

S 2437 IS

106th CONGRESS

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S. 2437

To provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes; to the Committee on Environment and Public Works.

IN THE SENATE OF THE UNITED STATES

April 13, 2000

Mr. SMITH introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes; to the Committee on Environment and Public Works.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.-

(a) SHORT TITLE.-This Act may be cited as the "Water Resources Development Act of 2000".

(b) TABLE OF CONTENTS.

Sec. 1. Short title.

Sec. 2. Definitions.

Sec. 3. Comprehensive Everglades restoration plan.

Sec. 4. Watershed and river basin assessments.

- Sec. 5. Brownfields Revitalization Program.
- Sec. 6. Tribal Partnership Program.
- Sec. 7. Ability to pay.
- Sec. 8. Property Protection Program.
- Sec. 9. National Recreation Reservation Service.
- Sec. 10. Operation and maintenance of hydroelectric facilities.
- Sec. 11. Interagency and international support.
- Sec. 12. Reburial and transfer authority.
- Sec. 13. Amendment to Rivers and Harbors Act.
- Sec. 14. Structural flood control cost-sharing.
- Sec. 15. Calfed Bay Delta Program assistance.
- Sec. 16. Project de-authorizations.
- Sec. 17. Floodplain management requirements.
- Sec. 18. Transfer of project lands.
- Sec. 19. Puget Sound and Adjacent waters restoration.0634

SEC. 2. DEFINITION OF SECRETARY.

In this Act, the term "Secretary" means the Secretary of the Army.

SEC. 3. COMPREHENSIVE EVERGLADES RESTORATION PLAN.

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

(1) CENTRAL AND SOUTHERN FLORIDA PROJECT.-The term "Central and Southern Florida Project" means the project for Central and Southern Florida authorized under the heading "CENTRAL AND SOUTHERN FLORIDA" in section 203 of the Flood Control Act of 1948 (62 Stat. 1176), any modification to the project authorized by law, or modified by the Comprehensive Everglades Restoration Plan.

(2) SOUTH FLORIDA ECOSYSTEM.-The term "South Florida ecosystem" means the area consisting of the lands and waters within the boundary, existing on July 1, 1999, of

the South Florida Water Management District, including the Everglades ecosystem, the Florida Keys, Biscayne Bay, Florida Bay, and other contiguous near-shore coastal waters of South Florida.

(3) **COMPREHENSIVE EVERGLADES RESTORATION PLAN.**-The term "Comprehensive Everglades Restoration Plan" means the plan contained in the "Final Feasibility Report and Programmatic Environmental Impact Statement," April 1999, as transmitted to the Congress by the July 1, 1999, letter of the Assistant Secretary of the Army for Civil Works pursuant to Section 528 of the Water Resources Development Act of 1996 (110 Stat. 3767).

(4) **NATURAL SYSTEM.**-The term "natural system" means all Federally or state managed lands and waters within the South Florida ecosystem, including the water conservation areas, Everglades National Park, Big Cypress National Preserve, and other federally or state designated conservation lands, and other lands that create or contribute to habitat supporting native flora and fauna.

(b) **FINDINGS.**-The Congress finds that:

(1) The Everglades is an American treasure. In its natural state, the South Florida ecosystem was connected by the flow of fresh water from the Kissimmee River to Lake Okeechobee-south through vast freshwater marshes known as the Everglades-to Florida Bay, and on to the coral reefs of the Florida Keys. The South Florida ecosystem covers approximately 18,000 square miles and once included a unique and biologically productive region, supporting vast colonies of wading birds, a mixture of temperate and tropical plant and animal species, and teeming coastal fisheries and North America's only barrier coral reef. The South Florida ecosystem is endangered as a result of adverse changes in the quantity, distribution, and timing of flows and degradation of water quality. The Everglades alone has been reduced in size by approximately 50 percent. Restoration of this nationally and internationally recognized ecosystem, including America's Everglades, is in the Nation's interest.

(2) The Central and Southern Florida Project plays an important role in the economy of south Florida by providing flood protection and water supply to agriculture and the residents of south Florida and providing water to the water conservation areas, Everglades National Park and other natural areas for the purpose of preserving fish and wildlife resources. The population of the region is expected to continue to grow, further straining the ability of the existing Central and Southern Florida Project to meet the needs of the natural system and the people of south Florida.

(3) Modifications to the Central and Southern Florida Project are needed to restore, preserve, and protect the South Florida ecosystem, including the Everglades, while continuing to provide for the water related needs of the region, including flood protection and other objectives served by the Project.

(4) The Comprehensive Everglades Restoration Plan is a scientifically and

economically sound plan that modifies the Central and Southern Florida Project to restore, preserve and protect the South Florida ecosystem. By storing most of the water currently discharged to the Atlantic Ocean and Gulf of Mexico, ensuring the quality of water discharged into the South Florida ecosystem from project features, and removing internal levees and canals in the Everglades, the Comprehensive Everglades Restoration Plan provides the roadmap for the recovery of a healthy, sustainable ecosystem as well as providing for the other water-related needs of the region, including flood protection, the enhancement of water supplies, and other objectives served by the Central and Southern Florida Project.

