

project carried out by the Secretary adversely impacts other Federal facilities, the Secretary may accept from other Federal agencies such funds as may be necessary to address the adverse impact, including by removing, relocating, or reconstructing those facilities.

(Pub. L. 113–121, title I, §1026, June 10, 2014, 128 Stat. 1229.)

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, 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. 113–121, set out as a note under section 2201 of this title.

SUBCHAPTER II—HARBOR DEVELOPMENT

§ 2231. Study of water resources development projects by non-Federal interests

(a) Submission to Secretary

(1) In general

A non-Federal interest may undertake a feasibility study of a proposed water resources development project and submit the study to the Secretary.

(2) Guidelines

To assist non-Federal interests, the Secretary, as soon as practicable, shall issue guidelines for feasibility studies of water resources development projects to provide sufficient information for the formulation of the studies.

(b) Review by Secretary

The Secretary shall review each feasibility study received under subsection (a)(1) for the purpose of determining whether or not the study, and the process under which the study was developed, each comply with Federal laws and regulations applicable to feasibility studies of water resources development projects.

(c) Submission to Congress

Not later than 180 days after the date of receipt of a feasibility study of a project under subsection (a)(1), 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 a report that describes—

- (1) the results of the Secretary’s review of the study under subsection (b), including a determination of whether the project is feasible;
- (2) any recommendations the Secretary may have concerning the plan or design of the project; and
- (3) any conditions the Secretary may require for construction of the project.

(d) Credit

If a project for which a feasibility study has been submitted under subsection (a)(1) is authorized by a Federal law enacted after the date of the submission to Congress under subsection (c), the Secretary shall credit toward the non-Federal share of the cost of construction of the

project an amount equal to the portion of the cost of developing the study that would have been the responsibility of the United States if the study had been developed by the Secretary.

(Pub. L. 99–662, title II, §203, Nov. 17, 1986, 100 Stat. 4098; Pub. L. 113–121, title I, §1014(a), June 10, 2014, 128 Stat. 1219.)

AMENDMENTS

2014—Pub. L. 113–121 amended section generally. Prior to amendment, section related to studies of projects by non-Federal interests.

SHORT TITLE

For short title of title II of Pub. L. 99–662, enacting this subchapter, as the Harbor Development and Navigation Improvement Act of 1986, see section 215 of Pub. L. 99–662, set out as a note under section 2201 of this title.

§ 2232. Construction of water resources development projects by non-Federal interests

(a) Water resources development project defined

In this section, the term “water resources development project” means a project recommendation that results from—

- (1) a feasibility report, as such term is defined in section 2282d(f) of this title;
- (2) a completed feasibility study developed under section 2231 of this title; or
- (3) a final feasibility study for water resources development and conservation and other purposes that is specifically authorized by Congress to be carried out by the Secretary.

(b) Authority

(1) In general

A non-Federal interest may carry out a water resources development project, or separable element thereof—

(A) in accordance with a plan approved by the Secretary for the project or separable element; and

(B) subject to any conditions that the Secretary may require, including any conditions specified under section 2231(c)(3) of this title.

(2) Conditions

Before carrying out a water resources development project, or separable element thereof, under this section, a non-Federal interest shall—

- (A) obtain any permit or approval required in connection with the project or separable element under Federal or State law; and
- (B) ensure that a final environmental impact statement or environmental assessment, as appropriate, for the project or separable element has been filed.

(c) Studies and engineering

When requested by an appropriate non-Federal interest, the Secretary may undertake all necessary studies and engineering for any construction to be undertaken under subsection (b), and provide technical assistance in obtaining all necessary permits for the construction, if the non-Federal interest contracts with the Secretary to furnish the United States funds for the

studies, engineering, or technical assistance in the period during which the studies and engineering are being conducted.

(d) Credit or reimbursement

(1) General rule

Subject to paragraph (3), a project or separable element of a project carried out by a non-Federal interest under this section shall be eligible for credit or reimbursement for the Federal share of work carried out on a project or separable element of a project if—

(A) before initiation of construction of the project or separable element—

(i) the Secretary approves the plans for construction of the project or separable element of the project by the non-Federal interest;

(ii) the Secretary determines, before approval of the plans, that the project or separable element of the project is feasible; and

(iii) the non-Federal interest enters into a written agreement with the Secretary under section 1962d-5b of title 42, including an agreement to pay the non-Federal share, if any, of the cost of operation and maintenance of the project; and

(B) the Secretary determines that all Federal laws and regulations applicable to the construction of a water resources development project, and any conditions identified under subsection (b)(1)(B), were complied with by the non-Federal interest during construction of the project or separable element of the project.

