

Engineers, the Secretary of the Army is authorized to allocate water which was allocated in the project purpose for municipal and industrial water supply and which is not under contract for delivery, for such periods as he may deem reasonable, for the interim use for irrigation purposes of such storage until such storage is required for municipal and industrial water supply. No contracts for the interim use of such storage shall be entered into which would significantly affect then-existing uses of such storage.

(Dec. 22, 1944, ch. 665, §8, 58 Stat. 891; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501; Pub. L. 99-662, title IX, §931, Nov. 17, 1986, 100 Stat. 4196.)

Editorial Notes

REFERENCES IN TEXT

Act of June 17, 1902, referred to in text, is popularly known as the Reclamation Act, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 371 of this title and Tables.

AMENDMENTS

1986—Pub. L. 99-662 inserted at end “In the case of any reservoir project constructed and operated by the Corps of Engineers, the Secretary of the Army is authorized to allocate water which was allocated in the project purpose for municipal and industrial water supply and which is not under contract for delivery, for such periods as he may deem reasonable, for the interim use for irrigation purposes of such storage until such storage is required for municipal and industrial water supply. No contracts for the interim use of such storage shall be entered into which would significantly affect then-existing uses of such storage.”

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted “Title 10, Armed Forces” which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

EXTENSION OF VARIABLE PAYMENT PLAN

Authority of Secretary to extend benefits of variable payment plan to organizations with which he contracts or has contracted for the repayment of construction costs allocated to irrigation on any project undertaken by the United States, including contracts for the storage of water or for the use of stored water under this section, see section 2 of Pub. L. 85-611, Aug. 8, 1958, 72 Stat. 542, set out as a note under section 485h of this title.

SECTION AS UNAFFECTED BY SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of this title.

Executive Documents

TRANSFER OF FUNCTIONS

For transfer of certain real property and functions relating to real property, insofar as they pertain to Air Force, from Secretary of the Army and Department of the Army to Secretary of the Air Force and Depart-

ment of the Air Force, see Secretary of Defense Transfer Order Nos. 14, eff. July 1, 1948, and 40 [App. B(133)], July 22, 1949.

§ 390a. Repealed. Pub. L. 105-362, title IX, § 901(e)(2), Nov. 10, 1998, 112 Stat. 3289

Section, acts July 31, 1953, ch. 298, title I, 67 Stat. 266; Pub. L. 99-294, §10, May 12, 1986, 100 Stat. 426, related to conditions precedent for construction of dams, reservoir, or water supply.

Provisions similar to those in this section were contained in act July 9, 1952, ch. 597, title I, 66 Stat. 451, prior to repeal by Pub. L. 105-362, title IX, §901(e)(1), Nov. 10, 1998, 112 Stat. 3289.

§ 390b. Development of water supplies for domestic, municipal, industrial, and other purposes

(a) Declaration of policy

It is declared to be the policy of the Congress to recognize the primary responsibilities of the States and local interests in developing water supplies for domestic, municipal, industrial, and other purposes and that the Federal Government should participate and cooperate with States and local interests in developing such water supplies in connection with the construction, maintenance, and operation of Federal navigation, flood control, irrigation, or multiple purpose projects.

(b) Storage in reservoir projects; agreements for payment of cost of construction or modification of projects

In carrying out the policy set forth in this section, it is provided that storage may be included in any reservoir project surveyed, planned, constructed or to be planned, surveyed and/or constructed by the Corps of Engineers or the Bureau of Reclamation to impound water for present or anticipated future demand or need for municipal or industrial water, and the reasonable value thereof may be taken into account in estimating the economic value of the entire project: *Provided*, That the cost of any construction or modification authorized under the provisions of this section shall be determined on the basis that all authorized purposes served by the project shall share equitably in the benefits of multiple purpose construction, as determined by the Secretary of the Army or the Secretary of the Interior, as the case may be: *Provided further*, That before construction or modification of any project including water supply provisions for present demand is initiated, State or local interests shall agree to pay for the cost of such provisions in accordance with the provisions of this section: *And provided further*, That (1) for Corps of Engineers projects, not to exceed 30 percent of the total estimated cost of any project may be allocated to anticipated future demands, and, (2) for Bureau of Reclamation projects, not to exceed 30 per centum of the total estimated cost of any project may be allocated to anticipated future demands where State or local interests give reasonable assurances, and there is reasonable evidence, that such demands for the use of such storage will be made within a period of time which will permit paying out the costs allocated to water supply within the life of the project: *And provided further*, That for Corps of Engineers projects, the

