

**Editorial Notes**

## REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (a), is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

## CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, 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 Pub. L. 114-322, set out as a note under section 2201 of this title.

**§ 2330c. Aquatic ecosystem restoration****(a) Definition of eligible entity**

In this section, the term “eligible entity” means—

- (1) any State, Indian Tribe, irrigation district, or water district;
- (2) any State, regional, or local authority, the members of which include 1 or more organizations with water or power delivery authority;
- (3) any other entity or organization that owns a facility that is eligible for upgrade, modification or removal under this section;
- (4) any nonprofit conservation organization, acting in partnership with any entity listed in paragraphs (1) through (3), with respect to a project involving land or infrastructure owned by the entity; and
- (5) an agency established under State law for the joint exercise of powers or a combination of entities described in paragraphs (1) through (4).

**(b) General authority****(1) In general**

Subject to the requirements of this section and paragraph (2), on request of any eligible entity the Secretary may negotiate and enter into an agreement on behalf of the United States to fund the design, study, and construction of an aquatic ecosystem restoration and protection project in a Reclamation State if the Secretary determines that the project is likely to improve the health of fisheries, wildlife or aquatic habitat, including through habitat restoration and improved fish passage via the removal or bypass of barriers to fish passage.

**(2) Exception**

With respect to an aquatic ecosystem restoration and protection project under this section that removes a dam or modifies a dam in a manner that reduces storage or diversion capacity, the Secretary may only negotiate and enter into an agreement to fund—

- (A) the design or study of such project if the Secretary has received consent from the owner of the applicable dam; or

(B) the construction of such project if the Secretary—

- (i) identifies any eligible entity that receives water or power from the facility that is under consideration for removal or modification at the time of the request;
- (ii) notifies each eligible entity identified in clause (i) that the dam removal or modification project has been requested; and
- (iii) does not receive, by the date that is 120 days after the date on which all eligible entities have been notified under clause (ii), written objection from 1 or more eligible entities that collectively receive  $\frac{1}{3}$  or more of the water or power delivered from the facility that is under consideration for removal or modification at the time of the request.

**(c) Requirements****(1) In general**

The Secretary shall accept and consider public comment prior to initiating design, study or development of a project under this section.

**(2) Preconditions**

Construction of a project under this section shall be a voluntary project initiated only after—

- (A) an eligible entity has entered into an agreement with the Secretary to pay no less than 35 percent of the costs of project construction;
- (B) an eligible entity has entered an agreement to pay 100 percent of any operation, maintenance, and replacement and rehabilitation costs with respect to the project;
- (C) the Secretary determines the proposed project—
  - (i) will not result in an unmitigated adverse impact on fulfillment of existing water delivery obligations consistent with historical operations and applicable contracts;
  - (ii) will not result in an unmitigated adverse effect on the environment;
  - (iii) is consistent with the responsibilities of the Secretary—
    - (I) in the role as trustee for federally recognized Indian Tribes; and
    - (II) to ensure compliance with any applicable international and Tribal treaties and agreements and interstate compacts and agreements;
  - (iv) is in the financial interest of the United States based on a determination that the project advances Federal objectives including environmental enhancement objectives in a Reclamation State; and
  - (v) complies with all applicable Federal and State law, including environmental laws; and

(D) the Secretary has complied with all applicable environmental laws, including—

- (i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
- (ii) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(iii) subtitle III of title 54.

**(d) Funding**

There is authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2022 through 2026, to remain available until expended.

**(e) Effects**

**(1) In general**

Nothing in this section supersedes or limits any existing authority provided, or responsibility conferred, by any provision of law.

**(2) Effect on state water law**

Nothing in this section preempts or affects any—

- (A) State water law; or
- (B) interstate compact governing water.

**(f) Compliance required**

The Secretary shall comply with applicable State water laws in carrying out this section.

**(g) Priority for projects providing regional benefits and assistance for aging assets**

When funding projects under this section, the Secretary shall prioritize projects that—

- (1) are jointly developed and supported by a diverse array of stakeholders including representatives of irrigated agricultural production, hydroelectric production, potable water purveyors and industrial water users, Indian Tribes, commercial fishing interests, and non-profit conservation organizations;
- (2) affect water resources management in 2 or more river basins while providing regional benefits not limited to fisheries restoration;
- (3) are a component of a broader strategy or plan to replace aging facilities with 1 or more alternate facilities providing similar benefits; and
- (4) contribute to the restoration of anadromous fish species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(Pub. L. 116–260, div. FF, title XI, § 1109, Dec. 27, 2020, 134 Stat. 3244.)

**Editorial Notes**

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c)(2)(D)(i), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 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 4321 of Title 42 and Tables.

The Endangered Species Act of 1973, referred to in subsecs. (c)(2)(D)(ii) and (g)(4), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§ 1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

CODIFICATION

Section was enacted as part of Consolidated Appropriations Act, 2021, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

**Statutory Notes and Related Subsidiaries**

DEFINITIONS

Pub. L. 116–260, div. FF, title XI, § 1115, Dec. 27, 2020, 134 Stat. 3251, provided that: “In this title [enacting this section and sections 390g–9 and 1477 of Title 43, Public Lands, and amending sections 1015 and 1015a of Title 16, Conservation, sections 1645 and 1647b of Title 25, Indians, sections 10362 and 10364 of Title 42, The Public Health and Welfare, section 510b of Title 43, and provisions set out as notes under sections 10301 and 10364 of Title 42]:

“(1) INDIAN TRIBE.—The term ‘Indian Tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

“(2) RECLAMATION STATE.—The term ‘Reclamation State’ means a State or territory described in the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 391).

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.”

[The first paragraph of 43 U.S.C. 391 is comprised of act June 17, 1902, ch. 1093, § 1 (part), 32 Stat. 388. The second paragraph of 43 U.S.C. 391 is comprised of act June 12, 1906, ch. 3288, 34 Stat. 259, as amended. See Codification note under section 391 of Title 43, Public Lands.]

**§ 2330d. Public recreational amenities in ecosystem restoration projects**

At the request of a non-Federal interest, the Secretary is authorized to study the incorporation of public recreational amenities, including facilities for hiking, biking, walking, and waterborne recreation, into a project for ecosystem restoration, including a project carried out under section 2330 of this title, if the incorporation of such amenities would be consistent with the ecosystem restoration purposes of the project.

(Pub. L. 117–263, div. H, title LXXXI, § 8105, Dec. 23, 2022, 136 Stat. 3699.)

**Editorial Notes**

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2022, and also as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, 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 8002 of Pub. L. 117–263, set out as a note under section 2201 of this title.

**§ 2331. Use of continuing contracts for construction of certain projects**

**(a) In general**

Notwithstanding any other provision of law, the Secretary shall not implement a fully allocated funding policy with respect to a water resource project if initiation of construction has occurred but sufficient funds are not available to complete the project.

**(b) Continuing contracts**

The Secretary shall enter into a continuing contract for a project described in subsection (a).