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SENATE

{ REPORT
{ 107-312

THE GREAT LAKES AND LAKE CHAMPLAIN PROGRAM ACT OF 2002

—————
OCTOBER 15, 2002.—Ordered to be printed
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Mr. JEFFORDS, from the Committee on Environment and Public
Works, submitted the following

REPORT

[to accompany H.R. 1070]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (H.R. 1070) to amend the Federal Water Pollution Control Act to authorize the Administrator of the Environmental Protection Agency to carry out projects and conduct research for remediation of sediment contamination in areas of concern in the Great Lakes, and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title, and recommends that the bill, as amended, do pass.

GENERAL STATEMENT, BACKGROUND, AND OBJECTIVES OF THE LEGISLATION

The first title of the bill, the “Great Lakes Legacy Act of 2002”, amends the Federal Water Pollution Control Act (33 U.S.C. 1268), or Clean Water Act, to authorize the Environmental Protection Agency to assist the Great Lakes region in the remediation of contaminated sediment identified in Areas of Concern. The second title is the Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002, which amends the Federal Water Pollution Control Act, (33 U.S.C. 1270), or Clean Water Act, to reauthorize the Lake Champlain Basin Program. This title authorizes Federal participation in the implementation of “Opportunities for Action”, the plan to preserve and protect Lake Champlain. The third title allows communities that will be required to obtain a National Pollutant

Discharge Elimination System (NPDES) permit under the regulation entitled, “National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges”, promulgated by the Administrator of the Environmental Protection Agency on December 8, 1999 (64 Fed. Reg. 68722), which takes effect in March of 2003, to retain eligibility for funding provided by the Administrator through section 319 of the Federal Water Pollution Control Act, (33 U.S.C. 1329 et seq.), or Clean Water Act.

Great Lakes Legacy Act of 2002

Over 33 million people live in the Great Lakes Basin, representing one tenth of the U.S. population and one quarter of the Canadian population. The Great Lakes constitute the largest system of fresh, surface water on Earth: holding 18 percent of the world’s supply and 95 percent of the U.S. supply.

Industrialization and development have had a significant impact on the Great Lakes ecosystem. The Great Lakes are particularly vulnerable to contamination because outflow rates from most of the Lakes are very slow: Lake Superior retains water for 173 years, Lake Michigan for 62 years, Lake Huron for 31 years. Lake Erie, the shallowest of the Lakes, has the shortest water retention, at 2.7 years. Lakes with low outflow rates do not flush contaminants quickly. As a result, many pollutants discharged into the Great Lakes settle into the sediments at the bottom of the Lakes.

According to EPA’s National Water Quality Inventory 1998 Report to Congress (based on State surveys of 90 percent of Great Lakes shoreline miles) most of the Great Lakes are safe for swimming and other recreational activities and can be used as a source of drinking water. However, only 4 percent of the near-shore waters fully support all of their designated uses. Water quality impairments in the Great Lakes generally involve fish advisories and aquatic life impacts. States report that the primary sources of pollutants causing these impairments are atmospheric deposition and contaminated sediment.

Efforts to restore the Great Lakes are proceeding through cooperative efforts with Canada as well as through efforts of EPA, the Army Corps of Engineers and other Federal agencies, the States, industry, and local communities.

Under the Boundary Waters Treaty of 1909 (36 Stat. 2448; TS 548), the United States and Canada created the International Joint Commission (IJC). In 1972, the United States and Canada signed the Great Lakes Water Quality Agreement. The primary purpose of the 1972 agreement was to reduce phosphorus loadings. In 1987, the two nations revised the agreement and committed to ecosystem cleanup plans for “Areas of Concern” and to the resolution of whole-lake problems associated with critical pollutants through “Lakewide Management Plans.” The IJC monitors progress toward these commitments and issues biennial reports.

To support the commitments made in the Great Lakes Water Quality Agreement, in 1987 Congress added section 118 to the Federal Water Pollution Control Act (33 U.S.C. 1268), or Clean Water Act. Section 118 established the Great Lakes National Program Office within EPA. One of its functions is to ensure that Remedial Ac-

tion Plans are developed for the Areas of Concern identified by the United States and Canada.

To date, most active sediment remediation at U.S. Areas of Concern has occurred as a result of Superfund enforcement action or threat of Superfund enforcement action. However, Superfund's suitability for cleanup of Areas of Concern is limited. There are generally multiple contaminants from multiple parties accumulated over several generations. Only a handful of contaminated sediment sites have ever been placed on Superfund's National Priorities List.

Section 118 of the 1987 amendments to the Federal Water Pollution Control Act (33 U.S.C. 1268), or Clean Water Act, authorized demonstration projects relating to the control and removal of toxic pollutants in the Great Lakes. Some activities to carry out Remedial Action Plans at Areas of Concern also are eligible for assistance from Federal Water Pollution Control Act (33 U.S.C. 1268 et seq.), or Clean Water Act, State Revolving Loan Funds or section 319 grants for nonpoint source programs. However, at present, there is no specific Federal authorization for assistance for implementation of Remedial Action Plans at Areas of Concern.

In May 2002, the General Accounting Office (GAO) completed a study on the cleanup of Areas of Concern in the Great Lakes entitled, "EPA Needs to Define Organizational Responsibilities Better for Effective Oversight and Cleanup of Contaminated Areas (GAO-02-563). GAO found that there has been slow progress of cleanup efforts, in part due to lack of funds and in part due to EPA oversight.

The Great Lakes Legacy Act of 2002 provides funding to EPA to implement Remedial Action Plans at Areas of Concern. This is the first source of funds provided specifically for this purpose. This authority will assist in expediting the remediation of sites with contaminated sediment and will improve the ability of the United States to meet its commitments under the Great Lakes Water Quality Agreement.

Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002

Lake Champlain is the sixth largest freshwater lake in the world, after only the Great Lakes. Flowing north along the borders of Vermont, New York, and Canada, it is 120 miles long and just 12 miles wide at its widest point. Lake Champlain is home to a diverse array of 81 species of fish, 318 species of birds, 56 species of mammals, 21 species of amphibians and 20 reptile species. Today, the lake is plagued by excess phosphorous loadings, toxics such as mercury, and non-native species such as the zebra mussel and sea lamprey.

The Lake Champlain Basin Program began in 1990 when Congress designated the lake as a resource of national significance under the Lake Champlain Special Designation Act of 1990 (33 U.S.C. 1270 note; P.L. 101-596.) The program began as a management conference with a charter to develop a comprehensive pollution prevention, control, and restoration plan for Lake Champlain. The conference evolved into today's Lake Champlain Basin Program, which is made up of multiple Federal agencies, State and local governments, and stakeholders. The Basin Program works co-

operatively with partners throughout the region to protect and enhance the environmental integrity and the social and economic benefits of the Lake Champlain Basin.

The Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002 authorizes the implementation of the plan prepared by the management conference and revised by the Lake Champlain Basin Program Steering Committee in January 2002.

Section 319 Funding

Section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329), or Clean Water Act, established a nonpoint source management program and authorized EPA to provide funds to States for implementation of nonpoint source management plans. This title provides a 1-year extension for fiscal year 2003 of the allowable use of section 319 funds in communities that will be obtaining an NPDES permit under the final rule entitled, “National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges”, promulgated by the Administrator of the Environmental Protection Agency on December 8, 1999 (64 Fed. 17 Reg. 68722). This regulation is commonly referred to as the “phase II stormwater regulation.” This regulation takes effect in March 2003. Existing EPA interpretation of the Federal Water Pollution Control Act (33 U.S.C. 1268), or Clean Water Act, prohibits States from using section 319 funding for addressing permitted discharges. In letters to the committee, States have expressed two concerns about EPA’s interpretation. First, because EPA’s guidance outlining how section 319 funds could be spent was finalized prior to the promulgation of the phase II stormwater regulations, States assert that the guidance was not informed by an understanding of how the denial of funding for clean water tools, such as mapping of storm water systems, would affect the ability of States and towns to address nonpoint source pollution. Second, States assert that the EPA’s statutory interpretation could preclude the use of section 319 funding anywhere within the jurisdiction of a community required to obtain a NPDES permit under the phase II stormwater regulations. In some States, this could mean the virtual exclusion of that State from the ability to use section 319 funds. This situation could slow the progress in reducing nonpoint source pollution, which remains one of the nation’s most important hurdles in meeting our clean water goals.

SECTION-BY-SECTION ANALYSIS

TITLE I—GREAT LAKES LEGACY ACT OF 2002

Section 101. Short Title

Great Lakes Legacy Act of 2002.

Sec. 102. Report on Remedial Action Plans

SUMMARY AND DISCUSSION

This section requires a report from the Administrator of EPA to Congress on such actions, time periods, and resources as are necessary to fulfill the duties of the Agency relating to oversight of Re-

medial Action Plans under this paragraph and the Great Lakes Water Quality Agreement. This report is a key element of the legislation. The General Accounting Office specifically called for this evaluation in its May 2002 report entitled, "EPA Needs to Define Organizational Responsibilities Better for Effective Oversight and Cleanup of Contaminated Areas (GAO-02-563).

Sec. 103. Remediation of Sediment Contamination in Areas of Concern in the Great Lakes

QUALIFIED PROJECTS

Section 103 amends section 118(c) of the Federal Water Pollution Control Act (33 U.S.C. 1268), or Clean Water Act, by adding a paragraph entitled: "Remediation of Sediment Contamination in Areas of Concern." This section provides a mechanism for providing funds through an EPA program for the remediation of contaminated sediments in Areas of Concern in the Great Lakes. This is the first funding source for this purpose.

Section 103 provides authority for EPA to carry out "qualified projects" for the remediation of contaminated sediment. Qualified projects are defined as those that:

- (i) monitor or evaluate contaminated sediment, including conducting a site characterization;
- (ii) remediate contaminated sediment (including disposal of the contaminated sediment); or
- (iii) prevent further or renewed contamination of sediment.

The committee intends for the EPA to prioritize projects on which work can be commenced not later than 1 year after receipt of the funds for the project as well as those that encourage innovation in remediation projects in the Great Lakes.

The Administrator is prohibited from carrying out a qualified project that is located in an Area of Concern that the Administrator determines is likely to suffer significant further or renewed sediment contamination from sources of pollutants after the completion of the qualified project or at a site that has not had a thorough site characterization.

Funds provided in this program have a non-Federal matching requirement of at least 35 percent of the total project cost. This match can include in-kind services provided by the non-Federal sponsor. The committee intends that the non-Federal share of the cost of a qualified project carried out under this paragraph may include the value of in-kind services or cash contributed by a non-Federal sponsor including any in-kind service performed under an administrative order on consent or judicial consent decree, but excluding any in-kind service or cash contributed performed under a unilateral administrative order or court order. Operations and maintenance of projects conducted under the program must be entirely the responsibility of the non-Federal sponsor such as a State.

The Administrator is required to coordinate with the Secretary of the Army and the States in which qualified projects that receive assistance are located. The committee intends that the Administrator and the Secretary of the Army will work together to ensure that there is no duplication of effort in the Great Lakes. The committee intends that the Administrator and the States will coordi-

nate Federal funds and non-Federal funds to proceed with the highest priority projects first.

The title authorizes \$50,000,000 for each of fiscal years 2004 through 2008 for this program, for a total of \$250,000,000 over 5 years.

RESEARCH AND DEVELOPMENT PROGRAM

Section 103 provides that the Administrator, in coordination with other officials, shall conduct research on the development and use of innovative approaches, technologies, and techniques for the remediation of sediment contamination in areas of concern in the Great Lakes. This authority is included to further the use of innovative approaches to the remediation of contaminated sediment in the Great Lakes. The committee authorizes \$2,000,000 for each of fiscal years 2004 through 2008 for this purpose, for a total of \$10,000,000 over 5 years.

PUBLIC INFORMATION PROGRAM

Section 103 provides that the Administrator is authorized to carry out, in coordination with the Office of Research and Development, States, Indian tribes, local governments, and other entities, a program to provide information relating to the remediation of contaminated sediment to the public in areas of concern and to provide for local coordination and organization in those areas. The committee authorizes \$5,000,000 for each of fiscal years 2004 through 2008 for this purpose, for a total of \$25,000,000 over 5 years.

Sec. 104. Relationship to Existing Federal and State Laws and International Agreements

Section 104 amends section 118(g) of the Federal Water Pollution Control Act (33 U.S.C. 1268), or Clean Water Act, to clarify that the Great Lakes Legacy Act of 2002 does not affect the jurisdiction, powers, or prerogatives of any department, agency, or officer of the Federal Government or of any State government, or of any tribe, nor any powers, jurisdiction, or prerogatives of any international body created by treaty with authority relating to the Great Lakes.

Sec. 105. Authorization of Appropriations

Section 105 reauthorizes the existing Great Lakes Program for \$40,000,000 for each of fiscal years 2004 through 2008, for a total of \$200,000,000 over 5 years.

TITLE II—LAKE CHAMPLAIN

Sec. 201. Short Title

“Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002.”