Secretary of the Army may permit the full non-Federal contribution to be made, without interest, during construction of the project, or, with interest, over a period of not more than thirty years from the date of completion, with repayment contracts providing for recalculation of the interest rate at, five-year intervals, and for Bureau of Reclamation projects, the entire amount of the construction costs, including interest during construction, allocated to water supply shall be repaid within the life of the project but in no event to exceed fifty years after the project is first used for the storage of water for water supply purposes, except that (1) no payment need be made with respect to storage for future water supply until such supply is first used, and (2) no interest shall be charged on such cost until such supply is first used, but in no case shall the interest-free period exceed ten years. For Corps of Engineers projects, all annual operation, maintenance, and replacement costs for municipal and industrial water supply storage under the provisions of this section shall be reimbursed from State or local interests on an annual basis. For Corps of Engineers projects, any repayment by a State or local interest shall be made with interest at a rate to be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which costs for the construction of the project are first incurred (or, when a recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs. For Bureau of Reclamation projects, the interest rate used for purposes of computing interest during construction and interest on the unpaid balance shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. The provisions of this subsection insofar as they relate to the Bureau of Reclamation and the Secretary of the Interior shall be alternative to and not a substitute for the provisions of the Reclamation Projects Act of 1939 (53 Stat. 1187) [43 U.S.C. 485 et seq.] relating to the same subject.

(c) Release of future water storage

(1) Establishment of 10-year plans for the utilization of future storage

(A) In general

For the period beginning 180 days after June 10, 2014, and ending on January 1, 2016, the Secretary may accept from a State or local interest a plan for the utilization of allocated water storage for future use under this Act.

(B) Contents

A plan submitted under subparagraph (A) shall include—

- (i) a 10-year timetable for the conversion of future use storage to present use; and

- (ii) a schedule of actions that the State or local interest agrees to carry out over a 10-year period, in cooperation with the Secretary, to seek new and alternative users of future water storage that is contracted to the State or local interest on June 10, 2014.

(2) Future water storage

For water resource development projects managed by the Secretary, a State or local interest that the Secretary determines has complied with paragraph (1) may request from the Secretary a release to the United States of any right of the State or local interest to future water storage under this Act that was allocated for future use water supply prior to November 17, 1986.

(3) Administration

(A) In general

Not later than 180 days after receiving a request under paragraph (2), the Secretary shall provide to the applicable State or local interest a written decision on whether the Secretary recommends releasing future water storage rights.

(B) Recommendation

If the Secretary recommends releasing future water storage rights, the Secretary shall include that recommendation in the annual plan submitted under section 2282d of title 33.

(4) Savings clause

Nothing in this subsection authorizes the Secretary to release a State or local interest from a contractual obligation unless specifically authorized by Congress.

(d) Application to other laws

The provisions of this section shall not be construed to modify the provisions of section 701-1 of title 33 and section 390 of this title, as amended and extended, or the provisions of sections 372 and 383 of this title.

(e) Approval of Congress of modifications of reservoir projects

Modifications of a reservoir project heretofore authorized, surveyed, planned, or constructed to include storage as provided in subsection (b) which would seriously affect the purposes for which the project was authorized, surveyed, planned, or constructed, or which would involve major structural or operational changes shall be made only upon the approval of Congress as now provided by law.

(Pub. L. 85-500, title III, §301, July 3, 1958, 72 Stat. 319; Pub. L. 87-88, §10, July 20, 1961, 75 Stat. 210; Pub. L. 99-662, title IX, §932(a), Nov. 17, 1986, 100 Stat. 4196; Pub. L. 113-121, title I, §§1046(d), 1051(a), June 10, 2014, 128 Stat. 1254, 1259; Pub. L. 114-322, title I, §1187, Dec. 16, 2016, 130 Stat. 1681.)

