

105TH CONGRESS
2D SESSION

S. 2131

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.

IN THE SENATE OF THE UNITED STATES

JUNE 4 (legislative day, JUNE 2), 1998

Mr. CHAFEE (by request) (for himself, Mr. WARNER, and Mr. BAUCUS) 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Water Resources Development Act of 1998”.

6 (2) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

- Sec. 2. Definitions.
- Sec. 3. Project authorizations.
- Sec. 4. Flood hazard mitigation and riverine ecosystem restoration program.
- Sec. 5. Shore protection.
- Sec. 6. Small flood control projects.
- Sec. 7. Use of non-Federal funds for compiling and disseminating information on floods and flood damages.
- Sec. 8. Everglades and South Florida ecosystem restoration.
- Sec. 9. Aquatic ecosystem restoration.
- Sec. 10. Beneficial uses of dredged material.
- Sec. 11. Cooperative agreements for natural resources, environmental protection, conservation, and recreation measures.
- Sec. 12. Contribution by States and political subdivisions.
- Sec. 13. Recreation user fees.
- Sec. 14. Shoreline management program fees.
- Sec. 15. Water resources development studies for the Pacific region.
- Sec. 16. Water resources foundation.
- Sec. 17. Regulatory program funding.
- Sec. 18. Flood mitigation near Pierre, South Dakota.
- Sec. 19. Lower Missouri River aquatic restoration projects.
- Sec. 20. Payment option, Moorehead, West Virginia.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act, the term “Secretary”
3 means the Secretary of the Army.

4 **SEC. 3. PROJECT AUTHORIZATIONS.**

5 (a) PROJECTS WITH REPORTS.—The following
6 projects for water resources development and conservation
7 and other purposes are authorized to be carried out by
8 the Secretary substantially in accordance with the plans,
9 and subject to the conditions, described in the respective
10 reports designated in this section:

11 (1) AMERICAN RIVER WATERSHED, CALIFOR-
12 NIA.—

13 (A) GENERAL.—The project for flood dam-
14 age reduction described as the Folsom Stepped
15 Release Plan in the U.S. Army Corps of Engi-

1 neers Supplemental Information Report for the
2 American River Watershed Project, California,
3 dated March 1996 is authorized for construc-
4 tion at a total cost of \$464,600,000, with an es-
5 timated Federal cost of \$302,000,000 and an
6 estimated non-Federal cost of \$162,600,000.

7 (B) IMPLEMENTATION.—

8 (i) Implementation of the measures by
9 the Secretary pursuant to paragraph (A)
10 of this subsection shall be undertaken sub-
11 sequent to the levee stabilization and
12 strengthening and flood warning features
13 authorized in section 101(a)(1) of Public
14 Law 104–303 (110 Stat. 3662–3663).

15 (ii) The Secretary may undertake
16 measures at the Folsom Dam and Res-
17 ervoir authorized pursuant to paragraph
18 (A) only after reviewing the design of such
19 measures to determine if modifications are
20 necessary to account for changed hydro-
21 logic conditions and any other changed
22 conditions in the project area, including
23 operational and construction impacts that
24 have occurred since completion of the Re-
25 port referred to in paragraph (A) of this

1 subsection. The Secretary shall conduct the
2 review and develop such modifications to
3 the Folsom Dam with the full participation
4 of the Secretary of the Interior.

5 (iii) Implementation of the remaining
6 downstream elements authorized pursuant
7 to paragraph (A) may be undertaken only
8 after the Secretary, in consultation with
9 affected Federal, State, Regional, and local
10 entities, has reviewed the elements to de-
11 termine if modifications are necessary to
12 address changes in the hydrologic condi-
13 tions, any other changed conditions in the
14 project area that have occurred since com-
15 pletion of the Report referred to in para-
16 graph (A) of this subsection and any de-
17 sign modifications for the Folsom Dam
18 and Reservoir made by the Secretary in
19 implementing the measures referred to in
20 paragraph (B)(ii), and has issued a report
21 on the review.

22 (2) AMITE RIVER AND TRIBUTARIES, LOUISI-
23 ANA, EAST BATON ROUGE PARISH WATERSHED.—
24 The project for flood damage reduction and recre-
25 ation, Amite River and Tributaries, Louisiana, East

1 Baton Rouge Parish Watershed: Report of the Chief
2 of Engineers, dated December 23, 1996, at a total
3 cost of \$110,045,000, with an estimated Federal
4 cost of \$71,343,000 and an estimated non-Federal
5 cost of \$38,702,000.

6 (3) GUANAJIBO RIVER, PUERTO RICO.—The
7 project for flood damage reduction, Guanajibo River,
8 Puerto Rico: Report of the Chief of Engineers, dated
9 February 27, 1996, at a total cost of \$27,441,000,
10 with an estimated Federal cost of \$17,837,000 and
11 an estimated non-Federal cost of \$9,604,000.