(5) The comprehensive, system-wide nature of the Comprehensive Everglades Restoration Plan and the linkage of the elements of the plan to each other must be preserved not only during the over 25-year period that will be necessary for its implementation, but for as long as the project remains authorized. Implementation must proceed in a programmatic manner using the principles of adaptive assessment as outlined in the Comprehensive Everglades Restoration Plan.

(6) The Comprehensive Everglades Restoration Plan contains a number of components that will benefit Everglades National Park, Biscayne National Park, Florida Keys National Marine Sanctuary, Big Cypress National Preserve, Ten Thousand Islands National Wildlife Refuge, and Loxahatchee National Wildlife Refuge by significantly improving the quantity, quality, timing, and distribution of waste delivered to these Federal areas. Improved water deliveries will also provide benefits to federally-listed threatened and endangered species.

(7) The Congress, the Federal government, and the State of Florida have, in prior legislation, recognized the need to restore, preserve, and protect the South Florida ecosystem. These on-going efforts are important to the success of the Comprehensive Everglades Restoration Plan. Since the creation of the South Florida Ecosystem Restoration Task Force in 1993, the Federal government has been working in partnership with tribal, state, and local governments, the private sector, and individual citizens to accomplish restoration of the South Florida ecosystem. It is important for the long-term restoration of this ecosystem that these efforts, including the South Florida Ecosystem Restoration Task Force, be continued and strengthened. The state, with its financial responsibilities for project implementation and capabilities in the planning, design, construction, and operation of the Comprehensive Everglades Restoration Plan, must be a full partner with the Federal government.

(c) COMPREHENSIVE EVERGLADES RESTORATION PLAN.-

(1) IN GENERAL.-Congress hereby approves the Comprehensive Everglades Restoration Plan to modify the Central and Southern Florida Project to restore, preserve, and protect the South Florida ecosystem. These changes are necessary in order to ensure that the Central and Southern Florida Project as amended provides for the improvement and protection of water quality in, and the reduction of the loss of fresh water from, the South Florida ecosystem, as well as providing for the water related needs

of the region, including flood protection, the enhancement of water supplies, and other objectives served by the Central and Southern Florida Project.

(2) SPECIFIC AUTHORIZATIONS.-

(A) IN GENERAL.-Those projects included in the Comprehensive Everglades Restoration Plan and specified in paragraphs (B) and (C) are authorized to be carried out by the Secretary substantially in accordance with the plans, and subject to the conditions described in the Central and Southern Florida Project: Comprehensive Review Study Report of the Chief of Engineers dated June 22, 1999.

(B) PILOT PROJECTS.-The following pilot projects are authorized for implementation, after review and approval by the Secretary, at a total cost of \$69,000,000, with an estimated Federal cost of \$34,500,000 and an estimated non-Federal cost of \$34,500,000:

- (1) Caloosahatchee River (C-43) Basin ASR (\$6,000,000);
- (2) Lake Belt In-Ground Reservoir Technology (\$23,000,000);
- (3) L-31N Seepage Management (10,000,000); and,
- (4) Wastewater Reuse Technology (\$30,000,000).

(C) OTHER PROJECTS.-The following projects are authorized at a total cost of \$1,100,918,000, with an estimated Federal cost of \$550,459,000 and an estimated non-Federal cost of \$550,459,000. Prior to implementation of projects (1) through (10), the Secretary shall review and approve a Project Implementation Report prepared in accordance with subsection (g).

- (1) C-44 Basin Storage Reservoir (\$112,562,000);
- (2) Everglades Agricultural Area Storage Reservoirs-Phase I (\$233,408,000);
- (3) Site 1 Impoundment (\$38,535,000);
- (4) Water Conservation Areas 3A/3B Levee Seepage Management (\$100,335,000);
- (5) C-11 Impoundment and Stormwater Treatment Area (\$124,837,000);
- (6) C-9 Impoundment and Stormwater Treatment Area (\$89,146,000);
- (7) Taylor Creek/Nubbin Slough Storage and Treatment Area (\$104,027,000);
- (8) Raise and Bridge East Portion of Tamiami Trail and Fill Miami Canal within Water Conservation Area 3 (\$26,946,000);

(9) North New River Improvements (\$77,087,000);

(10) C-111 Spreader Canal (\$94,035,000); and

(11) Adaptive Assessment and Monitoring Program (10 years) (\$100,000,000).

(d) **ADDITIONAL PROGRAM AUTHORITY.**-In order to expedite implementation of the Comprehensive Everglades Restoration Plan, the Secretary is authorized to implement modifications to the Central and Southern Florida Project that are consistent with the Comprehensive Everglades Restoration Plan and that will produce independent and substantial restoration, preservation, or protection benefits to the South Florida ecosystem; provided that the total Federal cost of each project accomplished under this authority shall not exceed \$35,000,000; and provided further that the total Federal cost of all the projects accomplished under this authority shall not exceed \$250,000,000. Prior to implementation of any project authorized under this subsection, the Secretary shall review and approve a Project Implementation Report prepared in accordance with subsection (g).

