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§ 2201. “Secretary” defined

For purposes of this Act, the term “Secretary” means the Secretary of the Army.

(Pub. L. 99-662, § 2, Nov. 17, 1986, 100 Stat. 4082.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4082, as amended, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115-270, §1(a), Oct. 23, 2018, 132 Stat. 3765, provided that: “This Act [see Tables for classification] may be cited as ‘America’s Water Infrastructure Act of 2018’.”

Pub. L. 115-270, title I, §101, Oct. 23, 2018, 132 Stat. 3768, provided that: “This title [see Tables for classification] may be cited as the ‘Water Resources Development Act of 2018’.”

SHORT TITLE OF 2016 AMENDMENT

Pub. L. 114-322, §1(a), Dec. 16, 2016, 130 Stat. 1628, provided that: “This Act [see Tables for classification] may be cited as the ‘Water Infrastructure Improvements for the Nation Act’ or the ‘WIIN Act’.”

Pub. L. 114-322, title I, §1001, Dec. 16, 2016, 130 Stat. 1632, provided that: “This title [see Tables for classification] may be cited as the ‘Water Resources Development Act of 2016’.”

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113-121, §1(a), June 10, 2014, 128 Stat. 1193, provided that: “This Act [see Tables for classification] may be cited as the ‘Water Resources Reform and Development Act of 2014’.”

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110-114, §1(a), Nov. 8, 2007, 121 Stat. 1041, provided that: “This Act [see Tables for classification] may be cited as the ‘Water Resources Development Act of 2007’.”

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-541, §1(a), Dec. 11, 2000, 114 Stat. 2572, provided that: “This Act [see Tables for classification] may be cited as the ‘Water Resources Development Act of 2000’.”

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-53, §1(a), Aug. 17, 1999, 113 Stat. 269, provided that: “This Act [see Tables for classification] may be cited as the ‘Water Resources Development Act of 1999’.”

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-303, §1(a), Oct. 12, 1996, 110 Stat. 3658, provided that: “This Act [see Tables for classification]

may be cited as the ‘Water Resources Development Act of 1996’.”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-580, §1(a), Oct. 31, 1992, 106 Stat. 4797, provided that: “This Act [enacting sections 59gg, 426i-1, 569d to 569f, 653, 1271, 2268, and 2325 to 2329 of this title, amending sections 426j, 467f, 467j to 467l, 562, 652, 1342, 1412, 1413, 1414, 1415, 1416, 1420, 1421, 2211, 2213, 2283, and 2309a of this title, section 3036 of Title 10, Armed Forces, sections 460tt, 4702, and 4711 of Title 16, Conservation, and section 1962d-16 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and sections 541, 1271, 2211, 2239, 2267, and 2281 of this title, section 9505 of Title 26, Internal Revenue Code, and sections 390h-4 and 390h-5 of Title 43, Public Lands] may be cited as the ‘Water Resources Development Act of 1992’.”

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-640, §1(a), Nov. 28, 1990, 104 Stat. 4604, provided that: “This Act [enacting sections 59bb and 2316 to 2324 of this title, amending sections 579a, 652, 701n, 709a, 2213, 2215, 2232, 2238, 2281, 2309a, and 2314a of this title, section 460tt of Title 16, Conservation, and section 1962d-16 of Title 42, The Public Health and Welfare, repealing sections 579 and 2239 of this title, enacting provisions set out as notes under this section, sections 426e, 1252, 1268, 2213, 2232, 2239, 2313, and 2317 of this title, and section 1405c of Title 48, Territories and Insular Possessions, and amending provisions set out as notes under sections 2294 and 2314 of this title and section 460d of Title 16] may be cited as the ‘Water Resources Development Act of 1990’.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-676, §1(a), Nov. 17, 1988, 102 Stat. 4012, provided that: “This Act [enacting sections 59j-1, 59y, 59z, and 2312 to 2315 of this title, amending sections 426j, 701b-12, 1293a, 2211, 2239, 2280, and 2291 of this title and section 1962d-5a of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section, sections 579a, 988, 2211, 2294, 2300, and 2314 of this title, and section 1962d-5g of Title 42, and amending provisions set out as a note under section 2294 of this title] may be cited as the ‘Water Resources Development Act of 1988’.”

