

bursement of installation costs incurred by such entities or an equivalent reduction in the contributions they would otherwise be required to make, or in appropriate cases, for a combination thereof. The amount of Federal reimbursement, including reductions in contributions, for a single project shall not exceed \$5,000,000 or 1 percent of the total project cost, whichever is greater; except that the amount of actual Federal reimbursement, including reductions in contributions, for such project may not exceed \$7,000,000 in any fiscal year.

(b) Agreement provisions; termination of agreement for failure to commence work

Agreements entered into pursuant to this section shall (1) fully describe the work to be accomplished by the non-Federal public body, and be accompanied by an engineering plan if necessary therefor; (2) specify the manner in which such work shall be carried out; (3) provide for necessary review of design and plans, and inspection of the work by the Chief of Engineers or his designee; (4) state the basis on which the amount of reimbursement shall be determined; (5) state that such reimbursement shall be dependent upon the appropriation of funds applicable thereto or funds available therefor, and shall not take precedence over other pending projects of higher priority for improvements; and (6) specify that reimbursement or credit for non-Federal installation expenditures shall apply only to work undertaken on Federal projects after project authorization and execution of the agreement, and does not apply retroactively to past non-Federal work. Each such agreement shall expire three years after the date on which it is executed if the work to be undertaken by the non-Federal public body has not commenced before the expiration of that period. The time allowed for completion of the work will be determined by the Secretary of the Army, acting through the Chief of Engineers, and stated in the agreement.

(c) Certification of performance

No reimbursement shall be made, and no expenditure shall be credited, pursuant to this section, unless and until the Chief of Engineers or his designee, has certified that the work for which reimbursement or credit is requested has been performed in accordance with the agreement.

(d) Beach erosion control projects

Reimbursement for work commenced by non-Federal public bodies no later than one year after August 13, 1968, to carry out or assist in carrying out projects for beach erosion control, may be made in accordance with the provisions of section 426f of title 33. Reimbursement for such work may, as an alternative, be made in accordance with the provisions of this section, provided that agreement required herein shall have been executed prior to commencement of the work. Expenditures for projects for beach erosion control commenced by non-Federal public bodies subsequent to one year after August 13, 1968, may be reimbursed by the Secretary of the Army, acting through the Chief of Engineers, only in accordance with the provisions of this section.

(e) Prohibition of construction for Federal assumption of responsibilities of non-Federal bodies or for Federal liability for unnecessary or inapplicable project work of such bodies

This section shall not be construed (1) as authorizing the United States to assume any responsibilities placed upon a non-Federal body by the conditions of project authorization, or (2) as committing the United States to reimburse non-Federal interests if the Federal project is not undertaken or is modified so as to make the work performed by the non-Federal Public body no longer applicable.

(f) Allotment limitation for any fiscal year; specific project reimbursement authorizations

The Secretary of the Army is authorized to allot from any appropriations hereafter made for civil works, not to exceed \$10,000,000 for any one fiscal year to carry out the provisions of this section. This limitation does not include specific project authorizations providing for reimbursement.

(Pub. L. 90-483, title II, §215, Aug. 13, 1968, 82 Stat. 747; Pub. L. 99-662, title IX, §913, Nov. 17, 1986, 100 Stat. 4190; Pub. L. 100-676, §12, Nov. 17, 1988, 102 Stat. 4025; Pub. L. 104-303, title II, §224(a), Oct. 12, 1996, 110 Stat. 3697; Pub. L. 110-161, div. C, title I, §116, Dec. 26, 2007, 121 Stat. 1945.)

CODIFICATION

Section was enacted as part of the Flood Control Act of 1968, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110-161, which directed the substitution of “\$7,000,000” for “\$5,000,000” in last sentence, was executed by making the substitution for “\$5,000,000” the second place it appeared, to reflect the probable intent of Congress.

1996—Subsec. (a). Pub. L. 104-303, in last sentence, substituted “\$5,000,000” for “\$3,000,000” before “or 1 percent” and “any fiscal year.” for “any fiscal year..”

