

(2) Service area

To the maximum extent practicable, the service area of the mitigation bank under paragraph (1) shall be in the same watershed as the affected habitat.

(3) Responsibility for monitoring**(A) In general**

Purchase of credits from a mitigation bank for a water resources project relieves the Secretary and the non-Federal interest from responsibility for monitoring or demonstrating mitigation success.

(B) Applicability

The relief of responsibility under subparagraph (A) applies only in any case in which the Secretary determines that monitoring of mitigation success is being conducted by the Secretary or by the owner or operator of the mitigation bank.

(Pub. L. 110-114, title II, § 2036(c), Nov. 8, 2007, 121 Stat. 1094.)

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.

§ 2318. Flood plain management**(a) Exclusion of elements from benefit-cost analysis**

The Secretary shall not include in the benefit base for justifying Federal flood damage reduction projects—

(1)(A) any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation after July 1, 1991; or

(B) in the case of a county substantially located within the 100-year flood plain, any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 10-year flood plain after July 1, 1991; and

(2) any structure which becomes located in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation or in the 10-year flood plain, as the case may be, by virtue of constrictions placed in the flood plain after July 1, 1991.

(b) Flood damage reduction benefits**(1) In general**

In calculating the benefits of a proposed project for nonstructural flood damage reduction, the Secretary shall calculate the benefits of the nonstructural project using methods similar to those used for calculating the benefits of structural projects, including similar treatment in calculating the benefits from losses avoided.

(2) Avoidance of double counting

In carrying out paragraph (1), the Secretary should avoid double counting of benefits.

(c) Counties substantially located within 100-year flood plain

For the purposes of subsection (a) of this section, a county is substantially located within the 100-year flood plain—

(1) if the county is comprised of lands of which 50 percent or more are located in the 100-year flood plain; and

(2) if the Secretary determines that application of the requirement contained in subsection (a)(1)(A) of this section with respect to the county would unreasonably restrain continued economic development or unreasonably limit the availability of needed flood control measures.

(d) Cost sharing

Not later than January 1, 1992, the Secretary shall transmit to Congress a report on the feasibility and advisability of increasing the non-Federal share of costs for new projects in areas where new or substantially improved structures and other constrictions are built or placed in the 100-year flood plain or the 10-year flood plain, as the case may be, after the initial date of the affected governmental unit's entry into the regular program of the national flood insurance program of the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.].

(e) Regulations

Not later than 6 months after the date on which a report is transmitted to Congress under subsection (c) of this section, the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall issue regulations to implement subsection (a) of this section. Such regulations shall define key terms, such as new or substantially improved structure, constriction, 10-year flood plain, and 100-year flood plain.

(f) Applicability

The provisions of this section shall not apply to any project, or separable element thereof, for which a final report of the Chief of Engineers has been forwarded to the Secretary before the last day of the 6-month period beginning on the date on which regulations are issued pursuant to subsection (a) of this section but not later than July 1, 1993.

(Pub. L. 101-640, title III, § 308, Nov. 28, 1990, 104 Stat. 4638; Pub. L. 106-53, title II, § 219(a), Aug. 17, 1999, 113 Stat. 294.)

REFERENCES IN TEXT

The National Flood Insurance Act of 1968, referred to in subsec. (d), is title XIII of Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to chapter 50 (§ 4001 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 4001 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-53, § 219(a)(1), inserted “Exclusion of elements from” before “benefit-cost” in heading.

Subsecs. (b) to (d). Pub. L. 106-53, §219(a)(2), (3), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 106-53, §219(a)(2), (4), redesignated subsec. (d) as (e) and substituted “subsection (c)” for “subsection (b)”. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106-53, §219(a)(2), redesignated subsec. (e) as (f).

CHANGE OF NAME

References to the Director of the Federal Emergency Management Agency to be considered to refer and apply to the Administrator of the Federal Emergency Management Agency, see section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security.

