

884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

§ 10364. Water management improvement

(a) Authorization of grants and cooperative agreements

(1) Authority of Secretary

The Secretary may provide any grant to, or enter into an agreement with, any eligible applicant to assist the eligible applicant in planning, designing, or constructing any improvement—

- (A) to conserve water;
- (B) to increase water use efficiency;
- (C) to facilitate water markets;
- (D) to enhance water management, including increasing the use of renewable energy in the management and delivery of water;
- (E) to accelerate the adoption and use of advanced water treatment technologies to increase water supply;
- (F) to prevent the decline of species that the United States Fish and Wildlife Service and National Marine Fisheries Service have proposed for listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (or candidate species that are being considered by those agencies for such listing but are not yet the subject of a proposed rule);
- (G) to accelerate the recovery of threatened species, endangered species, and designated critical habitats that are adversely affected by Federal reclamation projects or are subject to a recovery plan or conservation plan under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) under which the Commissioner of Reclamation has implementation responsibilities; or
- (H) to carry out any other activity—
 - (i) to address any climate-related impact to the water supply of the United States that increases ecological resiliency to the impacts of climate change; or
 - (ii) to prevent any water-related crisis or conflict at any watershed that has a nexus to a Federal reclamation project located in a service area.

(2) Application

To be eligible to receive a grant, or enter into an agreement with the Secretary under paragraph (1), an eligible applicant shall—

- (A) be located within—
 - (i) the States and areas referred to in section 391 of title 43;
 - (ii) the State of Alaska; or
 - (iii) the State of Hawaii; and
- (B) submit to the Secretary an application that includes a proposal of the improvement or activity to be planned, designed, constructed, or implemented by the eligible applicant.

(3) Requirements of grants and cooperative agreements

(A) Compliance with requirements

Each grant and agreement entered into by the Secretary with any eligible applicant

under paragraph (1) shall be in compliance with each requirement described in subparagraphs (B) through (F).

(B) Agricultural operations

(i) In general

Except as provided in clause (ii), in carrying out paragraph (1), the Secretary shall not provide a grant, or enter into an agreement, for an improvement to conserve irrigation water unless the eligible applicant agrees not—

(I) to use any associated water savings to increase the total irrigated acreage of the eligible applicant; or

(II) to otherwise increase the consumptive use of water in the operation of the eligible applicant, as determined pursuant to the law of the State in which the operation of the eligible applicant is located.

(ii) Indian tribes

In the case of an eligible applicant that is an Indian tribe, in carrying out paragraph (1), the Secretary shall not provide a grant, or enter into an agreement, for an improvement to conserve irrigation water unless the Indian tribe agrees not—

(I) to use any associated water savings to increase the total irrigated acreage more than the water right of that Indian tribe, as determined by—

- (aa) a court decree;
- (bb) a settlement;
- (cc) a law; or
- (dd) any combination of the authorities described in items (aa) through (cc); or

(II) to otherwise increase the consumptive use of water more than the water right of the Indian tribe described in subclause (I).

(C) Nonreimbursable funds

Any funds provided by the Secretary to an eligible applicant through a grant or agreement under paragraph (1) shall be nonreimbursable.

(D) Title to improvements

If an infrastructure improvement to a federally owned facility is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1), the Federal Government shall continue to hold title to the facility and improvements to the facility.

(E) Cost sharing

(i) Federal share

The Federal share of the cost of any infrastructure improvement or activity that is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1) shall not exceed 50 percent of the cost of the infrastructure improvement or activity.

(ii) Calculation of non-Federal share

In calculating the non-Federal share of the cost of an infrastructure improvement

or activity proposed by an eligible applicant through an application submitted by the eligible applicant under paragraph (2), the Secretary shall—

(I) consider the value of any in-kind services that substantially contributes toward the completion of the improvement or activity, as determined by the Secretary; and

(II) not consider any other amount that the eligible applicant receives from a Federal agency.

(iii) Maximum amount

The amount provided to an eligible applicant through a grant or other agreement under paragraph (1) shall be not more than \$5,000,000.