1988—Subsec. (a). Pub. L. 100-676 inserted before period at end “or 1 percent of the total project cost, whichever is greater; except that the amount of actual Federal reimbursement, including reductions in contributions, for such project may not exceed \$5,000,000 in any fiscal year.”

1986—Subsec. (a). Pub. L. 99-662 substituted “\$3,000,000” for “\$1,000,000”.

§ 1962d-5b. Written agreement requirement for water resources projects

(a) Cooperation of non-Federal interest

(1) In general

After December 31, 1970, the construction of any water resources project, or an acceptable separable element thereof, by the Secretary of the Army, acting through the Chief of Engineers, or by a non-Federal interest where such interest will be reimbursed for such construction under any provision of law, shall not be commenced until each non-Federal interest has entered into a written partnership agreement with the Secretary (or, where appropriate, the district engineer for the district in which the project will be carried out) under which each party agrees to carry out its re-

sponsibilities and requirements for implementation or construction of the project or the appropriate element of the project, as the case may be; except that no such agreement shall be required if the Secretary determines that the administrative costs associated with negotiating, executing, or administering the agreement would exceed the amount of the contribution required from the non-Federal interest and are less than \$25,000.

(2) Liquidated damages

A partnership agreement described in paragraph (1) may include a provision for liquidated damages in the event of a failure of one or more parties to perform.

(3) Obligation of future appropriations

In any partnership agreement described in paragraph (1) and entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future appropriations for such performance and payment when obligating future appropriations would be inconsistent with constitutional or statutory limitations of the State or a political subdivision of the State.

(4) Credit for in-kind contributions

(A) In general

A partnership agreement described in paragraph (1) may provide with respect to a project that the Secretary shall credit toward the non-Federal share of the cost of the project, including a project implemented without specific authorization in law or a project under an environmental infrastructure assistance program, the value of in-kind contributions made by the non-Federal interest, including—

- (i) the costs of planning (including data collection), design, management, mitigation, construction, and construction services that are provided by the non-Federal interest for implementation of the project;
- (ii) the value of materials or services provided before execution of the partnership agreement, including efforts on constructed elements incorporated into the project; and
- (iii) the value of materials and services provided after execution of the partnership agreement.

(B) Condition

The Secretary may credit an in-kind contribution under subparagraph (A) only if the Secretary determines that the material or service provided as an in-kind contribution is integral to the project.

(C) Work performed before partnership agreement

(i) Construction

(I) In general

In any case in which the non-Federal interest is to receive credit under subparagraph (A) for the cost of construction carried out by the non-Federal interest before execution of a partnership

agreement and that construction has not been carried out as of November 8, 2007, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such work and shall do so prior to the non-Federal interest initiating construction or issuing a written notice to proceed for the construction.

(II) Eligibility

Construction that is carried out after the execution of an agreement to carry out work described in subclause (I) and any design activities that are required for that construction, even if the design activity is carried out prior to the execution of the agreement to carry out work, shall be eligible for credit.

(ii) Planning

(I) In general

In any case in which the non-Federal interest is to receive credit under subparagraph (A) for the cost of planning carried out by the non-Federal interest before execution of a feasibility cost-sharing agreement, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such work and shall do so prior to the non-Federal interest initiating that planning.

(II) Eligibility

Planning that is carried out by the non-Federal interest after the execution of an agreement to carry out work described in subclause (I) shall be eligible for credit.

(D) Limitations

Credit authorized under this paragraph for a project—

- (i) shall not exceed the non-Federal share of the cost of the project;
- (ii) shall not alter any other requirement that a non-Federal interest provide lands, easements, relocations, rights-of-way, or areas for disposal of dredged material for the project;
- (iii) shall not alter any requirement that a non-Federal interest pay a portion of the costs of construction of the project under sections 2211(a)(2) and 2213(a)(1)(A) of title 33; and
- (iv) shall not exceed the actual and reasonable costs of the materials, services, or other things provided by the non-Federal interest, as determined by the Secretary.

(E) Analysis of costs and benefits

In the evaluation of the costs and benefits of a project, the Secretary shall not consider construction carried out by a non-Federal interest under this subsection as part of the future without project condition.