Editorial Notes

REFERENCES IN TEXT

The Reclamation Projects Act of 1939, referred to in subsec. (b), is act Aug. 4, 1939, ch. 418, 53 Stat. 1187, as amended, which is classified principally to subchapter X (§485 et seq.) of this chapter. For complete classifica-

tion of this Act to the Code, see section 485k of this title and Tables.

This Act, referred to in subsec. (c)(1)(A), (2), probably means the Water Supply Act of 1958. See below.

AMENDMENTS

2016—Subsec. (f). Pub. L. 114-322 struck out subsec. (f) which related to the Apalachicola-Chattahoochee-Flint River System and Alabama-Coosa-Tallapoosa River System projects.

2014—Subsecs. (c) to (e). Pub. L. 113-121, §1046(d), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (f). Pub. L. 113-121, §1051(a), added subsec. (f).

1986—Subsec. (b). Pub. L. 99-662 inserted in third proviso “(1) for Corps of Engineers projects, not to exceed 30 percent of the total estimated cost of any project may be allocated to anticipated future demands, and, (2) for Bureau of Reclamation projects.”, inserted in fourth proviso “for Corps of Engineers projects, the Secretary of the Army may permit the full non-Federal contribution to be made, without interest, during construction of the project, or, with interest, over a period of not more than thirty years from the date of completion, with repayment contracts providing for recalculation of the interest rate at, five-year intervals, and for Bureau of Reclamation projects.”, inserted after first sentence “For Corps of Engineers projects, all annual operation, maintenance, and replacement costs for municipal and industrial water supply storage under the provisions of this section shall be reimbursed from State or local interests on an annual basis. For Corps of Engineers projects, any repayment by a State or local interest shall be made with interest at a rate to be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which costs for the construction of the project are first incurred (or, when a recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs.”, and substituted “For Bureau of Reclamation projects, the interest rate used” for “The interest rate used”.

1961—Subsec. (b). Pub. L. 87-88 substituted provisions permitting not more than 30 per centum of the total estimated cost of any project to be allocated to anticipated future demands where State or local interests give reasonable assurances, and there is reasonable evidence, that such demands for the use of such storage will be made within a period of time which will permit paying out the costs allocated to water supply within the life of the project for provisions which permitted not more than 30 per centum of the total estimated cost of any project to be allocated to anticipated future demands where States or local interests give reasonable assurance that they will contract for the use of storage for anticipated future demands within a period of time which will permit paying out the costs allocated to water supply within the life of the project.

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87-88, §11, July 20, 1961, 75 Stat. 210, provided that: “This Act [amending this section, and sections 1151, 1153 to 1155, 1157 to 1160, 1171 to 1173 of Title 33, Navigation and Navigable Waters, and enacting provisions set out as notes under sections 1151, 1157, and 1159 of Title 33] may be cited as the ‘Federal Water Pollution Control Act Amendments of 1961.’”

SHORT TITLE

Pub. L. 85-500, title III, §302, July 3, 1958, 72 Stat. 320, provided that: “Title III of this Act [enacting this section] may be cited as the ‘Water Supply Act of 1958.’”

STORAGE

Pub. L. 114-322, title III, §4007(a)–(j), Dec. 16, 2016, 130 Stat. 1863–1866, provided that:

“(a) DEFINITIONS.—In this subtitle [subtitle J (§§ 4001–4014) of title III of Pub. L. 114-322, see Tables for classification]:

“(1) FEDERALLY OWNED STORAGE PROJECT.—The term ‘federally owned storage project’ means any project involving a surface water storage facility in a Reclamation State—

“(A) to which the United States holds title; and

“(B) that was authorized to be constructed, operated, and maintained pursuant to the reclamation laws.

“(2) STATE-LED STORAGE PROJECT.—The term ‘State-led storage project’ means any project in a Reclamation State that—

“(A) involves a groundwater or surface water storage facility constructed, operated, and maintained by any State, department of a State, subdivision of a State, or public agency organized pursuant to State law; and

“(B) provides a benefit in meeting any obligation under Federal law (including regulations).

