

33 USC 2213: Flood control and other purposes

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From Title 33-NAVIGATION AND NAVIGABLE WATERS

CHAPTER 36-WATER RESOURCES DEVELOPMENT

SUBCHAPTER I-COST SHARING

Jump To:

[Source Credit](#)

[References In Text](#)

[Amendments](#)

[Effective Date](#)

[Regulations](#)

[Miscellaneous](#)

§2213. Flood control and other purposes**(a) Flood control****(1) General rule**

The non-Federal interests for a project with costs assigned to flood control (other than a nonstructural project) shall-

- (A) pay 5 percent of the cost of the project assigned to flood control during construction of the project;
- (B) provide all lands, easements, rights-of-way, and dredged material disposal areas required only for flood control and perform all related necessary relocations; and
- (C) provide that portion of the joint costs of lands, easements, rights-of-way, dredged material disposal areas, and relocations which is assigned to flood control.

(2) 35 percent minimum contribution

If the value of the contributions required under paragraph (1) of this subsection is less than 35 percent of the cost of the project assigned to flood control, the non-Federal interest shall pay during construction of the project such additional amounts as are necessary so that the total contribution of the non-Federal interests under this subsection is equal to 35 percent of the cost of the project assigned to flood control.

(3) 50 percent maximum

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.

(4) Deferred payment of amount exceeding 30 percent

If the total amount of the contribution required under paragraph (1) of this subsection exceeds 30 percent of the cost of the project assigned to flood control, the non-Federal interests may pay the amount of the excess to the Secretary over a 15-year period (or such shorter period as may be agreed to by the Secretary and the non-Federal interests) beginning on the date construction of the project or separable element is completed, at an interest rate determined pursuant to section 2216 of this title. The preceding sentence does not modify the requirement of paragraph (1)(A) of this subsection.

(b) Nonstructural flood control projects**(1) In general**

The non-Federal share of the cost of nonstructural flood control measures shall be 35 percent of the cost of such measures. The non-Federal interests for any such measures shall be required to provide all lands, easements, rights-of-way, dredged material disposal areas, and relocations necessary for the project, but shall not be required to contribute any amount in cash during construction of the project.

(2) Non-Federal contribution in excess of 35 percent

At any time during construction of a project, if the Secretary determines that the costs of land, easements, rights-of-way, dredged material disposal areas, and relocations for the project, in combination with other costs contributed by the non-Federal interests, will exceed 35 percent, any additional costs for the project (not to exceed 65 percent of the total costs of the project) shall be a Federal responsibility and shall be contributed during construction as part of the Federal share.

(c) Other purposes

The non-Federal share of the cost assigned to other project purposes shall be as follows:

- (1) hydroelectric power: 100 percent, except that the marketing of such power and the recovery of costs of constructing, operating, maintaining, and rehabilitating such projects shall be in accordance with existing law: *Provided*, That after November 17, 1986, the Secretary shall not submit to Congress any proposal for the

authorization of any water resources project that has a hydroelectric power component unless such proposal contains the comments of the appropriate Power Marketing Administrator designated pursuant to section 7152 of title 42 concerning the appropriate Power Marketing Administration's ability to market the hydroelectric power expected to be generated and not required in the operation of the project under the applicable Federal power marketing law, so that, 100 percent of operation, maintenance and replacement costs, 100 percent of the capital investment allocated to the purpose of hydroelectric power (with interest at rates established pursuant to or prescribed by applicable law), and any other costs assigned in accordance with law for return from power revenues can be returned within the period set for the return of such costs by or pursuant to such applicable Federal power marketing law;

(2) municipal and industrial water supply: 100 percent;

(3) agricultural water supply: 35 percent;

(4) recreation, including recreational navigation: 50 percent of separable costs and, in the case of any harbor or inland harbor or channel project, 50 percent of joint and separable costs allocated to recreational navigation;

(5) hurricane and storm damage reduction: 35 percent;

(6) aquatic plant control: 50 percent of control operations; and

(7) environmental protection and restoration: 35 percent; except that nothing in this paragraph shall affect or limit the applicability of section 2283 of this title.

(d) Certain other costs assigned to project purposes

(1) Construction

Costs of constructing projects or measures for beach erosion control and water quality enhancement shall be assigned to appropriate project purposes listed in subsections (a), (b), and (c) of this section and shall be shared in the same percentage as the purposes to which the costs are assigned, except that all costs assigned to benefits to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private lands shall be borne by non-Federal interests and all costs assigned to the protection of federally owned shores shall be borne by the United States.

(2) Periodic nourishment

(A) In general

In the case of a project authorized for construction after December 31, 1999, except for a project for which a District Engineer's Report is completed by that date, the non-Federal cost of the periodic nourishment of the project, or any measure for shore protection or beach erosion control for the project, that is carried out-

(i) after January 1, 2001, shall be 40 percent;

(ii) after January 1, 2002, shall be 45 percent; and

(iii) after January 1, 2003, shall be 50 percent.