Sec. 202. Lake Champlain Basin Program

This section amends section 120 of the Federal Water Pollution Control Act (33 U.S.C. 1270) by inserting the text of this section. The committee intends to strengthen and increase the capacity of this cooperative effort by formally acknowledging the role of the

Lake Champlain Basin Program and its Steering Committee, and to encourage this innovative initiative to retain its flexible, responsive approach to addressing the evolving environmental challenges of the Lake Champlain Basin.

AUTHORIZATION OF PLAN IMPLEMENTATION

This section defines key terms such as “Plan” which is the plan entitled “Opportunities for Action: An Evolving Plan for the Future of the Lake Champlain Basin”, approved by the Lake Champlain Steering Committee on January 30, 2002. The Act authorizes Federal agencies to participate in implementing the Plan.

The Lake Champlain management conference, first authorized by the Lake Champlain Special Designation Act of 1990 (33 U.S.C. 1270 note; P.L. 101–596), completed the first plan in 1996. Since that time, the management conference has evolved into the Lake Champlain Basin Program. This section specifically authorizes the Lake Champlain Basin Program. This section establishes the purposes of the program:

- to protect and enhance the environmental integrity and social and economic benefits of the Lake Champlain basin; and
- to achieve the environmental goals described in the Plan, including—

(i) the reduction of phosphorous inputs to Lake Champlain from point sources and nonpoint sources so as to—

(I) promote a healthy and diverse ecosystem; and

(II) provide for sustainable human use and enjoyment of Lake Champlain;

(ii) the reduction of toxic contamination, such as contamination by mercury and polychlorinated biphenyls, to protect public health and the ecosystem of the Lake Champlain basin;

(iii) the control of the introduction, spread, and impacts of nonnative nuisance species to preserve the integrity of the ecosystem of the Lake Champlain basin;

(iv) the minimization of risks to humans from water-related health hazards in the Lake Champlain basin, including through the protection of sources of drinking water in the Lake Champlain basin;

(v) the restoration and maintenance of a healthy and diverse community of fish and wildlife in the Lake Champlain basin;

(vi) the protection and restoration of wetland, streams, and riparian habitat in the Lake Champlain basin, including functions and values provided by those areas;

(vii) the management of Lake Champlain, including shorelines and tributaries of Lake Champlain, to achieve—

(I) the protection of natural and cultural resources of Lake Champlain; and

(II) the maintenance of recreational uses of Lake Champlain;

(viii) the protection of recreation and cultural heritage resources of the Lake Champlain basin;

(ix) the continuance of the Lake Champlain long-term water quality and biological monitoring program; and

(x) the promotion of healthy and diverse economic activity and sustainable development principles in the Lake Champlain basin.

This section designates the Lake Champlain Basin Program as the implementing body for the Plan. The Lake Champlain Basin Program is made up of representatives from Federal, State, and local agencies as well as interested stakeholders. The Program's organization provides a forum for consensus building on prioritization and implementation of priorities in the Plan. The committee intends for the current processes at the Lake Champlain Basin Program to continue to ensure smooth and effective implementation of the Plan.

This section requires that the Plan be reviewed and, as necessary, be revised at least once every 5 years. The Plan authorized by this Act is the first revision of the plan developed in response to the Lake Champlain Special Designation Act of 1990 (33 U.S.C. 1270 note; P.L. 101-596.) Continual review and revision will be necessary to ensure that the document remains a current and accurate roadmap for preservation of Lake Champlain.

This section authorizes the Administrator to make grants to implement the management strategies in the plan to State, interstate, and regional water pollution control agencies as well as public or nonprofit agencies, institutions, and organizations. Federal funds will be matched with at least a 25 percent non-Federal contribution. The committee intends for the cost sharing applied to the Lake Champlain program to be consistent with the existing program that has operated for 12 years with a 25 percent non-Federal matching requirement.

COORDINATION OF FEDERAL PROGRAMS

This section authorizes the roles of other Federal agencies in the implementation of the Plan.

The Secretary of Agriculture is authorized to support the implementation of the Lake Champlain Basin Program by providing financial and technical assistance relating to best management practices for controlling nonpoint source pollution, particularly with respect to preventing pollution from agricultural activities. The Department of Agriculture has been a key participant in activities in the Lake Champlain Basin since 1990. The committee intends that the Department, through programs such as the Conservation Reserve Enhancement Program (CREP) and the Wetlands Reserve Program (WRP) will continue this long-standing commitment to the Basin. The reduction of nutrient run-off from nonpoint sources of pollution, particularly agriculture, is one of the activities in the Plan that can have the greatest impact on water quality in Lake Champlain. The Department of Agriculture is a key partner in achieving this goal.

The Secretary of Interior, acting through both the United States Geological Survey (USGS) and the Fish and Wildlife Service (FWS) is authorized to support the implementation of the Lake Champlain Basin Program. Through USGS, the Secretary may provide financial, scientific, and technical assistance and applicable watershed research, such as stream flow monitoring; water quality monitoring; evaluation of effectiveness of best management practices; re-

search on the transport and final destination of toxic chemicals in the environment; and development of an integrated geographic information system for the Lake Champlain basin.

Through the Fish and Wildlife Service, the Secretary shall support the implementation of the program by:

- supporting the protection and restoration of wetland, streams, aquatic, and riparian habitat;
- supporting restoration of interjurisdictional fisheries and declining aquatic species in the Lake Champlain watershed through propagation of fish in hatcheries and continued advancement in fish culture and aquatic species management technology;
- supporting the control and management of aquatic nuisance species that have adverse effects on fisheries or the form, function, or structure of the ecosystem of the Lake Champlain basin;
- providing financial and technical assistance in accordance with the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) to private landowners seeking to improve fish and wildlife habitat, a goal of which is restoration of full function to degraded habitat, enhancement of specific habitat functions, establishment of valuable fish and wildlife habitat that did not previously exist on a particular parcel of real property; and
- taking other appropriate action to assist in implementation of the Plan.

Through the National Park Service, the Secretary shall support the implementation of the program by providing financial and technical assistance for programs concerning cultural heritage, natural resources, recreational resources, or other programs consistent with the mission of the National Park Service that are identified in the Plan.

The Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, shall support the implementation of the program by providing financial and technical assistance, through the national sea grant program of the Department of Commerce, for research; management of fisheries and other aquatic resources; related watershed programs; and other appropriate action to assist in implementation of the Plan.

The committee authorizes \$11,000,000 for each of fiscal years 2003 through 2007 for implementation of the Lake Champlain Basin Program, with \$5,000,000 for the Administrator, \$3,000,000 for Interior, \$1,000,000 for Commerce; and \$2,000,000 for Agriculture.

