



## Water Resources Development Act 116<sup>th</sup> Congress

### **INCREASE FLEXIBILITY FOR NON-FEDERAL INTERESTS FOR REALLOCATION STUDIES**

*Corps reservoirs are an increasingly important source of water supply storage for state and local governments. Providing storage for water supply may be the highest and best use of a portion of the storage in many existing Corps projects. Existing Corps procedures prevent storage from being reallocated to the water supply purpose, however, because the studies and approvals routinely take a decade or more to complete when undertaken by the Corps. These delays are causing state and local governments to pursue local alternatives, which are often sub-optimal from both an environmental and economic perspective—diverting limited resources from more valuable infrastructure projects and preventing important national benefits from being realized. WRRDA 2014 broke down many similar barriers that have plagued other aspects of the Corps’ Civil Work program. Specifically, WRRDA 2014 authorized non-federal interests to undertake studies and even construct certain water resources development projects themselves. It also expanded non-federal project sponsors’ ability to contribute funds to the Corps to ensure federal budget limitations do not impede progress. Water supply storage reallocation studies are not currently eligible for these important reforms, however.*

#### **Impediments to Water Supply Reallocation Studies**

- The Water Supply Act of 1958 authorizes the Corps to include storage for water supply in existing reservoirs by “reallocating” storage from other purposes. Congressional approval is required for any reallocation that would involve a “major operational change” or “seriously affect” the purposes for which the project was originally authorized. Before approving a reallocation, the Corps must conduct a “reallocation study” to ensure the reallocation is both authorized and justified.
- Reallocation studies take many years to complete—routinely a decade or more—due in part to funding constraints and lengthy process requirements.
- Section 203 of WRDA 1986, as amended by WRRDA 2014, solved a similar problem by authorizing non-Federal interests to undertake “feasibility studies” for water resources development projects. Traditionally undertaken by the Corps, feasibility studies are submitted by the Secretary of the Army to Congress to assist Congress in determining whether to authorize proposed projects. Feasibility studies can now be submitted to the Secretary by non-Federal Interests. Section 203 provides for the Secretary to review such studies to ensure they are done correctly, and to forward them to Congress with a recommendation if appropriate.
- Reallocation studies are not eligible for Section 203 because they are not typically “feasibility studies.” A feasibility study is required for a reallocation only if Congressional approval is required. The backward result is that larger reallocations (those large enough to require specific Congressional approval) are eligible for the expedited 203 procedures, but smaller reallocations are not.

#### **Expand Section 203 to Give Non-Federal Interests Flexibility to Undertake Reallocation Studies**

- Expanding Section 203 to include reallocation studies would allow non-Federal interests to use their own money and efforts to complete the necessary studies within a reasonable time.
- Corps regulations implementing Section 203 for non-Federal feasibility studies ensure that all appropriate procedures are followed, including public input. The same should be required for reallocation studies.
- Reallocation studies prepared by non-Federal interests should be submitted to the Secretary for review. The Secretary should then determine if the studies were completed in accordance with established standards and procedures. Provided they were, the Secretary should then determine if the reallocation is both warranted and justified. If it is, the reallocation should be implemented within 60 days. If the reallocation is warranted but exceeds the Secretary’s authority under 43 USC 390b, the study could be submitted to Congress for potential authorization following the existing procedure under Section 203 for feasibility studies prepared by non-Federal interests.

## **Draft Legislative Language**

### Sec \_\_. Reallocation Studies Performed by Non-Federal Interests

(a) STUDIES -- Section 203 of the Water Resources Development Act of 1986, as amendment (33 USC 2231) is amended as follows:

- 1) By inserting in paragraph (a)(1) the phrase “or a reallocation study pursuant to 43 U.S.C. 390b” after the phrase “feasibility study of a proposed water resources development project.”
- 2) By inserting in paragraph (a)(2) the words “and reallocation studies pursuant to 43 U.S.C. 390b” after the phrase “feasibility studies of water resources development projects.
- 3) By striking paragraph (b) in its entirety and replacing it with the following:

“(b) Review by Secretary.

- (1) The Secretary shall review each feasibility study and each reallocation study received under subsection (a)(1) for the purpose of determining whether or not the study, and the process under which the study was developed, each comply with Federal laws and regulations applicable to feasibility studies of water resources development projects and/or to reallocation studies under 43 U.S.C. 390b.
- (2) The Secretary shall review each reallocation study received under subsection (a)(1). If the Secretary determines that the proposed reallocation is warranted and can be implemented under the Secretary’s existing authority, consistent with 43 U.S.C. § 390b(d), the Secretary will proceed to implement the reallocation within 60 days. If the Secretary determines the project may be justified but requires Congressional authorization under 43 U.S.C. 390b, the Secretary will submit the study to Congress as provided in paragraph (c).”