(B) Benefits to privately owned shores

All costs assigned to benefits of periodic nourishment projects or measures to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private land shall be borne by the non-Federal interest.

(C) Benefits to federally owned shores

All costs assigned to the protection of federally owned shores for periodic nourishment measures shall be borne by the United States.

(e) Applicability

(1) In general

This section applies to any project (including any small project which is not specifically authorized by Congress and for which the Secretary has not approved funding before November 17, 1986), or separable element thereof, on which physical construction is initiated after April 30, 1986, as determined by the Secretary, except as provided in paragraph (2). For the purpose of the preceding sentence, physical construction shall be considered to be initiated on the date of the award of a construction contract.

(2) Exceptions

This section shall not apply to the Yazoo Basin, Mississippi, Demonstration Erosion Control Program, authorized by Public Law 98-8, or to the Harlan, Kentucky, or Barbourville, Kentucky, elements of the project authorized by section 202 of Public Law 96-367.

(f) "Separable element" defined

For purposes of this Act, the term "separable element" means a portion of a project-

(1) which is physically separable from other portions of the project; and

(2) which-

(A) achieves hydrologic effects, or

(B) produces physical or economic benefits,

which are separately identifiable from those produced by other portions of the project.

(g) Deferral of payment

(1) With respect to the projects listed in paragraph (2), no amount of the non-Federal share required under this section shall be required to be paid during the three-year period beginning on November 17, 1986.

(2) The projects referred to in paragraph (1) are the following:

- (A) Boeuf and Tensas Rivers, Tensas Basin, Louisiana and Arkansas, authorized by the Flood Control Act of 1946;
- (B) Eight Mile Creek, Arkansas, authorized by Public Law 99-88; and
- (C) Rocky Bayou Area, Yazoo Backwater Area, Yazoo Basin, Mississippi, authorized by the Flood Control Act approved August 18, 1941.

(h) Assigned joint and separable costs

The share of the costs specified under this section for each project purpose shall apply to the joint and separable costs of construction of each project assigned to that purpose, except as otherwise specified in this Act.

(i) Lands, easements, rights-of-way, dredged material disposal areas, and relocations

Except as provided under section 2283(c) of this title, the non-Federal interests for a project to which this section applies shall provide all lands, easements, rights-of-way, and dredged material disposal areas required for the project and perform all necessary relocations, except to the extent limited by any provision of this section. The value of any contribution under the preceding sentence shall be included in the non-Federal share of the project specified in this section.

(j) Agreement

(1) Requirement for agreement

Any project to which this section applies (other than a project for hydroelectric power) shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to pay 100 percent of the operation, maintenance, and replacement and rehabilitation costs of the project, to pay the non-Federal share of the costs of construction required by this section, and to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors.

(2) Elements of agreement

The agreement required pursuant to paragraph (1) shall be in accordance with the requirements of section 1962d-5b of title 42 and shall provide for the rights and duties of the United States and the non-Federal interest with respect to the construction, operation, and maintenance of the project, including, but not limited to, provisions specifying that, in the event the non-Federal interest fails to provide the required non-Federal share of costs for such work, the Secretary-

(A) shall terminate or suspend work on the project unless the Secretary determines that continuation of the work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests in connection with the project; and

(B) may terminate or adjust the rights and privileges of the non-Federal interest to project outputs under the terms of the agreement.

(k) Payment options

Except as otherwise provided in this section, the Secretary may permit the full non-Federal contribution to be made without interest during construction of the project or separable element, or with interest at a rate determined pursuant to section 2216 of this title over a period of not more than thirty years from the date of completion of the project or separable element. Repayment contracts shall provide for recalculation of the interest rate at five-year intervals.

(l) Delay of initial payment

At the request of any non-Federal interest the Secretary may permit such non-Federal interest to delay the initial payment of any non-Federal contribution under this section or section 2211 of this title for up to one year after the date when construction is begun on the project for which such contribution is to be made. Any such delay in initial payment shall be subject to interest charges for up to six months at a rate determined pursuant to section 2216 of this title.

(m) Ability to pay

(1) In general

Any cost-sharing agreement under this section for a feasibility study, or for construction of an environmental protection and restoration project, a flood control project, a project for navigation, storm damage protection, shoreline erosion, hurricane protection, or recreation, or an agricultural water supply project, shall be subject to the ability of the non-Federal interest to pay.

(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 under paragraph (3) on the day before December 11, 2000; except that such criteria and procedures shall be revised, and new criteria and procedures shall be developed, not later than December 31, 2007, to reflect the requirements of such paragraph (3).