This section also makes technical changes to section 542 of P.L. 106-541 of the Water Resources Development Act of 2000 (114 Stat. 2671.) These modifications allow the Corps of Engineers to provide design and construction assistance for ecosystem restoration to the Lake Champlain Basin Program for the purposes of implementing the Plan. It adds Hamilton County in New York to the definition of Lake Champlain watershed. It authorizes the Army Corps of Engineers to conduct remote sensing and the development of a geographic information system for the Lake Champlain basin by the Cold Regions Research and Engineering Laboratory. It allows the Corps to provide assistance for ecosystem restoration projects through the Lake Champlain Basin Program. It clarifies existing crediting authority by allowing 100 percent of the non-Fed-

eral share to be comprised of in-kind services and by clarifying that funds provided to a non-Federal interest under the conservation reserve enhancement program of the Department of Agriculture announced on May 27, 1998 (63 Fed. Reg. 28965), or the wetlands reserve program under subchapter C of chapter 1 of 20 subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3837 et seq.) for use in carrying out a project under the Plan shall be credited toward the non-Federal share of the cost of the project if the Secretary of Agriculture certifies that those funds may be used for the purpose of the project under the Plan. Each of these changes is intended to facilitate Army Corps of Engineers participation in the Lake Champlain Basin Program while retaining the current flexibility of the Lake Champlain Basin Program.

TITLE III—MISCELLANEOUS

Sec. 301. Phase II Storm Water Program

SUMMARY AND DISCUSSION

This section of H.R. 1070 as amended provides that for fiscal year 2003, States may choose to use funds made available to carry out nonpoint source management programs under section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) for projects and activities related to the development or implementation of the phase II of the stormwater program of the Environmental Protection Agency established by the final rule entitled, “National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges”, promulgated by the Administrator of the Environmental Protection Agency on December 8, 1999 (64 Fed. 17 Reg. 68722). This section also retains the section 319 fund eligibility of other activities that are appropriate for section 319 funds and are within the jurisdiction of a community that is required to obtain a National Pollutant Discharge Elimination System (NPDES) permit under phase II of the stormwater program.

Existing EPA interpretation of the Clean Water Act prohibits States from using section 319 funding for addressing permitted discharges. In letters to the committee, multiple States expressed concern that the existing EPA interpretation could potentially preclude the use of any section 319 funding anywhere within the geographic jurisdiction of a community requiring an NPDES permit under the phase II stormwater regulations. In some States, this could mean the virtual exclusion of that State from the ability to use section 319 funds. This situation could negatively impact the progress in reducing nonpoint source pollution, which remains one of the nation’s most important hurdles in meeting our clean water goals.

The committee is aware that the EPA is in the process of re-evaluating their current interpretation of the Clean Water Act on this issue. However, the phase II stormwater regulations take effect in March of 2003. It is unclear if the EPA’s reevaluation of this policy will be complete before that deadline. The committee intends for section 301 of this bill to be a 1-year solution. During the 108th Congress, the committee fully intends to review the results of the EPA’s reevaluation and any other pertinent issues surrounding the

eligibility of funding for communities required to obtain a permit under the stormwater phase II rule for section 319. This section allows the committee's review to take place without preventing these communities from making progress in controlling their nonpoint sources of pollution during fiscal year 2003.

LEGISLATIVE HISTORY

H.R. 1070 was referred to the Committee on Environment and Public Works on September 5, 2002. The committee considered and amended the bill in a business meeting on September 26, 2002 and ordered the bill, as amended, reported to the Senate.

Senator Levin (D-MI) and Senator DeWine (R-OH) introduced S. 2544, the Senate version of the Great Lakes Legacy Act of 2002, on May 22, 2002. It was referred to the Committee on Environment and Public Works.

Senators Jeffords (I-VT), Leahy (D-VT), Clinton (D-NY), and Schumer (D-NY) introduced S. 2928, the Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002 on September 12, 2002. It was referred to the Committee on Environment and Public Works. The committee met to consider S. 2928 on September 26, 2002. A manager's amendment offered by Senator Jeffords was agreed to by voice vote. The bill was reported out by voice vote. The amended text of S. 2928 was included in the manager's amendment to H.R. 1070 agreed to at the committee business meeting on September 26, 2002.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider H.R. 1070 on September 26, 2002. A manager's amendment offered by Senator Jeffords was agreed to by voice vote.

An amendment by Senator Chafee to provide authority for States to use nonpoint source program funds made available under section 319 during the 2003 fiscal year for projects and activities related to the development and implementation of the phase II stormwater program was adopted by voice vote.

The committee favorably reported the bill by voice vote.

REGULATORY IMPACT STATEMENT

The bill does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. note; P.L. 104-4), the committee finds that H.R. 1070 would impose no unfunded mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill,

prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 1, 2002.

Hon. JAMES M. JEFFORDS, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1070, the Great Lakes Legacy Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*H.R. 1070, Great Lakes Legacy Act of 2002, as ordered reported by
the Senate Committee on Environment and Public Works on
September 26, 2002*

Summary

CBO estimates that implementing this legislation would cost \$390 million over the 2003-2007 period, assuming appropriation of the specified amounts. H.R. 1070 would authorize the Environmental Protection Agency (EPA), in conjunction with non-Federal sponsors, to carry out projects aimed at cleaning up certain areas of the Great Lakes where contamination has settled into sediments at the bottom of the lakes. The bill would authorize the appropriation of \$250 million over the 2004-2008 period to EPA for that purpose. In addition, over the same period, the bill would authorize the appropriation of \$10 million for EPA to conduct research on the development and use of innovative methods for cleaning up the Great Lakes and \$25 million for EPA to conduct a public information program that would address concerns over contaminated sediment. Also, this legislation would authorize the appropriation of \$200 million over the 2004-2008 period for the Great Lakes National Program Office to support demonstration projects on controlling and removing toxic pollutants from the Great Lakes, nutrient monitoring at the Great Lakes, and related research.

H.R. 1070 also includes the Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002, which would establish the Lake Champlain Basin Program and authorize the appropriation of \$55 million over the 2003-2007 period for EPA, the Department of the Interior, the Department of Commerce, and the Department of Agriculture. Such funds would be used by the various agencies to support efforts to improve the environmental quality of the Lake Champlain Basin.