(e) **AUTHORIZATION OF FUTURE PROJECT FEATURES.**-Except for those projects authorized in subsections (c) and (d), all future projects included in the Comprehensive Everglades Restoration Plan shall require a specific authorization of Congress. Prior to authorization, the Secretary shall transmit such projects to Congress along with a Project Implementation Report prepared in accordance with subsection (g). Further, such projects, if authorized, shall be implemented pursuant to subsection (i) of this section.

(f) **COST SHARING.**-

(1) **IN GENERAL.**-The non-Federal share of the cost of implementing projects authorized under subsections (c), (d), and (e) shall be 50 percent. The non-Federal sponsor shall be responsible for all lands, easements, rights-of-way, and relocations and shall be afforded credit toward the non-Federal share in accordance with paragraph (3)(A). The non-Federal sponsor may accept Federal funding for the purchase of the necessary lands, easements, rights-of-way or relocations, provided that such assistance is credited toward the Federal share of the cost of the project.

(2) **OPERATION AND MAINTENANCE.**-Notwithstanding section 528(e)(3) of the Water Resources Development Act of 1996, the non-Federal sponsor shall be responsible for sixty percent of the operation, maintenance, repair, replacement, and rehabilitation cost of activities authorized under this section.

(3) **CREDIT AND REIMBURSEMENT.**-

(A) **LANDS.**-Regardless of the date of acquisition, the value of lands or interests in land acquired by non-Federal interests for any activity required in this section shall be included in the total cost of the activity and credited against the non-Federal share of

the cost of the activity. Such value shall be determined by the Secretary.

(B) WORK.-The Secretary may provide credit, including in-kind credit, to or reimburse the non-Federal project sponsor for the reasonable cost of any work performed in connection with a study or activity necessary for the implementation of the Comprehensive Everglades Restoration Plan if the Secretary determines that the work is necessary and the credit or reimbursement is granted for work completed during the period of design or implementation pursuant to an agreement between the Secretary and the non-Federal sponsor that prescribes the terms and conditions of the credit or reimbursement.

(C) AUDITS.-Credit or reimbursement for land or work granted under this subsection shall be subject to audit by the Secretary.

(g) EVALUATION OF PROJECT FEATURES.-

(1) IN GENERAL.-Prior to implementation of project features authorized in subsection (c)(2)(C)(1) through (c)(2)(C)(10) and subsection (d), the Secretary, in cooperation with the non-Federal sponsor, shall, after notice and opportunity for public comment, complete Project Implementation Reports to address the project(s) cost effectiveness, engineering feasibility, and potential environmental impacts, including National Environmental Policy Act compliance. The Secretary shall coordinate with appropriate Federal, tribal, state and local governments during the development of such reports and shall identify any additional water that will be made available for the natural system, existing legal users, and other water related needs of the region. Further, such reports shall ensure that each project feature is consistent with the programmatic regulations issued pursuant to subsection (i).

(2) PROJECT JUSTIFICATION.-Notwithstanding section 209 of the Flood Control Act of 1970 (42 U.S.C. 1962-2) or any other provision of law regarding economic justification, in carrying out activities authorized in accordance with subsections (c), (d), and (e), the Secretary may determine that activities are justified by the environmental benefits derived by the South Florida ecosystem in general and the Everglades and Florida Bay in particular; and shall not need further economic justification if the Secretary determines that the activities are cost effective.

(h) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.-

(1) IN GENERAL.-Socially and economically disadvantaged individuals and communities make up a large portion of the South Florida ecosystem and have legitimate interests in the implementation of the Comprehensive Everglades Restoration Plan. Further, such groups have not, in some cases, been given the opportunity to understand and participate fully in the development of water resources projects. As provided in this subsection, the Secretary shall ensure that impacts on socially and economically disadvantaged individuals are considered during the implementation of the Comprehensive Everglades Restoration Plan and that such individuals have

opportunities to review and comment on its implementation.

(2) **DEFINITIONS.**-In this subsection, the following definitions apply:

(A) **SMALL BUSINESS CONCERN.**-The term "small business concern" has the meaning such term has under section 3 of the Small Business Act (15 U.S.C. 632).

(B) **SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.**-The term "socially and economically disadvantaged individuals" has the meaning such term has under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations promulgated pursuant thereto.

(3) **PROGRAM FOR SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.**-The Secretary shall establish a program to ensure that socially and economically disadvantaged individuals within the South Florida ecosystem are informed of the Comprehensive Everglades Restoration Plan, given the opportunity to review and comment on each project feature, provided opportunities to participate as a small business concern contractor, and given opportunities for employment or internships in emerging industry sectors.

(4) **CONTRACTS TO BUSINESSES OWNED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.**-The Secretary shall establish a goal that not less than 10 percent of the amounts made available for construction of projects authorized pursuant to subsections (c), (d) and (e), shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals within the South Florida ecosystem.

