

AMENDMENT OF CONTRACTS EXISTING PRIOR TO
NOVEMBER 17, 1986

Pub. L. 99-662, title IX, §932(b), Nov. 17, 1986, 100 Stat. 4197, provided that: “Nothing in this section [amending this section] shall be deemed to amend or require amendment of any valid contract entered into pursuant to the Water Supply Act of 1958 [this section], or Federal reclamation law and approved by the Secretary of the Army or the Secretary of the Interior prior to the date of enactment of this Act [Nov. 17, 1986].”

DEFINITIONS

Pub. L. 114-322, title III, §4014, Dec. 16, 2016, 130 Stat. 1883, provided that: “In this subtitle [subtitle J (§§4001-4014) of title III of Pub. L. 114-322, see Tables for classification]:

“(1) ASSISTANT ADMINISTRATOR.—The term ‘Assistant Administrator’ means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

“(2) CENTRAL VALLEY PROJECT.—The term ‘Central Valley Project’ has the meaning given the term in section 3403 of the Central Valley Project Improvement Act ([title XXXIV of] Public Law 102-575; 106 Stat. 4707).

“(3) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of Reclamation.

“(4) DELTA.—The term ‘Delta’ means the Sacramento-San Joaquin Delta and the Suisun Marsh (as defined in section 12220 of the California Water Code and section 29101 of the California Public Resources Code (as in effect on the date of enactment of this Act [Dec. 16, 2016])).

“(5) DELTA SMELT.—The term ‘Delta smelt’ means the fish species with the scientific name *Hypomesus transpacificus*.

“(6) DIRECTOR.—The term ‘Director’ means the Director of the United States Fish and Wildlife Service.

“(7) LISTED FISH SPECIES.—The term ‘listed fish species’ means—

“(A) any natural origin steelhead, natural origin genetic spring run Chinook, or genetic winter run Chinook salmon (including any hatchery steelhead or salmon population within the evolutionary significant unit or a distinct population segment); and

“(B) Delta smelt.

“(8) RECLAMATION STATE.—The term ‘Reclamation State’ means any of the States of—

“(A) Arizona;

“(B) California;

“(C) Colorado;

“(D) Idaho;

“(E) Kansas;

“(F) Montana;

“(G) Nebraska;

“(H) Nevada;

“(I) New Mexico;

“(J) North Dakota;

“(K) Oklahoma;

“(L) Oregon;

“(M) South Dakota;

“(N) Texas;

“(O) Utah;

“(P) Washington; and

“(Q) Wyoming.

“(9) SALMONID BIOLOGICAL OPINION.—

“(A) IN GENERAL.—The term ‘salmonid biological opinion’ means the biological and conference opinion of the National Marine Fisheries Service dated June 4, 2009, regarding the long-term operation of the Central Valley Project and the State Water Project, and successor biological opinions.

“(B) INCLUSIONS.—The term ‘salmonid biological opinion’ includes the operative incidental take statement of the opinion described in subparagraph (A).

“(10) SMELT BIOLOGICAL OPINION.—

“(A) IN GENERAL.—The term ‘smelt biological opinion’ means the biological opinion dated Decem-

ber 15, 2008, regarding the coordinated operation of the Central Valley Project and the State Water Project, and successor biological opinions.

“(B) INCLUSIONS.—The term ‘smelt biological opinion’ includes the operative incidental take statement of the opinion described in subparagraph (A).

“(11) STATE WATER PROJECT.—The term ‘State Water Project’ means the water project described in chapter 5 of part 3 of division 6 of the California Water Code (sections 11550 et seq.) (as in effect on the date of enactment of this Act [Dec. 16, 2016]) and operated by the California Department of Water Resources.”

§ 390b-1. Improving planning and administration of water supply storage

(1) In general

For each water supply feature of a reservoir managed by the Secretary, the Secretary shall notify the applicable non-Federal interests before each fiscal year of the anticipated operation and maintenance activities for that fiscal year and each of the subsequent 4 fiscal years (including the cost of those activities) for which the non-Federal interests are required to contribute amounts.

(2) Clarification

The information provided to a non-Federal interest under paragraph (1) shall—

(A) be an estimate which the non-Federal interest may use for planning purposes; and

(B) not be construed as or relied upon by the non-Federal interest as the actual amounts that the non-Federal interest will be required to contribute.

(Pub. L. 113-121, title I, §1046(b), June 10, 2014, 128 Stat. 1254.)

