

- (1) directly with a willing private landowner; or
- (2) indirectly through an agreement with a state, local, or tribal government or other public entity, educational institution, or private nonprofit organization.

**(c) Terms and conditions**

In order for the Secretary to enter into a watershed restoration and enhancement agreement—

- (1) the agreement shall—

(A) include such terms and conditions mutually agreed to by the Secretary and the landowner;

(B) improve the viability of and otherwise benefit the fish, wildlife, and other biotic resources on public land in the watershed;

(C) authorize the provision of technical assistance by the Secretary in the planning of management activities that will further the purposes of the agreement;

(D) provide for the sharing of costs of implementing the agreement among the Federal government,<sup>1</sup> the landowner, and other entities, as mutually agreed on by the affected interests; and

(E) ensure that any expenditure by the Secretary pursuant to the agreement is determined by the Secretary to be in the public interest; and

- (2) the Secretary may require such other terms and conditions as are necessary to protect the public investment on private lands, provided such terms and conditions are mutually agreed to by the Secretary and the landowner.

(Pub. L. 104–208, div. A, title I, §101(d) [title I, §124], Sept. 30, 1996, 110 Stat. 3009–181, 3009–204; Pub. L. 105–277, div. A, §101(e) [title I, §136], Oct. 21, 1998, 112 Stat. 2681–231, 2681–266; Pub. L. 108–7, div. F, title I, §135, Feb. 20, 2003, 117 Stat. 243.)

**CODIFICATION**

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1997, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Watershed Protection and Flood Prevention Act which comprises this chapter.

**AMENDMENTS**

2003—Subsec. (a). Pub. L. 108–7 inserted “including appropriations for the Wildland Fire Management account allocated to the National Park Service, Fish and Wildlife Service, and Bureau of Indian Affairs” after “appropriations made for the Bureau of Land Management”.

1998—Subsec. (a). Pub. L. 105–277 substituted “with the heads of other Federal agencies, tribal, State, and local governments, private and nonprofit entities, and landowners for the protection, restoration, and enhancement of fish and wildlife habitat and other resources on public or private land and the reduction of risk from natural disaster where public safety is threatened” for “with willing private landowners for restoration and enhancement of fish, wildlife, and other biotic resources on public or private land or both”.

**FEDERAL AND STATE COOPERATIVE WATERSHED RESTORATION AND PROTECTION**

Pub. L. 106–291, title III, §331, Oct. 11, 2000, 114 Stat. 996, as amended by Pub. L. 108–447, div. E, title III, §336,

Dec. 8, 2004, 118 Stat. 3102; Pub. L. 111–88, div. A, title IV, §422, Oct. 30, 2009, 123 Stat. 2961; Pub. L. 113–76, div. G, title IV, §417, Jan. 17, 2014, 128 Stat. 341, provided that:

“(a) USE OF STATE FOREST SERVICE.—The Secretary of Agriculture, via cooperative agreement or contract (including sole source contract) as appropriate, may permit the head of a State agency with jurisdiction over State forestry programs in a State containing National Forest System land (in this section referred to as a ‘State Forester’) to perform watershed restoration and protection services on National Forest System lands in the State when similar and complementary watershed restoration and protection services are being performed by the State Forest Service on adjacent State or private lands. The types of services that may be extended to National Forest System lands include treatment of insect infected trees, reduction of hazardous fuels, and other activities to restore or improve watersheds or fish and wildlife habitat across ownership boundaries.

“(b) STATE AS AGENT.—Except as provided in subsection (c), a cooperative agreement or contract under subsection (a) may authorize the State Forester to serve as the agent for the Forest Service in providing all services necessary to facilitate the performance of watershed restoration and protection services under subsection (a). The services to be performed by a State Forester may be conducted with subcontracts utilizing State contract procedures. Subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a) shall not apply to services performed under a cooperative agreement or contract under subsection (a).

“(c) RETENTION OF NEPA RESPONSIBILITIES.—With respect to any watershed restoration and protection services on National Forest System lands proposed for performance by a State Forester under subsection (a), any decision required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) may not be delegated to the State Forester or any other officer or employee of the State.

“(d) INCLUSION OF BLM LANDS.—The authority provided by this section shall also be available to the Secretary of the Interior with respect to public lands in a State administered by the Secretary through the Bureau of Land Management.

“(e) EXPIRATION OF AUTHORITY.—The authority of the Secretary of Agriculture and the Secretary of the Interior to enter into cooperative agreements and contracts under this section expires September 30, 2018, and the term of any cooperative agreement or contract entered into under this section shall not extend beyond that date.”

**WATERSHED AGREEMENTS**

Pub. L. 105–277, div. A, §101(e) [title III, §323], Oct. 21, 1998, 112 Stat. 2681–231, 2681–290, as amended, formerly set out as a note under this section, was transferred and is classified to section 1011a of this title.