(i) **ASSURING PROJECT BENEFITS.**-

(1) **IN GENERAL.**-The primary and overarching purpose of the Comprehensive Everglades Restoration Plan is to restore, preserve and protect the natural system within the South Florida ecosystem. The Comprehensive Everglades Restoration Plan shall be implemented to ensure the protection of water quality in, the reduction of the loss of fresh water from, and the improvement of the environment of the South Florida ecosystem, while providing for other water-related needs of the region, including water supply and flood protection. The Central and Southern Florida Project, as amended by the Comprehensive Everglades Restoration Plan, shall be implemented in a manner that ensures that the benefits to the natural system and the human environment, including the proper quantity, quality, timing and distribution of water, are achieved and maintained for as long as the Central and Southern Florida Project remains authorized. When implemented fully, the approximately 68 features of the Comprehensive Everglades Restoration Plan will result in modifications to the existing Central and Southern Florida Project works that shall provide the water necessary to restore, preserve and protect the natural system while providing for other water related needs of the region. The Secretary shall ensure that both the natural system and the human environment receive the benefits intended when such modifications to the Central and

Southern Florida project are made pursuant to the Comprehensive Everglades Restoration Plan and previous Acts of Congress.

(2) DEDICATION AND MANAGEMENT OF WATER-

(A) IN GENERAL.-Consistent with subsection (i)(2)(B), the Secretary shall dedicate and manage the water made available from the Central and Southern Florida Project features authorized, constructed, and operated in accordance with previous Acts of Congress and this Act authorizing the implementation of features of the Comprehensive Everglades Restoration Plan, for the temporal and spatial needs of the natural system. The needs of the natural system and the human environment shall be defined in terms of quality, quantity, timing and distribution of water. In developing the regulations that provide for the dedication and management of water for the natural system in accordance with this subsection, the Secretary shall incorporate rainfall driven operational criteria and annual fluctuations in rainfall.

(B) PROGRAMMATIC REGULATIONS.-The Secretary shall, after notice and opportunity for public comment and with the concurrence of the Secretary of the Interior, and in consultation with the Secretary of Commerce, the Administrator of the Environmental Protection Agency and the Governor of the State of Florida, issue programmatic regulations identifying the amount of water to be dedicated and managed for the natural system from the Central and Southern Florida Project features authorized, constructed, and operated in accordance with previous acts of Congress and this Act through the implementation of the Comprehensive Everglades Restoration Plan features. Such regulations shall be completed within two years of the date of enactment of this Act. These regulations shall ensure that the natural system and the human environment receive the benefits intended, including benefits for the restoration, preservation, and protection of the natural system, as the Comprehensive Everglades Restoration Plan is implemented and incorporated into the Central and Southern Florida Project for as long as the project remains authorized. Nothing in this Act shall prevent the State of Florida from reserving water for environmental uses under the 1972 Florida Water Resources Act to the extent consistent with this section.

(C) PROJECT SPECIFIC REGULATIONS.-The Secretary, after notice and opportunity for public comment, and in consultation with the Secretary of the Interior, Secretary of Commerce, the Administrator of the Environmental Protection Agency, other Federal agencies, and the State of Florida shall develop project feature specific regulations to ensure that the benefits anticipated from each feature of the Comprehensive Everglades Restoration Plan are achieved and maintained as long as the project remains authorized. Each such regulation shall be consistent with the programmatic regulations issued pursuant to subsection (i)(2)(B), be based on the best available science, and ensure that the quantity, quality, timing, and distribution of water for the natural system and the human environment anticipated in the Comprehensive Plan for each project feature is achieved and maintained.

(3) EXISTING WATER USES.-The Secretary shall ensure that the implementation of the Comprehensive Everglades Restoration Plan, including physical or operational modifications to the Central and Southern Florida Project, does not cause substantial adverse impacts on existing legal water uses, including annual water deliveries to Everglades National Park, water for the preservation of fish and wildlife in the natural system, and other legal uses as of the date of enactment of this Act. The Secretary shall not eliminate existing legal sources of water supply, including those for agricultural water supply, water for Everglades National Park and the preservation of fish and wildlife, until new sources of water supply of comparable quantity and quality are available to replace the water to be lost from existing sources. Existing authorized levels of flood protection will be maintained.

(j) REPORT TO CONGRESS.-Beginning on October 1, 2005, and periodically thereafter until October 1, 2036, the Secretary and the Secretary of the Department of the Interior, in consultation with the Environmental Protection Agency, the Department of Commerce and the State of Florida, shall jointly submit to Congress a report on the implementation of the Comprehensive Everglades Restoration Plan. Such reports shall be completed no less than every five years. Such reports shall include a description of planning, design, and construction work completed, the amount of funds expended during the period covered by the report, and the work anticipated over the next five-year period. In addition, each report shall include the determination of each Secretary, and the Administrator of the Environmental Protection Agency, concerning the benefits to the natural system and the human environment achieved as of the date of the report and whether the completed features of the Comprehensive Everglades Restoration Plan are being operated in a manner that is consistent with the programmatic regulations established under subsection (i)(2)(B).