(F) Transfer of credit between separable elements of a project

Credit for in-kind contributions provided by a non-Federal interest that are in excess of the non-Federal cost share for an author-

ized separable element of a project may be applied toward the non-Federal cost share for a different authorized separable element of the same project.

(G) Application of credit

(i) In general

To the extent that credit for in-kind contributions, as limited by subparagraph (D), and credit for required land, easements, rights-of-way, dredged material disposal areas, and relocations provided by the non-Federal interest exceed the non-Federal share of the cost of construction of a project other than a navigation project, the Secretary, subject to the availability of funds, shall enter into a reimbursement agreement with the non-Federal interest, which shall be in addition to a partnership agreement under subparagraph (A), to reimburse the difference to the non-Federal interest.

(ii) Priority

If appropriated funds are insufficient to cover the full cost of all requested reimbursement agreements under clause (i), the Secretary shall enter into reimbursement agreements in the order in which requests for such agreements are received.

(H) Applicability

(i) In general

This paragraph shall apply to water resources projects authorized after November 16, 1986, including projects initiated after November 16, 1986, without specific authorization in law, and to water resources projects authorized prior to November 17, 1986, if correction of design deficiencies is necessary.

(ii) Authorization as addition to other authorizations

The authority of the Secretary to provide credit for in-kind contributions pursuant to this paragraph shall be in addition to any other authorization to provide credit for in-kind contributions and shall not be construed as a limitation on such other authorization. The Secretary shall apply the provisions of this paragraph, in lieu of provisions under other crediting authority, only if so requested by the non-Federal interest.

(b) Definition of non-Federal interest

The term “non-Federal interest” means—

(1) a legally constituted public body (including an Indian tribe and a tribal organization (as those terms are defined in section 5304 of title 25)); or

(2) a nonprofit entity with the consent of the affected local government,

that has full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform.

(c) Enforcement; jurisdiction

Every agreement entered into pursuant to this section shall be enforceable in the appropriate district court of the United States.

(d) Nonperformance of terms of agreement by non-Federal interest; notice; reasonable opportunity for performance; performance by Chief of Engineers

After commencement of construction of a project, the Chief of Engineers may undertake performance of those items of cooperation necessary to the functioning of the project for its purposes, if he has first notified the non-Federal interest of its failure to perform the terms of its agreement and has given such interest a reasonable time after such notification to so perform.

(e) Delegation of authority

Not later than June 30, 2008, the Secretary shall issue policies and guidelines for partnership agreements that delegate to the district engineers, at a minimum—

(1) the authority to approve any policy in a partnership agreement that has appeared in an agreement previously approved by the Secretary;

(2) the authority to approve any policy in a partnership agreement the specific terms of which are dictated by law or by a final feasibility study, final environmental impact statement, or other final decision document for a water resources project;

(3) the authority to approve any partnership agreement that complies with the policies and guidelines issued by the Secretary; and

(4) the authority to sign any partnership agreement for any water resources project unless, within 30 days of the date of authorization of the project, the Secretary notifies the district engineer in which the project will be carried out that the Secretary wishes to retain the prerogative to sign the partnership agreement for that project.

(f) Report to Congress

Not later than 2 years after November 8, 2007, and every year thereafter, the Secretary shall submit to Congress a report detailing the following:

(1) The number of partnership agreements signed by district engineers and the number of partnership agreements signed by the Secretary.

(2) For any partnership agreement signed by the Secretary, an explanation of why delegation to the district engineer was not appropriate.

(g) Public availability

Not later than 120 days after November 8, 2007, the Chief of Engineers shall—

(1) ensure that each district engineer has made available to the public, including on the Internet, all partnership agreements entered into under this section within the preceding 10 years and all partnership agreements for water resources projects currently being carried out in that district; and

(2) make each partnership agreement entered into after November 8, 2007, available to the public, including on the Internet, not later than 7 days after the date on which such agreement is entered into.

(h) Effective date

This section shall not apply to any project the construction of which was commenced before

January 1, 1972, or to the assurances for future demands required by the Water Supply Act of 1958, as amended [43 U.S.C. 390b].