(3) Revision of criteria and procedures

In revising criteria and procedures pursuant to paragraph (2), the Secretary-

(A) shall consider-

- (i) per capita income data for the county or counties in which the project is to be located; and
- (ii) the per capita non-Federal cost of construction of the project for the county or counties in which the project is to be located; and

(B) may consider additional criteria relating to the non-Federal interest's financial ability to carry out its cost-sharing responsibilities, to the extent that the application of such criteria does not eliminate areas from eligibility for a reduction in the non-Federal share as determined under subparagraph (A).

(4) Non-Federal share

Notwithstanding subsection (a) of this section, the Secretary may reduce the requirement that a non-Federal interest make a cash contribution for any project that is determined to be eligible for a reduction in the non-Federal share under criteria and procedures in effect under paragraphs (1), (2), and (3).

(n) Non-Federal contributions

(1) Prohibition on solicitation of excess contributions

The Secretary may not-

- (A) solicit contributions from non-Federal interests for costs of constructing authorized water resources projects or measures in excess of the non-Federal share assigned to the appropriate project purposes listed in subsections (a), (b), and (c); or
- (B) condition Federal participation in such projects or measures on the receipt of such contributions.

(2) Limitation on statutory construction

Nothing in this subsection shall be construed to affect the Secretary's authority under section 903(c).¹

(Pub. L. 99-662, title I, §103, Nov. 17, 1986, 100 Stat. 4084 ; Pub. L. 101-640, title III, §305(a), Nov. 28, 1990, 104 Stat. 4635 ; Pub. L. 102-580, title II, §201(a), title III, §333(b)(2), Oct. 31, 1992, 106 Stat. 4825 , 4852; Pub. L. 104-303, title II, §§202(a)(1)(A), (2), (b)(1), 210(a), Oct. 12, 1996, 110 Stat. 3673 , 3681; Pub. L. 106-53, title II, §§215(a), 219(c), Aug. 17, 1999, 113 Stat. 292 , 295; Pub. L. 106-109, §5, Nov. 24, 1999, 113 Stat. 1495 ; Pub. L. 106-541, title II, §204, Dec. 11, 2000, 114 Stat. 2589 ; Pub. L. 110-114, title II, §2001, 2019(a), Nov. 8, 2007, 121 Stat. 1067 , 1078.)

REFERENCES IN TEXT

Public Law 98-8, referred to in subsec. (e)(2), is Pub. L. 98-8, Mar. 24, 1983, 97 Stat. 13 . For complete classification of this Act to the Code, see Tables.

Section 202 of Public Law 96-367, referred to in subsec. (e)(2), is section 202 of Pub. L. 96-367, title II, Oct. 1, 1980, 94 Stat. 1339 , which is not classified to the Code.

This Act, referred to in subsecs. (f) and (h), is Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4082 , as amended, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

The Flood Control Act of 1946, referred to in subsec. (g)(2)(A), is act July 24, 1946, ch. 596, 60 Stat. 641 , as amended. For complete classification of this Act to the Code, see Tables.

Public Law 99-88, referred to in subsec. (g)(2)(B), is Pub. L. 99-88, Aug. 15, 1985, 99 Stat. 293 , known as the Supplemental Appropriations Act, 1985. Provisions of Pub. L. 99-88 authorizing the project for Eight Mile Creek, Arkansas, are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Flood Control Act approved August 18, 1941, referred to in subsec. (g)(2)(C), is act Aug. 18, 1941, ch. 377, 55 Stat. 638 . For complete classification of this Act to the Code, see Tables.

Section 903(c), referred to in subsec. (n)(2), is section 903(c) of Pub. L. 99-662, title IX, Nov. 17, 1986, 100 Stat. 4184 , which is not classified to the Code.

AMENDMENTS

2007-Subsec. (m)(2). Pub. L. 110-114, §2019(a), substituted "December 31, 2007" for "180 days after December 11, 2000".

Subsec. (n). Pub. L. 110-114, §2001, added subsec. (n).

2000-Subsec. (m)(1), (2). Pub. L. 106-541, §204(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which required any cost-sharing agreement to be subject to the ability of a non-Federal interest to pay and required the Secretary to determine ability to pay using certain criteria and procedures.

Subsec. (m)(3)(B), (C). Pub. L. 106-541, §204(2), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "shall not consider criteria (other than criteria described in subparagraph (A)) in effect on the day before October 12, 1996; and".

1999-Subsec. (b). Pub. L. 106-53, §219(c)(1), which directed insertion of the par. (1) designation and heading before "The non-Federal", was executed by making the insertion before that phrase the first place it appeared to reflect the probable intent of Congress.

Subsec. (b)(2). Pub. L. 106-53, §219(c)(2), added par. (2).