Statutory Notes and Related Subsidiaries

“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 Title 33, Navigation and Navigable Waters.

§ 390b-2. Leveraging Federal infrastructure for increased water supply

(a) In general

At the request of a non-Federal interest, the Secretary may review proposals to increase the quantity of available supplies of water at a Federal water resources development project through—

(1) modification of the project;

(2) modification of how the project is managed; or

(3) accessing water released from the project.

(b) Proposals included

A proposal under subsection (a) may include—

(1) increasing the storage capacity of the project;

(2) diversion of water released or withdrawn from the project—

(A) to recharge groundwater;

(B) to aquifer storage and recovery; or

(C) to any other storage facility;

(3) construction of facilities for delivery of water from pumping stations constructed by the Secretary;

(4) construction of facilities to access water; and

(5) a combination of the activities described in paragraphs (1) through (4).

(c) Exclusions

This section shall not apply to a proposal that—

(1) reallocates existing water supply or hydropower storage; or

(2) reduces water available for any authorized project purpose.

(d) Other Federal projects

In any case in which a proposal relates to a Federal project that is not operated by the Secretary, this section shall apply only to activities under the authority of the Secretary.

(e) Review process

(1) Notice

On receipt of a proposal submitted under subsection (a), the Secretary shall provide a copy of the proposal to each entity described in paragraph (2) and, if applicable, the Federal agency that operates the project, in the case of a project operated by an agency other than the Department of the Army.

(2) Public participation

In reviewing proposals submitted under subsection (a), and prior to making any decisions regarding a proposal, the Secretary shall comply with all applicable public participation requirements under law, including consultation with—

(A) affected States;

(B) power marketing administrations, in the case of reservoirs with Federal hydropower projects;

(C) entities responsible for operation and maintenance costs;

(D) any entity that has a contractual right from the Federal Government or a State to withdraw water from, or use storage at, the project;

(E) entities that the State determines hold rights under State law to the use of water from the project; and

(F) units of local government with flood risk reduction responsibilities downstream of the project.

(f) Authorities

A proposal submitted to the Secretary under subsection (a) may be reviewed and approved, if applicable and appropriate, under—

(1) the specific authorization for the water resources development project;

(2) section 549a of title 33;

(3) section 390b of this title; and

(4) section 408 of title 33.

(g) Limitations

The Secretary shall not approve a proposal submitted under subsection (a) that—

(1) is not supported by the Federal agency that operates the project, if that agency is not the Department of the Army;

(2) interferes with an authorized purpose of the project;

(3) adversely impacts contractual rights to water or storage at the reservoir;

(4) adversely impacts legal rights to water under State law, as determined by an affected State;

(5) increases costs for any entity other than the entity that submitted the proposal; or

(6) if a project is subject to section 390b(e) of this title, makes modifications to the project that do not meet the requirements of that section unless the modification is submitted to and authorized by Congress.

(h) Cost share

(1) In general

Except as provided in paragraph (2), 100 percent of the cost of developing, reviewing, and implementing a proposal submitted under subsection (a) shall be provided by an entity other than the Federal Government.

(2) Planning assistance to states

In the case of a proposal from an entity authorized to receive assistance under section 1962d-16 of title 42, the Secretary may use funds available under that section to pay 50 percent of the cost of a review of a proposal submitted under subsection (a).

(3) Operation and maintenance costs

(A) In general

Except as provided in subparagraphs (B) and (C), the operation and maintenance costs for the non-Federal sponsor of a proposal submitted under subsection (a) shall be 100 percent of the separable operation and maintenance costs associated with the costs of implementing the proposal.

(B) Certain water supply storage projects

For a proposal submitted under subsection (a) for constructing additional water supply storage at a reservoir for use under a water supply storage agreement, in addition to the costs under subparagraph (A), the non-Federal costs shall include the proportional share of any joint-use costs for operation, maintenance, repair, replacement, or rehabilitation of the reservoir project determined in accordance with section 390b of this title.

(C) Voluntary contributions

An entity other than an entity described in subparagraph (A) may voluntarily contribute to the costs of implementing a proposal submitted under subsection (a).

(i) Contributed funds

(1) Contributed funds for corps projects

The Secretary may receive and expend funds contributed by a non-Federal interest for the review and approval of a proposal submitted under subsection (a).

(2) Contributed funds for other Federal reservoir projects

The Secretary is authorized to receive and expend funds from a non-Federal interest to formulate, review, or revise operational documents, pursuant to a proposal submitted in accordance subsection (a), for any reservoir for which the Secretary is authorized to prescribe regulations for the use of storage allocated for

flood control or navigation pursuant to section 709 of title 33.