SEC. 4. WATERSHED AND RIVER BASIN ASSESSMENTS.

Section 729 of Public Law 99-662 [100 stat. 4164] is amended by-

(a) striking "STUDY OF WATER RESOURCES NEEDS OF RIVER BASINS AND REGIONS." and all that follows, and

(b) inserting in lieu thereof:

"WATERSHED AND RIVER BASIN ASSESSMENTS.

"(a) IN GENERAL.-The Secretary is authorized to assess the water resources needs of river basins and watersheds of the United States. Such assessments shall be undertaken in cooperation and coordination with the Departments of the Interior, Agriculture and Commerce, the Environmental Protection Agency, and other appropriate agencies, and may include an evaluation of ecosystem protection and restoration, flood damage reduction, navigation and port needs, watersheds protection, water supply, and drought preparedness.

"(b) CONSULTATION.-The Secretary shall consult with Federal, Tribal, State, interstate, and local governmental entities in carrying out the assessments authorized by this section. In conducting such assessments, the Secretary may accept contributions of services, materials, supplies and cash from Federal, Tribal, State, interstate, and local governmental entities where the Secretary determines that such contributions will facilitate completion of the assessments.

"(c) COST SHARING REQUIREMENTS.-The non-Federal share of the cost of an assessment conducted under this section shall be 25 percent of the cost of such assessment. The non-Federal sponsor may provide the non-Federal cost-sharing requirement through the provision cash or services, materials, supplies, or other in-kind services. In no event shall such credit exceed the non-Federal required share of costs for the assessment.

"(d) AUTHORIZATION OF APPROPRIATIONS.-There is authorized to be appropriated to carry out this section \$15,000,000."

SEC. 5. BROWNFIELDS REVITALIZATION PROGRAM

(a) GENERAL.-The Secretary shall, in consultation with the Environmental Protection Agency and other appropriate agencies, carry out a program to provide assistance to non-Federal interests in the remediation and restoration of abandoned or idled industrial and commercial sites where such assistance will improve the quality, conservation, and sustainable use of the Nation's streams, rivers, lakes, wetlands, and floodplains. Assistance may be in the form of site characterizations, planning, design, and construction projects. To the maximum extent practicable, projects implemented by the Secretary under this section will be done in cooperation and coordination with other Federal, Tribal, State, and local efforts to maximize resources available for the remediation, restoration, and redevelopment of brownfield sites.

(b) JUSTIFICATION FOR ASSISTANCE.-Notwithstanding any economic justification provision or requirement of section 209 of the Flood Control Act of 1970 [42 U.S.C. 1962-2] or economic justification provision of any other law, the Secretary may determine that the assistance projects authorized by subsection (a),

(1) is justified by the public health and safety, and environmental benefits; and

(2) shall not need further economic justification if the Secretary determines that the assistance is cost effective.

(c) COST SHARING.-

(1) IN GENERAL.-Prior to implementing any assistance project under this section, the Secretary shall enter into a binding agreement with the non-Federal interest, which shall require the non-Federal interest to: (a) pay 50 percent of the total costs of the assistance project; (b) acquire and place in public ownership for so long as is necessary to

implement and complete the assistance project any lands, easements, rights-of-way, and relocations necessary for implementation and completion of the assistance project; (c) pay 100 percent of any operation, maintenance, repair, replacement, and rehabilitation costs associated with the assistance project; and (d) hold and save harmless the United States free from claims or damages due to implementation of the assistance project, except for the negligence of the Government or its contractors.

(2) CREDIT.-The non-Federal interest shall receive credit for the value of any lands, easements, rights-of-way, and relocations provided for implementation and completion of such assistance project. The Secretary also may afford credit to a non-Federal interest for services, studies, supplies, and other in-kind consideration where the Secretary determines that such services, studies, supplies, and other in-kind consideration will facilitate completion of the assistance project. In no event shall such credit exceed the 50 percent non-Federal cost-sharing requirement.

(d) APPLICABILITY OF OTHER FEDERAL AND STATE LAWS.-Nothing in this section shall be construed as waiving, limiting, or otherwise affecting the applicability of any provision of Federal or State law.

(e) PROJECT COST LIMITATION.-Not more than \$5,000,000 in Army Civil Works Appropriations funds may be allotted under this section at any single site.

(f) AUTHORIZATION OF APPROPRIATIONS.-There is authorized to be appropriate to carry out this section \$25,000,000 for each fiscal year from 2002 through 2005.

(g) PROGRAM EVALUATION.-Not later than December 31, 2005, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that discusses the program's performance objectives and evaluates its effectiveness in achieving them, along with any recommendations concerning continuation of the program.

SEC. 6. TRIBAL PARTNERSHIP PROGRAM.

(a) IN GENERAL.-The Secretary is authorized, in cooperation with Federally recognized Indian tribes and other Federal agencies, to study and determine the feasibility of implementing water resources development projects that will substantially benefit Indian tribes, and are located primarily within Indian country, as defined in 18 U.S.C. 1151, or in proximity to Alaska native villages. Studies conducted under this authority may address, but are not limited to, projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources.

