed for project purposes.

###### (B) Agreement

Before the Secretary takes an action under subparagraph (A), the non-Federal interest shall agree to pay—

(i) all costs associated with the construction of the additional capacity or replacement capacity in advance of construction of such capacity; and

(ii) in the case of use by a non-Federal interest of dredged material disposal capacity required for project purposes under subparagraph (A)(ii), any increase in the cost of operation and maintenance of the project that the Secretary determines results from the use of the project capacity by the non-Federal interest in advance of each cycle of dredging.

###### (C) Credit

In the event the Secretary determines that the cost to operate or maintain the project

decreases as a result of use by the non-Federal interest of dredged material disposal capacity required for project purposes under subparagraph (A)(ii), the Secretary, at the request of the non-Federal interest, shall credit the amount of the decrease toward any cash contribution of the non-Federal interest required thereafter for construction, operation, or maintenance of the project, or of another navigation project.

#### (2) Cost recovery authority

The non-Federal interest may recover the costs assigned to the additional capacity under paragraph (1)(A)(i) through fees assessed on third parties whose dredged material is deposited at the facility and who enter into agreements with the non-Federal interest for the use of the facility. The amount of such fees may be determined by the non-Federal interest.

#### (3) Special rule for designation of replacement capacity facility or site

##### (A) In general

Subject to such terms and conditions as the Secretary determines to be necessary or advisable, an agreement under paragraph (1)(B) for use permitted under paragraph (1)(A)(ii) shall reserve to the non-Federal interest—

(i) the right to submit to the Secretary for approval at a later date an alternative to the facility or site designated in the agreement for construction of replacement capacity; and

(ii) the right to construct the replacement capacity at the alternative facility or site at the expense of the non-Federal interest.

##### (B) Requirement

The Secretary shall not reject a site for the construction of replacement capacity under paragraph (1)(A)(ii) that is submitted by the non-Federal interest for approval by the Secretary before the date of execution of the agreement under paragraph (1)(B), or thereafter, unless the Secretary—

(i) determines that the site is environmentally unacceptable, geographically unacceptable, or technically unsound; and

(ii) provides a written basis for the determination under clause (i) to the non-Federal interest.

#### (4) Public comment

The Secretary shall afford the public an opportunity to comment on the determinations required under this subsection for a use permitted under paragraph (1)(A)(ii).

#### (b) Non-Federal use of disposal facilities

##### (1) In general

###### (A) Non-Federal use

The Secretary—

(i) at the request of a non-Federal entity, may permit the use of any dredged material disposal facility under the jurisdiction of, or managed by, the Secretary by the non-Federal entity if the Secretary determines that such use will not reduce the

availability of the facility for the authorized water resources development project on a channel in the vicinity of the disposal facility;

(ii) at the request of a non-Federal entity, shall permit the non-Federal entity to use a non-Federal disposal facility for the disposal of material dredged by the non-Federal entity, regardless of any connection to a Federal navigation project, if—

(I) permission for such use has been granted by the owner of the non-Federal disposal facility; and

(II) the Secretary determines that the dredged material disposal needs required to maintain, perform authorized deepening, or restore the navigability and functionality of authorized navigation channels in the vicinity of the non-Federal disposal facility for the 20-year period following the date of the request, including all planned and routine dredging operations necessary to maintain such channels for the authorized purposes during such period, can be met by the available gross capacity of other dredged material disposal facilities in the vicinity of the non-Federal disposal facility; and

(iii) shall impose fees to recover capital, operation, and maintenance costs associated with such uses.

#### **(B) Determinations**

The Secretary shall—

(i) delegate determinations under clauses (i) and (ii)(II) of subparagraph (A) to the District Commander of the district in which the relevant disposal facility is located; and

(ii) make such determinations not later than 90 days after receiving the applicable request.