12 (4) RIO NIGUA AT SALINAS, PUERTO RICO.—
13 The project for flood damage reduction, Rio Nigua
14 at Salinas, Puerto Rico: Report of the Chief of Engi-
15 neers, dated April 15, 1997, at a total cost
16 \$13,565,000, with an estimated Federal cost of
17 \$7,079,000 and an estimated non-Federal cost of
18 \$6,486,000.

19 (b) PROJECTS SUBJECT TO A REPORT.—The follow-
20 ing project for water resources development and conserva-
21 tion and other purposes is authorized to be carried out
22 by the Secretary substantially in accordance with the plans
23 and subject to the conditions recommended in a report of
24 the Chief of Engineers, as approved by the Secretary:

1 (1) GRAND FORKS, NORTH DAKOTA, AND EAST
2 GRAND FORKS, MINNESOTA.—The project for flood
3 damage reduction and recreation, Grand Forks,
4 North Dakota and East Grand Forks, Minnesota,
5 Report of the Chief of Engineers consisting of set-
6 back levees and floodwalls, at a total cost of
7 \$281,754,000, with an estimated Federal cost of
8 \$140,877,000 and an estimated non-Federal cost of
9 \$140,877,000.

10 **SEC. 4. FLOOD HAZARD MITIGATION AND RIVERINE ECO-**
11 **SYSTEM RESTORATION PROGRAM.**

12 (a) IN GENERAL.—The Secretary is authorized to
13 undertake a program to reduce flood hazards and to re-
14 store the natural functions and values of riverine eco-
15 systems throughout the United States. In carrying out the
16 program, the Secretary may conduct studies to identify
17 appropriate flood damage reduction, conservation, and
18 restoration measures and may design and implement wa-
19 tershed management and restoration projects. The studies
20 and projects carried out under this authority shall be con-
21 ducted, to the maximum extent practicable, with the full
22 participation of the appropriate Federal agencies, includ-
23 ing the Department of Agriculture, the Federal Emer-
24 gency Management Agency, the Department of the Inte-
25 rior, the Environmental Protection Agency, and the De-

1 partment of Commerce. Such studies and projects shall,
2 to the maximum extent practicable, emphasize non-struc-
3 tural approaches to preventing or reducing flood damages.

4 (b) COST-SHARING REQUIREMENTS.—The cost of
5 studies conducted under this authority shall be shared in
6 accordance with section 105 of the Water Resources De-
7 velopment Act of 1986 (100 Stat. 4088–4089) as amend-
8 ed by section 203 of the Water Resources Development
9 Act of 1996 (110 Stat. 3677–3678). The non-Federal in-
10 terests shall pay 35 percent of the cost of any environ-
11 mental restoration or non-structural flood control project
12 carried out under this authority. The non-Federal inter-
13 ests shall provide all lands, easements, rights-of-way,
14 dredged material disposal areas, and relocations necessary
15 for such projects, and the value of such lands, easements,
16 rights-of-way, dredged material disposal areas, and reloca-
17 tions shall be credited toward the payment required under
18 this subsection. For any structural flood control measures
19 carried out under this authority, the cost sharing shall be
20 in accordance with section 103(a) of the Water Resources
21 Development Act of 1986 as amended by section 202 of
22 the Water Resources Development Act of 1996 (33 U.S.C.
23 2213(a)). The non-Federal interests shall be responsible
24 for all costs associated with operating, maintaining, re-

1 placing, repairing, and rehabilitating all projects carried
2 out under this authority.

3 (c) PROJECT JUSTIFICATION.—(1) Notwithstanding
4 any other provision of law or requirement for economic
5 justification established pursuant to 42 U.S.C. 1962–2,
6 the Secretary may implement a project under this author-
7 ity provided the Secretary determines that the project—

8 (A) will significantly reduce potential flood
9 damages;

10 (B) will improve the quality of the environment;
11 and

12 (C) is justified considering all costs and bene-
13 ficial outputs of the project.

14 (2) Within 180 days of the date of enactment of this
15 section the Secretary shall develop criteria for selecting
16 and rating the projects to be carried out as a part of the
17 Program authorized by this section and shall establish
18 policies and procedures for carrying out the studies and
19 projects undertaken under this authority.

20 (d) REPORTING REQUIREMENT.—The Secretary may
21 not implement a project under this authority until—

22 (1) the Secretary provides to the appropriate
23 committees of Congress a written notification de-
24 scribing the project and the determinations reached
25 pursuant to subsection (c); and

1 (2) a period of 21 calendar days has expired
2 following the date on which the notification was re-
3 ceived by the Committees.