SHORT TITLE

Pub. L. 99-662, §1(a), Nov. 17, 1986, 100 Stat. 4082, provided that: “This Act [enacting this chapter and sections 59n-1, 59v, 59w, 403b, 426n, 426o, 467f to 467n, 555a, 579a, 652, 701b-12, 709b, 988a, and 1414a of this title, sections 460tt of Title 16, Conservation, sections 4461, 4462, 9505, and 9506 of Title 26, Internal Revenue Code, section 483d of former Title 40, Public Buildings, Property, and Works, and sections 1962d-11b and 1962d-20 of Title 42, The Public Health and Welfare, amending sections 409, 414, 415, 426g, 426i, 426j, 426m, 467, 467b, 555, 557, 603a, 610, 701a-1, 701g, 701n, 701r, 701s, 984, and 1804 of this title, section 3036 of Title 10, Armed Forces, sections 460ee and 1002 of Title 16, section 4042 of Title 26, sections 1962d-5a, 1962d-5b, 1962d-5d, 1962d-5f, and 1962d-16 of Title 42, sections 390 and 390b of Title 43, Public Lands, and section 1121-1 of Title 46, Appendix, Shipping, repealing sections 1801 and 1802 of this title, enacting provisions set out as notes under this section, sections 426, 426g, 467, 661, 984, 988, 1414a, and 2294 of this title, sections 460d and 1004 of Title 16, sections 1, 4042, 4461, 9505, and 9506 of Title 26, sections 1962d-5b, 1962d-20, and 10301 of Title 42, and section 390b of Title 43, and amending provisions set out as a note under section 1962b-3 of Title 42] may be cited as the ‘Water Resources Development Act of 1986’.”

Pub. L. 99-662, title II, §215, Nov. 17, 1986, 100 Stat. 4109, provided that: “This title [enacting subchapter II of this chapter] may be cited as the ‘Harbor Development and Navigation Improvement Act of 1986’.”

REPORTS TO CONGRESS

Pub. L. 113-121, title I, §1042, June 10, 2014, 128 Stat. 1243, provided that:

“(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary [of the Army] shall complete and submit to Congress by the applicable date required the reports that address public safety and enhanced local participation in project delivery described in subsection (b).

“(b) REPORTS.—The reports referred to in subsection (a) are the reports required under—

“(1) subparagraphs (A) and (B) of section 1043(a)(5) [33 U.S.C. 2201 note];

“(2) section 1046(a)(2)(B) [33 U.S.C. 2319 note];

“(3) section 210(e)(3) of the Water Resources Development Act of 1986 (33 U.S.C. 2238(e)(3)) (as amended by section 2102(a)); and

“(4) section 7001 [33 U.S.C. 2282d].

“(c) FAILURE TO PROVIDE A COMPLETED REPORT.—

“(1) IN GENERAL.—Subject to subsection (d), if the Secretary fails to provide a report listed under subsection (b) by the date that is 180 days after the applicable date required for that report, \$5,000 shall be reprogrammed from the General Expenses account of the civil works program of the Army Corps of Engineers into the account of the division of the Army Corps of Engineers with responsibility for completing that report.

“(2) SUBSEQUENT REPROGRAMMING.—Subject to subsection (d), for each additional week after the date described in paragraph (1) in which a report described in that paragraph remains uncompleted and unsubmitted to Congress, \$5,000 shall be reprogrammed from the General Expenses account of the civil works program of the Army Corps of Engineers into the account of the division of the Secretary of the Army with responsibility for completing that report.

“(d) LIMITATIONS.—

“(1) IN GENERAL.—For each report, the total amounts reprogrammed under subsection (c) shall not exceed, in any fiscal year, \$50,000.

“(2) AGGREGATE LIMITATION.—The total amount reprogrammed under subsection (c) in a fiscal year shall not exceed \$200,000.

“(e) NO FAULT OF THE SECRETARY.—Amounts shall not be reprogrammed under subsection (c) if the Secretary certifies in a letter to the applicable committees of Congress that—

“(1) a major modification has been made to the content of the report that requires additional analysis for the Secretary to make a final decision on the report;

“(2) amounts have not been appropriated to the agency under this Act or any other Act to carry out the report; or

“(3) additional information is required from an entity other than the Corps of Engineers and is not available in a timely manner to complete the report by the deadline.

“(f) LIMITATION.—The Secretary shall not reprogram funds to the General Expenses account of the civil works program of the Corps of Engineers for the loss of the funds.”

NON-FEDERAL IMPLEMENTATION PILOT PROGRAM

Pub. L. 113-121, title I, §1043, June 10, 2014, 128 Stat. 1244, as amended by Pub. L. 115-270, title I, §1137, Oct. 23, 2018, 132 Stat. 3783, provided that:

“(a) NON-FEDERAL IMPLEMENTATION OF FEASIBILITY STUDIES.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [June 10, 2014], the Secretary [of the Army] shall establish and implement a pilot program to evaluate the cost-effectiveness and project delivery efficiency of allowing non-Federal interests to carry out feasibility studies for flood risk management, hurricane and storm damage reduction, aquatic ecosystem restoration, and coastal harbor and channel and inland navigation.

“(2) PURPOSES.—The purposes of the pilot program are—

“(A) to identify project delivery and cost-saving alternatives to the existing feasibility study process;

“(B) to evaluate the technical, financial, and organizational efficiencies of a non-Federal interest carrying out a feasibility study of 1 or more projects; and

“(C) to evaluate alternatives for the decentralization of the project planning, management, and operational decisionmaking process of the Corps of Engineers.