#### **(2) Fees**

##### **(A) Use**

Notwithstanding section 1341(c) of this title but subject to advance appropriations, any monies received through collection of fees under this subsection shall be available to the Secretary, and shall be used by the Secretary, for the operation and maintenance of the disposal facility from which the fees were collected.

##### **(B) Reduction in amount**

In collecting any fee under this subsection, the Secretary shall reduce the amount imposed under paragraph (1)(A)(iii) to account for improvements made to the non-Federal disposal facility by the non-Federal entity to recover the capacity of the non-Federal disposal facility.

#### **(3) Disposition studies**

##### **(A) Requirement**

Upon request by the owner of a non-Federal disposal facility, the Secretary shall carry out a disposition study of the non-Federal disposal facility, in accordance with section 578b of this title, if—

(i) the Secretary has not used the non-Federal disposal facility for the disposal of dredged material during the 20-year period preceding the date of the request; and

(ii) the Secretary determines that the non-Federal disposal facility is not needed for such use by the Secretary during the 20-year period following the date of the request.

#### **(B) Conclusive presumptions**

For purposes of carrying out a disposition study required under subparagraph (A), the Secretary shall—

(i) consider the non-Federal disposal facility to be a separable element of a project; and

(ii) consider a Federal interest in the non-Federal disposal facility to no longer exist.

#### **(4) Definitions**

In this subsection:

##### **(A) Gross capacity**

The term “gross capacity” means the total quantity of dredged material that may be placed in a dredged material disposal facility, taking into consideration any additional capacity that can be constructed at the facility.

##### **(B) Non-Federal disposal facility**

The term “non-Federal disposal facility” means a dredged material disposal facility under the jurisdiction of, or managed by, the Secretary that is owned by a non-Federal entity.

#### **(c) Dredged material facility**

##### **(1) In general**

The Secretary may enter into a partnership agreement under section 1962d-5b of title 42 with one or more non-Federal interests with respect to a water resources project, or group of water resources projects within a geographic region, if appropriate, for the acquisition, design, construction, management, or operation of a dredged material processing, treatment, contaminant reduction, or disposal facility (including any facility used to demonstrate potential beneficial uses of dredged material, which may include effective sediment contaminant reduction technologies) using funds provided in whole or in part by the Federal Government.

##### **(2) Performance**

One or more of the parties to a partnership agreement under this subsection may perform the acquisition, design, construction, management, or operation of a dredged material processing, treatment, contaminant reduction, or disposal facility.

##### **(3) Multiple projects**

If appropriate, the Secretary may combine portions of separate water resources projects with appropriate combined cost-sharing among the various water resources projects in a partnership agreement for a facility under this subsection if the facility serves to manage dredged material from multiple water re-

sources projects located in the geographic region of the facility.

**(4) Specified Federal funding sources and cost sharing**

**(A) Specified Federal funding**

A partnership agreement with respect to a facility under this subsection shall specify—

- (i) the Federal funding sources and combined cost-sharing when applicable to multiple water resources projects; and
- (ii) the responsibilities and risks of each of the parties relating to present and future dredged material managed by the facility.

**(B) Management of sediments**

**(i) In general**

A partnership agreement under this subsection may include the management of sediments from the maintenance dredging of Federal water resources projects that do not have partnership agreements.

**(ii) Payments**

A partnership agreement under this subsection may allow the non-Federal interest to receive reimbursable payments from the Federal Government for commitments made by the non-Federal interest for disposal or placement capacity at dredged material processing, treatment, contaminant reduction, or disposal facilities.

**(C) Credit**

A partnership agreement under this subsection may allow costs incurred by the non-Federal interest before execution of the partnership agreement to be credited in accordance with section 1962d-5b of title 42.

**(5) Credit**

**(A) Effect on existing agreements**

Nothing in this subsection supersedes or modifies an agreement in effect on November 8, 2007, between the Federal Government and any non-Federal interest for the cost-sharing, construction, and operation and maintenance of a water resources project.

