

(Pub. L. 103-302, §5, Aug. 23, 1994, 108 Stat. 1563.)

§ 3805. Indian dam safety

(a) Definitions

In this section:

(1) Dam

(A) In general

The term “dam” has the meaning given the term in section 467 of title 33.

(B) Inclusions

The term “dam” includes any structure, facility, equipment, or vehicle used in connection with the operation of a dam.

(2) Fund

The term “Fund” means, as applicable—

(A) the High-Hazard Indian Dam Safety Deferred Maintenance Fund established by subsection (b)(1)(A); or

(B) the Low-Hazard Indian Dam Safety Deferred Maintenance Fund established by subsection (b)(2)(A).

(3) High hazard potential dam

The term “high hazard potential dam” means a dam assigned to the significant or high hazard potential classification under the guidelines published by the Federal Emergency Management Agency entitled “Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams” (FEMA Publication Number 333).

(4) Indian tribe

The term “Indian tribe” has the meaning given the term in section 5304 of this title.

(5) Low hazard potential dam

The term “low hazard potential dam” means a dam assigned to the low hazard potential classification under the guidelines published by the Federal Emergency Management Agency entitled “Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams” (FEMA Publication Number 333).

(6) Secretary

The term “Secretary” means the Secretary of the Interior, acting through the Assistant Secretary for Indian Affairs, in consultation with the Secretary of the Army.

(b) Indian Dam Safety Deferred Maintenance Funds

(1) High-Hazard Fund

(A) Establishment

There is established in the Treasury of the United States a fund, to be known as the “High-Hazard Indian Dam Safety Deferred Maintenance Fund”, consisting of—

(i) such amounts as are deposited in the Fund under subparagraph (B); and

(ii) any interest earned on investment of amounts in the Fund under subparagraph (D).

(B) Deposits to Fund

(i) In general

For each of fiscal years 2017 through 2030, the Secretary of the Treasury shall

deposit in the Fund \$22,750,000 from the general fund of the Treasury.

(ii) Availability of amounts

Amounts deposited in the Fund under clause (i) shall be used, subject to appropriation, to carry out this section.

(C) Expenditures from Fund

(i) In general

Subject to clause (ii), for each of fiscal years 2017 through 2030, the Secretary may, to the extent provided in advance in appropriations Acts, expend from the Fund, in accordance with this section, not more than the sum of—

(I) \$22,750,000; and

(II) the amount of interest accrued in the Fund.

(ii) Additional expenditures

The Secretary may expend more than \$22,750,000 for any fiscal year referred to in clause (i) if the additional amounts are available in the Fund as a result of a failure of the Secretary to expend all of the amounts available under clause (i) in 1 or more prior fiscal years.

(D) Investments of amounts

(i) In general

The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

(ii) Credits to Fund

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

(E) Transfers of amounts

(i) In general

The amounts required to be transferred to the Fund under this paragraph shall be transferred at least monthly.

(ii) Adjustments

Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates are in excess of or less than the amounts required to be transferred.

(F) Termination

On September 30, 2030—

(i) the Fund shall terminate; and

(ii) the unexpended and unobligated balance of the Fund shall be transferred to the general fund of the Treasury.

(2) Low-Hazard Fund

(A) Establishment

There is established in the Treasury of the United States a fund, to be known as the “Low-Hazard Indian Dam Safety Deferred Maintenance Fund”, consisting of—

(i) such amounts as are deposited in the Fund under subparagraph (B); and

(ii) any interest earned on investment of amounts in the Fund under subparagraph (D).

(B) Deposits to Fund**(i) In general**

For each of fiscal years 2017 through 2030, the Secretary of the Treasury shall deposit in the Fund \$10,000,000 from the general fund of the Treasury.

(ii) Availability of amounts

Amounts deposited in the Fund under clause (i) shall be used, subject to appropriation, to carry out this section.

(C) Expenditures from Fund**(i) In general**

Subject to clause (ii), for each of fiscal years 2017 through 2030, the Secretary may, to the extent provided in advance in appropriations Acts, expend from the Fund, in accordance with this section, not more than the sum of—

(I) \$10,000,000; and

(II) the amount of interest accrued in the Fund.