**§ 1011a. Watershed agreements**

**(a) Watershed restoration and enhancement agreements**

For fiscal year 2006 and each fiscal year thereafter, to the extent funds are otherwise available, appropriations for the Forest Service may be used by the Secretary of Agriculture for the purpose of entering into cooperative agreements with willing Federal, tribal, State and local governments, private and nonprofit entities and landowners for the protection, restoration and enhancement of fish and wildlife habitat, and other resources on public or private land, the reduction of risk from natural disaster where public safety is threatened, or a combination thereof or both that benefit these resources within the watershed.

<sup>1</sup> So in original. Probably should be capitalized.

**(b) Direct and indirect watershed agreements**

The Secretary of Agriculture may enter into a watershed restoration and enhancement agreement—

- (1) directly with a willing private landowner; or
- (2) indirectly through an agreement with a State, local or tribal government or other public entity, educational institution, or private nonprofit organization.

**(c) Terms and conditions**

In order for the Secretary to enter into a watershed restoration and enhancement agreement—

- (1) the agreement shall—

(A) include such terms and conditions mutually agreed to by the Secretary and the landowner, state<sup>1</sup> or local government, or private or nonprofit entity;

(B) improve the viability of and otherwise benefit the fish, wildlife, and other resources on national forests lands within the watershed;

(C) authorize the provision of technical assistance by the Secretary in the planning of management activities that will further the purposes of the agreement;

(D) provide for the sharing of costs of implementing the agreement among the Federal Government, the landowner(s), and other entities, as mutually agreed on by the affected interests; and

(E) ensure that any expenditure by the Secretary pursuant to the agreement is determined by the Secretary to be in the public interest; and

- (2) the Secretary may require such other terms and conditions as are necessary to protect the public investment on non-Federal lands, provided such terms and conditions are mutually agreed to by the Secretary and other landowners, State and local governments or both.

**(d) Applicable law**

Chapter 63 of title 31 shall not apply to—

- (1) a watershed restoration and enhancement agreement entered into under this section; or
- (2) an agreement entered into under section 565a-1 of this title.

**(e) Reporting requirements**

Not later than December 31, 1999, the Secretary shall submit a report to the Committees on Appropriations of the House and Senate, which contains—

- (1) A<sup>2</sup> concise description of each project, including the project purpose, location on federal<sup>1</sup> and non-federal<sup>3</sup> land, key activities, and all parties to the agreement.

- (2) the funding and/or other contributions provided by each party for each project agreement.

(Pub. L. 105-277, div. A, §101(e) [title III, §323], Oct. 21, 1998, 112 Stat. 2681-231, 2681-290; Pub. L. 107-63, title III, §330, Nov. 5, 2001, 115 Stat. 471;

Pub. L. 109-54, title IV, §434, Aug. 2, 2005, 119 Stat. 557; Pub. L. 111-11, title III, §3001, Mar. 30, 2009, 123 Stat. 1126.)

## CODIFICATION

Section was formerly set out as a note under section 1011 of this title.

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1999, and also as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the Watershed Protection and Flood Prevention Act which comprises this chapter.

## AMENDMENTS

2009—Subsec. (a). Pub. L. 111-11, §3001(1), substituted “fiscal year 2006 and each fiscal year thereafter” for “each of fiscal years 2006 through 2011”.

Subsecs. (d), (e). Pub. L. 111-11, §3001(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

2005—Subsec. (a). Pub. L. 109-54 substituted “each of fiscal years 2006 through 2011” for “fiscal year 1999, 2000 and 2001, and fiscal years 2002 through 2005”.

2001—Subsec. (a). Pub. L. 107-63 inserted “and fiscal years 2002 through 2005,” before “to the extent funds are otherwise available”.

## SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation act:

Pub. L. 105-83, title III, §334, Nov. 14, 1997, 111 Stat. 1601.

**§ 1012. Rehabilitation of structural measures near, at, or past their evaluated life expectancy****(a) Definitions**

For purposes of this section:

**(1) Rehabilitation**

The term “rehabilitation”, with respect to a structural measure constructed as part of a covered water resource project, means the completion of all work necessary to extend the service life of the structural measure and meet applicable safety and performance standards. This may include: (A) protecting the integrity of the structural measure or prolonging the useful life of the structural measure beyond the original evaluated life expectancy; (B) correcting damage to the structural measure from a catastrophic event; (C) correcting the deterioration of structural components that are deteriorating at an abnormal rate; (D) upgrading the structural measure to meet changed land use conditions in the watershed served by the structural measure or changed safety criteria applicable to the structural measure; or (E) decommissioning the structure, if requested by the local organization.

**(2) Covered water resource project**

The term “covered water resource project” means a work of improvement carried out under any of the following:

(A) This chapter.

(B) Section 13 of the Act of December 22, 1944 (Public Law 78-534; 58 Stat. 905).

(C) The pilot watershed program authorized under the heading “FLOOD PREVENTION” of the Department of Agriculture Appropriation Act, 1954 (Public Law 156; 67 Stat. 214).

(D) Subtitle H of title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451

<sup>1</sup> So in original. Probably should be capitalized.

<sup>2</sup> So in original. Probably should not be capitalized.

<sup>3</sup> So in original. Probably should be “non-Federal”.