**(B) Credit for funds**

Subject to the approval of the Secretary and in accordance with law (including regulations and policies) in effect on November 8, 2007, a non-Federal interest for a water resources project may receive credit for funds provided for the acquisition, design, construction, management, or operation of a dredged material processing, treatment, contaminant reduction, or disposal facility to the extent the facility is used to manage dredged material from the project.

**(C) Non-Federal interest responsibilities**

A non-Federal interest entering into a partnership agreement under this subsection for a facility shall—

- (i) be responsible for providing all necessary lands, easements, relocations, and rights-of-way associated with the facility; and
- (ii) receive credit toward the non-Federal share of the cost of the project with

respect to which the agreement is being entered into for those items.

**(d) Public-private partnerships**

**(1) In general**

The Secretary may carry out a program to evaluate and implement opportunities for public-private partnerships in the design, construction, management, or operation and maintenance of dredged material processing, treatment, contaminant reduction, or disposal facilities in connection with construction or maintenance of Federal navigation projects. If a non-Federal interest is a sponsor of the project, the Secretary shall consult with the non-Federal interest in carrying out the program with respect to the project.

**(2) Private financing**

**(A) Agreements**

In carrying out this subsection, the Secretary may enter into an agreement with a non-Federal interest with respect to a project, a private entity, or both for the acquisition, design, construction, management, or operation and maintenance of a dredged material processing, treatment, contaminant reduction, or disposal facility (including any facility used to demonstrate potential beneficial uses of dredged material) using funds provided in whole or in part by the private entity.

**(B) Reimbursement**

If any funds provided by a private entity are used to carry out a project under this subsection, the Secretary may reimburse the private entity over a period of time agreed to by the parties to the agreement through the payment of subsequent user fees. Such fees may include the payment of a disposal or tipping fee for placement of suitable dredged material at the facility.

**(C) Amount of fees**

User fees paid pursuant to subparagraph (B) shall be sufficient to repay funds contributed by the private entity plus a reasonable return on investment approved by the Secretary in cooperation with the non-Federal interest with respect to the project and the private entity.

**(D) Federal share**

The Federal share of such fees shall be equal to the percentage of the total cost that would otherwise be borne by the Federal Government as required pursuant to existing cost-sharing requirements, including section 2213 of this title and section 2326 of this title.

**(E) Budget Act compliance**

Any spending authority (as defined in section 651(c)(2) of title 2) authorized by this section shall be effective only to such extent and in such amounts as are provided in appropriation Acts.

(Pub. L. 104-303, title II, §217, Oct. 12, 1996, 110 Stat. 3694; Pub. L. 110-114, title II, §2005, Nov. 8, 2007, 121 Stat. 1071; Pub. L. 116-260, div. AA, title I, §145, Dec. 27, 2020, 134 Stat. 2654; Pub. L.

118-272, div. A, title I, §1119(a), Jan. 4, 2025, 138 Stat. 3012.)

### Editorial Notes

#### REFERENCES IN TEXT

The Budget Act, referred to in subsec. (d)(2)(E) heading, probably means the Congressional Budget Act of 1974, titles I through IX of Pub. L. 93-344, July 12, 1974, 88 Stat. 297. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

#### CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

#### AMENDMENTS

2025—Subsec. (b)(1). Pub. L. 118-272, §1119(a)(1), amended par. (1) generally. Prior to amendment, text read as follows: “The Secretary—

“(A) may permit the use of any dredged material disposal facility under the jurisdiction of, or managed by, the Secretary by a non-Federal interest if the Secretary determines that such use will not reduce the availability of the facility for project purposes; and

“(B) may impose fees to recover capital, operation, and maintenance costs associated with such use.”

Subsec. (b)(2). Pub. L. 118-272, §1119(a)(2), substituted “Fees” for “Use of fees” in par. heading, designated existing provisions as subpar. (A) and inserted subpar. heading, and added subpar. (B).

