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WATER RESOURCES DEVELOPMENT ACT OF 1990



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February 24, 2004

SELECTED PROVISIONS OF THE WATER RESOURCES DEVELOPMENT ACT OF 1990

[As Amended Through P.L. 108-201, February 24, 2004]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Water Resources Development Act of 1990”.

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TITLE III—GENERALLY APPLICABLE PROVISIONS

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SEC. 306. ENVIRONMENTAL PROTECTION MISSION.

(a) **GENERAL RULE.**—The Secretary shall include environmental protection as one of the primary missions of the Corps of Engineers in planning, designing, constructing, operating, and maintaining water resources projects.

(b) **LIMITATION.**—Nothing in this section affects—

(1) existing Corps of Engineers’ authorities, including its authorities with respect to navigation and flood control;

(2) pending Corps of Engineers permit applications or pending lawsuits involving permits or water resources projects; or

(3) the application of public interest review procedures for Corps of Engineers permits.

(33 U.S.C. 2316)

SEC. 307. WETLANDS.

(a) **GOALS AND ACTION PLAN.**—

(1) **GOALS.**—There is established, as part of the Corps of Engineers water resources development program, an interim goal of no overall net loss of the Nation’s remaining wetlands base, as defined by acreage and function, and a long-term goal to increase the quality and quantity of the Nation’s wetlands, as defined by acreage and function.

(2) **USE OF AUTHORITIES.**—The Secretary shall utilize all appropriate authorities, including those to restore and create wetlands, in meeting the interim and long-term goals.

(3) **ACTION PLAN.**—

(A) **DEVELOPMENT.**—The Secretary shall develop, in consultation with the Environmental Protection Agency, the Fish and Wildlife Service, and other appropriate Federal agencies, a wetlands action plan to achieve the goals established by this subsection as soon as possible.

(B) CONTENTS.—The plan shall include and identify actions to be taken by the Secretary in achieving the goals and any new authorities which may be necessary to accelerate attainment of the goals.

(C) COMPLETION DEADLINE.—The Secretary shall complete the plan not later than 1 year after the date of enactment of this Act.

(b) CONSTRUCTED WETLANDS FOR MUD CREEK, ARKANSAS.—Notwithstanding any other provision of law, the Secretary is authorized and directed to establish and carry out a research and pilot project to evaluate and demonstrate—

(1) the use of constructed wetlands for wastewater treatment, and

(2) methods by which such projects contribute—

(A) to meeting the objective of the Federal Water Pollution Control Act to restore and maintain the physical, chemical, and biological integrity of the Nation's waters, and

(B) to attaining the goals established by subsection (a). The project under this subsection shall be carried out to improve the quality of effluent discharged from publicly owned treatment works operated by the city of Fayetteville, Arkansas, into Mud Creek or its tributaries.

(c) NON-FEDERAL RESPONSIBILITIES.—For the project conducted under subsection (b), the non-Federal interest shall agree—

(1) to provide, without cost to the United States, all lands, easements, rights-of-way, relocations, and dredged material disposal areas necessary for construction and subsequent research and demonstration work;

(2) to hold and save the United States free from damages due to construction, operation, and maintenance of the project, except damages due to the fault or negligence of the United States or its contractors; and

(3) to operate and maintain the restored or constructed wetlands in accordance with good management practices; except that nothing in this paragraph shall be construed as precluding a Federal agency from agreeing to operate and maintain the restored or reconstructed wetlands.

The value of the non-Federal lands, easements, rights-of-way, relocations, and dredged material disposal areas provided by the non-Federal interest shall be credited toward the non-Federal share of project design and construction costs. The non-Federal share of project design and construction costs shall be 25 percent.

(d) WETLANDS RESTORATION AND ENHANCEMENT DEMONSTRATION PROGRAM.—

(1) ESTABLISHMENT AND IMPLEMENTATION.—The Secretary, in consultation with the Administrator, is authorized to establish and implement a demonstration program for the purpose of determining the feasibility of wetlands restoration, enhancement, and creation as a means of contributing to the goals established by subsection (a).

(2) GOAL.—The goal of the program under this subsection shall be to establish a limited number of demonstration wetlands restoration, enhancement, and creation areas in districts

of the Corps of Engineers for the purpose of evaluating the technical and scientific long-term feasibility of such areas as a means of contributing to the attainment of the goals established by subsection (a). Federal and State land-owning agencies and private parties may contribute to such areas.