(b) CONSULTATION AND COORDINATION.-the Secretary shall consult with the Secretary of the Interior on studies conducted under this section in recognition of the unique role of the Secretary of the Interior regarding trust responsibilities with Indian

tribes, and in recognition of mutual trust responsibilities. the Secretary shall integrate Army Civil Works activities with activities of the Department of the Interior to avoid conflicts, duplications of effort, or unanticipated adverse effects to Indian tribes, and shall consider existing authorities and programs of the Department of the Interior and other Federal agencies in any recommendations regarding implementation of project studied under this section.

(c) ABILITY TO PAY.-Any cost-sharing agreement for a study under this section shall be subject to the ability of a non-Federal interest to pay. The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.

(d) CREDITS.-For such studies conducted under this section, the Secretary may afford credit to the tribe for services, studies, supplies, and other in-kind consideration where the Secretary determines that such services, studies, supplies, and other-in-kind consideration will facilitate completion of the project. In no event shall such credit exceed the tribe's required share of costs for the study.

(e) AUTHORIZATION OF APPROPRIATIONS.-There is authorized to be appropriated to carry out subsection (a) of this section \$5,000,000 for each fiscal year, for fiscal years 2002 through 2006. Not more than \$1,000,000 in Army Civil Works appropriations may be allotted under this section for any one tribe.

(f) DEFINITION.-For the purposes of this section the term "Indian tribes" means any tribe, band, nation, or other organized group of community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

SEC. 7. ABILITY TO PAY.

Section 103(m) of Public Law 99-662 (33 U.S.C. 2213(m), as amended) is amended by:

(1) Deleting subsection "(1)" in its entirety and inserting in lieu thereof the following language:

"(1) IN GENERAL.-Any cost-sharing agreement under this section for a feasibility study or for construction of an environmental protection and restoration or flood control project, or for construction of an agricultural water supply project, shall be subject to the ability of a non-Federal interest to pay."

(2) Deleting subsection "(2)" in its entirety and inserting in lieu thereof the following language:

"(2) CRITERIA AND PROCEDURES.-the ability of a non-Federal interest to pay shall

be determined by the Secretary in accordance with criteria and procedures in effect on the day before the date of the enactment of the Water Resources Development Act of 2000; except that such criteria and procedures shall be revised, and new criteria and procedures be developed, within 18 months after such date of enactment to reflect the requirements of paragraph (3) of section 202(b) of the Water Resources Development Act of 1996 [110 STAT. 3674]."

(3) adding the word "and" at the end of subsection (3)(A)(ii)

(4) Deleting subsection (3)(B) in its entirety.

(5) Deleting subsection (3)(C) in its entirety and inserting in lieu thereof the following language:

"(B) may consider additional criteria relating to the non-Federal interest's financial ability to carry out its cost-sharing responsibilities, or relating to additional assistance that may be available for other Federal or State sources."

SEC. 8. PROPERTY PROTECTION PROGRAM.

(a) **IN GENERAL.**-The Secretary is authorized to implement a program to reduce vandalism and destruction of property at water resources development projects under the jurisdiction of the Department of the Army. In carrying out the program the Secretary may provide rewards to individuals who provide information or evidence leading to the arrest and prosecution of individuals causing damage to Federal property, including the payment of cash rewards.

(b) **AUTHORIZATION OF APPROPRIATIONS.**-There is authorized to be appropriated \$500,000 annually to carry out this section.

SEC. 9. NATIONAL RECREATION RESERVATION SERVICE.

Notwithstanding Section 611 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277), the Secretary may participate in the National Recreation Reservation Service on an interagency basis and fund the Department of the Army's share of those activities required for implementing, operating, and maintaining the Service.

SEC. 10. OPERATION AND MAINTENANCE OF HYDROELECTRIC FACILITIES.

Section 314 of Public Law 101-640 (33 U.S.C. 2321) is amended by inserting the following language immediately after the phrase "commercial activities": "where such activities require specialized training related to hydroelectric power generation. These activities would be subject to the labor standards provisions in the Service Contract Act, 41 U.S.C. 351, and to the extent applicable, the Davis-Bacon Act, 40 U.S.C., Sections 276(a)-7."

SEC. 11. INTERAGENCY AND INTERNATIONAL SUPPORT.

Section 234 of Public Law 104-303 (33 U.S.C. 2323a) is amended-

(1) in subsection (d) by deleting "\$1,000,000" and inserting \$2,000,000.

SEC. 12. REBURIAL AND TRANSFER AUTHORITY.

(a) IN GENERAL.-

(1) REBURIAL.-The Secretary is authorized, in consultation with the appropriate Indian tribes, to identify and set aside areas at civil works projects managed by the Secretary that may be used to reinter Native American remains that have been discovered on project lands, and which have been rightfully claimed by a lineal descendant or Indian tribe in accordance with applicable Federal law. The Secretary, in consultation and in consent with the lineal descendant or the respective Indian tribe, is authorized to recover and rebury the remains at such sites at full Federal expense.