“(3) ADMINISTRATION.—

“(A) IN GENERAL.—On the request of a non-Federal interest, the Secretary may enter into an agreement with the non-Federal interest for the non-Federal interest to provide full project management control of a feasibility study for a project for—

“(i) flood risk management;

“(ii) hurricane and storm damage reduction, including levees, floodwalls, flood control channels, and water control structures;

“(iii) coastal harbor and channel and inland navigation; and

“(iv) aquatic ecosystem restoration.

“(B) USE OF NON-FEDERAL FUNDS.—

“(i) IN GENERAL.—A non-Federal interest that has entered into an agreement with the Secretary pursuant to subparagraph (A) may use non-Federal funds to carry out the feasibility study.

“(ii) CREDIT.—The Secretary shall credit towards the non-Federal share of the cost of construction of a project for which a feasibility study is carried out under this subsection an amount equal to the portion of the cost of developing the study that would have been the responsibility of the Secretary, if the study were carried out by the Secretary, subject to the conditions that—

“(I) non-Federal funds were used to carry out the activities that would have been the responsibility of the Secretary;

“(II) the Secretary determines that the feasibility study complies with all applicable Federal laws and regulations; and

“(III) the project is authorized by any provision of Federal law enacted after the date on which an agreement is entered into under subparagraph (A).

“(C) TRANSFER OF FUNDS.—

“(i) IN GENERAL.—After the date on which an agreement is executed pursuant to subparagraph (A), the Secretary may transfer to the non-Federal interest to carry out the feasibility study—

“(I) if applicable, the balance of any unobligated amounts appropriated for the study, except that the Secretary shall retain sufficient amounts for the Corps of Engineers to carry out any responsibilities of the Corps of Engineers relating to the project and pilot program; and

“(II) additional amounts, as determined by the Secretary, from amounts made available under paragraph (8), except that the total amount transferred to the non-Federal interest shall not exceed the updated estimate of the Federal share of the cost of the feasibility study.

“(ii) ADMINISTRATION.—The Secretary shall include such provisions as the Secretary determines to be necessary in an agreement under subparagraph (A) to ensure that a non-Federal interest receiving Federal funds under this paragraph—

“(I) has the necessary qualifications to administer those funds; and

“(II) will comply with all applicable Federal laws (including regulations) relating to the use of those funds.

“(D) NOTIFICATION.—The Secretary shall notify the Committee on Environment and Public Works

of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the initiation of each feasibility study under the pilot program.

“(E) AUDITING.—The Secretary shall regularly monitor and audit each feasibility study carried out by a non-Federal interest under this section to ensure that the use of any funds transferred under subparagraph (C) are used in compliance with the agreement signed under subparagraph (A).

“(F) TECHNICAL ASSISTANCE.—On the request of a non-Federal interest, the Secretary may provide technical assistance to the non-Federal interest relating to any aspect of the feasibility study, if the non-Federal interest contracts with the Secretary for the technical assistance and compensates the Secretary for the technical assistance.

“(G) DETAILED PROJECT SCHEDULE.—Not later than 180 days after entering into an agreement under subparagraph (A), each non-Federal interest, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule, based on full funding capability, that lists all deadlines for milestones relating to the feasibility study.

“(4) COST SHARE.—Nothing in this subsection affects the cost-sharing requirement applicable on the day before the date of enactment of this Act to a feasibility study carried out under this subsection.

“(5) REPORT.—

“(A) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, 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 detailing the results of the pilot program carried out under this section, including—

“(i) a description of the progress of the non-Federal interests in meeting milestones in detailed project schedules developed pursuant to paragraph (3)(G); and

“(ii) any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.

“(B) UPDATE.—Not later than 5 years after the date of enactment of this Act, 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 an update of the report described in subparagraph (A).

“(C) FAILURE TO MEET DEADLINE.—If the Secretary fails to submit a report by the required deadline under this paragraph, 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 detailed explanation of why the deadline was missed and a projected date for submission of the report.

“(6) ADMINISTRATION.—All laws and regulations that would apply to the Secretary if the Secretary were carrying out the feasibility study shall apply to a non-Federal interest carrying out a feasibility study under this subsection.

“(7) TERMINATION OF AUTHORITY.—The authority to commence a feasibility study under this subsection terminates on the date that is 5 years after the date of enactment of this Act.

“(8) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts appropriated for a specific project, there is authorized to be appropriated to the Secretary to carry out the pilot program under this subsection, including the costs of administration of the Secretary, \$25,000,000 for each of fiscal years 2015 through 2019.

“(b) NON-FEDERAL PROJECT IMPLEMENTATION PILOT PROGRAM.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall es-

tablish and implement a pilot program to evaluate the cost-effectiveness and project delivery efficiency of allowing non-Federal interests to carry out flood risk management, hurricane and storm damage reduction, coastal harbor and channel inland navigation, and aquatic ecosystem restoration projects.

