

- (II) the proposed modification to an authorized water resources development project; and
- (E) an estimate, to the extent practicable, of the monetary and nonmonetary benefits of—
  - (i) the water resources development project that is the subject of—
    - (I) the feasibility report; or
    - (II) the authorized feasibility study for which a modification is proposed, with respect to the benefits of such modification; or
  - (ii) the proposed modification to an authorized water resources development project.

### (3) Certification

The Secretary shall include in the annual report a certification stating that each feasibility report, proposed feasibility study, and proposed modification to an authorized water resources development project or feasibility study included in the annual report meets the criteria established in paragraph (1)(A).

### (4) Appendix

The Secretary shall include in the annual report an appendix listing the proposals submitted under subsection (b) that were not included in the annual report under paragraph (1)(A) and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion under such paragraph.

### (d) Special rule for initial annual report

Notwithstanding any other deadlines required by this section, the Secretary shall—

- (1) not later than 60 days after June 10, 2014, publish in the Federal Register a notice required by subsection (b)(1); and
- (2) include in such notice a requirement that non-Federal interests submit to the Secretary any proposals described in subsection (b)(1) by not later than 120 days after the date of publication of such notice in the Federal Register in order for such proposals to be considered for inclusion in the first annual report developed by the Secretary under this section.

### (e) Publication

Upon submission of an annual report to Congress, the Secretary shall make the annual report publicly available, including through publication on the Internet.

### (f) Definitions

In this section:

#### (1) Annual report

The term “annual report” means a report required by subsection (a).

#### (2) Feasibility report

##### (A) In general

The term “feasibility report” means a final feasibility report developed under section 2282 of this title.

##### (B) Inclusions

The term “feasibility report” includes—

- (i) a report described in section 2215(d)(2) of this title; and
- (ii) where applicable, any associated report of the Chief of Engineers.

### (3) Feasibility study

The term “feasibility study” has the meaning given that term in section 2215 of this title.

### (4) Non-Federal interest

The term “non-Federal interest” has the meaning given that term in section 1962d-5b of title 42.

### (5) Water resources development project

The term “water resources development project” includes a project under an environmental infrastructure assistance program if authorized before December 16, 2016.

(Pub. L. 113-121, title VII, § 7001, June 10, 2014, 128 Stat. 1360; Pub. L. 114-322, title I, § 1157(b), Dec. 16, 2016, 130 Stat. 1666.)

#### 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.

#### AMENDMENTS

2016—Subsec. (f)(5). Pub. L. 114-322 added par. (5).

#### “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.

### § 2282e. Post-authorization change reports

#### (a) In general

The completion of a post-authorization change report prepared by the Corps of Engineers for a water resources development project—

- (1) may not be delayed as a result of consideration being given to changes in policy or priority with respect to project consideration; and
- (2) shall be submitted, upon completion, to—
  - (A) the Committee on Environment and Public Works of the Senate; and
  - (B) the Committee on Transportation and Infrastructure of the House of Representatives.

#### (b) Completion review

With respect to a post-authorization change report subject to review by the Secretary, the Secretary shall, not later than 120 days after the date of completion of such report—

- (1) review the report; and
- (2) provide to Congress any recommendations of the Secretary regarding modification of the applicable water resources development project.

#### (c) Prior reports

Not later than 120 days after December 16, 2016, with respect to any post-authorization change report that was completed prior to December 16, 2016, and is subject to a review by the Secretary that has yet to be completed, the Secretary shall complete review of, and provide rec-

ommendations to Congress with respect to, the report.

**(d) Post-authorization change report inclusions**

In this section, the term “post-authorization change report” includes—

- (1) a general reevaluation report;
- (2) a limited reevaluation report; and
- (3) any other report that recommends the modification of an authorized water resources development project.

(Pub. L. 114–322, title I, § 1132, Dec. 16, 2016, 130 Stat. 1653.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, 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 1002 of Pub. L. 114–322, set out as a note under section 2201 of this title.