Subsec. (b)(3), (4). Pub. L. 118-272, §1119(a)(3), added pars. (3) and (4).

2020—Subsec. (a). Pub. L. 116-260, §145(1), inserted “or replacement capacity” after “Additional capacity” in heading.

Subsec. (a)(1). Pub. L. 116-260, §145(2), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “At the request of a non-Federal interest with respect to a project, the Secretary may provide additional capacity at a dredged material disposal facility constructed by the Secretary beyond the capacity that would be required for project purposes if the non-Federal interest agrees to pay, during the period of construction, all costs associated with the construction of the additional capacity.”

Subsec. (a)(2). Pub. L. 116-260, §145(3), inserted “under paragraph (1)(A)(i)” after “additional capacity”.

Subsec. (a)(3), (4). Pub. L. 116-260, §145(4), added pars. (3) and (4).

2007—Subsec. (c). Pub. L. 110-114, §2005(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110-114, §2005(1), redesignated subsec. (c) as (d).

Subsec. (d)(1). Pub. L. 110-114, §2005(3), inserted “and maintenance” after “operation” and “processing, treatment, contaminant reduction, or” after “dredged material”.

Subsec. (d)(2)(A). Pub. L. 110-114, §2005(3), inserted “and maintenance” after “operation” and “processing, treatment, contaminant reduction, or” after “of a dredged material”.

### Statutory Notes and Related Subsidiaries

#### SAVINGS PROVISION

Pub. L. 118-272, div. A, title I, §1119(b), Jan. 4, 2025, 138 Stat. 3014, provided that: “Nothing in the amendments made by subsection (a) [amending this section] shall affect—

“(1) an agreement between the Secretary [of the Army] and a non-Federal interest that is in effect on the date of enactment of this Act [Jan. 4, 2025], except that, upon request by the non-Federal interest

party to such agreement, the Secretary and the non-Federal interest may modify such agreement; or

“(2) the inclusion in an agreement between the Secretary and a non-Federal interest entered into after the date of enactment of this Act of a dredged material disposal facility that is included in an agreement between the Secretary and a non-Federal interest in effect on the date of enactment of this Act, unless the non-Federal interest is notified and agrees.”

#### “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104-303, set out as a note under section 2201 of this title.

### § 2326b. Sediment management

#### (a) In general

The Secretary may enter into cooperation agreements with non-Federal interests with respect to navigation projects, or other appropriate non-Federal entities, for the development of long-term management strategies for controlling sediments at such projects.

#### (b) Contents of strategies

Each strategy developed under subsection (a) shall—

(1) include assessments of sediment rates and composition, sediment reduction options, dredging practices, long-term management of any dredged material disposal facilities, remediation of such facilities, and alternative disposal and reuse options;

(2) include a timetable for implementation of the strategy; and

(3) incorporate relevant ongoing planning efforts, including remedial action planning, dredged material management planning, harbor and waterfront development planning, and watershed management planning.

#### (c) Consultation

In developing strategies under subsection (a), the Secretary shall consult with interested Federal agencies, States, and Indian tribes and provide an opportunity for public comment.

#### (d) Dredged material disposal

##### (1) Study

The Secretary shall conduct a study to determine the feasibility of constructing and operating an underwater confined dredged material disposal site in the Port of New York-New Jersey that could accommodate as much as 250,000 cubic yards of dredged material for the purpose of demonstrating the feasibility of an underwater confined disposal pit as an environmentally suitable method of containing certain sediments.

##### (2) Report

The Secretary shall transmit to Congress a report on the results of the study conducted under paragraph (1), together with any recommendations of the Secretary that may be developed in a strategy under subsection (a).

#### (e) Great Lakes tributary model

##### (1) In general

In consultation and coordination with the Great Lakes States, the Secretary shall develop a tributary sediment transport model for each major river system or set of major