“(2) PURPOSES.—The purposes of the pilot program are—

“(A) to identify project delivery and cost-saving alternatives that reduce the backlog of authorized Corps of Engineers projects;

“(B) to evaluate the technical, financial, and organizational efficiencies of a non-Federal interest carrying out the design, execution, management, and construction of 1 or more projects; and

“(C) to evaluate alternatives for the decentralization of the project management, design, and construction for authorized Corps of Engineers water resources projects.

“(3) ADMINISTRATION.—

“(A) IN GENERAL.—In carrying out the pilot program, the Secretary shall—

“(i) identify a total of not more than 20 projects for flood risk management, hurricane and storm damage reduction (including levees, floodwalls, flood control channels, and water control structures), coastal harbor and channels, inland navigation, and aquatic ecosystem restoration that have been authorized for construction, including—

“(I) not more than 12 projects that have been authorized for construction prior to the date of enactment of this Act and that—

“(aa)(AA) have received Federal funds prior to the date of enactment of this Act; or

“(BB) for more than 2 consecutive fiscal years, have an unobligated funding balance for that project in the Corps of Engineers construction account; and

“(bb) to the maximum extent practicable, are located in each of the divisions of the Corps of Engineers;

“(II) not more than 3 projects that have been authorized for construction prior to the date of enactment of this Act and that have not received Federal funds in the period beginning on the date on which the project was authorized and ending on the date of enactment of this Act; and

“(III) not more than 5 projects that have been authorized for construction, but did not receive the authorization prior to the date of enactment of this Act;

“(ii) notify the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the identification of each project under the pilot program;

“(iii) in collaboration with the non-Federal interest, develop a detailed project management plan for each identified project that outlines the scope, budget, design, and construction resource requirements necessary for the non-Federal interest to execute the project, or a separable element of the project;

“(iv) on the request of the non-Federal interest, enter into a project partnership agreement with the non-Federal interest for the non-Federal interest to provide full project management control for construction of the project, or a separable element of the project, in accordance with plans approved by the Secretary;

“(v) following execution of the project partnership agreement, transfer to the non-Federal interest to carry out construction of the project, or a separable element of the project—

“(I) if applicable, the balance of the unobligated amounts appropriated for the project, except that the Secretary shall retain sufficient amounts for the Corps of Engineers to carry out

any responsibilities of the Corps of Engineers relating to the project and pilot program; and

“(II) additional amounts, as determined by the Secretary, from amounts made available under paragraph (8), except that the total amount transferred to the non-Federal interest shall not exceed the updated estimate of the Federal share of the cost of construction, including any required design; and

“(vi) regularly monitor and audit each project being constructed by a non-Federal interest under this section to ensure that the construction activities are carried out in compliance with the plans approved by the Secretary and that the construction costs are reasonable.

“(B) DETAILED PROJECT SCHEDULE.—Not later than 180 days after entering into an agreement under subparagraph (A)(iv), each non-Federal interest, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule, based on estimated funding levels, that lists all deadlines for each milestone in the construction of the project.

“(C) TECHNICAL ASSISTANCE.—On the request of a non-Federal interest, the Secretary may provide technical assistance to the non-Federal interest, if the non-Federal interest contracts with and compensates the Secretary for the technical assistance relating to—

“(i) any study, engineering activity, and design activity for construction carried out by the non-Federal interest under this subsection; and

“(ii) expeditiously obtaining any permits necessary for the project.

“(4) COST SHARE.—Nothing in this subsection affects the cost-sharing requirement applicable on the day before the date of enactment of this Act to a project carried out under this subsection.

“(5) REPORT.—

“(A) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, 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 detailing the results of the pilot program carried out under this subsection, including—

“(i) a description of the progress of non-Federal interests in meeting milestones in detailed project schedules developed pursuant to paragraph (2)(B); and

“(ii) any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.

“(B) UPDATE.—Not later than 5 years after the date of enactment of this Act, 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 an update of the report described in subparagraph (A).

“(C) FAILURE TO MEET DEADLINE.—If the Secretary fails to submit a report by the required deadline under this paragraph, 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 detailed explanation of why the deadline was missed and a projected date for submission of the report.

“(6) ADMINISTRATION.—All laws and regulations that would apply to the Secretary if the Secretary were carrying out the project shall apply to a non-Federal interest carrying out a project under this subsection.

“(7) TERMINATION OF AUTHORITY.—The authority to commence a project under this subsection terminates on the date that is 5 years after the date of enactment of this Act.

“(8) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts appropriated for a specific

project, there is authorized to be appropriated to the Secretary to carry out the pilot program under this subsection, including the costs of administration of the Secretary, \$25,000,000 for each of fiscal years 2019 through 2023.”

WATER INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM

Pub. L. 113-121, title V, §5014, June 10, 2014, 128 Stat. 1329, provided that:

“(a) IN GENERAL.—The Secretary [of the Army] shall establish a pilot program to evaluate the cost effectiveness and project delivery efficiency of allowing non-Federal pilot applicants to carry out authorized water resources development projects for coastal harbor improvement, channel improvement, inland navigation, flood damage reduction, aquatic ecosystem restoration, and hurricane and storm damage reduction.