(Pub. L. 91-611, title II, §221, Dec. 31, 1970, 84 Stat. 1831; Pub. L. 92-222, §4, Dec. 23, 1971, 85 Stat. 799; Pub. L. 99-662, title IX, §912(a), Nov. 17, 1986, 100 Stat. 4189; Pub. L. 104-106, div. A, title X, §1064(d), Feb. 10, 1996, 110 Stat. 445; Pub. L. 104-303, title II, §220, Oct. 12, 1996, 110 Stat. 3696; Pub. L. 106-541, title II, §201, Dec. 11, 2000, 114 Stat. 2587; Pub. L. 110-114, title II, §2003(a)-(c), Nov. 8, 2007, 121 Stat. 1067, 1069; Pub. L. 113-121, title I, §1018(a), June 10, 2014, 128 Stat. 1224; Pub. L. 114-322, title I, §1131, Dec. 16, 2016, 130 Stat. 1653; Pub. L. 115-270, title I, §1155(b), Oct. 23, 2018, 132 Stat. 3793.)

REFERENCES IN TEXT

The Water Supply Act of 1958, as amended, referred to in subsec. (h), is Pub. L. 85-500, title III, §301, July 3, 1958, 72 Stat. 319, as amended, which is classified to section 390b of Title 43, Public Lands.

CODIFICATION

Section was enacted as part of the Flood Control Act of 1970, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

2018—Subsec. (b)(1). Pub. L. 115-270 substituted “(including an Indian tribe and a tribal organization (as those terms are defined in section 5304 of title 25)); or” for “(including a federally recognized Indian tribe and, as defined in section 1602 of title 43, a Native village, Regional Corporation, and Village Corporation); or”.

Subsec. (b)(1). Pub. L. 114-322 inserted “and, as defined in section 1602 of title 43, a Native village, Regional Corporation, and Village Corporation” after “Indian tribe”.

2014—Subsec. (a)(4)(A). Pub. L. 113-121, §1018(a)(1), inserted “or a project under an environmental infrastructure assistance program” after “law” in introductory provisions.

Subsec. (a)(4)(C). Pub. L. 113-121, §1018(a)(2), added text of subpar. (C) and struck out text of former subpar. (C) which read as follows: “In any case in which the non-Federal interest is to receive credit under subparagraph (A)(ii) for the cost of work carried out by the non-Federal interest and such work has not been carried out as of November 8, 2007, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such work, and only work carried out following the execution of the agreement shall be eligible for credit.”

Subsec. (a)(4)(D)(iii). Pub. L. 113-121, §1018(a)(3), substituted “sections 2211(a)(2) and 2213(a)(1)(A) of title 33” for “sections 2211 and 2213 of title 33”.

Subsec. (a)(4)(E) to (H). Pub. L. 113-121, §1018(a)(4), (5), added subpars. (E) to (G) and redesignated former subpar. (E) as (H).

Subsec. (a)(4)(H)(i). Pub. L. 113-121, §1018(a)(6)(A), inserted “, and to water resources projects authorized prior to November 17, 1986, if correction of design deficiencies is necessary” before period at end.

Subsec. (a)(4)(H)(ii). Pub. L. 113-121, §1018(a)(6)(B), added cl. (ii) and struck out former cl. (ii). Prior to amendment, text read as follows: “In any case in which a specific provision of law provides for a non-Federal interest to receive credit toward the non-Federal share of the cost of a study for, or construction or operation and maintenance of, a water resources project, the specific provision of law shall apply instead of this paragraph.”

2007—Pub. L. 110-114, §2003(a)(1), inserted section catchline.

Subsec. (a). Pub. L. 110-114, §2003(a)(2), added subsec. (a) and struck out former subsec. (a), which read as fol-

lows: “After December 31, 1970, the construction of any water resources project, or an acceptable separable element thereof, by the Secretary of the Army, acting through the Chief of Engineers, or by a non-Federal interest where such interest will be reimbursed for such construction under the provisions of section 1962d-5a of this title or under any other provision of law, shall not be commenced until each non-Federal interest has entered into a written agreement with the Secretary of the Army to furnish its required cooperation for the project or the appropriate element of the project, as the case may be; except that no such agreement shall be required if the Secretary determines that the administrative costs associated with negotiating, executing, or administering the agreement would exceed the amount of the contribution required from the non-Federal interest and are less than \$25,000. In any such agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future appropriations for such performance and payment when obligating future appropriations would be inconsistent with constitutional or statutory limitations of the State or a political subdivision of the State.”