(3) **FACTORS TO CONSIDER.**—In establishing the demonstration program under this subsection, the Secretary shall consider—

(A) past experience with wetlands restoration, enhancement, and creation;

(B) the appropriate means of measuring benefits of compensatory mitigation activities, including enhancement or restoration of existing wetlands or creation of wetlands;

(C) the appropriate geographic scope for which wetlands loss may be offset by restoration, enhancement, and creation efforts;

(D) the technical feasibility and scientific likelihood that wetlands can be successfully restored, enhanced, and created;

(E) means of establishing liability for, and long-term ownership of, wetlands restoration, enhancement, and creation areas; and

(F) responsibilities for short- and long-term project monitoring.

(4) **REPORTING.**—

(A) **TO THE CHIEF OF ENGINEERS.**—The district engineer for each district of the Corps of Engineers in which a wetlands restoration, enhancement, and creation area is established under this subsection shall transmit annual reports to the Chief of Engineers describing the amount and value of wetlands restored, enhanced, and created for the area and a summary of whether the area is contributing to the goal established in paragraph (2).

(B) **TO CONGRESS.**—Not later than 3 years after the date of the enactment of this Act, the Secretary shall transmit to Congress a report evaluating the use of wetlands restoration, enhancement, and creation areas in fulfilling the goal established by paragraph (2), together with recommendations on whether or not to continue use of such areas as a means of meeting the goals established by subsection (a).

(5) **EFFECT ON OTHER LAWS.**—Nothing in this subsection affects any requirements under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 10 of the Act of March 3, 1899 (33 U.S.C. 403).

(e) **TRAINING AND CERTIFICATION OF DELINEATORS.**—

(1) **IN GENERAL.**—The Secretary is authorized to establish a program for the training and certification of individuals as wetlands delineators. As part of such program, the Secretary shall carry out demonstration projects in districts of the Corps of Engineers. The program shall include training and certification of delineators and procedures for expediting consideration and acceptance of delineations performed by certified delineators.

(2) **REPORTS.**—The Secretary shall transmit to Congress periodic reports concerning the status of the program and any recommendations on improving the content and implementation of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

(33 U.S.C. 2317)

SEC. 308. FLOOD PLAIN MANAGEMENT.

(a) **EXCLUSION OF ELEMENTS FROM BENEFIT-COST ANALYSIS.**—The Secretary shall not include in the benefit base for justifying Federal flood damage reduction projects—

(1)(A) any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation after July 1, 1991; or

(B) in the case of a county substantially located within the 100-year flood plain, any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 10-year flood plain after July 1, 1991; and

(2) any structure which becomes located in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation or in the 10-year flood plain, as the case may be, by virtue of constrictions placed in the flood plain after July 1, 1991.

(b) **FLOOD DAMAGE REDUCTION BENEFITS.**—

(1) **IN GENERAL.**—In calculating the benefits of a proposed project for nonstructural flood damage reduction, the Secretary shall calculate the benefits of the nonstructural project using methods similar to those used for calculating the benefits of structural projects, including similar treatment in calculating the benefits from losses avoided.

(2) **AVOIDANCE OF DOUBLE COUNTING.**—In carrying out paragraph (1), the Secretary should avoid double counting of benefits.

(c) **COUNTIES SUBSTANTIALLY LOCATED WITHIN 100-YEAR FLOOD PLAIN.**—For the purposes of subsection (a), a county is substantially located within the 100-year flood plain—

(1) if the county is comprised of lands of which 50 percent or more are located in the 100-year flood plain; and

(2) if the Secretary determines that application of the requirement contained in subsection (a)(1)(A) with respect to the county would unreasonably restrain continued economic development or unreasonably limit the availability of needed flood control measures.

(d) **COST SHARING.**—Not later than January 1, 1992, the Secretary shall transmit to Congress a report on the feasibility and advisability of increasing the non-Federal share of costs for new projects in areas where new or substantially improved structures and other constrictions are built or placed in the 100-year flood plain or the 10-year flood plain, as the case may be, after the initial date of the affected governmental unit's entry into the regular pro-

gram of the national flood insurance program of the National Flood Insurance Act of 1968.

(e) REGULATIONS.—Not later than 6 months after the date on which a report is transmitted to Congress under subsection (c)¹, the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall issue regulations to implement subsection (a). Such regulations shall define key terms, such as new or substantially improved structure, constriction, 10-year flood plain, and 100-year flood plain.

(f) APPLICABILITY.—The provisions of this section shall not apply to any project, or separable element thereof, for which a final report of the Chief of Engineers has been forwarded to the Secretary before the last day of the 6-month period beginning on the date on which regulations are issued pursuant to subsection (a) but not later than July 1, 1993.