“(b) PURPOSES.—The purposes of the pilot program established under subsection (a) are—

“(1) to identify cost-saving project delivery alternatives that reduce the backlog of authorized Corps of Engineers projects; and

“(2) to evaluate the technical, financial, and organizational benefits of allowing a non-Federal pilot applicant to carry out and manage the design or construction (or both) of 1 or more of such projects.

“(c) SUBSEQUENT APPROPRIATIONS.—Any activity undertaken under this section is authorized only to the extent specifically provided for in subsequent appropriations Acts.

“(d) ADMINISTRATION.—In carrying out the pilot program established under subsection (a), the Secretary shall—

“(1) identify for inclusion in the program at least 15 projects that are authorized for construction for coastal harbor improvement, channel improvement, inland navigation, flood damage reduction, or hurricane and storm damage reduction;

“(2) notify in writing the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of each project identified under paragraph (1);

“(3) in consultation with the non-Federal pilot applicant associated with each project identified under paragraph (1), develop a detailed project management plan for the project that outlines the scope, financing, budget, design, and construction resource requirements necessary for the non-Federal pilot applicant to execute the project, or a separable element of the project;

“(4) at the request of the non-Federal pilot applicant associated with each project identified under paragraph (1), enter into a project partnership agreement with the non-Federal pilot applicant under which the non-Federal pilot applicant is provided full project management control for the financing, design, or construction (or any combination thereof) of the project, or a separable element of the project, in accordance with plans approved by the Secretary;

“(5) following execution of a project partnership agreement under paragraph (4) and completion of all work under the agreement, issue payment, in accordance with subsection (g), to the relevant non-Federal pilot applicant for that work; and

“(6) regularly monitor and audit each project carried out under the program to ensure that all activities related to the project are carried out in compliance with plans approved by the Secretary and that construction costs are reasonable.

“(e) SELECTION CRITERIA.—In identifying projects under subsection (d)(1), the Secretary shall consider the extent to which the project—

“(1) is significant to the economy of the United States;

“(2) leverages Federal investment by encouraging non-Federal contributions to the project;

“(3) employs innovative project delivery and cost-saving methods;

“(4) received Federal funds in the past and experienced delays or missed scheduled deadlines;

“(5) has unobligated Corps of Engineers funding balances; and

“(6) has not received Federal funding for recapitalization and modernization since the project was authorized.

“(f) DETAILED PROJECT SCHEDULE.—Not later than 180 days after entering into a project partnership agreement under subsection (d)(4), a non-Federal pilot applicant, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule for the relevant project, based on estimated funding levels, that specifies deadlines for each milestone with respect to the project.

“(g) PAYMENT.—Payment to the non-Federal pilot applicant for work completed pursuant to a project partnership agreement under subsection (d)(4) may be made from—

“(1) if applicable, the balance of the unobligated amounts appropriated for the project; and

“(2) other amounts appropriated to the Corps of Engineers, subject to the condition that the total amount transferred to the non-Federal pilot applicant may not exceed the estimate of the Federal share of the cost of construction, including any required design.

“(h) TECHNICAL ASSISTANCE.—At the request of a non-Federal pilot applicant participating in the pilot program established under subsection (a), the Secretary may provide to the non-Federal pilot applicant, if the non-Federal pilot applicant contracts with and compensates the Secretary, technical assistance with respect to—

“(1) a study, engineering activity, or design activity related to a project carried out by the non-Federal pilot applicant under the program; and

“(2) obtaining permits necessary for such a project.

“(i) IDENTIFICATION OF IMPEDIMENTS.—

“(1) IN GENERAL.—The Secretary shall—

“(A) except as provided in paragraph (2), identify any procedural requirements under the authority of the Secretary that impede greater use of public-private partnerships and private investment in water resources development projects;

“(B) develop and implement, on a project-by-project basis, procedures and approaches that—

“(i) address such impediments; and

“(ii) protect the public interest and any public investment in water resources development projects that involve public-private partnerships or private investment in water resources development projects; and

“(C) not later than 1 year after the date of enactment of this section [June 10, 2014], issue rules to carry out the procedures and approaches developed under subparagraph (B).

“(2) RULE OF CONSTRUCTION.—Nothing in this section allows the Secretary to waive any requirement under—

“(A) sections 3141 through 3148 and sections 3701 through 3708 of title 40, United States Code;

“(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

“(C) any other provision of Federal law.

“(j) PUBLIC BENEFIT STUDIES.—

“(1) IN GENERAL.—Before entering into a project partnership agreement under subsection (d)(4), the Secretary shall conduct an assessment of whether, and provide justification in writing to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that, the proposed agreement provides better public and financial benefits than a similar transaction using public funding or financing.