(j) Assistance

On request by a non-Federal interest, the Secretary may provide technical assistance in the development or implementation of a proposal under subsection (a), including assistance in obtaining necessary permits for construction, if the non-Federal interest contracts with the Secretary to pay all costs of providing the technical assistance.

(k) Exclusion

This section shall not apply to reservoirs in—

- (1) the Upper Missouri River;
- (2) the Apalachicola-Chatthahoochee-Flint river system;
- (3) the Alabama-Coosa-Tallapoosa river system; and
- (4) the Stones River.

(l) Effect of section

Nothing in this section affects or modifies any authority of the Secretary to review or modify reservoirs.

(Pub. L. 114-322, title I, §1118, Dec. 16, 2016, 130 Stat. 1640; Pub. L. 116-260, div. AA, title I, §162, Dec. 27, 2020, 134 Stat. 2667.)

Editorial Notes

AMENDMENTS

2020—Subsec. (i). Pub. L. 116-260 designated existing provisions as par. (1), inserted heading, and added par. (2).

Statutory Notes and Related Subsidiaries

“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 Title 33, Navigation and Navigable Waters.

§ 390c. Water reservoirs; interests of States and local agencies in storage space

Cognizant that many States and local interests have in the past contributed to the Government, or have contracted to pay to the Government over a specified period of years, money equivalent to the cost of providing for them water storage space at Government-owned dams and reservoirs, constructed by the Corps of Engineers of the United States Army, and that such practices will continue, and, that no law defines the duration of their interest in such storage space, and realizing that such States and local interests assume the obligation of paying substantially their portion of the cost of providing such facilities, their right to use may be continued during the existence of the facility as hereinafter provided.

(Pub. L. 88-140, §1, Oct. 16, 1963, 77 Stat. 249.)

§ 390d. Dams and reservoirs wherein costs thereof, or rights thereto, have been acquired by local interests

Sections 390c to 390f of this title are applicable to all dams and reservoirs heretofore or hereafter constructed by the United States Government (acting through the Corps of Engineers of

the United States Army) wherein either a part of the construction cost thereof shall have been contributed or may be contributed by States or local interests (hereinafter called “local interests”) or local interests have acquired or may acquire rights to utilize certain storage space thereof by making payments during the period of such use as specified in the agreement with the Government and wherein the amount of money paid, exclusive of interest, is equivalent to the cost of providing that part of such dam and reservoir which is allocated to such use, whether such share of cost shall have been determined by the “incremental cost” method or by the “separable costs-remaining benefits” method or by any other method. Included among the dams and reservoirs affected by sections 390c to 390f of this title are those constructed by the Corps of Engineers of the Department of the Army, but nothing in sections 390c to 390f of this title shall be construed to affect or modify section 390 of this title.

(Pub. L. 88-140, §2, Oct. 16, 1963, 77 Stat. 249.)

§ 390e. Rights, acquisition and availability of; obligation for operation and maintenance; costs for reconstruction, rehabilitation, or replacement; use during Government operation or by contract

The right thus acquired by any such local interest is declared to be available to the local interest so long as the space designated for that purpose may be physically available, taking into account such equitable reallocation of reservoir storage capacities among the purposes served by the project as may be necessary due to sedimentation, and not limited to the term of years which may be prescribed in any lease agreement or other agreement with the Government, but the enjoyment of such right will remain subject to performance of its obligations prescribed in such lease agreement or agreement executed in reference thereto. Such obligations will include continued payment of annual operation and maintenance costs allocated to water supply. In addition, local interests shall bear the costs allocated to the water supply of any necessary reconstruction, rehabilitation, or replacement of project features which may be required to continue satisfactory operation of the project. Any affected local interest may utilize such facility so long as it is operated by the Government. In the event that the Government concludes that it can no longer usefully and economically maintain and operate such facility, the responsible department or agency of the Government is authorized to negotiate a contract with the affected local interest under which the local interest may continue to operate such part of the facility as is necessary for utilization of the storage space allocated to it, under terms which will protect the public interest and provided that the Government is effectively absolved from all liability in connection with such operation.

(Pub. L. 88-140, §3, Oct. 16, 1963, 77 Stat. 249.)

§ 390f. Revision of leases or agreements to evidence conversion of rights to use of storage rights

Upon application of any affected local interest its existing lease or agreement with the Govern-