Subsec. (b). Pub. L. 110-114, §2003(b), inserted heading and amended text generally. Prior to amendment, text read as follows: “A non-Federal interest shall be a legally constituted public body with full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform.”

Subsecs. (e) to (h). Pub. L. 110-114, §2003(c), added subsecs. (e) to (g) and redesignated former subsec. (e) as (h).

2000—Subsec. (a). Pub. L. 106-541 in last sentence, struck out “State legislative” after “obligate future”, substituted “constitutional” for “State constitutional”, and inserted “of the State or a political subdivision of the State” before period at end.

1996—Subsec. (a). Pub. L. 104-303, in first sentence, inserted before period at end “; except that no such agreement shall be required if the Secretary determines that the administrative costs associated with negotiating, executing, or administering the agreement would exceed the amount of the contribution required from the non-Federal interest and are less than \$25,000”.

Subsecs. (e), (f). Pub. L. 104-106 redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: “The Secretary of the Army, acting through the Chief of Engineers, shall maintain a continuing inventory of agreements and the status of their performance, and shall report thereon annually to the Congress.”

1986—Subsec. (a). Pub. L. 99-662 inserted “, or an acceptable separable element thereof,” “or the appropriate element of the project, as the case may be”, and “In any such agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future State legislative appropriations for such performance and payment when obligating future appropriations would be inconsistent with State constitutional or statutory limitations.”

1971—Subsec. (f). Pub. L. 92-222 made provisions of section inapplicable to the assurances for future demands required by the Water Supply Act of 1958, as amended.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-121, title I, §1018(c), June 10, 2014, 128 Stat. 1226, provided that: “The amendments made by subsections (a) and (b) [amending this section and provisions set out as a note under this section] take effect on November 8, 2007.”

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-114, title II, §2003(e), Nov. 8, 2007, 121 Stat. 1070, as amended by Pub. L. 113-121, title I, §1018(b), June 10, 2014, 128 Stat. 1225, provided that: “The amendments made by subsections (a), (b), and (d) [amending this section and provisions set out as a note under this section] only apply to partnership agreements entered into after the date of enactment of this Act [Nov. 8, 2007]; except that, at the request of a non-Federal interest for a project, the district engineer for the district in which the project is located may amend a project partnership agreement entered into on or before such date and under which construction on the project, or construction of design deficiency corrections on the project, has not been initiated, or under which construction of the project has not been completed and the work to be performed by the non-Federal interests has not been carried out and is creditable only toward any remaining non-Federal cost share, as of such date of enactment for the purpose of incorporating such amendments.”

LOCAL GOVERNMENT WATER MANAGEMENT PLANS

Pub. L. 115-270, title I, §1164, Oct. 23, 2018, 132 Stat. 3797, provided that: “With the consent of the non-Federal interest for a feasibility study for a water resources development project, the Secretary [of the Army] may enter into a written agreement under section 221(a) of the Flood Control Act of 1970 [42 U.S.C. 1962d-5b(a)], with a unit of local government in the watershed that has adopted a local or regional water management plan, to allow the unit of local government to participate in the feasibility study to determine if there is an opportunity to include additional feasible elements in the project in order to help achieve the purposes identified in the local or regional water management plan.”

GUIDELINES

Pub. L. 113-121, title I, §1018(d), June 10, 2014, 128 Stat. 1226, provided that:

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [June 10, 2014], the Secretary [of the Army] shall update any guidance or regulations for carrying out section 221(a)(4) of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b(a)(4)) (as amended by subsection (a)) that are in existence on the date of enactment of this Act or issue new guidelines, as determined to be appropriate by the Secretary.