“(2) REQUIREMENTS.—An assessment under paragraph (1) shall—

“(A) be completed in a period of not more than 90 days;

“(B) take into consideration any supporting materials and data submitted by the relevant non-Federal pilot applicant and other stakeholders; and

“(C) determine whether the proposed project partnership agreement is in the public interest by determining whether the agreement will provide public and financial benefits, including expedited project delivery and savings for taxpayers.

“(k) NON-FEDERAL FUNDING.—The non-Federal pilot applicant may finance the non-Federal share of a project carried out under the pilot program established under subsection (a).

“(l) APPLICABILITY OF FEDERAL LAW.—Any provision of Federal law that would apply to the Secretary if the Secretary were carrying out a project shall apply to a non-Federal pilot applicant carrying out a project under this section.

“(m) COST SHARE.—Nothing in this section affects a cost-sharing requirement under Federal law that is applicable to a project carried out under the pilot program established under subsection (a).

“(n) REPORT.—Not later than 3 years after the date of enactment of this Act, 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 describing the results of the pilot program established under subsection (a), including any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.

“(o) NON-FEDERAL PILOT APPLICANT DEFINED.—In this section, the term ‘non-Federal pilot applicant’ means—

“(1) the non-Federal sponsor of the water resources development project;

“(2) a non-Federal interest, as defined in section 221 of the Flood Control Act of 1970 (42 U.S.C. 1982d–5b [1962d–5b]); or

“(3) a private entity with the consent of the local government in which the project is located or that is otherwise affected by the project.”

FUNDING TO PROCESS PERMITS

Pub. L. 106–541, title II, §214, Dec. 11, 2000, 114 Stat. 2594, as amended by Pub. L. 108–137, title I, §114, Dec. 1, 2003, 117 Stat. 1836; Pub. L. 109–99, §1, Nov. 11, 2005, 119 Stat. 2169; Pub. L. 109–209, §1, Mar. 24, 2006, 120 Stat. 318; Pub. L. 109–434, §1, Dec. 20, 2006, 120 Stat. 3197; Pub. L. 110–114, title II, §2002, Nov. 8, 2007, 121 Stat. 1067; Pub. L. 111–120, §1, Dec. 22, 2009, 123 Stat. 3478; Pub. L. 111–315, §1, Dec. 18, 2010, 124 Stat. 3450; Pub. L. 113–121, title I, §1006, June 10, 2014, 128 Stat. 1212, which related to funding to process permits and was formerly set out as a note under this section, was transferred to section 2352 of this title.

MONITORING

Pub. L. 106–541, title II, §223, Dec. 11, 2000, 114 Stat. 2597, provided that:

“(a) IN GENERAL.—The Secretary shall conduct a monitoring program of the economic and environmental results of up to 5 eligible projects selected by the Secretary.

“(b) DURATION.—The monitoring of a project selected by the Secretary under this section shall be for a period of not less than 12 years beginning on the date of its selection.

“(c) REPORTS.—The Secretary shall transmit to Congress every 3 years a report on the performance of each project selected under this section.

“(d) ELIGIBLE PROJECT DEFINED.—In this section, the term ‘eligible project’ means a water resources project, or separable element thereof—

“(1) for which a contract for physical construction has not been awarded before the date of enactment of this Act [Dec. 11, 2000];

“(2) that has a total cost of more than \$25,000,000; and

“(3)(A) that has as a benefit-to-cost ratio of less than 1.5 to 1; or

“(B) that has significant environmental benefits or significant environmental mitigation components.

“(e) COSTS.—The cost of conducting monitoring under this section shall be a Federal expense.”

WATER CONTROL MANAGEMENT

Pub. L. 106–53, title V, §511, Aug. 17, 1999, 113 Stat. 341, provided that:

“(a) IN GENERAL.—In evaluating potential improvements for water control management activities and consolidation of water control management centers, the Secretary may consider a regionalized water control management plan but may not implement such a plan until the date on which a report is submitted under subsection (b).

“(b) REPORT.—Not later than 180 days after the date of enactment of this Act [Aug. 17, 1999], the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives and the Committee on Environment and Public Works and the Committee on Appropriations of the Senate a report containing—

“(1) a description of the primary objectives of streamlining water control management activities;

“(2) a description of the benefits provided by streamlining water control management activities through consolidation of centers for those activities;

“(3) a determination whether the benefits to users of establishing regional water control management centers will be retained in each district office of the Corps of Engineers that does not have a regional center;

“(4) a determination whether users of regional centers will receive a higher level of benefits from streamlining water control management activities; and

“(5) a list of the members of Congress who represent a district that includes a water control management center that is to be eliminated under a proposed regionalized plan.”

BUY AMERICAN; SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE

Pub. L. 106–53, title II, §222, Aug. 17, 1999, 113 Stat. 295, provided that:

“(a) IN GENERAL.—It is the sense of Congress that, to the extent practicable, all equipment and products purchased with funds made available under this Act [see Tables for classification] should be American-made.

“(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the Secretary, to the greatest extent practicable, shall provide to each recipient of the assistance a notice describing the statement made in subsection (a).”

