

Subsec. (b)(1). Pub. L. 115-270, §1332(a)(2), substituted “studies, proposed modifications to authorized water resources development projects and feasibility studies, and proposed modifications for an environmental infrastructure program” for “studies and proposed modifications to authorized water resources development projects and feasibility studies”.

Subsec. (c)(4). Pub. L. 115-270, §1332(a)(5), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: “The Secretary shall include in the annual report an appendix listing the proposals submitted under subsection (b) that were not included in the annual report under paragraph (1)(A) and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion under such paragraph.”

Subsecs. (d) to (g). Pub. L. 115-270, §1332(a)(3), (4), added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively.

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

DISSEMINATION OF INFORMATION

Pub. L. 115-270, title I, §1104, Oct. 23, 2018, 132 Stat. 3771, provided that:

“(a) FINDINGS.—Congress finds the following:

“(1) Congress plays a central role in identifying, prioritizing, and authorizing vital water resources infrastructure activities throughout the United States.

“(2) The Water Resources Reform and Development Act of 2014 (Public Law 113-121) established a new and transparent process to review and prioritize the water resources development activities of the Corps of Engineers with strong congressional oversight.

“(3) Section 7001 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d) requires the Secretary [of the Army] to develop and submit to Congress each year a Report to Congress on Future Water Resources Development and, as part of the annual report process, to—

“(A) publish a notice in the Federal Register that requests from non-Federal interests proposed feasibility studies and proposed modifications to authorized water resources development projects and feasibility studies for inclusion in the report; and

“(B) review the proposals submitted and include in the report those proposed feasibility studies and proposed modifications that meet the criteria for inclusion established under such section 7001.

“(4) Congress will use the information provided in the annual Report to Congress on Future Water Resources Development to determine authorization needs and priorities for purposes of water resources development legislation.

“(5) To ensure that Congress can gain a thorough understanding of the water resources development needs and priorities of the United States, it is important that the Secretary take sufficient steps to ensure that non-Federal interests are made aware of the new annual report process, including the need for non-Federal interests to submit proposals during the Secretary’s annual request for proposals in order for such proposals to be eligible for consideration by Congress.

“(b) DISSEMINATION OF PROCESS INFORMATION.—The Secretary shall develop, support, and implement education and awareness efforts for non-Federal interests with respect to the annual Report to Congress on Future Water Resources Development required under section 7001 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d), including efforts to—

“(1) develop and disseminate technical assistance materials, seminars, and guidance on the annual process as it relates to non-Federal interests;

“(2) provide written notice to local elected officials and previous and potential non-Federal interests on the annual process and on opportunities to address local water resources challenges through the missions and authorities of the Corps of Engineers;

“(3) issue guidance for non-Federal interests to assist such interests in developing proposals for water

resources development projects that satisfy the requirements of such section 7001; and

“(4) provide, at the request of a non-Federal interest, assistance with researching and identifying existing project authorizations and Corps of Engineers decision documents.”

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113-121, set out as a note under section 2201 of this title.

§ 2282e. Post-authorization change reports

(a) In general

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

(1) may not be delayed as a result of consideration being given to changes in policy or priority with respect to project consideration; and

(2) shall be submitted, upon completion, to—
(A) the Committee on Environment and Public Works of the Senate; and

(B) the Committee on Transportation and Infrastructure of the House of Representatives.

(b) Completion review

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

(1) review the report; and

(2) provide to Congress any recommendations of the Secretary regarding modification of the applicable water resources development project.

(c) Prior reports

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

(d) Post-authorization change report inclusions

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

(1) a general reevaluation report;

(2) a limited reevaluation report; and

(3) any other report that recommends the modification of an authorized water resources development project.

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

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114-322, set out as a note under section 2201 of this title.

§ 2283. Fish and wildlife mitigation

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

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

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

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

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

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

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

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

(A) acquisition under this paragraph shall not be by condemnation in the case of projects completed as of November 17, 1986, or on which at least 10 percent of the physical construction on the project has been completed as of November 17, 1986; and

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

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

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

(c) Allocation of mitigation costs

Costs incurred after November 17, 1986, including lands, easements, rights-of-way, and relocations, for implementation and operation, main-

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

(d) Mitigation plans as part of project proposals

(1) In general

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

(2) Selection and design of mitigation projects

The Secretary shall select and design mitigation projects using a watershed approach to reflect contemporary understanding of the science of mitigating the adverse environmental impacts of water resources projects.

(3) Mitigation requirements

(A) In general

To mitigate losses to flood damage reduction capabilities and fish and wildlife resulting from a water resources project, the Secretary shall ensure that the mitigation plan for each water resources project complies with, at a minimum, the mitigation standards and policies established pursuant to the regulatory programs administered by the Secretary.

(B) Inclusions

A specific mitigation plan for a water resources project under paragraph (1) shall include, at a minimum—

(i) a plan for monitoring the implementation and ecological success of each mitigation measure, including the cost and duration of any monitoring, and, to the extent practicable, a designation of the enti-