“(b) FEDERALLY OWNED STORAGE PROJECTS.—

“(1) AGREEMENTS.—On the request of any State, any department, agency, or subdivision of a State, or any public agency organized pursuant to State law, the Secretary of the Interior may negotiate and enter into an agreement on behalf of the United States for the design, study, and construction or expansion of any federally owned storage project in accordance with this section.

“(2) FEDERAL COST SHARE.—Subject to the requirements of this subsection, the Secretary of the Interior may participate in a federally owned storage project in an amount equal to not more than 50 percent of the total cost of the federally owned storage project.

“(3) COMMENCEMENT.—The construction of a federally owned storage project that is the subject of an agreement under this subsection shall not commence until the Secretary of the Interior—

“(A) determines that the proposed federally owned storage project is feasible in accordance with the reclamation laws;

“(B) secures an agreement providing upfront funding as is necessary to pay the non-Federal share of the capital costs; and

“(C) determines that, in return for the Federal cost-share investment in the federally owned storage project, at least a proportionate share of the project benefits are Federal benefits, including water supplies dedicated to specific purposes such as environmental enhancement and wildlife refuges.

“(4) ENVIRONMENTAL LAWS.—In participating in a federally owned storage project under this subsection, the Secretary of the Interior shall comply with all applicable environmental laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(c) STATE-LED STORAGE PROJECTS.—

“(1) IN GENERAL.—Subject to the requirements of this subsection, the Secretary of the Interior may participate in a State-led storage project in an amount equal to not more than 25 percent of the total cost of the State-led storage project.

“(2) REQUEST BY GOVERNOR.—Participation by the Secretary of the Interior in a State-led storage project under this subsection shall not occur unless—

“(A) the participation has been requested by the Governor of the State in which the State-led storage project is located;

“(B) the State or local sponsor determines, and the Secretary of the Interior concurs, that—

“(i) the State-led storage project is technically and financially feasible and provides a Federal benefit in accordance with the reclamation laws;

“(ii) sufficient non-Federal funding is available to complete the State-led storage project; and

“(iii) the State-led storage project sponsors are financially solvent;

“(C) the Secretary of the Interior determines that, in return for the Federal cost-share investment in the State-led storage project, at least a proportional share of the project benefits are the Federal benefits, including water supplies dedicated to specific purposes such as environmental enhancement and wildlife refuges; and

“(D) the Secretary of the Interior submits to Congress a written notification of these determinations within 30 days of making such determinations.

“(3) ENVIRONMENTAL LAWS.—When participating in a State-led storage project under this subsection, the Secretary shall comply with all applicable environmental laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(4) INFORMATION.—When participating in a State-led storage project under this subsection, the Secretary of the Interior—

“(A) may rely on reports prepared by the sponsor of the State-led storage project, including feasibility (or equivalent) studies, environmental analyses, and other pertinent reports and analyses; but

“(B) shall retain responsibility for making the independent determinations described in paragraph (2).

“(d) AUTHORITY TO PROVIDE ASSISTANCE.—The Secretary of the Interior may provide financial assistance under this subtitle to carry out projects within any Reclamation State.

“(e) RIGHTS TO USE CAPACITY.—Subject to compliance with State water rights laws, the right to use the capacity of a federally owned storage project or State-led storage project for which the Secretary of the Interior has entered into an agreement under this subsection shall be allocated in such manner as may be mutually agreed to by the Secretary of the Interior and each other party to the agreement.

“(f) COMPLIANCE WITH CALIFORNIA WATER BOND.—

“(1) IN GENERAL.—The provision of Federal funding for construction of a State-led storage project in the State of California shall be subject to the condition that the California Water Commission shall determine that the State-led storage project is consistent with the California Water Quality, Supply, and Infrastructure Improvement Act, approved by California voters on November 4, 2014.

“(2) APPLICABILITY.—This subsection expires on the date on which State bond funds available under the Act referred to in paragraph (1) are expended.