**§ 2283. Fish and wildlife mitigation**

**(a) Steps to be taken prior to or concurrently with construction**

(1) In the case of any water resources project which is authorized to be constructed by the Secretary before, on, or after November 17, 1986, construction of which has not commenced as of November 17, 1986, and which necessitates the mitigation of fish and wildlife losses, including the acquisition of lands or interests in lands to mitigate losses to fish and wildlife, as a result of such project, such mitigation, including acquisition of the lands or interests—

(A) shall be undertaken or acquired before any construction of the project (other than such acquisition) commences, or

(B) shall be undertaken or acquired concurrently with lands and interests in lands for project purposes (other than mitigation of fish and wildlife losses),

whichever the Secretary determines is appropriate, except that any physical construction required for the purposes of mitigation may be undertaken concurrently with the physical construction of such project.

(2) For the purposes of this subsection, any project authorized before November 17, 1986, on which more than 50 percent of the land needed for the project, exclusive of mitigation lands, has been acquired shall be deemed to have commenced construction under this subsection.

**(b) Acquisition of lands or interests in lands for mitigation**

(1) After consultation with appropriate Federal and non-Federal agencies, the Secretary is authorized to mitigate damages to fish and wildlife resulting from any water resources project under his jurisdiction, whether completed, under construction, or to be constructed. Such mitigation may include the acquisition of lands, or interests therein, except that—

(A) acquisition under this paragraph shall not be by condemnation in the case of projects

completed as of November 17, 1986, or on which at least 10 percent of the physical construction on the project has been completed as of November 17, 1986; and

(B) acquisition of water, or interests therein, under this paragraph, shall not be by condemnation.

The Secretary, shall, under the terms of this paragraph, obligate no more than \$30,000,000 in any fiscal year. With respect to any water resources project, the authority under this subsection shall not apply to measures that cost more than \$7,500,000 or 10 percent of the cost of the project, whichever is greater.

(2) Whenever, after his review, the Secretary determines that such mitigation features under this subsection are likely to require condemnation under subparagraph (A) or (B) of paragraph (1) of this subsection, the Secretary shall transmit to Congress a report on such proposed modification, together with his recommendations.

**(c) Allocation of mitigation costs**

Costs incurred after November 17, 1986, including lands, easements, rights-of-way, and relocations, for implementation and operation, maintenance, and rehabilitation to mitigate damages to fish and wildlife shall be allocated among authorized project purposes in accordance with applicable cost allocation procedures, and shall be subject to cost sharing or reimbursement to the same extent as such other project costs are shared or reimbursed, except that when such costs are covered by contracts entered into prior to November 17, 1986, such costs shall not be recovered without the consent of the non-Federal interests or until such contracts are complied with or renegotiated.

**(d) Mitigation plans as part of project proposals**

**(1) In general**

After November 17, 1986, the Secretary shall not submit any proposal for the authorization of any water resources project to Congress in any report, and shall not select a project alternative in any report, unless such report contains (A) a recommendation with a specific plan to mitigate for damages to ecological resources, including terrestrial and aquatic resources, and fish and wildlife losses created by such project, or (B) a determination by the Secretary that such project will have negligible adverse impact on ecological resources and fish and wildlife without the implementation of mitigation measures. Specific mitigation plans shall ensure that impacts to bottomland hardwood forests are mitigated in-kind, and other habitat types are mitigated to not less than in-kind conditions, to the extent possible. If the Secretary determines that mitigation to in-kind conditions is not possible, the Secretary shall identify in the report the basis for that determination and the mitigation measures that will be implemented to meet the requirements of this section and the goals of section 2317(a)(1) of this title. In carrying out this subsection, the Secretary shall consult with appropriate Federal and non-Federal agencies.

**(2) Selection and design of mitigation projects**

The Secretary shall select and design mitigation projects using a watershed approach to