

PUBLIC LAW 104-303—OCT. 12, 1996

WATER RESOURCES DEVELOPMENT ACT OF
1996

Public Law 104-303
104th Congress

An Act

Oct. 12, 1996
[S. 640]

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.

Water Resources
Development Act
of 1996.

33 USC 2201
note.

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.

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33 USC 2201
note.

SEC. 2. DEFINITION.

In this Act, the term “Secretary” means the Secretary of the Army.

**TITLE I—WATER RESOURCES
PROJECTS**

SEC. 101. PROJECT AUTHORIZATIONS.

(a) **PROJECTS WITH CHIEF’S REPORTS.**—Except as provided in this subsection, the following projects for water resources development and conservation and other purposes are authorized to be carried out by the Secretary substantially in accordance with the plans, and subject to the conditions, described in the respective reports designated in this subsection:

(1) **AMERICAN RIVER WATERSHED, CALIFORNIA.**—

(A) **IN GENERAL.**—The project for flood damage reduction, American and Sacramento Rivers, California: Report of the Chief of Engineers, dated June 27, 1996, at a total cost of \$56,900,000, with an estimated Federal cost of \$42,675,000 and an estimated non-Federal cost of \$14,225,000, consisting of—

(i) approximately 24 miles of slurry wall in the levees along the lower American River;

(ii) approximately 12 miles of levee modifications along the east bank of the Sacramento River downstream from the Natomas Cross Canal;

(iii) 3 telemeter streamflow gauges upstream from the Folsom Reservoir; and

(iv) modifications to the flood warning system along the lower American River.

(B) **CREDIT TOWARD NON-FEDERAL SHARE.**—The non-Federal interest shall receive credit toward the non-Federal share of project costs for expenses that the non-Federal interest incurs for design or construction of any of the features authorized under this paragraph before the date on which Federal funds are made available for construction of the project. The amount of the credit shall be determined by the Secretary.

(C) **INTERIM OPERATION.**—Until such time as a comprehensive flood damage reduction plan for the American River watershed has been implemented, the Secretary of the Interior shall continue to operate the Folsom Dam and Reservoir to the variable 400,000/670,000 acre-feet of flood control storage capacity and shall extend the agreement between the Bureau of Reclamation and the Sacramento Area Flood Control Agency with respect to the watershed.

(D) **OTHER COSTS.**—The non-Federal interest shall be responsible for—

(b) **CONSULTATION WITH FEDERAL ENTITIES.**—Any project under subsection (a) that is located on lands owned by the United States shall be undertaken in consultation with the Federal entity with administrative jurisdiction over such lands.

(c) **FEDERAL SHARE.**—The Federal share of the cost of the activities conducted under subsection (a) shall be 50 percent; except that, with respect to projects located on lands owned by the United States, the Federal share shall be 100 percent.

(d) **EFFECT ON AUTHORITY OF SECRETARY OF THE INTERIOR.**—Nothing in this section is intended to affect the authority of the Secretary of the Interior under title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 et seq.).

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$1,500,000.

SEC. 527. FAULKNER ISLAND, CONNECTICUT.

In consultation with the Director of the United States Fish and Wildlife Service, the Secretary shall design and construct shoreline protection measures for the coastline adjacent to the Faulkner Island Lighthouse, Connecticut, at a total cost of \$4,500,000.

SEC. 528. EVERGLADES AND SOUTH FLORIDA ECOSYSTEM RESTORATION.

(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), and any modification to the project authorized by law.

(2) **COMMISSION.**—The term “Commission” means the Governor’s Commission for a Sustainable South Florida, established by Executive Order of the Governor dated March 3, 1994.

(3) **GOVERNOR.**—The term “Governor” means the Governor of the State of Florida.

(4) **SOUTH FLORIDA ECOSYSTEM.**—The term “South Florida ecosystem” means the area consisting of the lands and waters within the boundary of the South Florida Water Management District, including the Everglades, the Florida Keys, and the contiguous near-shore coastal waters of South Florida.

(5) **TASK FORCE.**—The term “Task Force” means the South Florida Ecosystem Restoration Task Force established by subsection (f).

(b) **RESTORATION ACTIVITIES.**—

(1) **COMPREHENSIVE PLAN.**—

(A) **DEVELOPMENT.**—

(i) **PURPOSE.**—The Secretary shall develop, as expeditiously as practicable, a proposed comprehensive plan for the purpose of restoring, preserving, and protecting the South Florida ecosystem. The comprehensive plan shall provide for the protection of water quality in, and the reduction of the loss of fresh water from, the Everglades. The comprehensive plan shall include such features as are necessary to provide for the water-related needs of the region, including flood control, the enhancement of water supplies, and

other objectives served by the Central and Southern Florida Project.