(ii) Additional expenditures

The Secretary may expend more than \$10,000,000 for any fiscal year referred to in clause (i) if the additional amounts are available in the Fund as a result of a failure of the Secretary to expend all of the amounts available under clause (i) in 1 or more prior fiscal years.

(D) Investments of amounts**(i) In general**

The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

(ii) Credits to Fund

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

(E) Transfers of amounts**(i) In general**

The amounts required to be transferred to the Fund under this paragraph shall be transferred at least monthly.

(ii) Adjustments

Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates are in excess of or less than the amounts required to be transferred.

(F) Termination

On September 30, 2030—

(i) the Fund shall terminate; and

(ii) the unexpended and unobligated balance of the Fund shall be transferred to the general fund of the Treasury.

(c) Repair, replacement, and maintenance of certain Indian dams**(1) Program establishment****(A) In general**

The Secretary shall establish a program to address the deferred maintenance needs of Indian dams that—

(i) create flood risks or other risks to public or employee safety or natural or cultural resources; and

(ii) unduly impede the management and efficiency of Indian dams.

(B) Funding**(i) High-Hazard Fund**

Consistent with subsection (b)(1)(B), the Secretary shall use or transfer to the Bureau of Indian Affairs not less than \$22,750,000 of amounts in the High-Hazard Indian Dam Safety Deferred Maintenance Fund, plus accrued interest, for each of fiscal years 2017 through 2030 to carry out maintenance, repair, and replacement activities for 1 or more of the Indian dams described in paragraph (2)(A).

(ii) Low-Hazard Fund

Consistent with subsection (b)(2)(B), the Secretary shall use or transfer to the Bureau of Indian Affairs not less than \$10,000,000 of amounts in the Low-Hazard Indian Dam Safety Deferred Maintenance Fund, plus accrued interest, for each of fiscal years 2017 through 2030 to carry out maintenance, repair, and replacement activities for 1 or more of the Indian dams described in paragraph (2)(B).

(C) Compliance with dam safety policies

Maintenance, repair, and replacement activities for Indian dams under this section shall be carried out in accordance with the dam safety policies of the Director of the Bureau of Indian Affairs established to carry out the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.).

(2) Eligible dams**(A) High hazard potential dams**

The dams eligible for funding under paragraph (1)(B)(i) are Indian high hazard potential dams in the United States that—

(i) are included in the safety of dams program established pursuant to the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.); and

(iii)(I)(aa)¹ are owned by the Federal Government, as listed in the Federal inventory required by Executive Order 13327 (40 U.S.C. 121 note; relating to Federal real property asset management); and

(bb) are managed by the Bureau of Indian Affairs (including dams managed under contracts or compacts pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.)); or

(II) have deferred maintenance documented by the Bureau of Indian Affairs.

(B) Low hazard potential dams

The dams eligible for funding under paragraph (1)(B)(ii) are Indian low hazard potential dams in the United States that, on December 16, 2016—

(i) are covered under the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.); and

¹ So in original. No cl. (ii) has been enacted.

(ii)(I)(aa) are owned by the Federal Government, as listed in the Federal inventory required by Executive Order 13327 (40 U.S.C. 121 note; relating to Federal real property asset management); and

(bb) are managed by the Bureau of Indian Affairs (including dams managed under contracts or compacts pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.)); or

(II) have deferred maintenance documented by the Bureau of Indian Affairs.

(3) Requirements and conditions

Not later than 120 days after December 16, 2016, and as a precondition to amounts being expended from the Fund to carry out this subsection, the Secretary, in consultation with representatives of affected Indian tribes, shall develop and submit to Congress—

(A) programmatic goals to carry out this subsection that—

(i) would enable the completion of repairing, replacing, improving, or performing maintenance on Indian dams as expeditiously as practicable, subject to the dam safety policies of the Director of the Bureau of Indian Affairs established to carry out the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.);

(ii) facilitate or improve the ability of the Bureau of Indian Affairs to carry out the mission of the Bureau of Indian Affairs in operating an Indian dam; and

(iii) ensure that the results of government-to-government consultation required under paragraph (4) be addressed; and

(B) funding prioritization criteria to serve as a methodology for distributing funds under this subsection that take into account—

(i) the extent to which deferred maintenance of Indian dams poses a threat to—

(I) public or employee safety or health;