“(g) PARTNERSHIP AND AGREEMENTS.—The Secretary of the Interior, acting through the Commissioner [of Reclamation], may partner or enter into an agreement regarding the water storage projects identified in section 103(d)(1) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361; 118 Stat. 1688) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

“(h) AUTHORIZATION OF APPROPRIATIONS.—

“(1) \$335,000,000 of funding in section 4011(e) [130 Stat. 1881] is authorized to remain available until expended.

“(2) Projects can only receive funding if enacted appropriations legislation designates funding to them by name, after the Secretary recommends specific projects for funding pursuant to this section and transmits such recommendations to the appropriate committees of Congress.

“(i) SUNSET.—This section shall apply only to federally owned storage projects and State-led storage projects that the Secretary of the Interior determines to be feasible before January 1, 2021.

“(j) CONSISTENCY WITH STATE LAW.—Nothing in this section preempts or modifies any obligation of the United States to act in conformance with applicable State law.”

[For definition of “Reclamation State” as used in section 4007(a)(1), (2), (d) of Pub. L. 114-322, set out above, see section 4014(8) of Pub. L. 114-322, set out below.]

SAVINGS LANGUAGE

Pub. L. 114-322, title III, § 4012, Dec. 16, 2016, 130 Stat. 1882, provided that:

“(a) IN GENERAL.—This subtitle [subtitle J (§§ 4001-4014) of title III of Pub. L. 114-322, see Tables for classification] shall not be interpreted or implemented in a manner that—

“(1) preempts or modifies any obligation of the United States to act in conformance with applicable State law, including applicable State water law;

“(2) affects or modifies any obligation under the Central Valley Project Improvement Act ([title XXXIV of] Public Law 102-575; 106 Stat. 4706), except for the savings provisions for the Stanislaus River predator management program expressly established by section 11(d) and provisions in section 11(g) [sic; probably means section 4010(d) and (g) of Pub. L. 114-322, 130 Stat. 1874, 1878];

“(3) overrides, modifies, or amends the applicability of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the application of the smelt and salmonid biological opinions to the operation of the Central Valley Project or the State Water Project;

“(4) would cause additional adverse effects on listed fish species beyond the range of effects anticipated to occur to the listed fish species for the duration of the applicable biological opinion, using the best scientific and commercial data available; or

“(5) overrides, modifies, or amends any obligation of the Pacific Fisheries Management Council, required by the Magnuson Stevens Act [probably means the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.] or the Endangered Species Act of 1973, to manage fisheries off the coast of California, Oregon, or Washington.

“(b) SUCCESSOR BIOLOGICAL OPINIONS.—

“(1) IN GENERAL.—The Secretaries of the Interior and Commerce shall apply this Act [see Tables for classification] to any successor biological opinions to the smelt or salmonid biological opinions only to the extent that the Secretaries determine is consistent with—

“(A) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), its implementing regulations, and the successor biological opinions; and

“(B) subsection (a)(4).

“(2) LIMITATION.—Nothing in this Act shall restrict the Secretaries of the Interior and Commerce from completing consultation on successor biological opinions and through those successor biological opinions implementing whatever adjustments in operations or other activities as may be required by the Endangered Species Act of 1973 and its implementing regulations.

“(c) SEVERABILITY.—If any provision of this subtitle, or any application of such provision to any person or circumstance, is held to be inconsistent with any law or the biological opinions, the remainder of this subtitle and the application of this subtitle to any other person or circumstance shall not be affected.”

[For definitions of terms used in section 4012 of Pub. L. 114-322, set out above, see section 4014 of Pub. L. 114-322, set out below.]

DURATION

Pub. L. 114-322, title III, § 4013, Dec. 16, 2016, 130 Stat. 1883, provided that: “This subtitle [subtitle J (§§ 4001-4014) of title III of Pub. L. 114-322, see Tables for classification] shall expire on the date that is 5 years after the date of its enactment [Dec. 16, 2016], with the exception of—

“(1) section 4004 [130 Stat. 1858], which shall expire 10 years after the date of its enactment; and

“(2) projects under construction in sections 4007 [set out in part as a note above], 4009(a) [amending provisions set out as a note under section 10301 of Title 42, The Public Health and Welfare], and 4009(c) [amending section 390h of this title].”

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;