(33 U.S.C. 2318)

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SEC. 312. ENVIRONMENTAL DREDGING.

(a) OPERATION AND MAINTENANCE OF NAVIGATION PROJECTS.—Whenever necessary to meet the requirements of the Federal Water Pollution Control Act, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, may remove and remediate, as part of operation and maintenance of a navigation project, contaminated sediments outside the boundaries of and adjacent to the navigation channel.

(b) NONPROJECT SPECIFIC.—

(1) IN GENERAL.—The Secretary may remove and remediate contaminated sediments from the navigable waters of the United States for the purpose of environmental enhancement and water quality improvement if such removal and remediation is requested by a non-Federal sponsor and the sponsor agrees to pay 35 percent of the cost of such removal and remediation.

(2) MAXIMUM AMOUNT.—The Secretary may not expend more than \$50,000,000 in a fiscal year to carry out this subsection.

(c) JOINT PLAN REQUIREMENT.—The Secretary may only remove and remediate contaminated sediments under subsection (b) in accordance with a joint plan developed by the Secretary and interested Federal, State, and local government officials. Such plan must include an opportunity for public comment, a description of the work to be undertaken, the method to be used for dredged material disposal, the roles and responsibilities of the Secretary and non-Federal sponsors, and identification of sources of funding.

(d) DISPOSAL COSTS.—Costs of disposal of contaminated sediments removed under this section shall be a¹ shared as a cost of construction.

¹So in law. Section 219(a)(4) of Public Law 106-53 reads as follows: “(4) in subsection (d), by striking ‘subsection (b)’ and inserting ‘subsection (c)’.”. Probably should have been in subsection (e) as redesignated.

¹So in law. Section 224 of Public Law 106-53 amended subsection (d) by striking “non-Federal responsibility” and inserting “shared as a cost of construction”. Probably should strike “a non-Federal responsibility”.

(e) **LIMITATION ON STATUTORY CONSTRUCTION.**—Nothing in this section shall be construed to affect the rights and responsibilities of any person under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(f) **PRIORITY WORK.**—In carrying out this section, the Secretary shall give priority to work in the following areas:

- (1) Brooklyn Waterfront, New York.
- (2) Buffalo Harbor and River, New York.
- (3) Ashtabula River, Ohio.
- (4) Mahoning River, Ohio.
- (5) Lower Fox River, Wisconsin.
- (6) Passaic River and Newark Bay, New Jersey.
- (7) Snake Creek, Bixby, Oklahoma.
- (8) Willamette River, Oregon.

(g) **NONPROFIT ENTITIES.**—Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), for any project carried out under this section, a non-Federal sponsor may include a nonprofit entity, with the consent of the affected local government.

SEC. 313. PROTECTION OF RECREATIONAL AND COMMERCIAL USES.

(a) **GENERAL RULE.**—In planning any water resources project, the Secretary shall consider the impact of the project on existing and future recreational and commercial uses in the area surrounding the project.

(b) **MAINTENANCE.**—Whenever the Secretary maintains, repairs, rehabilitates, or reconstructs a water resources project which will result in a change in the configuration of a structure which is a part of such project, the Secretary, to the maximum extent practicable, shall carry out such maintenance, repair, rehabilitation, or reconstruction in a manner which will not adversely affect any recreational use established with respect to such project before the date of such maintenance, repair, rehabilitation, or reconstruction.

(c) **MITIGATION.**—

(1) **IN GENERAL.**—If maintenance, repair, rehabilitation, or reconstruction of a water resources project by the Secretary results in a change in the configuration of any structure which is a part of such project and has an adverse effect on a recreational use established with respect to such project before the date of such maintenance, repair, rehabilitation, or reconstruction, the Secretary, to the maximum extent practicable, shall take such actions as may be necessary to restore such recreational use or provide alternative opportunities for comparable recreational use.

(2) **MAXIMUM AMOUNT.**—The Secretary may not expend more than \$2,000,000 in a fiscal year to carry out this subsection.

(3) **TERMINATION DATE.**—This subsection shall not be effective after the last day of the 5-year period beginning on the date of the enactment of this Act; except that the Secretary may complete any restoration commenced under this subsection on or before such last day.

(d) **APPLICABILITY.**—

(1) GENERAL RULE.—Subsections (b) and (c) shall apply to maintenance, repair, rehabilitation, or reconstruction for which physical construction is initiated after May 1, 1988.

(2) LIMITATION.—Subsections (b) and (c) shall not apply to any action of the Secretary which is necessary to discontinue the operation of a water resources project.