(II) natural or cultural resources; or

(III) the ability of the Bureau of Indian Affairs to carry out the mission of the Bureau of Indian Affairs in operating an Indian dam;

(ii) the extent to which repairing, replacing, improving, or performing maintenance on an Indian dam will—

(I) improve public or employee safety, health, or accessibility;

(II) assist in compliance with codes, standards, laws, or other requirements;

(III) address unmet needs; or

(IV) assist in protecting natural or cultural resources;

(iii) the methodology of the rehabilitation priority index of the Secretary, as in effect on December 16, 2016;

(iv) the potential economic benefits of the expenditures on job creation and general economic development in the affected tribal communities;

(v) the ability of an Indian dam to address tribal, regional, and watershed level flood prevention needs;

(vi) the need to comply with the dam safety policies of the Director of the Bureau of Indian Affairs established to carry out the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.);

(vii) the ability of the water storage capacity of an Indian dam to be increased to prevent flooding in downstream tribal and nontribal communities; and

(viii) such other factors as the Secretary determines to be appropriate to prioritize the use of available funds that are, to the fullest extent practicable, consistent with tribal and user recommendations received pursuant to the consultation and input process under paragraph (4).

(4) Tribal consultation and user input

(A) In general

Except as provided in subparagraph (B), before expending funds on an Indian dam pursuant to paragraph (1) and not later than 60 days after December 16, 2016, the Secretary shall—

(i) consult with the Director of the Bureau of Indian Affairs on the expenditure of funds;

(ii) ensure that the Director of the Bureau of Indian Affairs advises the Indian tribe that has jurisdiction over the land on which a dam eligible to receive funding under paragraph (2) is located on the expenditure of funds; and

(iii) solicit and consider the input, comments, and recommendations of the landowners served by the Indian dam.

(B) Emergencies

If the Secretary determines that an emergency circumstance exists with respect to an Indian dam, subparagraph (A) shall not apply with respect to that Indian dam.

(5) Allocation among dams

(A) In general

Subject to subparagraph (B), to the maximum extent practicable, the Secretary shall ensure that, for each of fiscal years 2017 through 2030, each Indian dam eligible for funding under paragraph (2) that has critical maintenance needs receives part of the funding under paragraph (1) to address critical maintenance needs.

(B) Priority

In allocating amounts under paragraph (1)(B), in addition to considering the funding priorities described in paragraph (3), the Secretary shall give priority to Indian dams eligible for funding under paragraph (2) that serve—

(i) more than 1 Indian tribe within an Indian reservation; or

(ii) highly populated Indian communities, as determined by the Secretary.

(C) Cap on funding

(i) In general

Subject to clause (ii), in allocating amounts under paragraph (1)(B), the Secretary shall allocate not more than \$10,000,000 to any individual dam described

in paragraph (2) during any consecutive 3-year period.

(ii) Exception

Notwithstanding the cap described in clause (i), if the full amount under paragraph (1)(B) cannot be fully allocated to eligible Indian dams because the costs of the remaining activities authorized in paragraph (1)(B) of an Indian dam would exceed the cap described in clause (i), the Secretary may allocate the remaining funds to eligible Indian dams in accordance with this subsection.

(D) Basis of funding

Any amounts made available under this paragraph shall be nonreimbursable.

(E) Applicability of ISDEAA

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) shall apply to activities carried out under this paragraph.

(d) Tribal Safety of Dams Committee

(1) Establishment of Committee

(A) Establishment

The Secretary of the Interior shall establish within the Bureau of Indian Affairs the Tribal Safety of Dams Committee (referred to in this paragraph as the “Committee”).

(B) Membership

(i) Composition

The Committee shall be composed of 15 members, of whom—

(I) 11 shall be appointed by the Secretary of the Interior from among individuals who, to the maximum extent practicable, have knowledge and expertise in dam safety issues and flood prevention and mitigation, of whom not less than 1 shall be a member of an Indian tribe in each of the Bureau of Indian Affairs regions of—

- (aa) the Northwest Region;
- (bb) the Pacific Region;
- (cc) the Western Region;
- (dd) the Navajo Region;
- (ee) the Southwest Region;
- (ff) the Rocky Mountain Region;
- (gg) the Great Plains² Region; and
- (hh) the Midwest Region;

(II) 2 shall be appointed by the Secretary of the Interior from among employees of the Bureau of Indian Affairs who have knowledge and expertise in dam safety issues and flood prevention and mitigation;

(III) 1 shall be appointed by the Secretary of the Interior from among employees of the Bureau of Reclamation who have knowledge and expertise in dam safety issues and flood prevention and mitigation; and

(IV) 1 shall be appointed by the Secretary of the Army from among employees of the Corps of Engineers who have

knowledge and expertise in dam safety issues and flood prevention and mitigation.