(ii) CONSIDERATIONS.—The comprehensive plan shall—

(I) be developed by the Secretary in cooperation with the non-Federal project sponsor and in consultation with the Task Force; and

(II) consider the conceptual framework specified in the report entitled “Conceptual Plan for the Central and Southern Florida Project Restudy”, published by the Commission and approved by the Governor.

(B) SUBMISSION.—Not later than July 1, 1999, the Secretary shall—

(i) complete the feasibility phase of the Central and Southern Florida Project comprehensive review study as authorized by section 309(l) of the Water Resources Development Act of 1992 (106 Stat. 4844), and by 2 resolutions of the Committee on Public Works and Transportation of the House of Representatives, dated September 24, 1992; and

(ii) submit to Congress the plan developed under subparagraph (A)(i) consisting of a feasibility report and a programmatic environmental impact statement covering the proposed Federal action set forth in the plan.

(C) ADDITIONAL STUDIES AND ANALYSES.—Notwithstanding the completion of the feasibility report under subparagraph (B), the Secretary shall continue to conduct such studies and analyses as are necessary, consistent with subparagraph (A)(i).

(2) USE OF EXISTING AUTHORITY FOR UNCONSTRUCTED PROJECT FEATURES.—The Secretary shall design and construct any features of the Central and Southern Florida Project that are authorized on the date of the enactment of this Act or that may be implemented in accordance with the Secretary’s authority to modify an authorized project, including features authorized under sections 315 and 316, with funds that are otherwise available, if the Secretary determines that the design and construction—

(A) will accelerate the restoration, preservation, and protection of the South Florida ecosystem;

(B) will be generally consistent with the conceptual framework described in paragraph (1)(A)(ii)(II); and

(C) will be compatible with the overall authorized purposes of the Central and Southern Florida Project.

(3) CRITICAL RESTORATION PROJECTS.—

(A) IN GENERAL.—In addition to the activities described in paragraphs (1) and (2), if the Secretary, in cooperation with the non-Federal project sponsor and the Task Force, determines that a restoration project for the South Florida ecosystem will produce independent, immediate, and substantial restoration, preservation, and protection benefits, and will be generally consistent with the conceptual framework described in paragraph (1)(A)(ii)(II), the Secretary shall proceed expeditiously with the implementation of the restoration project.

Reports.

(B) INITIATION OF PROJECTS.—After September 30, 1999, no new projects may be initiated under subparagraph (A).

(C) AUTHORIZATION OF APPROPRIATIONS.—

(i) IN GENERAL.—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 subparagraph (A) \$75,000,000 for the period consisting of fiscal years 1997 through 1999.

(ii) FEDERAL SHARE.—The Federal share of the cost of carrying out any 1 project under subparagraph (A) shall be not more than \$25,000,000.

(4) GENERAL PROVISIONS.—

(A) WATER QUALITY.—In carrying out activities described in this subsection and sections 315 and 316, the Secretary—

(i) shall take into account the protection of water quality by considering applicable State water quality standards; and

(ii) may include in projects such features as are necessary to provide water to restore, preserve, and protect the South Florida ecosystem.

(B) COMPLIANCE WITH APPLICABLE LAW.—In carrying out the activities described in this subsection and subsection (c), the Secretary shall comply with any applicable Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(C) PUBLIC PARTICIPATION.—In developing the comprehensive plan under paragraph (1) and carrying out the activities described in this subsection and subsection (c), the Secretary shall provide for public review and comment on the activities in accordance with applicable Federal law.

(c) INTEGRATION OF OTHER ACTIVITIES.—

(1) IN GENERAL.—In carrying out activities described in subsection (b), the Secretary shall integrate such activities with ongoing Federal and State projects and activities, including—

(A) the project for the ecosystem restoration of the Kissimmee River, Florida, authorized by section 101 of the Water Resources Development Act of 1992 (106 Stat. 4802);

(B) the project for modifications to improve water deliveries into Everglades National Park authorized by section 104 of the Everglades National Park Protection and Expansion Act of 1989 (16 U.S.C. 410r-8);

(C) activities under the Florida Keys National Marine Sanctuary and Protection Act (16 U.S.C. 1433 note; 104 Stat. 3089); and

(D) the Everglades Construction Project of the State of Florida.