(2) Application of credit

The Secretary may apply credit toward—

(A) the non-Federal share of authorized separable elements of the same project; or

(B) subject to the requirements of this section and section 2223 of this title, at the request of the non-Federal interest, the non-Federal share of a different water resources development project.

(3) Requirements

The Secretary may only apply credit or provide reimbursement under paragraph (1) if—

(A) Congress has authorized construction of the project or separable element of the project; and

(B) the Secretary certifies that the project has been constructed in accordance with—

(i) all applicable permits or approvals; and

(ii) this section.

(4) Monitoring

The Secretary shall regularly monitor and audit any water resources development project, or separable element of a water resources development project, constructed by a non-Federal interest under this section to ensure that—

(A) the construction is carried out in compliance with the requirements of this section; and

(B) the costs of the construction are reasonable.

(e) Notification of committees

If a non-Federal interest notifies the Secretary that the non-Federal interest intends to

carry out a project, or separable element thereof, under this section, the Secretary shall provide written notice to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives concerning the intent of the non-Federal interest.

(f) Operation and maintenance

Whenever a non-Federal interest carries out improvements to a federally authorized harbor or inland harbor, the Secretary shall be responsible for operation and maintenance in accordance with section 2211(b) of this title if—

(1) before construction of the improvements—

(A) the Secretary determines that the improvements are feasible and consistent with the purposes of this subchapter; and

(B) the Secretary and the non-Federal interest execute a written agreement relating to operation and maintenance of the improvements;

(2) the Secretary certifies that the project or separable element of the project is constructed in accordance with applicable permits and appropriate engineering and design standards; and

(3) the Secretary does not find that the project or separable element is no longer feasible.

(Pub. L. 99-662, title II, §204, Nov. 17, 1986, 100 Stat. 4099; Pub. L. 101-640, title III, §303, Nov. 28, 1990, 104 Stat. 4634; Pub. L. 113-121, title I, §1014(b)(1), June 10, 2014, 128 Stat. 1220.)

AMENDMENTS

2014—Pub. L. 113-121 amended section generally. Prior to amendment, section related to construction of projects by non-Federal interests.

1990—Subsec. (c). Pub. L. 101-640, §303(a), inserted after first sentence “The Secretary is further authorized to complete and transmit to the appropriate non-Federal interest any study for improvement to harbors or inland harbors of the United States that is initiated pursuant to section 577 of this title or, upon request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest.”

Subsec. (e). Pub. L. 101-640, §303(b)(1), redesignated subsec. (e), relating to operation and maintenance, as (f).

Subsec. (e)(1). Pub. L. 101-640, §303(b)(2), (3), in introductory provisions inserted “including any small navigation project approved pursuant to section 577 of this title,” after “or separable element thereof,” and in subpar. (A) inserted “(or, in the case of a small navigation project, after completion of a favorable project report by the Corps of Engineers)” after “authorization of the project”.

Subsec. (f). Pub. L. 101-640, §303(b)(1), redesignated subsec. (e), relating to operation and maintenance, as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 101-640, §303(b)(1), redesignated subsec. (f) as (g).

SAVINGS PROVISION

Pub. L. 113-121, title I, §1014(d), June 10, 2014, 128 Stat. 1222, provided that: “Nothing in this section [amending this section and section 2231 of this title, repealing sections 426i-1 and 701b-13 of this title, and repealing provisions set out as a note under this section] may be construed to affect an agreement in effect on the date of enactment of this Act [June 10, 2014], or an agree-

ment that is finalized between the Corps of Engineers and a non-Federal interest on or before December 31, 2014, under any of the following sections (as such sections were in effect on the day before such date of enactment):

“(1) Section 204 of the Water Resources Development Act of 1986 (33 U.S.C. 2232).

“(2) Section 206 of the Water Resources Development Act of 1992 (33 U.S.C. 426i-1).

“(3) Section 211 of the Water Resources Development Act of 1996 (33 U.S.C. 701b-13).”