Subsec. (d). Pub. L. 106-53, §215(a), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (d)(2)(A). Pub. L. 106-109 substituted "except for a project for which a District Engineer's Report is completed by that date," for "or for which a feasibility study is completed after that date,".

1996-Subsecs. (a)(2), (b). Pub. L. 104-303, §202(a)(1)(A), substituted "35 percent" for "25 percent" wherever appearing.

Subsec. (c)(7). Pub. L. 104-303, §210(a), added par. (7).

Subsec. (e)(1). Pub. L. 104-303, §202(a)(2), inserted at end "For the purpose of the preceding sentence, physical construction shall be considered to be initiated on the date of the award of a construction contract."

Subsec. (m). Pub. L. 104-303, §202(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Any cost-sharing agreement under this section for flood control or agricultural water supply 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."

1992-Subsec. (i). Pub. L. 102-580, §333(b)(2), substituted "Except as provided under section 2283(c) of this title, the non-Federal" for "The non-Federal".

Subsec. (m). Pub. L. 102-580, §201(a), amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows:

"(1) GENERAL RULE.-Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay.

"(2) PROCEDURES.-

"(A) IN GENERAL.-The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.

"(B) LIMITATIONS.-The procedures established pursuant to this subsection shall provide for a reduction in any non-Federal cash contribution required under subsection (a)(2) of this section. In addition, such procedures shall provide for determination of the eligibility of the non-Federal interest for a reduction in the required cash contribution on the basis of local, not statewide, economic and financial data.

"(C) REGULATIONS.-Not later than 1 year after November 28, 1990, the Secretary shall issue regulations establishing the procedures required by this paragraph."

1990-Subsec. (m). Pub. L. 101-640 amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: "Any cost-sharing agreement under this section for flood control or agricultural water supply 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."

EFFECTIVE DATE OF 1996 AMENDMENT

Section 202(a)(1)(B) of Pub. L. 104-303 provided that: "The amendments made by subparagraph (A) [amending this section] shall apply to any project authorized after the date of the enactment of this Act [Oct. 12, 1996] and to any flood control project that is not specifically authorized by Congress for which a Detailed Project Report is approved after such date of enactment or, in the case of a project for which no Detailed Project Report is prepared, construction is initiated after such date of enactment."

Section 202(b)(2) of Pub. L. 104-303 provided that:

"(A) GENERALLY.-Subject to subparagraph (C), the amendment made by paragraph (1) [amending this section] shall apply to any project, or separable element thereof, with respect to which the Secretary and the non-Federal interest enter into a project cooperation agreement after December 31, 1997.

"(B) AMENDMENT OF COOPERATION AGREEMENT.-If requested by the non-Federal interest, the Secretary shall amend a project cooperation agreement executed on or before the date of the enactment of this Act [Oct. 12, 1996] to reflect the application of the amendment made by paragraph (1) to any project for which a contract for construction has not been awarded on or before such date of enactment.

"(C) NON-FEDERAL OPTION.-If requested by the non-Federal interest, the Secretary shall apply the criteria and procedures established pursuant to section 103(m) of the Water Resources Development Act of 1986 [subsec. (m) of this section] as in effect on the day before the date of the enactment of this Act for projects that are authorized before the date of the enactment of this Act."

[Reference to "project cooperation agreement" deemed to be reference to "project partnership agreement", see section 2003(f)(2) of Pub. L. 110-114, set out as a note under section 1962d-5b of Title 42,

The Public Health and Welfare.]

Section 210(b) of Pub. L. 104–303 provided that: "The amendments made by subsection (a) [amending this section] apply only to projects authorized after the date of the enactment of this Act [Oct. 12, 1996]."

CONTINUATION OF EXISTING REGULATIONS

Section 305(b) of Pub. L. 101–640 provided that: "Regulations issued to carry out section 103(m) of the Water Resources Development Act of 1986 [33 U.S.C. 2213(m)] before the date of the enactment of this Act [Nov. 28, 1990] and in effect on such date shall continue in effect until regulations are issued pursuant to paragraph (2)(C) of such section, as added by subsection (a) of this section."

REPORTS TO CONGRESS

Pub. L. 100–71, [title I, July 11, 1987](#), 101 Stat. 401 , provided that: "The Secretary of the Army shall file a report with the appropriate committees of the House of Representatives and the Senate within ninety days after a written request is made pursuant to the provisions of subsection (m) of section 103 of Public Law 99–662 [33 U.S.C. 2213(m)] indicating the action taken on the request. In addition, the Secretary of the Army shall file a report with the appropriate committees of the House of Representatives and the Senate within ninety days after enactment of this Act [July 11, 1987] listing any project or study falling under the provisions of subsection (e)(1) of section 103 of Public Law 99–662."

¹ *See References in Text note below.*