(e) COST SHARING.—Costs incurred by the Secretary to carry out the objectives of this section shall be allocated to recreation and shall be payable by the beneficiaries of the recreation.

(33 U.S.C. 2320)

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SEC. 317. SINGLE ENTITIES.

For purposes of Federal participation in water resource development projects which are to be carried out by the Secretary, benefits which are to be provided to a facility owned by a State (including the District of Columbia and a territory or possession of the United States), county, municipality, or other public entity shall not be treated as benefits to be provided a single owner or single entity. The Secretary shall not treat such a facility as a single owner or single entity for any purpose.

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SEC. 322. REDUCED PRICING FOR CERTAIN WATER SUPPLY STORAGE.

(a) PROVISION OF STORAGE SPACE.—If a low income community requests the Secretary to provide water supply storage space in a water resources development project operated by the Secretary and if the amount of space requested is available or could be made available through reallocation of water supply storage space in the project or through modifications to operation of the project, the Secretary may provide such space to the community at a price determined under subsection (c).

(b) MAXIMUM AMOUNT OF STORAGE SPACE.—The maximum amount of water supply storage space which may be provided to a community under this section may not exceed an amount of water supply storage space sufficient to yield 2,000,000 gallons of water per day.

(c) PRICE.—The Secretary shall provide water supply storage space under this section at a price which is the greater of—

(1) the updated construction cost of the project allocated to provide such amount of water supply storage space or \$100 per acre foot of storage space, whichever is less; and

(2) the value of the benefits which are lost as a result of providing such water supply storage space.

(d) DETERMINATIONS.—For purposes of subsection (c), the determinations of updated construction costs and value of benefits lost shall be made by the Secretary on the basis of the most recent information available.

(e) INFLATION ADJUSTMENT OF DOLLAR AMOUNT.—The \$100 amount set forth in subsection (c) shall be adjusted annually by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics.

(f) NON-FEDERAL RESPONSIBILITIES.—Nothing in this section shall be construed as affecting the responsibility of non-Federal in-

terests to provide operation and maintenance costs assigned to water supply storage provided under this section.

(g) **LOW INCOME COMMUNITY DEFINED.**—The term “low income community” means a community with a population of less than 20,000 which is located in a county with a per capita income less than the per capita income of two-thirds of the counties in the United States.

(33 U.S.C. 2324)

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. GREAT LAKES REMEDIAL ACTION PLANS AND SEDIMENT REMEDIATION.

(a) GREAT LAKES REMEDIAL ACTION PLANS.—

(1) **IN GENERAL.**—The Secretary may provide technical, planning, and engineering assistance to State and local governments and nongovernmental entities designated by a State or local government in the development and implementation of remedial action plans for Areas of Concern in the Great Lakes identified under the Great Lakes Water Quality Agreement of 1978.

(2) NON-FEDERAL SHARE.—

(A) **IN GENERAL.**—Non-Federal interests shall contribute, in cash or by providing in-kind contributions, 50 percent of costs of activities for which assistance is provided under paragraph (1).

(B) **CONTRIBUTIONS BY ENTITIES.**—Nonprofit public or private entities may contribute all or a portion of the non-Federal share.

(b) SEDIMENT REMEDIATION PROJECTS.—

(1) **IN GENERAL.**—The Secretary, in consultation with the Administrator of the Environmental Protection Agency (acting through the Great Lakes National Program Office), may conduct pilot- and full-scale projects of promising technologies to remediate contaminated sediments in freshwater coastal regions in the Great Lakes basin. The Secretary shall conduct not fewer than 3 full-scale projects under this subsection.

(2) **SITE SELECTION FOR PROJECTS.**—In selecting the sites for the technology projects, the Secretary shall give priority consideration to Saginaw Bay, Michigan, Sheboygan Harbor, Wisconsin, Grand Calumet River, Indiana, Ashtabula River, Ohio, Buffalo River, New York, and Duluth-Superior Harbor, Minnesota and Wisconsin.

(3) **NON-FEDERAL SHARE.**—Non-Federal interests shall contribute 35 percent of costs of projects under this subsection. Such costs may be paid in cash or by providing in-kind contributions.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section \$10,000,000 for each of fiscal years 2001 through 2006.

(33 U.S.C. 1268 note)

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SEC. 420. SENSE OF CONGRESS.

It is the sense of Congress that priority consideration will be given to the authorization of water resources development projects which are recommended by the Chief of Engineers in reports completed after the date of the enactment of this Act.

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