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.

REEVALUATION OF FLOOD CONTROL PROJECTS

Pub. L. 106-53, title II, §219(b), Aug. 17, 1999, 113 Stat. 295, provided that: “At the request of a non-Federal interest for a flood control project, the Secretary shall conduct a reevaluation of a project authorized before the date of enactment of this Act [Aug. 17, 1999] to consider nonstructural alternatives in light of the amendments made by subsection (a) [amending this section].”

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101-640, set out as a note under section 2201 of this title.

§ 2319. Reservoir management

The Secretary shall ensure that, in developing or revising reservoir operating manuals of the Corps of Engineers, the Corps shall provide significant opportunities for public participation, including opportunities for public hearings. The Secretary shall issue regulations to implement this section, including a requirement that all appropriate informational materials relating to proposed management decisions of the Corps be made available to the public sufficiently in advance of public hearings. Not later than January 1, 1992, the Secretary shall transmit to Congress a report on measures taken pursuant to this section.

(Pub. L. 101-640, title III, §310, Nov. 28, 1990, 104 Stat. 4639; Pub. L. 104-303, title II, §233, Oct. 12, 1996, 110 Stat. 3704.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-303, §233(1), struck out heading and text of subsec. (a). Text read as follows: “Not later than 2 years after November 28, 1990, the Secretary shall establish for major reservoirs under the jurisdiction of the Corps of Engineers a technical advisory committee to provide to the Secretary and Corps of Engineers recommendations on reservoir monitoring and options for reservoir research. The Secretary shall determine the membership of the committee, except that the Secretary may not appoint more than 6 members and shall ensure a predominance of members with appropriate academic, technical, or scientific qualifications. Members shall serve without pay, and the Secretary shall provide any necessary facilities, staff, and other support services in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.).”

Subsec. (b). Pub. L. 104-303, §233(2), struck out “(b) PUBLIC PARTICIPATION.—” before “The Secretary shall ensure”, and substituted “section” for “subsection” in two places.

DAM OPTIMIZATION

Pub. L. 113-121, title I, §1046(a), June 10, 2014, 128 Stat. 1251, provided that:

“(1) DEFINITION OF PROJECT.—In this subsection, the term ‘project’ means a water resources development project that is operated and maintained by the Secretary [of the Army].

“(2) REPORTS.—

“(A) ASSESSMENT OF WATER SUPPLY IN ARID REGIONS.—

“(i) IN GENERAL.—The Secretary shall conduct an assessment of the management practices, priorities, and authorized purposes at Corps of Engineers reservoirs in arid regions to determine the effects of such practices, priorities, and purposes on water supply during periods of drought.

“(ii) INCLUSIONS.—The assessment under clause (i) shall identify actions that can be carried out within the scope of existing authorities of the Secretary to increase project flexibility for the purpose of mitigating drought impacts.

“(iii) REPORT.—Not later than 1 year after the date of enactment of this Act [June 10, 2014], the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report on the results of the assessment.

“(B) UPDATED REPORT.—

“(i) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall update and make publicly available the report entitled ‘Authorized and Operating Purposes of Corps of Engineers Reservoirs’ and dated July 1992, which was produced pursuant to section 311 of the Water Resources Development Act of 1990 [Pub. L. 101-640] (104 Stat. 4639).

“(ii) INCLUSIONS.—The updated report described in clause (i) shall—

“(I) include—

“(aa) the date on which the most recent review of project operations was conducted and any recommendations of the Secretary relating to that review the Secretary determines to be significant;

“(bb) the activities carried out pursuant to each such review to improve the efficiency of operations and maintenance and to improve project benefits consistent with authorized purposes;

“(cc) the degree to which reviews of project operations and subsequent activities pursuant to completed reviews complied with the policies and requirements of applicable law and regulations; and

“(dd) a plan for reviewing the operations of individual projects, including a detailed sched-