(2) STATUTORY CONSTRUCTION.—

(A) EXISTING AUTHORITY.—Except as otherwise expressly provided in this section, nothing in this section affects any authority in effect on the date of the enactment of this Act, or any requirement of the authority, relating to participation in restoration activities in the South Florida

ecosystem, including the projects and activities specified in paragraph (1), by—

- (i) the Department of the Interior;
- (ii) the Department of Commerce;
- (iii) the Department of the Army;
- (iv) the Environmental Protection Agency;
- (v) the Department of Agriculture;
- (vi) the State of Florida; and
- (vii) the South Florida Water Management District.

(B) NEW AUTHORITY.—Nothing in this section confers any new regulatory authority on any Federal or non-Federal entity that carries out any activity authorized by this section.

(d) JUSTIFICATION.—

(1) IN GENERAL.—Notwithstanding section 209 of the Flood Control Act of 1970 (42 U.S.C. 1962-2) or any other provision of law, in carrying out the activities to restore, preserve, and protect the South Florida ecosystem described in subsection (b), the Secretary may determine that the activities—

(A) are justified by the environmental benefits derived by the South Florida ecosystem in general and the Everglades and Florida Bay in particular; and

(B) shall not need further economic justification if the Secretary determines that the activities are cost-effective.

(2) APPLICABILITY.—Paragraph (1) shall not apply to any separable element intended to produce benefits that are predominantly unrelated to the restoration, preservation, and protection of the South Florida ecosystem.

(e) COST SHARING.—

(1) IN GENERAL.—Except as provided in sections 315 and 316 and paragraph (2), the non-Federal share of the cost of activities described in subsection (b) shall be 50 percent.

(2) WATER QUALITY FEATURES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the non-Federal share of the cost of project features to improve water quality described in subsection (b) shall be 100 percent.

(B) EXCEPTION.—

(i) IN GENERAL.—Subject to clause (ii), if the Secretary determines that a project feature to improve water quality is essential to Everglades restoration, the non-Federal share of the cost of the feature shall be 50 percent.

(ii) APPLICABILITY.—Clause (i) shall not apply to any feature of the Everglades Construction Project of the State of Florida.

(3) OPERATION AND MAINTENANCE.—The operation and maintenance of projects carried out under this section shall be a non-Federal responsibility.

(4) CREDIT.—Regardless of the date of acquisition, the value of lands or interests in land acquired by non-Federal interests for any activity described in subsection (b) 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.

(f) SOUTH FLORIDA ECOSYSTEM RESTORATION TASK FORCE.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established the South Florida Ecosystem Restoration Task Force, which shall consist of the following members (or, in the case of a Federal agency, a designee at the level of assistant secretary or an equivalent level):

(A) The Secretary of the Interior, who shall serve as chairperson.

(B) The Secretary of Commerce.

(C) The Secretary.

(D) The Attorney General.

(E) The Administrator of the Environmental Protection Agency.

(F) The Secretary of Agriculture.

(G) The Secretary of Transportation.

(H) 1 representative of the Miccosukee Tribe of Indians of Florida, to be appointed by the Secretary of the Interior based on the recommendations of the tribal chairman.

(I) 1 representative of the Seminole Tribe of Florida, to be appointed by the Secretary of the Interior based on the recommendations of the tribal chairman.

(J) 2 representatives of the State of Florida, to be appointed by the Secretary of the Interior based on the recommendations of the Governor.

(K) 1 representative of the South Florida Water Management District, to be appointed by the Secretary of the Interior based on the recommendations of the Governor.

(L) 2 representatives of local government in the State of Florida, to be appointed by the Secretary of the Interior based on the recommendations of the Governor.

(2) DUTIES OF TASK FORCE.—The Task Force—

(A) shall consult with, and provide recommendations to, the Secretary during development of the comprehensive plan under subsection (b)(1);

(B) shall coordinate the development of consistent policies, strategies, plans, programs, projects, activities, and priorities for addressing the restoration, preservation, and protection of the South Florida ecosystem;

(C) shall exchange information regarding programs, projects, and activities of the agencies and entities represented on the Task Force to promote ecosystem restoration and maintenance;

(D) shall establish a Florida-based working group which shall include representatives of the agencies and entities represented on the Task Force as well as other governmental entities as appropriate for the purpose of formulating, recommending, coordinating, and implementing the policies, strategies, plans, programs, projects, activities, and priorities of the Task Force;

(E) may, and the working group described in subparagraph (D), may—

(i) establish such advisory bodies as are necessary to assist the Task Force in its duties, including public policy and scientific issues; and

(ii) select as an advisory body any entity, such as the Commission, that represents a broad variety of private and public interests;

