

nonmonetary, justify the cost of the project; and

(2) the project will not result in environmental degradation.

**(c) Determination of project costs**

**(1) Costs of construction**

**(A) In general**

Costs associated with construction of a project under this section or identified in a regional sediment management plan shall be limited solely to construction costs that are in excess of the costs necessary to carry out the dredging for construction, operation, or maintenance of an authorized Federal water resources project in the most cost-effective way, consistent with economic, engineering, and environmental criteria.

**(B) Cost sharing**

**(i) In general**

Except as provided in clause (ii), the non-Federal share of the construction cost of a project under this section shall be determined as provided in subsections (a) through (d) of section 2213 of this title.

**(ii) Special rule**

Construction of a project under this section for one or more of the purposes of protection, restoration, or creation of aquatic and ecologically related habitat, the cost of which does not exceed \$750,000 and which is located in a disadvantaged community as determined by the Secretary, may be carried out at Federal expense.

**(C) Total cost**

The total Federal costs associated with construction of a project under this section may not exceed \$5,000,000.

**(2) Operation, maintenance, replacement, and rehabilitation costs**

Operation, maintenance, replacement, and rehabilitation costs associated with a project under this section are the responsibility of the non-Federal interest.

**(d) Selection of dredged material disposal method for environmental purposes**

**(1) In general**

In developing and carrying out a Federal water resources project involving the disposal of dredged material, the Secretary may select, with the consent of the non-Federal interest, a disposal method that is not the least cost option if the Secretary determines that the incremental costs of the disposal method are reasonable in relation to the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetlands and control of shoreline erosion.

**(2) Federal share**

The Federal share of such incremental costs shall be determined in accordance with subsection (c).

**(e) State and regional plans**

The Secretary may—

(1) cooperate with any State in the preparation of a comprehensive State or regional sedi-

ment management plan within the boundaries of the State;

(2) encourage State participation in the implementation of the plan; and

(3) submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out the plan.

**(f) Priority areas**

In carrying out this section, the Secretary shall give priority to a regional sediment management project in the vicinity of each of the following:

(1) Little Rock Slackwater Harbor, Arkansas.

(2) Fletcher Cove, California.

(3) Egmont Key, Florida.

(4) Calcasieu Ship Channel, Louisiana.

(5) Delaware River Estuary, New Jersey and Pennsylvania.

(6) Fire Island Inlet, Suffolk County, New York.

(7) Smith Point Park Pavilion and the TWA Flight 800 Memorial, Brookhaven, New York.

(8) Morehead City, North Carolina.

(9) Toledo Harbor, Lucas County, Ohio.

(10) Galveston Bay, Texas.

(11) Benson Beach, Washington.

**(g) Authorization of appropriations**

There is authorized to be appropriated to carry out this section \$30,000,000 per fiscal year, of which not more than \$5,000,000 per fiscal year may be used for the development of regional sediment management plans authorized by subsection (e) and of which not more than \$3,000,000 per fiscal year may be used for construction of projects to which subsection (c)(1)(B)(ii) applies. Such funds shall remain available until expended.

(Pub. L. 102-580, title II, §204, Oct. 31, 1992, 106 Stat. 4826; Pub. L. 104-303, title II, §207, Oct. 12, 1996, 110 Stat. 3680; Pub. L. 106-53, title II, §209, Aug. 17, 1999, 113 Stat. 287; Pub. L. 110-114, title II, §2037(a), Nov. 8, 2007, 121 Stat. 1094.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2007—Pub. L. 110-114 amended section generally. Prior to amendment, section related to beneficial uses of dredged material.

1999—Subsec. (c). Pub. L. 106-53, §209(1), in introductory provisions, substituted “binding agreement with the Secretary” for “cooperative agreement in accordance with the requirements of section 1962d-5b of title 42”.

Subsec. (g). Pub. L. 106-53, §209(2), added subsec. (g). 1996—Subsecs. (e), (f). Pub. L. 104-303 added subsec. (e) and redesignated former subsec. (e) as (f).

“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**

**(1) Provided by Secretary**

At the request of a non-Federal interest with respect to a project, the Secretary may pro-

vide 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.

**(2) Cost recovery authority**

The non-Federal interest may recover the costs assigned to the additional capacity 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.

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

**(1) In general**

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.

**(2) Use of fees**

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.

**(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 resources 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.)

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, as amended. 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

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”.

“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) of this section 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) of this section, 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 op-