H.R. 1070 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

Estimated Cost to the Federal Government

CBO estimates that implementing the bill would cost \$390 million over the 2003–2007 period, assuming appropriation of the amounts authorized for each year. Another \$150 million would be spent in subsequent years. The estimated budgetary impact of H.R. 1070 for the first 5 years is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹					
EPA Funding for Clean-up Projects:					
Authorization Level	0	50	50	50	50
Estimated Outlays	0	25	40	48	50
Research and Development:					
Authorization Level	0	2	2	2	2
Estimated Outlays	10	2	2	2	2
Public Information Program:					
Authorization Level	0	5	5	5	5
Estimated Outlays	0	5	5	5	5
Great Lakes National Program Office:					
Authorization Level	0	40	40	40	40
Estimated Outlays	0	26	38	40	40
Lake Champlain Basin Program:					
Authorization Level	11	11	11	11	11
Estimated Outlays	11	11	11	11	11
Total:					
Authorization Level	11	108	108	108	108
Estimated Outlays	11	69	96	106	108

¹ EPA has not yet received a full-year appropriation for 2003. The Great Lakes National Program Office and the Lake Champlain Basin Management Conference received an appropriation of \$18 million in 2002.

Intergovernmental and Private-Sector Impact

H.R. 1070 contains no intergovernmental or private-sector mandates as defined in UMRA. This bill would benefit Great Lakes States by authorizing appropriations for grants to conduct projects that lead to remediation of sediment contamination in certain areas in the

Great Lakes. States in the Lake Champlain basin would benefit from grants authorized to implement a plan to improve the environmental integrity of the Lake Champlain watershed. Any costs to participants in these programs would be incurred voluntarily.

Previous CBO Estimate

On July 3, 2002, CBO transmitted a cost estimate for H.R. 1070, as ordered reported by the House Committee on Transportation and Infrastructure on June 26, 2002. The Senate version of H.R. 1070, unlike the House version, would authorize the appropriation of

\$55 million over the 2003–2007 period for the Lake Champlain Basin Program. In addition, the Senate version would authorize appropriations totaling \$485 million over the 2004–2008 period for activities related to the Great Lakes, while the House version would authorize a total appropriation of \$260 million over the 2003–2007 period.

Estimate Prepared By: Federal Costs: Susanne S. Mehlman (226–2860); Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins (225–3220); Impact on the Private Sector: Cecil McPherson (226–2940)

Estimate Approved By: Robert A. Sunshine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

FEDERAL WATER POLLUTION CONTROL ACT

(33 U.S.C. 1251 et seq.)

AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes.

* * * * *

SEC. 118. GREAT LAKES.

(a) * * *

* * * * *

(c) *GREAT LAKES MANAGEMENT.*—

(1) * * *

* * * * *

(12) *REMEDIATION OF SEDIMENT CONTAMINATION IN AREAS OF CONCERN.*—

(A) *DEFINITION OF QUALIFIED PROJECT.*—*In this paragraph, the term “qualified project” means a project, to be carried out in an area of concern located wholly or in part in the United States, to—*

- (i) *monitor or evaluate contaminated sediment, including conducting a site characterization;*
- (ii) *remediate contaminated sediment (including disposal of the contaminated sediment); or*
- (iii) *prevent further or renewed contamination of sediment.*

(B) *PROJECTS.*—*The Administrator, acting through the Program Office and in coordination with the Office of Research and Development of the Agency, may carry out qualified projects under this paragraph.*

(C) *PRIORITY.*—*In carrying out this paragraph, the Administrator shall give priority to a qualified project that—*

(i) consists of remedial action for contaminated sediment;

(ii) has been identified in a Remedial Action Plan that is—

(I) submitted under paragraph (3); and

(II) ready to be implemented;

(iii) will use an innovative approach, technology, or technique for remediation; or

(iv) includes remediation to be commenced not later than 1 year after the receipt of funds for the project.

(D) LIMITATIONS.—The Administrator may not carry out a qualified project described in clause (ii) or (iii) of subparagraph (A)—

(i) that is located in an area of concern that the Administrator determines is likely to suffer significant further or renewed sediment contamination from sources of pollutants after the completion of the qualified project; or

(ii) at a site that has not had a thorough site characterization.

(E) NON-FEDERAL MATCHING REQUIREMENT.—

(i) IN GENERAL.—The non-Federal share of the cost of a qualified project carried out under this paragraph shall be not less than 35 percent.

(ii) IN-KIND CONTRIBUTIONS.—The non-Federal share of the cost of a qualified project carried out under this paragraph may include the value of in-kind services contributed by a non-Federal sponsor.

(iii) OPERATION AND MAINTENANCE.—The non-Federal share of the cost of the operation and maintenance of a qualified project carried out under this paragraph shall be 100 percent.

(F) COORDINATION.—In carrying out qualified projects under this paragraph, the Administrator shall coordinate with the Secretary of the Army, and with the Governors of States in which qualified projects assisted under this paragraph are located, to ensure that Federal and State assistance for remediation in areas of concern is used as efficiently as practicable.

(G) AUTHORIZATION OF APPROPRIATIONS.—

(i) IN GENERAL.—In addition to other amounts authorized to be appropriated under this section, there is authorized to be appropriated to carry out this paragraph \$50,000,000 for each of fiscal years 2004 through 2008.

(ii) AVAILABILITY.—Funds appropriated under clause (i) shall remain available until expended.

(13) RESEARCH AND DEVELOPMENT PROGRAM.—

(A) IN GENERAL.—The Administrator, in coordination with other Federal and local officials, shall conduct research on the development and use of innovative approaches, technologies, and techniques for the remediation

of sediment contamination in areas of concern in the Great Lakes.

(B) AUTHORIZATION OF APPROPRIATIONS.—

(i) IN GENERAL.—In addition to amounts authorized to be appropriated under other law, there is authorized to be appropriated to carry out this paragraph \$2,000,000 for each of fiscal years 2004 through 2008.

(ii) AVAILABILITY.—Funds appropriated under clause (i) shall remain available until expended.

(14) PUBLIC INFORMATION PROGRAM.—

(A) IN GENERAL.—The Administrator, acting through the Program Office and in coordination with the Office of Research and Development of the Agency, States, Indian tribes, local governments, and other entities, may carry out a public information program to provide—

(i) information relating to the remediation of contaminated sediment to the public in areas of concern that are—

- (I) located wholly within the United States; or*
- (II) shared with Canada; and*

(ii) local coordination and organization in those areas.