(F) shall facilitate the resolution of interagency and intergovernmental conflicts associated with the restoration of the South Florida ecosystem among agencies and entities represented on the Task Force;

(G) shall coordinate scientific and other research associated with the restoration of the South Florida ecosystem;

(H) shall provide assistance and support to agencies and entities represented on the Task Force in their restoration activities;

(I) shall prepare an integrated financial plan and recommendations for coordinated budget requests for the funds proposed to be expended by agencies and entities represented on the Task Force for the restoration, preservation, and protection of the South Florida ecosystem; and

(J) shall submit a biennial report to Congress that summarizes—

(i) the activities of the Task Force;

(ii) the policies, strategies, plans, programs, projects, activities, and priorities planned, developed, or implemented for the restoration of the South Florida ecosystem; and

(iii) progress made toward the restoration.

(3) PROCEDURES AND ADVICE.—

(A) PUBLIC PARTICIPATION.—

(i) IN GENERAL.—The Task Force shall implement procedures to facilitate public participation in the advisory process, including providing advance notice of meetings, providing adequate opportunity for public input and comment, maintaining appropriate records, and making a record of the proceedings of meetings available for public inspection.

(ii) OVERSIGHT.—The Secretary of the Interior shall ensure that the procedures described in clause (i) are adopted and implemented and that the records described in clause (i) are accurately maintained and available for public inspection.

(B) ADVISORS TO THE TASK FORCE AND WORKING GROUP.—The Task Force or the working group described in paragraph (2)(D) may seek advice and input from any interested, knowledgeable, or affected party as the Task Force or working group, respectively, determines necessary to perform the duties described in paragraph (2).

(C) APPLICATION OF THE FEDERAL ADVISORY COMMITTEE ACT.—

(i) TASK FORCE AND WORKING GROUP.—The Task Force and the working group shall not be considered advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.).

(ii) ADVISORS.—Seeking advice and input under subparagraph (B) shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(4) COMPENSATION.—A member of the Task Force shall receive no compensation for the service of the member on the Task Force.

(5) TRAVEL EXPENSES.—Travel expenses incurred by a member of the Task Force in the performance of services for the

Reports.

Task Force shall be paid by the agency, tribe, or government that the member represents.

SEC. 529. TAMPA, FLORIDA.

The Secretary may enter into a cooperative agreement under section 229 with the Museum of Science and Industry, Tampa, Florida, to provide technical, planning, and design assistance to demonstrate the water quality functions found in wetlands, at an estimated total Federal cost of \$500,000.

SEC. 530. WATERSHED MANAGEMENT PLAN FOR DEEP RIVER BASIN, INDIANA.

(a) DEVELOPMENT.—The Secretary, in consultation with the Natural Resources Conservation Service of the Department of Agriculture, shall develop a watershed management plan for the Deep River Basin, Indiana, including Deep River, Lake George, Turkey Creek, and other related tributaries in Indiana.

(b) CONTENTS.—The plan to be developed by the Secretary under subsection (a) shall address specific concerns related to the Deep River Basin area, including—

- (1) sediment flow into Deep River, Turkey Creek, and other tributaries;
- (2) control of sediment quality in Lake George;
- (3) flooding problems;
- (4) the safety of the Lake George Dam; and
- (5) watershed management.

SEC. 531. SOUTHERN AND EASTERN KENTUCKY.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary may establish a program for providing environmental assistance to non-Federal interests in southern and eastern Kentucky.

(b) FORM OF ASSISTANCE.—Assistance under this section may be in the form of design and construction assistance for water-related environmental infrastructure and resource protection and development projects in southern and eastern Kentucky, including projects for wastewater treatment and related facilities, water supply and related facilities, and surface water resource protection and development.

(c) PUBLIC OWNERSHIP REQUIREMENT.—The Secretary may provide assistance for a project under this section only if the project is publicly owned.

(d) PROJECT COOPERATION AGREEMENTS.—

(1) IN GENERAL.—Before providing assistance under this section, the Secretary shall enter into a project cooperation agreement with a non-Federal interest to provide for design and construction of the project to be carried out with such assistance.

(2) REQUIREMENTS.—Each agreement entered into under this subsection shall provide for the following:

(A) PLAN.—Development by the Secretary, in consultation with appropriate Federal and State officials, of a facilities development plan or resource protection plan, including appropriate plans and specifications.

(B) LEGAL AND INSTITUTIONAL STRUCTURES.—Establishment of such legal and institutional structures as are necessary to ensure the effective long-term operation of the project by the non-Federal interest.

(3) COST SHARING.—