“(2) INCLUSIONS.—Any guidance, regulations, or guidelines updated or issued under paragraph (1) shall include, at a minimum—

“(A) the milestone for executing an in-kind memorandum of understanding for construction by a non-Federal interest;

“(B) criteria and procedures for evaluating a request to execute an in-kind memorandum of understanding for construction by a non-Federal interest that is earlier than the milestone under subparagraph (A) for that execution; and

“(C) criteria and procedures for determining whether work carried out by a non-Federal interest is integral to a project.

“(3) PUBLIC AND STAKEHOLDER PARTICIPATION.—Before issuing any new or revised guidance, regulations, or guidelines or any subsequent updates to those documents, the Secretary shall—

“(A) consult with affected non-Federal interests;

“(B) publish the proposed guidelines developed under this subsection in the Federal Register; and

“(C) provide the public with an opportunity to comment on the proposed guidelines.”

OTHER CREDIT

Pub. L. 113-121, title I, §1018(e), June 10, 2014, 128 Stat. 1226, provided that: “Nothing in section 221(a)(4) of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b(a)(4)) (as amended by subsection (a)) affects any eligibility for credit under section 104 of the Water Resources Development

Act of 1986 (33 U.S.C. 2214) that was approved by the Secretary [of the Army] prior to the date of enactment of this Act [June 10, 2014].”

PARTNERSHIP AND COOPERATION AGREEMENTS;
REFERENCES

Pub. L. 110-114, title II, §2003(f), Nov. 8, 2007, 121 Stat. 1070, provided that:

“(1) IN GENERAL.—A goal of agreements entered into under section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b) shall be to further partnership and cooperation, and the agreements shall be referred to as ‘partnership agreements’.

“(2) REFERENCES TO COOPERATION AGREEMENTS.—Any reference in a law, regulation, document, or other paper of the United States to a ‘cooperation agreement’ or ‘project cooperation agreement’ shall be deemed to be a reference to a ‘partnership agreement’ or a ‘project partnership agreement’, respectively.

“(3) REFERENCES TO PARTNERSHIP AGREEMENTS.—Any reference to a ‘partnership agreement’ or ‘project partnership agreement’ in this Act [see Short Title of 2007 Amendment note set out under section 2201 of Title 33, Navigation and Navigable Waters] (other than this section) shall be deemed to be a reference to a ‘cooperation agreement’ or a ‘project cooperation agreement’, respectively.”

COMPLIANCE WITH COOPERATION REQUIREMENTS FOR
NON-FEDERAL INTERESTS IN WATER RESOURCES
PROJECTS

Pub. L. 99-662, title IX, §912(b), Nov. 17, 1986, 100 Stat. 4190, as amended by Pub. L. 110-114, title II, §2003(d), Nov. 8, 2007, 121 Stat. 1070, provided that:

“(1) The Secretary may require compliance with any requirements pertaining to cooperation by non-Federal interests in carrying out any water resources project authorized before, on, or after the date of enactment of this Act [Nov. 17, 1986].

“(2) Whenever on the basis of any information available to the Secretary, the Secretary finds that any non-Federal interest is not providing cooperation required under subsection (a) [amending this section], the Secretary may issue an order requiring such non-Federal interest to provide such cooperation.

“(3) Non-Federal interests shall be liable for interest on any payments required pursuant to section 221 of the Flood Control Act of 1970 [this section] that may fall delinquent. The interest rate to be charged on any such delinquent payment shall be at a rate, to be determined by the Secretary of the Treasury, equal to 150 percent of the average bond equivalent rate of the thirteen-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional three-month period if the period of delinquency exceeds three months.

“(4) The Secretary may request the Attorney General to bring a civil action for appropriate relief, including permanent or temporary injunction, for payment of damages or, for any violation of an order issued under this section, to recover any cost incurred by the Secretary in undertaking performance of any item of cooperation under section 221(d) of the Flood Control Act of 1970 [subsec. (d) of this section], or to collect interest for which a non-Federal interest is liable under paragraph (3). Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides, or is doing business, and such court shall have jurisdiction to restrain such violation, to require compliance, to require payment of any damages, and to require payment of any costs incurred by the Secretary in undertaking performance of any such item.