(B) AUTHORIZATION OF APPROPRIATIONS.—*There is authorized to be appropriated to carry out this paragraph \$5,000,000 for each of fiscal years 2004 through 2008.*

* * * * *

(g) RELATIONSHIP TO EXISTING FEDERAL AND STATE LAWS AND INTERNATIONAL TREATIES.—Nothing in this section shall be construed to affect the jurisdiction, powers, or prerogatives of any department, agency, or officer of the Federal Government or of any State government, or of any tribe, nor any powers, jurisdiction, or prerogatives of any international body created by treaty with authority relating to the Great Lakes , *including the cleanup and protection of the Great Lakes.*

(h) AUTHORIZATIONS OF GREAT LAKES APPROPRIATIONS.—**[**There are authorized to be appropriated to the Administrator to carry out this section not to exceed \$11,000,000 per fiscal year for the fiscal years 1987, 1988, 1989, and 1990, and \$25,000,000 for fiscal year 1991.**]** *There is authorized to be appropriated to carry out this section \$40,000,000 for each of fiscal years 2004 through 2008. Of the amounts appropriated each fiscal year—*

* * * * *

WATER RESOURCES DEVELOPMENT ACT OF 2000

[Public Law 106-541]

* * * * *

[LAKE CHAMPLAIN MANAGEMENT CONFERENCE

[SEC. 120. (a) **ESTABLISHMENT.—***There is established a Lake Champlain Management Conference to develop a comprehensive pollution prevention, control, and restoration plan for Lake Cham-*

plain. The Administrator shall convene the management conference within ninety days of the date of enactment of this section.

[(b) *MEMBERSHIP*.—The Members of the Management Conference shall be comprised of—

[(1) the Governors of the States of Vermont and New York;

[(2) each interested Federal agency, not to exceed a total of five members;

[(3) the Vermont and New York Chairpersons of the Vermont, New York, Quebec Citizens Advisory Committee for the Environmental Management of Lake Champlain;

[(4) four representatives of the State legislature of Vermont;

[(5) four representatives of the State legislature of New York;

[(6) six persons representing local governments having jurisdiction over any land or water within the Lake Champlain basin, as determined appropriate by the Governors; and

[(7) eight persons representing affected industries, non-governmental organizations, public and private educational institutions, and the general public, as determined appropriate by the trigovernmental Citizens Advisory Committee for the Environmental Management of Lake Champlain, but not to be current members of the Citizens Advisory Committee.

[(c) *TECHNICAL ADVISORY COMMITTEE*.—(1) The Management Conference shall, not later than one hundred and twenty days after the date of enactment of this section, appoint a Technical Advisory Committee.

[(2) Such Technical Advisory Committee shall consist of officials of: appropriate departments and agencies of the Federal Government; the State governments of New York and Vermont; and governments of political subdivisions of such States; and public and private research institutions.

[(d) *RESEARCH PROGRAM*.—(1)¹ The Management Conference shall establish a multi-disciplinary environmental research program for Lake Champlain. Such research program shall be planned and conducted jointly with the Lake Champlain Research Consortium.

[(e) *POLLUTION PREVENTION, CONTROL, AND RESTORATION PLAN*.—(1) Not later than three years after the date of the enactment of this section, the Management Conference shall publish a pollution prevention, control, and restoration plan (hereafter in this section referred to as the “Plan”) for Lake Champlain.

[(2) The Plan developed pursuant to this section shall—

[(A) identify corrective actions and compliance schedules addressing point and nonpoint sources of pollution necessary to restore and maintain the chemical, physical, and biological integrity of water quality, a balanced, indigenous population of shellfish, fish and wildlife, recreational, and economic activities in and on the lake;

¹ So in law. No paragraph (2). See P.L. 101-596, sec. 303, 104 Stat. 3006.

[(B) incorporate environmental management concepts and programs established in State and Federal plans and programs in effect at the time of the development of such plan;

[(C) clarify the duties of Federal and State agencies in pollution prevention and control activities, and to the extent allowable by law, suggest a timetable for adoption by the appropriate Federal and State agencies to accomplish such duties within a reasonable period of time;

[(D) describe the methods and schedules for funding of programs, activities, and projects identified in the Plan, including the use of Federal funds and other sources of funds; and

[(E) include a strategy for pollution prevention and control that includes the promotion of pollution prevention and management practices to reduce the amount of pollution generated in the Lake Champlain basin.

[(3) The Administrator, in cooperation with the Management Conference, shall provide for public review and comment on the draft Plan. At a minimum, the Management Conference shall conduct one public meeting to hear comments on the draft plan in the State of New York and one such meeting in the State of Vermont.

[(4) Not less than one hundred and twenty days after the publication of the Plan required pursuant to this section, the Administrator shall approve such plan if the plan meets the requirements of this section and the Governors of the States of New York and Vermont concur.

[(5) Upon approval of the plan, such plan shall be deemed to be an approved management program for the purposes of section 319(h) of this Act and such plan shall be deemed to be an approved comprehensive conservation and management plan pursuant to section 320 of this Act.

[(f) *GRANT ASSISTANCE*.—(1) The Administrator may, in consultation with the Management Conference, make grants to State, interstate, and regional water pollution control agencies, and public or nonprofit agencies, institutions, and organizations.

[(2) Grants under this subsection shall be made for assisting research, surveys, studies, and modeling and technical and supporting work necessary for the development of the Plan and for retaining expert consultants in support of litigation undertaken by the State of New York and the State of Vermont to compel cleanup or obtain cleanup damage costs from persons responsible for pollution of Lake Champlain.

[(3) The amount of grants to any person under this subsection for a fiscal year shall not exceed 75 per centum of the costs of such research, survey, study and work and shall be made available on the condition that non-Federal share of such costs are provided from non-Federal sources.

[(4) The Administrator may establish such requirements for the administration of grants as he determines to be appropriate.

[(g) *DEFINITION*.—For the purposes of this section, the term “Lake Champlain drainage basin” means all or part of Clinton, Franklin, Warren, Essex, and Washington counties in the State of New York and all or part of Franklin, Grand Isle, Chittenden, Addison, Rutland, Lamoille, Orange, Washington, Orleans, and Caledonia counties in Vermont, that contain all of the streams, riv-

ers, lakes, and other bodies of water, including wetlands, that drain into Lake Champlain.

[(h) *STATUTORY INTERPRETATION.*—Nothing in this section shall be construed so as to affect the jurisdiction or powers of—

[(1) any department or agency of the Federal Government or any State government; or

[(2) any international organization or entity related to Lake Champlain created by treaty or memorandum to which the United States is a signatory.

[(i) *AUTHORIZATION.*—There are authorized to be appropriated to the Environmental Protection Agency to carry out this section \$2,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995.]

SEC. 120. LAKE CHAMPLAIN BASIN PROGRAM.