(2) TRANSFER AUTHORITY.-Notwithstanding any provision of law, the Secretary is authorized to transfer to the Indian tribe the land identified by the Secretary in subsection (1) for use as a cemetery. The Secretary shall retain any necessary rights-of-way, easements, or other property interests that the Secretary of the Army determines is necessary to carry out the authorized project purpose.

(b) DEFINITION.-For the purposes of this section the term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

SEC. 13. AMENDMENT TO RIVERS AND HARBORS ACT.

33 U.S.C. 401 is amended by adding the following language at the end of the last sentence: "The approval required by this section of the location and plans, or any modification of plans, for any dam or dike, applies only to any dam or dike that would completely span a waterway currently used to transport interstate or foreign commerce, in a manner that actual, existing interstate or foreign commerce could be adversely affected. Any other dam or dike proposed to be built in any other navigable water of the United States shall be regulated as a structure under 33 U.S.C. 403, and shall not require approval under this section."

SEC. 14. STRUCTURAL FLOOD CONTROL COST-SHARING.

(a) Section 103(a) of the Water Resources Development Act of 1986 [100 Stat.

4084-4085] is amended by-

(1) striking "35" whenever it appears in paragraph (2) and inserting "50 in lieu thereof;

(2) deleting the word "MINIMUM" in paragraph (2);

(3) adding the following language to paragraph (2) immediately after the last sentence in that paragraph: The non-Federal share under paragraph (1) shall not exceed 50 percent of the cost of the project assigned to flood control. The preceding sentence does not modify the requirement of paragraph (1)(A) of this subsection.", and

(4) deleting paragraph (3) and (4) in their entirety.

(b) APPLICABILITY.-The amendment made by this section shall apply to any project or separable element thereof with respect to which the Secretary and the non-Federal interest have not entered into a project cooperation agreement on or before the date of enactment of this Act.

SEC. 15. CALFED BAY-DELTA PROGRAM ASSISTANCE.

(a) IN GENERAL.-The Secretary is authorized to participate with the appropriate Federal and State agencies in the planning and management activities associated with the CALFED Bay Delta Program, and shall, to the maximum extent practicable and in accordance with all applicable laws, integrate the activities of the Army Corps of Engineers in the San Joaquin and Sacramento River basins with the long-term goals of the CALFED Bay Delta Program.

(b) COOPERATIVE ACTIVITIES.-In participating in the CALFED Bay Delta Program as provided for in subsection (a) of this section, the Secretary is authorized to accept and expend funds from other Federal agencies and from non-Federal public, private and non-profit entities to carry out ecosystem restoration projects and activities associated with the CALFED Bay Delta Program and may enter into contracts, cooperative research and development agreements, and cooperative agreements with Federal and non-Federal private, public, and non-profit entities in carrying out these projects and activities.

(c) AUTHORIZATION OF APPROPRIATIONS.-There is authorized to be appropriated to the Department of the Army to carry out activities under this section \$5,000,000 for fiscal years from 2002 through 2005.

(d) DEFINITION.-For purposes of this section, the area covered by the CALFED Bay Delta Program is defined as the San Francisco Bay, Sacramento-San Joaquin Delta Estuary and its watershed (Bay-Delta Estuary) as identified in the Framework Agreement Between the Governor's Water Policy Council of the State of California and the Federal Ecosystem Directorate (Club Fed).

SEC. 16. PROJECT DE-AUTHORIZATIONS.

Section 33 U.S.C. 579a is deleted in its entirety and the following language inserted in lieu thereof:

"PROJECT DE-AUTHORIZATIONS

"(a) PROJECTS NEVER UNDER CONSTRUCTION.-

"(1) The Secretary shall transmit annually to Congress a list of projects and separable elements of projects that have been authorized for construction, but for which no appropriations have been obligated for construction of the project or separable element during the four consecutive fiscal years preceding the transmittal of such list.

"(2) Any water resources project authorized for construction, and any separable element of such a project, shall be de-authorized after the last day of the 7-year period beginning on the date of the project or separable element's most recent authorization or reauthorization unless funds have been obligated for construction of the project or separable element.

"(b) PROJECTS WHERE CONSTRUCTION HAS BEEN SUSPENDED.-

"(1) The Secretary shall transmit annually to Congress a list of projects and separable elements of projects that have been authorized for construction, and for which funds have been obligated in the past for construction of the project or separable element, but for which no appropriations have been obligated for construction of the project or separable element during the two consecutive fiscal years preceding the transmittal of such list.

"(2) Any water resources project, and any separable element of such a project, for which funds have been obligated in the past for construction of the project or separable element, shall be de-authorized if appropriations specifically identified for construction of the project or separable element (either in Statute or in the accompanying legislative report language) have not been obligated for construction of the project or separable element during any five subsequent consecutive fiscal years.

"(c) CONGRESSIONAL NOTIFICATIONS.-Upon submission of the lists under subsections (a) and (b), the Secretary shall notify each Senator in whose State, and each Member of the House of Representatives in whose district, the affected project or separable element would be located.