Pub. L. 104–303, title II, §235, Oct. 12, 1996, 110 Stat. 3704, provided that:

“(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Act [see Tables for classification] should be American-made.

“(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the Secretary, to the greatest extent practicable, shall provide to each recipient of the assistance a notice describing the statement made in subsection (a).”

BUDGET ACT REQUIREMENTS

Pub. L. 99–662, title IX, §948, Nov. 17, 1986, 100 Stat. 4201, provided that: “Any spending authority under this Act [see Short Title note above] shall be effective only to such extent and in such amounts as are provided in appropriation Acts. For purposes of this Act, the term ‘spending authority’ has the meaning provided in section 401(c)(2) of the Congressional Budget Act of 1974 [2 U.S.C. 651(c)(2)], except that such term does not include spending authority for which an exception is made under section 401(d) of such Act.”

“SECRETARY” DEFINED

Pub. L. 115–270, title I, §102, Oct. 23, 2018, 132 Stat. 3768, provided that: “In this title [see Tables for classification], the term ‘Secretary’ means the Secretary of the Army.”

Pub. L. 114–322, title I, §1002, Dec. 16, 2016, 130 Stat. 1632, provided that: “In this title [see Tables for classification], the term ‘Secretary’ means the Secretary of the Army.”

Pub. L. 113–121, §2, June 10, 2014, 128 Stat. 1195, provided that: “In this Act [see Tables for classification], the term ‘Secretary’ means the Secretary of the Army.”

Pub. L. 110–114, §2, Nov. 8, 2007, 121 Stat. 1049, provided that: “In this Act [see Tables for classification], the term ‘Secretary’ means the Secretary of the Army.”

Pub. L. 106–541, §2, Dec. 11, 2000, 114 Stat. 2575, provided that: “In this Act [see Tables for classification], the term ‘Secretary’ means the Secretary of the Army.”

Pub. L. 106–53, §2, Aug. 17, 1999, 113 Stat. 273, provided that: “In this Act [see Tables for classification], the term ‘Secretary’ means the Secretary of the Army.”

Pub. L. 104–303, §2, Oct. 12, 1996, 110 Stat. 3662, provided that: “In this Act [see Tables for classification], the term ‘Secretary’ means the Secretary of the Army.”

Pub. L. 102–580, §3, Oct. 31, 1992, 106 Stat. 4801, provided that: “For purposes of this Act [see Short Title of 1992 Amendment note above], the term ‘Secretary’ means the Secretary of the Army.”

Pub. L. 101–640, §2, Nov. 28, 1990, 104 Stat. 4605, provided that: “For purposes of this Act [see Short Title of 1990 Amendment note above], the term ‘Secretary’ means the Secretary of the Army.”

Pub. L. 100–676, §2, Nov. 17, 1988, 102 Stat. 4013, provided that: “For purposes of this Act [see Short Title of 1988 Amendment note above], the term ‘Secretary’ means the Secretary of the Army.”

PROMOTING THE RELIABLE SUPPLY AND DELIVERY OF WATER IN THE WEST

Memorandum of President of the United States, Oct. 19, 2018, 83 F.R. 53961, provided:

Memorandum for the Secretary of the Interior[,] the Secretary of Commerce[,] the Secretary of Energy[,] the Secretary of the Army[, and] the Chair of the Council on Environmental Quality

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

SECTION 1. *Policy.* During the 20th Century, the Federal Government invested enormous resources in water infrastructure throughout the western United States to reduce flood risks to communities; to provide reliable water supplies for farms, families, businesses, and fish and wildlife; and to generate dependable hydropower. Decades of uncoordinated, piecemeal regulatory actions have diminished the ability of our Federal infrastructure, however, to deliver water and power in an efficient, cost-effective way.

Unless addressed, fragmented regulation of water infrastructure will continue to produce inefficiencies, unnecessary burdens, and conflict among the Federal Government, States, tribes, and local public agencies that deliver water to their citizenry. To meet these challenges, the Secretary of the Interior and the Secretary of Commerce should, to the extent permitted by law, work together to minimize unnecessary regulatory burdens and foster more efficient decision-making so that water projects are better able to meet the demands of their authorized purposes.

SEC. 2. *Streamlining Western Water Infrastructure Regulatory Processes and Removing Unnecessary Burdens.* To address water infrastructure challenges in the western United States, the Secretary of the Interior and the Secretary of Commerce shall undertake the following actions:

(a) Within 30 days of the date of this memorandum [Oct. 19, 2018], the Secretary of the Interior and the Secretary of Commerce shall:

(i) identify major water infrastructure projects in California for which the Department of the Interior and the Department of Commerce have joint responsibility under the Endangered Species Act of 1973 (ESA) (Public Law 93-205) [16 U.S.C. 1531 et seq.] or individual responsibilities under the National Environmental Policy Act of 1969 (NEPA) (Public Law 91-190) [42 U.S.C. 4321 et seq.]; and

(ii) for each such project, work together to facilitate the designation of one official to coordinate the agencies' ESA and NEPA compliance responsibilities. Within the 30-day time period provided by this subsection, the designated official shall also identify regulations and procedures that potentially burden the project and develop a proposed plan, for consideration by the Secretaries, to appropriately suspend, revise, or rescind any regulations or procedures that unduly burden the project beyond the degree necessary to protect the public interest or otherwise comply with the law. For purposes of this memorandum, "burden" means to unnecessarily obstruct, delay, curtail, impede, or otherwise impose significant costs on the permitting, utilization, transmission, delivery, or supply of water resources and infrastructure.