(ii) Nonvoting members

The members of the Committee appointed under subclauses (II) and (III) of clause (i) shall be nonvoting members.

(iii) Date

The appointments of the members of the Committee shall be made as soon as practicable after December 16, 2016.

(C) Period of appointment

Members shall be appointed for the life of the Committee.

(D) Vacancies

Any vacancy in the Committee shall not affect the powers of the Committee, but shall be filled in the same manner as the original appointment.

(E) Initial meeting

Not later than 30 days after the date on which all members of the Committee have been appointed, the Committee shall hold the first meeting.

(F) Meetings

The Committee shall meet at the call of the Chairperson.

(G) Quorum

A majority of the members of the Committee shall constitute a quorum, but a lesser number of members may hold hearings.

(H) Chairperson and Vice Chairperson

The Committee shall select a Chairperson and Vice Chairperson from among the members.

(2) Duties of the committee

(A) Study

The Committee shall conduct a thorough study of all matters relating to the modernization of the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.).

(B) Recommendations

The Committee shall develop recommendations for legislation to improve the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.).

(C) Report

Not later than 1 year after the date on which the Committee holds the first meeting, the Committee shall submit a report containing a detailed statement of the findings and conclusions of the Committee, together with recommendations for legislation that the Committee considers appropriate, to—

- (i) the Committee on Indian Affairs of the Senate; and
- (ii) the Committee on Natural Resources of the House of Representatives.

(3) Powers of the Committee

(A) Hearings

The Committee may hold such hearings, sit and act at such times and places, take

²So in original. Probably should be “Plains”.

such testimony, and receive such evidence as the Committee considers appropriate to carry out this paragraph.

(B) Information from Federal agencies

(i) In general

The Committee may secure directly from any Federal department or agency such information as the Committee considers necessary to carry out this paragraph.

(ii) Request

On request of the Chairperson of the Committee, the head of any Federal department or agency shall furnish information described in clause (i) to the Committee.

(C) Postal services

The Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(D) Gifts

The Committee may accept, use, and dispose of gifts or donations of services or property.

(4) Committee personnel matters

(A) Compensation of members

(i) Non-Federal members

Each member of the Committee who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) during which the member is engaged in the performance of the duties of the Committee.

(ii) Federal members

Each member of the Committee who is an officer or employee of the Federal Government shall serve without compensation in addition to that received for services as an officer or employee of the Federal Government.

(B) Travel expenses

The members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Committee.

(C) Staff

(i) In general

(I) Appointment

The Chairperson of the Committee may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Committee to perform the duties of the Committee.

(II) Confirmation

The employment of an executive director shall be subject to confirmation by the Committee.

(ii) Compensation

The Chairperson of the Committee may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(D) Detail of Government employees

Any Federal Government employee may be detailed to the Committee without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(E) Procurement of temporary and intermittent services

The Chairperson of the Committee may procure temporary and intermittent services under section 3109(b) of title 5 at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(5) Termination of the Committee

The Committee shall terminate 90 days after the date on which the Committee submits the report under paragraph (2)(C).

(6) Funding

Of the amounts authorized to be expended from either Fund, \$1,000,000 shall be made available from either Fund during fiscal year 2017 to carry out this subsection, to remain available until expended.

(e) Indian dam surveys

(1) Tribal reports

The Secretary shall request that, not less frequently than once every 180 days, each Indian tribe submit to the Secretary a report providing an inventory of the dams located on the land of the Indian tribe.

(2) BIA reports

Not less frequently than once each year, the Secretary shall submit to Congress a report describing the condition of each dam under the partial or total jurisdiction of the Secretary.

(f) Flood plain management pilot program

(1) Establishment

The Secretary shall establish, within the Bureau of Indian Affairs, a flood plain management pilot program (referred to in this subsection as the "program") to provide, at the request of an Indian tribe, guidance to the Indian tribe relating to best practices for the mitigation and prevention of floods, including consultation with the Indian tribe on—

- (A) flood plain mapping; or
- (B) new construction planning.