OPERATION AND MAINTENANCE OF CERTAIN PROJECTS

Pub. L. 113-121, title I, §1016, June 10, 2014, 128 Stat. 1223, provided that: “The Secretary [of the Army] may assume responsibility for operation and maintenance in accordance with section 101(b) of the Water Resources Development Act of 1986 (33 U.S.C. 2211(b)) (as amended by section 2102(b)) for improvements to a federally authorized harbor or inland harbor that are carried out by a non-Federal interest prior to December 31, 2014, if the Secretary determines that the requirements under paragraphs (2) and (3) of section 204(f) of the Water Resources Development Act of 1986 (33 U.S.C. 2232(f)) are met.”

DEMONSTRATION OF CONSTRUCTION OF FEDERAL PROJECT BY NON-FEDERAL INTERESTS

Pub. L. 101-640, title IV, §404, Nov. 28, 1990, 104 Stat. 4646, which related to the demonstration of safety benefits and economic efficiencies of non-Federal management of harbor improvement projects, was repealed by Pub. L. 113-121, title I, §1014(c)(1), June 10, 2014, 128 Stat. 1222.

§ 2233. Coordination and scheduling of Federal, State, and local actions

(a) Notice of intent

The Secretary, on request from an appropriate non-Federal interest in the form of a written notice of intent to construct a navigation project for a harbor or inland harbor under section 2232 of this title or this section, shall initiate procedures to establish a schedule for consolidating Federal, State, and local agency environmental assessments, project reviews, and issuance of all permits for the construction of the project, including associated access channels, berthing areas, and onshore port-related facilities, before the initiation of construction. The non-Federal interest shall submit, with the notice of intent, studies and documentation, including environmental reviews, that may be required by Federal law for decisionmaking on the proposed project. A State shall not be required to participate in carrying out this section.

(b) Procedural requirements

Within 15 days after receipt of notice under subsection (a) of this section, the Secretary shall publish such notice in the Federal Register. The Secretary also shall provide written notification of the receipt of a notice under subsection (a) of this section to all State and local agencies that may be required to issue permits for the construction of the project or related activities. The Secretary shall solicit the cooperation of those agencies and request their entry into a memorandum of agreement described in subsection (c) of this section. Within 30 days after publication of the notice in the Federal Register, State and local agencies that intend to enter into the memorandum of agreement shall notify the Secretary of their intent in writing.

(c) Scheduling agreement

Within 90 days after receipt of notice under subsection (a) of this section, the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and any State or local agencies that have notified the Secretary under subsection (b) of this section shall enter into an agreement with the Secretary establishing a schedule of decisionmaking for approval of the project and permits associated with it and with related activities. Such schedule may not exceed two and one-half years from the date of the agreement.

(d) Contents of agreement

The agreement entered into under subsection (c) of this section, to the extent practicable, shall consolidate hearing and comment periods, procedures for data collection and report preparation, and the environmental review and permitting processes associated with the project and related activities. The agreement shall detail, to the extent possible, the non-Federal interest's responsibilities for data development and information that may be necessary to process each permit, including a schedule when the information and data will be provided to the appropriate Federal, State, or local agency.

(e) Preliminary decision

The agreement shall include a date by which the Secretary, taking into consideration the views of all affected Federal agencies, shall provide to the non-Federal interest in writing a preliminary determination whether the project and Federal permits associated with it are reasonably likely to receive approval.

(f) Revision of agreement

The Secretary may revise the agreement once to extend the schedule to allow the non-Federal interest the minimum amount of additional time necessary to revise its original application to meet the objections of a Federal, State, or local agency which is a party to the agreement.

(g) Progress reports

Six months before the final date of the schedule, the Secretary shall provide to Congress a written progress report for each navigation project for a harbor or inland harbor subject to this section. The Secretary shall transmit the report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. The report shall summarize all work completed under the agreement and shall include a detailed work program that will assure completion of all remaining work under the agreement.

(h) Final decision

Not later than the final day of the schedule, the Secretary shall notify the non-Federal interest of the final decision on the project and whether the permit or permits have been issued.

(i) Report on timesavings methods

Not later than one year after November 17, 1986, the Secretary shall prepare and transmit to Congress a report estimating the time required for the issuance of all Federal, State, and local permits for the construction of navigation