(b) Within 40 days of the date of this memorandum, the Secretary of the Interior and the Secretary of Commerce shall develop a timeline for completing applicable environmental compliance requirements for projects identified under section 2(a)(i) of this memorandum. Environmental compliance requirements shall be completed as expeditiously as possible, and in accordance with applicable law.

(c) To the maximum extent practicable and consistent with applicable law, including the authorities granted to the Secretary of the Interior and the Secretary of Commerce under the Water Infrastructure Improvements for the Nation Act (Public Law 114-322):

(i) The Secretary of the Interior and the Secretary of Commerce shall ensure that the ongoing review of the long-term coordinated operations of the Central Valley Project and the California State Water Project is completed and an updated Plan of Operations and Record of Decision is issued.

(ii) The Secretary of the Interior shall issue final biological assessments for the long-term coordinated operations of the Central Valley Project and the California State Water Project not later than January 31, 2019.

(iii) The Secretary of the Interior and the Secretary of Commerce shall ensure the issuance of their respective final biological opinions for the long-term coordinated operations of the Central Valley Project and the California State Water Project within 135 days of the deadline provided in section 2(c)(ii) of this memorandum. To the extent practicable and consistent with law, these shall be joint opinions.

(iv) The Secretary of the Interior and the Secretary of Commerce shall complete the joint consultation presently underway for the Klamath Irrigation Project by August 2019.

(d) The Secretary of the Interior and the Secretary of Commerce shall provide monthly updates to the Chair of the Council on Environmental Quality and other components of the Executive Office of the President, as appropriate, regarding progress in meeting the established timelines.

SEC. 3. Improve Forecasts of Water Availability. To facilitate greater use of forecast-based management and use of authorities and capabilities provided by the Weather Research and Forecasting Innovation Act of 2017 (Public Law 115-25) [15 U.S.C. 8501 et seq.] and other applicable laws, the Secretary of the Interior and the Secretary of Commerce shall convene water experts and resource managers to develop an action plan to improve the information and modeling capabilities related to water availability and water infrastructure projects. The action plan shall be completed by January 2019 and submitted to the Chair of the Council on Environmental Quality.

SEC. 4. Improving Use of Technology to Increase Water Reliability. To the maximum extent practicable, and pursuant to the Reclamation Wastewater and Groundwater Study and Facilities Act (Public Law 102-575, title XVI) [43 U.S.C. 390h et seq.], the Water Desalination Act of 1996 (Public Law 104-298) [42 U.S.C. 10301 note], and other applicable laws, the Secretary of the Interior shall direct appropriate bureaus to promote the expanded use of technology for improving the accuracy and reliability of water and power deliveries. This promotion of expanded use should include:

(a) investment in technology and reduction of regulatory burdens to enable broader scale deployment of desalination technology;

(b) investment in technology and reduction of regulatory burdens to enable broader scale use of recycled water; and

(c) investment in programs that promote and encourage innovation, research, and development of technology that improve water management, using best available science through real-time monitoring of wildlife and water deliveries.

SEC. 5. Consideration of Locally Developed Plans in Hydroelectric Projects Licensing. To the extent the Secretary of the Interior and the Secretary of Commerce participate in Federal Energy Regulatory Commission licensing activities for hydroelectric projects, and to the extent permitted by law, the Secretaries shall give appropriate consideration to any relevant information available to them in locally developed plans, where consistent with the best available information.

SEC. 6. Streamlining Regulatory Processes and Removing Unnecessary Burdens on the Columbia River Basin Water Infrastructure. In order to address water and hydro-power operations challenges in the Columbia River Basin, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Energy, and the Assistant Secretary of the Army for Civil Works under the direction of the Secretary of the Army, shall develop a schedule to complete the Columbia River System Operations Environmental Impact Statement and the associated Biological Opinion due by 2020. The schedule shall be submitted to the Chair of the Council on Environmental Quality within 60 days of the date of this memorandum.

SEC. 7. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of the Interior is hereby authorized and directed to publish this memorandum in the Federal Register.

DONALD J. TRUMP.

§ 2202. Non-Federal engagement and review

(a) Issuance

The Secretary shall expeditiously issue guidance to implement each covered provision of law in accordance with this section.

(b) Public notice

(1) In general

Prior to developing and issuing any new or revised implementation guidance for a covered