"(d) FINAL DE-AUTHORIZATION LIST.-The Secretary shall publish annually in the Federal Register a list of all projects or separable elements de-authorized under subsections (a) and (b).

"(e) DEFINITIONS.-For purposes of this section, for non-structural flood control projects, the phrase `construction of the project or separable element' means the

acquisition of lands, easements and rights-of-way primarily to relocate structures, or the performance of physical work under a construction contract for other non-structural measures. For environmental protection and restoration projects, it means the acquisition of lands, easements and rights-of-way primarily to facilitate the restoration of wetlands or similar habitats, or the performance of physical work under a construction contract to modify existing project facilities or to construct new environmental protection and restoration measures. For all other water resources projects, it means the performance of physical work under a construction contract. In no case shall the term "physical work under a construction contract", as used in this subsection, include activities related to project planning, engineering and design, relocation, or the acquisition of lands, easements, and rights-of-way.

"(f) EFFECTIVE DATE OF PROVISIONS.-Subsections (a)(2) and (b)(2) shall become effective three years after the date of enactment of this Act."

SEC. 17. FLOODPLAIN MANAGEMENT REQUIREMENTS.

(a) Section 402 of the Water Resources Development Act of 1986 [100 Stat. 4133] is amended by-

(1) in subsection (c)(1) by deleting "Within 6 months after the date of the enactment of this subsection, the" and inserting "The";

(2) by inserting "that non-Federal interests shall adopt and enforce" after the word "policies" in the second sentence in subsection (c)(1); and

(3) by inserting at the end of subsection (c)(1) "Such guidelines shall also require non-Federal interests to take measures to preserve the level of flood protection provided by the project for which subsection (a) applies."

(b) APPLICABILITY.-The amendment made by this section shall apply to any project or separable element thereof with respect to which the Secretary and the non-Federal interest have not entered into a project cooperation agreement on or before the date of enactment of this Act.

SEC. 18. STUDY OF TRANSFER OF PROJECT LANDS.

"(a) IN GENERAL.-

"(1) STUDY OF TRANSFER.-The Secretary is authorized to conduct a feasibility study in cooperation with the Secretary of the Interior, the state of * * * and with the affected Indian tribes, for the transfer to the Secretary of Interior the land described in subsection (b) to be held in trust for the benefit of the respective Indian tribes.

"(b) LANDS TO BE STUDIED.-The land authorized to be studied for transfer is land that-

(1) was acquired by the Secretary for the implementation of the Pick-Sloan Missouri River Basin program; and

(2) is located within the external boundaries of the reservations of the Three Affiliated Tribes of the Fort Berthold Reservation, N.D., the Standing Rock Sioux Tribe of North and South Dakota, the Crow Creek Sioux Tribe of the Crow Creek Reservation, SD, the Yankton Sioux Tribe of South Dakota, and the Flandreau Santee Sioux Tribe of South Dakota.

"(c) DEFINITION.-For the purposes of this section the term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

SEC. 19. PUGET SOUND AND ADJACENT WATERS RESTORATION.

"(a) IN GENERAL.-The Secretary is authorized to participate in Critical Restoration Projects in the area of the Puget Sound and its adjacent waters, including the watersheds that drain directly into Puget Sound, Admiralty Inlet, Hood Canal, Rosario Strait, and the eastern portion of the Strait of Juan de Fuca.

"(b) DEFINITION.-"Critical Restoration Projects" are those projects that will produce, consistent with existing Federal programs, projects and activities, immediate and substantial restoration, preservation and ecosystem protection benefits.

"(c) PROJECT SELECTION.-The Secretary, with the concurrence of the Secretaries of the Interior and Commerce, and in consultation with other appropriate Federal, Tribal, State, and local agencies, may identify critical restoration projects and may implement those projects after entering into an agreement with an appropriate non-Federal interest in accordance with the requirements of section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b) and this section.

"(d) AUTHORIZATION OF APPROPRIATIONS.-There is authorized to be appropriated to the Department of the Army to pay the Federal share of the cost of carrying out projects under this section \$10,000,000.

"(e) PROJECT COST LIMITATION.-Not more than \$2,500,000 in Army Civil Works appropriations Federal funds may be allocated to carrying out any one project under this section.

"(c) COST SHARING.-

"(1) IN GENERAL.-Prior to implementing any project under this section, the Secretary

shall enter into a binding agreement with the non-Federal interest, which shall require the non-Federal interest to: (a) pay 35 percent of the total costs of the project; (b) acquire any lands, easements, rights-of-way, relocations, and dredged material disposal areas necessary for implementation of the project; (c) pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation costs associated with the project; and (d) hold and save harmless the United States free from claims or damages due to implementation of the assistance project, except for the negligence of the Government or its contractors.

(2) CREDIT.-The non-Federal interest shall receive credit for the value of any lands, easements, rights-of-way, relocations, and dredged material disposal areas provided for implementation and completion of such assistance project. The non-Federal interest may provide up to 50 percent of the non-Federal cost-sharing requirement through the provision of services, materials, supplies, or other in-kind services.