(a) *DEFINITIONS.*—*In this section:*

(1) *COMMITTEE.*—*The term ‘Committee’ means the steering committee of the program comprised of representatives of Federal, State, and local governments and other persons, as specified in the Plan.*

(2) *LAKE CHAMPLAIN BASIN.*—

(A) *IN GENERAL.*—*The term ‘Lake Champlain basin’ means all water and land resources in the United States in the drainage basin of Lake Champlain.*

(B) *INCLUSIONS.*—*The term ‘Lake Champlain basin’ includes—*

(i) *Clinton, Essex, Franklin, Hamilton, Warren, and Washington counties in the State of New York; and*

(ii) *Addison, Bennington, Caledonia, Chittenden, Franklin, Grand Isle, Lamoille, Orange, Orleans, Rutland, and Washington counties in the State of Vermont.*

(3) *PLAN.*—*The term ‘Plan’ means the plan entitled ‘Opportunities for Action: An Evolving Plan for the Future of the Lake Champlain Basin’, approved by Lake Champlain Steering Committee on January 30, 2002, that describes the actions necessary to protect and enhance the environmental integrity and the social and economic benefits of the Lake Champlain basin.*

(4) *PROGRAM.*—*The term ‘program’ means the Lake Champlain Basin Program established by subsection (b)(1).*

(b) *ESTABLISHMENT.*—

(1) *IN GENERAL.*—*There is established a program to be known as the ‘Lake Champlain Basin Program’.*

(2) *PURPOSES.*—*The purposes of the program are—*

(A) *to protect and enhance the environmental integrity and social and economic benefits of the Lake Champlain basin; and*

(B) *to achieve the environmental goals described in the Plan, including—*

(i) *the reduction of phosphorous inputs to Lake Champlain from point sources and nonpoint sources so as to—*

(I) *promote a healthy and diverse ecosystem; and*

(II) provide for sustainable human use and enjoyment of Lake Champlain;

(ii) the reduction of toxic contamination, such as contamination by mercury and polychlorinated biphenyls, to protect public health and the ecosystem of the Lake Champlain basin;

(iii) the control of the introduction, spread, and impacts of nonnative nuisance species to preserve the integrity of the ecosystem of the Lake Champlain basin;

(iv) the minimization of risks to humans from water-related health hazards in the Lake Champlain basin, including through the protection of sources of drinking water in the Lake Champlain basin;

(v) the restoration and maintenance of a healthy and diverse community of fish and wildlife in the Lake Champlain basin;

(vi) the protection and restoration of wetland, streams, and riparian habitat in the Lake Champlain basin, including functions and values provided by those areas;

(vii) the management of Lake Champlain, including shorelines and tributaries of Lake Champlain, to achieve—

(I) the protection of natural and cultural resources of Lake Champlain; and

(II) the maintenance of recreational uses of Lake Champlain;

(viii) the protection of recreation and cultural heritage resources of the Lake Champlain basin;

(ix) the continuance of the Lake Champlain long-term water quality and biological monitoring program; and

(x) the promotion of healthy and diverse economic activity and sustainable development principles in the Lake Champlain basin.

(c) IMPLEMENTATION.—The Committee, in consultation with appropriate heads of Federal agencies, shall implement the program.

(d) REVISION OF PLAN.—At least once every 5 years, the Committee shall review and, as necessary, revise the Plan.

(e) GRANTS.—

(1) IN GENERAL.—Subject to paragraph (2), the Administrator may, in consultation with the Committee, make grants, for the purpose of implementing the management strategies contained in the Plan, to—

(A) State, interstate, and regional water pollution control agencies; and

(B) public or nonprofit agencies, institutions, and organizations.

(2) COST SHARING.—The Federal share of the cost of any activity carried out using funds from a grant provided under this subsection shall not exceed 75 percent.

(3) ADDITIONAL REQUIREMENTS.—The Administrator may establish such additional requirements for the administration

of grants provided under this subsection as the Administrator determines to be appropriate.

(f) *COORDINATION OF FEDERAL PROGRAMS.*—

(1) *AGRICULTURE.*—*The Secretary of Agriculture shall support the implementation of the program by providing financial and technical assistance relating to best management practices for controlling nonpoint source pollution, particularly with respect to preventing pollution from agricultural activities.*

(2) *INTERIOR.*—

(A) *GEOLOGICAL SURVEY.*—*The Secretary of the Interior, acting through the United States Geological Survey, shall support the implementation of the program by providing financial, scientific, and technical assistance and applicable watershed research, such as—*

(i) *stream flow monitoring;*

(ii) *water quality monitoring;*

(iii) *evaluation of effectiveness of best management practices;*

(iv) *research on the transport and final destination of toxic chemicals in the environment; and*

(v) *development of an integrated geographic information system for the Lake Champlain basin.*

(B) *FISH AND WILDLIFE.*—*The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service and in cooperation with the Committee, shall support the implementation of the program by—*

(i) *supporting the protection and restoration of wetland, streams, aquatic, and riparian habitat;*

(ii) *supporting restoration of interjurisdictional fisheries and declining aquatic species in the Lake Champlain watershed through—*

(I) *propagation of fish in hatcheries; and*

(II) *continued advancement in fish culture and aquatic species management technology;*

(iii) *supporting the control and management of aquatic nuisance species that have adverse effects on—*

(I) *fisheries; or*

(II) *the form, function, or structure of the ecosystem of the Lake Champlain basin;*

(iv) *providing financial and technical assistance in accordance with the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) to private landowners seeking to improve fish and wildlife habitat, a goal of which is—*

(I) *restoration of full function to degraded habitat;*

(II) *enhancement of specific habitat functions;*

or

(III) *establishment of valuable fish and wildlife habitat that did not previously exist on a particular parcel of real property; and*

(v) *taking other appropriate action to assist in implementation of the Plan.*

(C) NATIONAL PARKS.—The Secretary of the Interior, acting through the Director of the National Park Service, shall support the implementation of the program by providing, through the use of funds in the National Recreation and Preservation Appropriation account of the National Park Service, financial and technical assistance for programs concerning cultural heritage, natural resources, recreational resources, or other programs consistent with the mission of the National Park Service that are associated with the Lake Champlain basin, as identified in the Plan.

(3) COMMERCE.—The Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, shall support the implementation of the program by providing financial and technical assistance, through the national sea grant program of the Department of Commerce, for—

(A) research;

(B) management of fisheries and other aquatic resources;

(C) related watershed programs; and

(D) other appropriate action to assist in implementation of the Plan.

(g) NO EFFECT ON OTHER AUTHORITY.—Nothing in this section affects the authority of—

(1) any Federal or State agency; or

(2) any international entity relating to Lake Champlain established by an international agreement to which the United States is a party.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$11,000,000 for each of fiscal years 2003 through 2007, of which—

(1) \$5,000,000 shall be made available to the Administrator;

(2) \$3,000,000 shall be made available to the Secretary of the Interior;

(3) \$1,000,000 shall be made available to the Secretary of Commerce; and

(4) \$2,000,000 shall be made available to the Secretary of Agriculture.