“(5) The Secretary is authorized to determine that no funds appropriated for operation and maintenance, including operation and maintenance of the project for flood control, Mississippi River and Tributaries, are to be used for the particular benefit of projects within the

jurisdiction of any non-Federal interest when such non-Federal interest is in arrears for more than twenty-four months in the payment of charges due under an agreement entered into with the United States pursuant to section 221 of the Flood Control Act of 1970 (Public Law 91-611) [this section].”

§ 1962d-5c. Non-Federal public bodies, installment construction payments

(a) Annual installments during period of construction in absence of other provision for extended repayment

In connection with any water resource development project, heretofore, herein, or hereafter authorized to be undertaken by the Secretary of the Army, the construction of which has not been initiated as of March 7, 1974, where authorization requires that non-Federal public bodies make an agreed-upon cash contribution as part of their reimbursement to the Federal Government for construction costs, or a specific portion of the construction costs, and where there exists no other provision of law which would permit extended repayment for the construction costs or such specific portion of the construction costs involved, such non-Federal public bodies may make such repayment in annual installments during the period of construction.

(b) Cost sharing; modification

Upon the request of affected non-Federal public bodies, the Secretary of the Army is authorized to modify existing cost sharing agreements in order to effectuate the provisions of subsection (a) of this section.

(Pub. L. 93-251, title I, § 40, Mar. 7, 1974, 88 Stat. 23.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1974, and not as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d-5d. Authorization of Secretary of the Army to contract with States and political subdivisions for increased law enforcement services during peak visitation periods; authorization of appropriations

(a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to contract with States and their political subdivisions for the purpose of obtaining increased law enforcement services at water resources development projects under the jurisdiction of the Secretary of the Army to meet needs during peak visitation periods.

(b) There is authorized to be appropriated \$10,000,000 per fiscal year for each fiscal year beginning after September 30, 1986, to carry out this section.

(Pub. L. 94-587, § 120, Oct. 22, 1976, 90 Stat. 2924; Pub. L. 99-662, title IX, § 920, Nov. 17, 1986, 100 Stat. 4193.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-662 amended subsec. (b) generally, substituting “\$10,000,000 per fiscal year for

each fiscal year beginning after September 30, 1986” for “\$6,000,000 per fiscal year for the fiscal years ending September 30, 1978, and September 30, 1979”.

§ 1962d-5e. Wetland areas

(a) Authorization of Secretary of the Army to plan and establish wetland areas; criteria for establishment

The Secretary of the Army, acting through the Chief of Engineers, is authorized to plan and establish wetland areas as part of an authorized water resources development project under his jurisdiction. Establishment of any wetland area in connection with the dredging required for such a water resources development project may be undertaken in any case where the Chief of Engineers in his judgment finds that—

(1) environmental, economic, and social benefits of the wetland area justifies the increased cost thereof above the cost required for alternative methods of disposing of dredged material for such project; and

(2) the increased cost of such wetland area will not exceed \$400,000; and

(3) there is reasonable evidence that the wetland area to be established will not be substantially altered or destroyed by natural or man-made causes.

(b) Reports to Congress

Whenever the Secretary of the Army, acting through the Chief of Engineers, submits to Congress a report on a water resources development project after October 22, 1976, such report shall include, where appropriate, consideration of the establishment of wetland areas.

(c) Cost

In the computation of benefits and cost of any water resources development project the benefits of establishing of any wetland area shall be deemed to be at least equal to the cost of establishing such area. All costs of establishing a wetland area shall be borne by the United States.

(Pub. L. 94-587, § 150, Oct. 22, 1976, 90 Stat. 2931.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d-5f. Beach nourishment

(a) In general

The Secretary of the Army, acting through the Chief of Engineers, is authorized to provide periodic beach nourishment in the case of each water resources development project where such nourishment has been authorized for a limited period for such additional period as he determines necessary but in no event shall such additional period extend beyond the fiftieth year which begins after the date of initiation of construction of such project.

(b) Review

(1) In general

Notwithstanding subsection (a), the Secretary shall, at the request of the non-Federal interest, carry out a study to determine the feasibility of extending the period of nourish-