



Water Resources Development Act
117th Congress

INCREASE FLEXIBILITY FOR NON-FEDERAL INTERESTS FOR REALLOCATION STUDIES

U.S. Army Corps of Engineers (USACE) 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 USACE projects. Existing USACE procedures present obstacles to reallocating storage to the water supply purpose, however, because the studies and approvals routinely take a decade or more to complete when undertaken by the USACE. 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. The Water Resources Reform and Development Act of 2014 (WRRDA 2014) broke down many similar barriers that have plagued other aspects of the USACE Civil Works program. Specifically, WRRDA 2014 authorized non-federal interests to undertake studies and even construct certain water resources development projects themselves. Water supply storage reallocation studies are not currently eligible for these important reforms.

Impediments to Water Supply Reallocation Studies

- The Water Supply Act of 1958 authorizes USACE 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, USACE 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.

Amend the Water Supply Act of 1958 (WSA 1958) to Give Non-Federal Interests Flexibility to Undertake Reallocation Studies

- Amending WSA 1958 would allow non-Federal interests to use their own funds and efforts to conduct a reallocation study within a reasonable time.
- 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.

Draft Legislative Language

SEC. —The Water Supply Act of 1958 (43 U.S. Code § 390b) is amended by inserting the following paragraph (f):

“(f) SERVICES BY NON-FEDERAL INTERESTS. —As relates to reservoirs surveyed, planned, or to be planned, surveyed, or constructed, by the Corps of Engineers:

(1) REALLOCATION STUDIES BY NON-FEDERAL INTERESTS. —

a. IN GENERAL. —Upon notice to the Secretary, a non-Federal interest may undertake a study, or any discrete component of a study, to include storage capacity at a reservoir project for domestic, municipal, and industrial water supply.

b. REVIEW AND APPROVAL BY THE SECRETARY. —

i. Within 120 days from submission by the non-Federal interest of any study, or component of a study, prepared under subparagraph (a), the Secretary shall determine whether—

A. All substantive and procedural requirements that would apply to the work if it had been undertaken by the Secretary have been satisfied;

B. The work conforms to requirements set forth in the implementation guidelines published pursuant to subsection (f)(5);

C. The proposal is within the Corps' authority; and

D. Based on available information, including any documentation compiled in accordance with the National Environmental Policy Act, the proposal is in the federal interest.

ii. If the Secretary determines that the submission by the non-Federal interest does not satisfy the requirements of subparagraph (b)(i), the Secretary shall provide written notice to the non-Federal interest within 30 days from the determination identifying any such inconsistencies and the actions by the non-Federal interest required to remedy them.

iii. If the Secretary determines that the submission by the non-Federal interest satisfies the requirements of subparagraph (b)(i), the Secretary shall utilize the information provided by the non-Federal interest; provided further that, in the case of a completed study recommending modification of a reservoir to include storage for water supply, the Secretary shall take final action upon the information submitted by the non-Federal interest within 180 days from such determination.

c. REVIEW AND TECHNICAL ASSISTANCE. —

i. REVIEW. —The Secretary may accept and expend funds provided by non-Federal interests to undertake reviews, inspections, certifications, and other activities that are the responsibility of the Secretary in carrying out this section.

ii. TECHNICAL ASSISTANCE. —At the request of a non-Federal interest, the Secretary shall provide to the non-Federal interest technical assistance relating to any aspect of a study to provide additional storage capacity for domestic water supply storage if the non-Federal interest contracts with the Secretary to pay all costs of providing such technical assistance.

iii. LIMITATION. —Funds provided under this paragraph (f)(1)(c) shall not be eligible for credit under subsection (f)(4) or reimbursement.

(2) IN-KIND SERVICES. — The Secretary is authorized to accept services, materials, supplies, or other in-kind services from a non-Federal interest related to the implementation of this section.

(3) MONETARY CONTRIBUTIONS. —The Secretary may accept funds contributed by a non-Federal interest for work relating to the implementation of this section, to be expended in connection with funds appropriated by the United States, including funds appropriated for Operations and Maintenance of reservoir projects, whenever such work and expenditure may be considered by the Secretary as advantageous in the public interest.

(4) CREDIT. —The Secretary shall credit against either the cost of storage or the annual operation, maintenance, and replacement costs, at the non-Federal interest's option, an amount equal to the services provided by a non-Federal interest under this subsection (f). The amount of credit shall not exceed the amount that would have been the responsibility of the Secretary if the study had been developed by the Secretary.

(5) IMPLEMENTATION GUIDANCE. —Within 180 days after the date of enactment, the Secretary shall publish guidance on the implementation of this subsection (f).