

(Pub. L. 110–114, title II, §2039, Nov. 8, 2007, 121 Stat. 1100.)

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.

“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.

§ 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) of this section.

(c) Initiation of construction clarified

For the purposes of this section, initiation of construction for a project occurs on the date of enactment of an Act that appropriates funds for the project from 1 of the following appropriation accounts:

- (1) Construction, General.
- (2) Operation and Maintenance, General.
- (3) Flood Control, Mississippi River and Tributaries.

(Pub. L. 106–53, title II, §206, Aug. 17, 1999, 113 Stat. 286.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–53, set out as a note under section 2201 of this title.

§ 2332. Flood mitigation and riverine restoration program

(a) In general

The Secretary may undertake a program for the purpose of conducting projects to reduce flood hazards and restore the natural functions and values of rivers throughout the United States.

(b) Studies and projects

(1) Authority

In carrying out the program, the Secretary may conduct studies to identify appropriate flood damage reduction, conservation, and restoration measures and may design and implement projects described in subsection (a) of this section.

(2) Consultation and coordination

The studies and projects carried out under this section shall be conducted, to the maxi-

imum extent practicable, in consultation and coordination with the Federal Emergency Management Agency and other appropriate Federal agencies, and in consultation and coordination with appropriate State and local agencies and tribes.

(3) Nonstructural approaches

The studies and projects shall emphasize, to the maximum extent practicable and appropriate, nonstructural approaches to preventing or reducing flood damages.

(4) Participation

The studies and projects shall be conducted, to the maximum extent practicable, in cooperation with State and local agencies and tribes to ensure the coordination of local flood damage reduction or riverine and wetland restoration studies with projects that conserve, restore, and manage hydrologic and hydraulic regimes and restore the natural functions and values of floodplains.

(c) Cost-sharing requirements

(1) Studies

Studies conducted under this section shall be subject to cost sharing in accordance with section 2215 of this title.

(2) Environmental restoration and nonstructural flood control projects

(A) In general

The non-Federal interests shall pay 35 percent of the cost of any environmental restoration or nonstructural flood control project carried out under this section.

(B) Items provided by non-Federal interests

The non-Federal interests shall provide all land, easements, rights-of-way, dredged material disposal areas, and relocations necessary for such projects.

(C) Credit

The value of such land, easements, rights-of-way, dredged material disposal areas, and relocations shall be credited toward the payment required under this paragraph.

(3) Structural flood control projects

Any structural flood control projects carried out under this section shall be subject to cost sharing in accordance with section 2213(a) of this title.

(4) Operation and maintenance

The non-Federal interests shall be responsible for all costs associated with operating, maintaining, replacing, repairing, and rehabilitating all projects carried out under this section.

(d) Project justification

(1) In general

Notwithstanding any other provision of law or requirement for economic justification established under section 1962–2 of title 42, the Secretary may implement a project under this section if the Secretary determines that the project—

- (A) will significantly reduce potential flood damages;

(B) will improve the quality of the environment; and

(C) is justified considering all costs and beneficial outputs of the project.

(2) Establishment of selection and rating criteria and policies

(A) In general

Not later than 180 days after August 17, 1999, the Secretary, in cooperation with State and local agencies and tribes, shall—

(i) develop, and submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, criteria for selecting and rating projects to be carried out under this section; and

(ii) establish policies and procedures for carrying out the studies and projects undertaken under this section.

(B) Criteria

The criteria referred to in subparagraph (A)(i) shall include, as a priority, the extent to which the appropriate State government supports the project.

(e) Priority areas

In carrying out this section, the Secretary shall examine appropriate locations, including—

(1) Pima County, Arizona, at Paseo De Las Iglesias and Rillito River;

(2) Coachella Valley, Riverside County, California;

(3) Los Angeles and San Gabriel Rivers, California;

(4) Murrieta Creek, California;

(5) Napa River Valley watershed, California, at Yountville, St. Helena, Calistoga, and American Canyon;

(6) Santa Clara basin, California, at Upper Guadalupe River and Tributaries, San Francisquito Creek, and Upper Penitencia Creek;

(7) Pond Creek, Kentucky;

(8) Red River of the North, Minnesota, North Dakota, and South Dakota;

(9) Connecticut River, New Hampshire;

(10) Pine Mount Creek, New Jersey;

(11) Southwest Valley, Albuquerque, New Mexico;

(12) Upper Delaware River, New York;

(13) Briar Creek, North Carolina;

(14) Chagrin River, Ohio;

(15) Mill Creek, Cincinnati, Ohio;

(16) Tillamook County, Oregon;

(17) Willamette River basin, Oregon;

(18) Blair County, Pennsylvania, at Altoona and Frankstown Township;

(19) Delaware River, Pennsylvania;

(20) Schuylkill River, Pennsylvania;

(21) Providence County, Rhode Island;

(22) Shenandoah River, Virginia;

(23) Lincoln Creek, Wisconsin;

(24) Perry Creek, Iowa;

(25) Lester, St. Louis, East Savanna, and Floodwood Rivers, Duluth, Minnesota;

(26) Lower Hudson River and tributaries, New York;

(27) Susquehanna River watershed, Bradford County, Pennsylvania;

(28) Clear Creek, Harris, Galveston, and Brazoria Counties, Texas;

(29) Ascension Parish, Louisiana;

(30) East Baton Rouge Parish, Louisiana;

(31) Iberville Parish, Louisiana;

(32) Livingston Parish, Louisiana; and

(33) Pointe Coupee Parish, Louisiana.