* * * * *

SEC. 542. LAKE CHAMPLAIN WATERSHED, VERMONT AND NEW YORK.

[(a) DEFINITIONS.—In this section, the following definitions apply:

[(1) CRITICAL RESTORATION PROJECT.—The term “critical restoration project” means a project that will produce, consistent with Federal programs, projects, and activities, immediate and substantial ecosystem restoration, preservation, and protection benefits.

[(2) LAKE CHAMPLAIN WATERSHED.—The term “Lake Champlain watershed” means—

[(A) the land areas]

(a) DEFINITION OF LAKE CHAMPLAIN WATERSHED.—In this section, the term ‘Lake Champlain watershed’ means—

(1) *the land areas* within Addison, Bennington, Caledonia, Chittenden, Franklin, Grand Isle, Lamoille, Orange, Orleans, Rutland, and Washington Counties in the State of Vermont; and

[(B)(i) the]

(2)(A) *the land areas* that drain into Lake Champlain and that are located within Essex, Clinton, Franklin, Hamilton, Warren, and Washington Counties in the State of New York; and

[(ii) the]

(B) *the near-shore areas* of Lake Champlain within the counties referred to in subparagraph (A).

(b) **CRITICAL RESTORATION PROJECTS** *ECOSYSTEM RESTORATION PROGRAM*.—

(1) **IN GENERAL**.—The Secretary may [participate in] *provide design and construction assistance to non-Federal interests for [critical restoration] ecosystem restoration projects* in the Lake Champlain watershed.

(2) **TYPES OF PROJECTS**.—[A] *An [critical restoration] ecosystem restoration project shall be eligible for assistance under this section if the [critical restoration] ecosystem restoration project consists of—*

(A) implementation of an intergovernmental agreement for coordinating regulatory and management responsibilities with respect to the Lake Champlain watershed;

(B) acceleration of whole farm planning to implement best management practices to maintain or enhance water quality and to promote agricultural land use in the Lake Champlain watershed;

(C) acceleration of whole community planning to promote intergovernmental cooperation in the regulation and management of activities consistent with the goal of maintaining or enhancing water quality in the Lake Champlain watershed;

(D) natural resource stewardship activities on public or private land to promote land uses that—

(i) preserve and enhance the economic and social character of the communities in the Lake Champlain watershed; and

(ii) protect and enhance water quality; or

(E) any other activity determined by the Secretary to be appropriate, *including remote sensing and the development of a geographic information system for the Lake Champlain basin by the Cold Regions Research and Engineering Laboratory.*

(c) **PUBLIC OWNERSHIP REQUIREMENT**.—The Secretary may provide [assistance for a] *design and construction assistance for an [critical restoration] ecosystem restoration project* under this section only if—

(1) the [critical restoration] *ecosystem restoration project* is publicly owned; or

(2) the non-Federal interest with respect to the [critical restoration] *ecosystem restoration project* demonstrates that the [critical restoration] *ecosystem restoration project* will pro-

vide a substantial public benefit in the form of *ecosystem restoration* or water quality improvement.

(d) PROJECT SELECTION.—

[(1) IN GENERAL.—In consultation with the Lake Champlain Basin Program and the heads of other appropriate Federal, State, tribal, and local agencies, the Secretary may—

[(A) identify [critical restoration] *ecosystem restoration* projects in the Lake Champlain watershed; and

[(B) carry out the [critical restoration] *ecosystem restoration* projects after entering into an agreement with an appropriate non-Federal interest in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b) and this section.

[(2) CERTIFICATION.—

[(A) IN GENERAL.—A]

(d) CRITERIA FOR ELIGIBILITY.—

(1) IN GENERAL.—An [critical restoration] *ecosystem restoration* project shall be eligible for financial assistance under this section only if the appropriate State official for the [critical restoration] *ecosystem restoration* project certifies to the Secretary that the [critical restoration] *ecosystem restoration* project will contribute to the protection and enhancement of the quality or quantity of the water resources of the Lake Champlain watershed.

[(B) SPECIAL]

(2) SPECIAL CONSIDERATION.—In certifying [critical restoration] *ecosystem restoration* projects to the Secretary, the appropriate State officials shall give special consideration to projects that implement plans, agreements, and measures that preserve and enhance the economic and social character of the communities in the Lake Champlain watershed.

(e) COST SHARING.—

(1) IN GENERAL.—Before providing assistance under this section with respect [to a] to an [critical restoration] *ecosystem restoration* project, the Secretary shall enter into a [project] project (which assistance may include the provision of funds through the Lake Champlain Basin Program), cooperation [agreement that shall require the non-Federal interest] agreement that is in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b) and under which the non-Federal interest agrees—

(A) to pay 35 percent of the total costs of the project;

(B) to provide any land, easements, rights-of-way, dredged material disposal areas, and relocations necessary to carry out the project;

(C) to pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation costs associated with the project; and

(D) to hold the United States harmless from any claim or damage that may arise from carrying out the project, except any claim or damage that may arise from the negligence of the Federal Government or a contractor of the Federal Government.

(2) NON-FEDERAL SHARE.—

(A) CREDIT FOR DESIGN WORK.—The non-Federal interest shall receive credit for the reasonable costs of design work carried out by the non-Federal interest before the date of execution of a project cooperation agreement for the [critical restoration] *ecosystem restoration* project, if the Secretary finds that the design work is integral to the project.

(B) CREDIT FOR LAND, EASEMENTS, AND RIGHTS-OF-WAY.—The Secretary shall credit the non-Federal interest for the value of any land, easement, right-of-way, dredged material disposal area, or relocation provided for carrying out the project.

(C) FORM.—The non-Federal interest may provide up to [50] 100 percent of the non-Federal share in the form of services, materials, supplies, or other in-kind contributions.

(3) CREDIT FOR AGRICULTURAL CONSERVATION.—*Funds provided to a non-Federal interest under the conservation reserve enhancement program of the Department of Agriculture announced on May 27, 1998 (63 Fed. Reg. 28965), or the wetlands reserve program under subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3837 et seq.), for use in carrying out a project under the Plan shall be credited toward the non-Federal share of the cost of the project if the Secretary of Agriculture certifies that those funds may be used for the purpose of the project under the Plan.*

(f) APPLICABILITY OF OTHER FEDERAL AND STATE LAWS.—Nothing in this section waives, limits, or otherwise affects the applicability of Federal or State law with respect to a project carried out with assistance provided under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$20,000,000, to remain available until expended.

