

that the project advances Federal objectives including environmental enhancement objectives in a Reclamation State; and

(v) complies with all applicable Federal and State law, including environmental laws; and

(D) the Secretary has complied with all applicable environmental laws, including—

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

(ii) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(iii) subtitle III of title 54.

#### (d) Funding

There is authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2022 through 2026, to remain available until expended.

#### (e) Effects

##### (1) In general

Nothing in this section supersedes or limits any existing authority provided, or responsibility conferred, by any provision of law.

##### (2) Effect on state water law

Nothing in this section preempts or affects any—

(A) State water law; or

(B) interstate compact governing water.

#### (f) Compliance required

The Secretary shall comply with applicable State water laws in carrying out this section.

#### (g) Priority for projects providing regional benefits and assistance for aging assets

When funding projects under this section, the Secretary shall prioritize projects that—

(1) are jointly developed and supported by a diverse array of stakeholders including representatives of irrigated agricultural production, hydroelectric production, potable water purveyors and industrial water users, Indian Tribes, commercial fishing interests, and non-profit conservation organizations;

(2) affect water resources management in 2 or more river basins while providing regional benefits not limited to fisheries restoration;

(3) are a component of a broader strategy or plan to replace aging facilities with 1 or more alternate facilities providing similar benefits; and

(4) contribute to the restoration of anadromous fish species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(Pub. L. 116-260, div. FF, title XI, § 1109, Dec. 27, 2020, 134 Stat. 3244.)

#### Editorial Notes

##### REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c)(2)(D)(i), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Endangered Species Act of 1973, referred to in subsecs. (c)(2)(D)(ii) and (g)(4), 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.

#### CODIFICATION

Section was enacted as part of Consolidated Appropriations Act, 2021, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

#### Statutory Notes and Related Subsidiaries

##### DEFINITIONS

Pub. L. 116-260, div. FF, title XI, § 1115, Dec. 27, 2020, 134 Stat. 3251, provided that: “In this title [enacting this section and sections 390g-9 and 1477 of Title 43, Public Lands, and amending sections 1015 and 1015a of Title 16, Conservation, sections 1645 and 1647b of Title 25, Indians, sections 10362 and 10364 of Title 42, The Public Health and Welfare, section 510b of Title 43, and provisions set out as notes under sections 10301 and 10364 of Title 42]:

“(1) INDIAN TRIBE.—The term ‘Indian Tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

“(2) RECLAMATION STATE.—The term ‘Reclamation State’ means a State or territory described in the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 391).

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.”

[The first paragraph of 43 U.S.C. 391 is comprised of act June 17, 1902, ch. 1093, § 1 (part), 32 Stat. 388. The second paragraph of 43 U.S.C. 391 is comprised of act June 12, 1906, ch. 3288, 34 Stat. 259, as amended. See Codification note under section 391 of Title 43, Public Lands.]

#### § 2331. Use of continuing contracts for construction of certain projects

##### (a) In general

Notwithstanding any other provision of law, the Secretary shall not implement a fully allocated funding policy with respect to a water resource project if initiation of construction has occurred but sufficient funds are not available to complete the project.

##### (b) Continuing contracts

The Secretary shall enter into a continuing contract for a project described in subsection (a).

##### (c) Initiation of construction clarified

For the purposes of this section, initiation of construction for a project occurs on the date of enactment of an Act that appropriates funds for the project from 1 of the following appropriation accounts:

(1) Construction, General.

(2) Operation and Maintenance, General.

(3) Flood Control, Mississippi River and Tributaries.

(Pub. L. 106-53, title II, § 206, Aug. 17, 1999, 113 Stat. 286.)

#### Editorial Notes

##### CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water

Resources Development Act of 1986 which comprises this chapter.

#### Statutory Notes and Related Subsidiaries

##### “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106-53, set out as a note under section 2201 of this title.

#### § 2331a. Initiating work on separable elements

With respect to a water resources development project that has received construction funds in the previous 6-year period, for purposes of initiating work on a separable element of the project—

- (1) no new start or new investment decision shall be required; and
- (2) the work shall be treated as ongoing work.

(Pub. L. 114-322, title I, §1146, Dec. 16, 2016, 130 Stat. 1659.)

#### Editorial Notes

##### 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.

#### § 2332. Flood mitigation and riverine restoration program

##### (a) In general

The Secretary may undertake a program for the purpose of conducting projects to reduce flood hazards and restore the natural functions and values of rivers throughout the United States.

##### (b) Studies and projects

###### (1) Authority

In carrying out the program, the Secretary may conduct studies to identify appropriate flood damage reduction, conservation, and restoration measures and may design and implement projects described in subsection (a).

###### (2) Consultation and coordination

The studies and projects carried out under this section shall be conducted, to the maximum extent practicable, in consultation and coordination with the Federal Emergency Management Agency and other appropriate Federal agencies, and in consultation and coordination with appropriate State and local agencies and tribes.

###### (3) Nonstructural approaches

The studies and projects shall emphasize, to the maximum extent practicable and appropriate, nonstructural approaches to preventing or reducing flood damages.

###### (4) Participation

The studies and projects shall be conducted, to the maximum extent practicable, in cooperation with State and local agencies and tribes to ensure the coordination of local flood damage reduction or riverine and wetland res-

toration studies with projects that conserve, restore, and manage hydrologic and hydraulic regimes and restore the natural functions and values of floodplains.

##### (c) Cost-sharing requirements

###### (1) Studies

Studies conducted under this section shall be subject to cost sharing in accordance with section 2215 of this title.

###### (2) Environmental restoration and non-structural flood control projects

###### (A) In general

The non-Federal interests shall pay 35 percent of the cost of any environmental restoration or nonstructural flood control project carried out under this section.

###### (B) Items provided by non-Federal interests

The non-Federal interests shall provide all land, easements, rights-of-way, dredged material disposal areas, and relocations necessary for such projects.

###### (C) Credit

The value of such land, easements, rights-of-way, dredged material disposal areas, and relocations shall be credited toward the payment required under this paragraph.

###### (3) Structural flood control projects

Any structural flood control projects carried out under this section shall be subject to cost sharing in accordance with section 2213(a) of this title.

###### (4) Operation and maintenance

The non-Federal interests shall be responsible for all costs associated with operating, maintaining, replacing, repairing, and rehabilitating all projects carried out under this section.

##### (d) Project justification

###### (1) In general

Notwithstanding any other provision of law or requirement for economic justification established under section 1962-2 of title 42, the Secretary may implement a project under this section if the Secretary determines that the project—

- (A) will significantly reduce potential flood damages;
- (B) will improve the quality of the environment; and
- (C) is justified considering all costs and beneficial outputs of the project.

###### (2) Establishment of selection and rating criteria and policies

###### (A) In general

Not later than 180 days after August 17, 1999, the Secretary, in cooperation with State and local agencies and tribes, shall—

- (i) develop, and submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, criteria for selecting and rating projects to be carried out under this section; and