(f) Program review

(1) In general

The program established under this section shall be subject to an independent review to evaluate the efficacy of the program in achieving the dual goals of flood hazard mitigation and riverine restoration.

(2) Report

Not later than April 15, 2003, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the findings of the review conducted under this subsection with any recommendations concerning continuation of the program.

(g) Maximum Federal cost per project

Not more than \$30,000,000 may be expended by the United States on any single project under this section.

(h) Procedure

(1) All projects

The Secretary shall not implement any project under this section until—

(A) the Secretary submits to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a written notification describing the project and the determinations made under subsection (d)(1) of this section; and

(B) 21 calendar days have elapsed after the date on which the notification was received by the committees.

(2) Projects exceeding \$15,000,000

(A) Limitation on appropriations

No appropriation shall be made to construct any project under this section the total Federal cost of construction of which exceeds \$15,000,000 if the project has not been approved by resolutions adopted by the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(B) Report

For the purpose of securing consideration of approval under this paragraph, the Secretary shall submit a report on the proposed project, including all relevant data and information on all costs.

(i) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section \$20,000,000.

(2) Full funding

All studies and projects carried out under this section from Army Civil Works appropria-

tions shall be fully funded within the program funding levels provided in this subsection.

(Pub. L. 106-53, title II, §212, Aug. 17, 1999, 113 Stat. 288; Pub. L. 106-541, title II, §227, Dec. 11, 2000, 114 Stat. 2599; Pub. L. 110-114, title V, §5005, Nov. 8, 2007, 121 Stat. 1192.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2007—Subsec. (e)(23). Pub. L. 110-114, §5005(a)(1), struck out “and” at end.

Subsec. (e)(29) to (33). Pub. L. 110-114, §5005(a), added pars. (29) to (33).

Subsec. (i)(1). Pub. L. 110-114, §5005(b), substituted “section \$20,000,000” for “section—

“(A) \$20,000,000 for fiscal year 2001;

“(B) \$30,000,000 for fiscal year 2002; and

“(C) \$50,000,000 for each of fiscal years 2003 through 2005”.

2000—Subsec. (e)(24) to (28). Pub. L. 106-541 added pars. (24) to (28).

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.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106-53, set out as a note under section 2201 of this title.

§ 2333. Irrigation diversion protection and fisheries enhancement assistance

(a) In general

The Secretary may provide technical planning and design assistance to non-Federal interests and may conduct other site-specific studies to formulate and evaluate fish screens, fish passages devices, and other measures to decrease the incidence of juvenile and adult fish inadvertently entering irrigation systems.

(b) Cooperation

Measures under subsection (a) of this section—

(1) shall be developed in cooperation with Federal and State resource agencies; and

(2) shall not impair the continued withdrawal of water for irrigation purposes.

(c) Priority

In providing assistance under subsection (a) of this section, the Secretary shall give priority based on—

(1) the objectives of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(2) cost-effectiveness; and

(3) the potential for reducing fish mortality.

(d) Non-Federal share

(1) In general

The non-Federal share of the cost of measures under subsection (a) of this section shall be 50 percent.

(2) In-kind contributions

Not more than 50 percent of the non-Federal contribution may be made through the provision of services, materials, supplies, or other in-kind contributions.

(e) No construction activity

This section does not authorize any construction activity.

(f) Report

Not later than 2 years after August 17, 1999, the Secretary shall submit to Congress a report on—

(1) fish mortality caused by irrigation water intake devices;

(2) appropriate measures to reduce fish mortality;

(3) the extent to which those measures are currently being employed in arid States;

(4) the construction costs associated with those measures; and

(5) the appropriate Federal role, if any, to encourage the use of those measures.

(Pub. L. 106-53, title V, §515, Aug. 17, 1999, 113 Stat. 344.)

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (c)(1), is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally 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.

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§ 2334. Innovative technologies for watershed restoration

The Secretary shall examine using, and, if appropriate, encourage the use of, innovative treatment technologies, including membrane technologies, for watershed and environmental restoration and protection projects involving water quality.

(Pub. L. 106-53, title V, §516, Aug. 17, 1999, 113 Stat. 344.)

CODIFICATION

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