(2) Termination

The program shall terminate on the date that is 11 years after December 16, 2016.

(3) Funding

Of the amounts authorized to be expended from either Fund, \$250,000 shall be made available from either Fund during each of fiscal years 2017 through 2026 to carry out this subsection, to remain available until expended.

(Pub. L. 114-322, title III, §3101, Dec. 16, 2016, 130 Stat. 1740; Pub. L. 115-270, title IV, §4314, Oct. 23, 2018, 132 Stat. 3893.)

REFERENCES IN TEXT

The Indian Dams Safety Act of 1994, referred to in subsecs. (c)(1)(C), (2)(A)(i), (B)(i), (3)(A)(i), (B)(vi) and (d)(2)(A), (B), is Pub. L. 103-302, Aug. 23, 1994, 108 Stat. 1560, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(2)(A)(iii)(I)(bb), (B)(ii)(I)(bb), (5)(E), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to chapter 46 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and not as part of the Indian Dams Safety Act of 1994 which comprises this chapter.

AMENDMENTS

2018—Pub. L. 115-270, §4314(1), substituted “each of fiscal years 2017 through 2030” for “each of fiscal years 2017 through 2023” wherever appearing.

Subsec. (b)(1)(F). Pub. L. 115-270, §4314(2)(A), substituted “September 30, 2030” for “September 30, 2023” in introductory provisions.

Subsec. (b)(2)(F). Pub. L. 115-270, §4314(2)(B), substituted “September 30, 2030” for “September 30, 2023” in introductory provisions.

Subsec. (f)(2). Pub. L. 115-270, §4314(3)(A), substituted “11 years” for “4 years”.

Subsec. (f)(3). Pub. L. 115-270, §4314(3)(B), substituted “each of fiscal years 2017 through 2026” for “each of fiscal years 2017, 2018, and 2019”.

CHAPTER 41—INDIAN LANDS OPEN DUMP CLEANUP

Sec.	
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§ 3901. Findings and purposes

(a) Findings

The Congress finds that—

(1) there are at least 600 open dumps on Indian and Alaska Native lands;

(2) these dumps threaten the health and safety of residents of Indian and Alaska Native lands and contiguous areas;

(3) many of these dumps were established or are used by Federal agencies such as the Bureau of Indian Affairs and the Indian Health Service;

(4) these dumps threaten the environment;

(5) the United States holds most Indian lands in trust for the benefit of Indian tribes and Indian individuals; and

(6) most Indian tribal governments and Alaska Native entities lack the financial and technical resources necessary to close and maintain these dumps in compliance with applicable Federal laws.

(b) Purposes

The purposes of this chapter are to—

(1) identify the location of open dumps on Indian lands and Alaska Native lands;

(2) assess the relative health and environmental hazards posed by such dumps; and

(3) provide financial and technical assistance to Indian tribal governments and Alaska Native entities, either directly or by contract, to close such dumps in compliance with applicable Federal standards and regulations, or standards promulgated by an Indian tribal government or Alaska Native entity, if such standards are more stringent than the Federal standards.

(Pub. L. 103-399, §2, Oct. 22, 1994, 108 Stat. 4164.)

SHORT TITLE

Pub. L. 103-399, §1, Oct. 22, 1994, 108 Stat. 4164, provided that: “This Act [enacting this chapter] may be cited as the ‘Indian Lands Open Dump Cleanup Act of 1994.’”

§ 3902. Definitions

For the purposes of this chapter, the following definitions shall apply:

(1) Closure or close

The term “closure or close” means the termination of operations at open dumps on Indian land or Alaska Native land and bringing such dumps into compliance with applicable Federal standards and regulations, or standards promulgated by an Indian tribal government or Alaska Native entity, if such standards are more stringent than the Federal standards and regulations.

(2) Director

The term “Director” means the Director of the Indian Health Service.

(3) Indian land

The term “Indian land” means—

(A) land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(B) dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(C) Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

(4) Alaska Native land

The term “Alaska Native land” means (A) land conveyed or to be conveyed pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], including any land reconveyed under section 14(c)(3) of that Act (43