(iv) Operation and maintenance costs

The non-Federal share of the cost of operating and maintaining any infrastructure improvement that is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1) shall be 100 percent.

(F) Liability

(i) In general

Except as provided under chapter 171 of title 28 (commonly known as the “Federal Tort Claims Act”), the United States shall not be liable for monetary damages of any kind for any injury arising out of an act, omission, or occurrence that arises in relation to any facility created or improved under this section, the title of which is not held by the United States.

(ii) Tort Claims Act

Nothing in this section increases the liability of the United States beyond that provided in chapter 171 of title 28 (commonly known as the “Federal Tort Claims Act”).

(b) Research agreements

(1) Authority of Secretary

The Secretary may enter into 1 or more agreements with any university, nonprofit research institution, or organization with water or power delivery authority to fund any research activity that is designed—

(A) to conserve water resources;

(B) to increase the efficiency of the use of water resources; or

(C) to enhance the management of water resources, including increasing the use of renewable energy in the management and delivery of water.

(2) Terms and conditions of Secretary

(A) In general

An agreement entered into between the Secretary and any university, institution, or organization described in paragraph (1) shall be subject to such terms and conditions as the Secretary determines to be appropriate.

(B) Availability

The agreements under this subsection shall be available to all Reclamation

projects and programs that may benefit from project-specific or programmatic cooperative research and development.

(c) Mutual benefit

Grants or other agreements made under this section may be for the mutual benefit of the United States and the entity that is provided the grant or enters into the cooperative agreement.

(d) Relationship to project-specific authority

This section shall not supersede any existing project-specific funding authority.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$530,000,000, to remain available until expended.

(Pub. L. 111–11, title IX, §9504, Mar. 30, 2009, 123 Stat. 1334; Pub. L. 113–235, div. D, title II, §203, Dec. 16, 2014, 128 Stat. 2311; Pub. L. 114–113, div. D, title II, §206, Dec. 18, 2015, 129 Stat. 2407; Pub. L. 114–322, title III, §4009(d), Dec. 16, 2016, 130 Stat. 1870; Pub. L. 115–244, div. A, title II, §205(b), Sept. 21, 2018, 132 Stat. 2906; Pub. L. 116–9, title VIII, §8501, Mar. 12, 2019, 133 Stat. 826; Pub. L. 116–94, div. C, title II, §203, Dec. 20, 2019, 133 Stat. 2669.)

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (a)(1)(F), (G), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

AMENDMENTS

2019—Subsec. (a)(2)(A). Pub. L. 116–9, §8501(1), substituted “within—” for “within”, inserted cl. (i) designation before “the States”, and added cls. (ii) and (iii).

Subsec. (a)(3)(B). Pub. L. 116–9, §8501(2), designated existing provisions as cl. (i) and inserted heading, substituted “Except as provided in clause (ii), in carrying” for “In carrying” in introductory provisions, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and realigned margins, and added cl. (ii).

Subsec. (e). Pub. L. 116–94 substituted “\$530,000,000” for “\$480,000,000”.

2018—Subsec. (e). Pub. L. 115–244 substituted “\$480,000,000” for “\$450,000,000”.

2016—Subsec. (e). Pub. L. 114–322 substituted “\$450,000,000” for “\$350,000,000”. See Funding note set out below.

2015—Subsec. (e). Pub. L. 114–113 substituted “\$350,000,000” for “\$300,000,000”.

2014—Subsec. (e). Pub. L. 113–235 substituted “\$300,000,000” for “\$200,000,000”.

FUNDING

Pub. L. 114–322, title III, §4009(d), Dec. 16, 2016, 130 Stat. 1870, provided that: “Section 9504 of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364) is amended in subsection (e) by striking ‘\$350,000,000’ and inserting ‘\$450,000,000’ on the condition that of that amount, \$50,000,000 of it is used to carry out section 206 of the Energy and Water Development and Related Agencies Appropriation Act, 2015 (43 U.S.C. 620 note; Public Law 113–235).”

§ 10365. Hydroelectric power assessment

(a) Duty of Secretary of Energy

The Secretary of Energy, in consultation with the Administrator of each Federal Power Mar-