4 (e) PROGRAM REVIEW.—The program established
5 pursuant to this section shall be subject to an independent
6 review to evaluate the efficiency of the program in achiev-
7 ing the dual goals of flood hazard mitigation and eco-
8 system restoration. The Secretary shall transmit a report
9 on the findings of the review conducted under this sub-
10 section to the Congress by April 2004, together with any
11 recommendations for continuing the program.

12 (f) PER PROJECT LIMITATION.—No more than
13 \$75,000,000 in Army Civil Works appropriations may be
14 expended on any single project undertaken under this au-
15 thority.

16 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
17 authorized to be appropriated to carry out this section
18 \$25,000,000 for each fiscal year for fiscal years 1999 and
19 2000; \$50,000,000 for fiscal year 2001; and \$75,000,000
20 for each fiscal year for fiscal years 2002 through 2004.
21 All studies and projects undertaken under this authority
22 from Army Civil Works appropriations shall be fully fund-
23 ed within the program funding levels provided in this sub-
24 section.

1 **SEC. 5. SHORE PROTECTION.**

2 Section 103(d) of the Water Resources Development
3 Act of 1986 (100 Stat. 4085–5086) is amended by—

4 (1) inserting the following immediately before
5 the phrase “Costs of constructing projects or meas-
6 ures for beach erosion control;”:

7 “(1) CONSTRUCTION.—”; and

8 (2) inserting a new paragraph (2) as follows:

9 “(2) PERIODIC NOURISHMENT.—The non-Fed-
10 eral cost of the periodic nourishment of projects or
11 measures for shore protection or beach erosion con-
12 trol shall be 65 percent, except that all costs as-
13 signed to benefits to privately owned shores (where
14 use of such shores is limited to private interests) or
15 to prevention of losses of private lands shall be
16 borne by non-Federal interests and all costs assigned
17 to the protection of federally owned shores shall be
18 borne by the United States.”.

19 **SEC. 6. SMALL FLOOD CONTROL PROJECTS.**

20 Section 205 of the Flood Control Act of 1948 as
21 amended (33 U.S.C. 701s) is further amended by—

22 (1) striking “construction of small projects”
23 and inserting in lieu thereof “implementation of
24 small structural and nonstructural projects”; and

25 (2) striking “\$5,000,000” and inserting in lieu
26 thereof “\$7,000,000”.

1 **SEC. 7. USE OF NON-FEDERAL FUNDS FOR COMPILING AND**
2 **DISSEMINATING INFORMATION ON FLOODS**
3 **AND FLOOD DAMAGES.**

4 Section 206(b) of the Flood Control Act of 1960 as
5 amended (33 U.S.C. 709a(b)) is further amended by add-
6 ing the following language immediately following the word
7 “section” in the last sentence of that subsection: “, except
8 that this limitation on fees shall not apply to funds volun-
9 tarily contributed by such entities for the purpose of ex-
10 panding the scope of the services requested by such enti-
11 ties”.

12 **SEC. 8. EVERGLADES AND SOUTH FLORIDA ECOSYSTEM**
13 **RESTORATION.**

14 Subsections (b)(3)(B) and (b)(3)(C)(i) of section 528
15 of the Water Resources Development Act of 1996 (110
16 Stat. 3769) are amended by striking “1999” and inserting
17 in lieu thereof “2000”.

18 **SEC. 9. AQUATIC ECOSYSTEM RESTORATION.**

19 Section 206(c) of the Water Resources Development
20 Act of 1996 (110 Stat. 3679–3680) is amended by insert-
21 ing a new sentence at the end thereof as follows: “Not-
22 withstanding 42 U.S.C. 1962d–5b(b), for any project un-
23 dertaken under this authority, a non-Federal interest may
24 also include a non-profit entity.”.

1 **SEC. 10. BENEFICIAL USES OF DREDGED MATERIAL.**

2 Section 204 of the Water Resources Development Act
3 of 1992 (106 Stat. 4826) as amended by section 207 of
4 the Water Resources Development Act of 1996 (110 Stat.
5 3680) is further amended by—

6 (1) striking “cooperative agreement in accord-
7 ance with the requirements of section 221 of the
8 Flood Control Act of 1970” from subsection (c) and
9 inserting in lieu thereof “binding agreement with the
10 Secretary”; and

11 (2) inserting a new subsection (g) as follows:

12 “(g) NON-FEDERAL INTERESTS.—Notwithstanding
13 42 U.S.C. 1962d–5b(b), for any project carried out under
14 this section, a non-Federal interest may also include a
15 non-profit entity.”.

16 **SEC. 11. COOPERATIVE AGREEMENTS FOR NATURAL RE-**
17 **SOURCES, ENVIRONMENTAL PROTECTION,**
18 **CONSERVATION, AND RECREATION MEAS-**
19 **URES.**

20 The Secretary is authorized to enter into cooperative
21 agreements with non-Federal public bodies and non-profit
22 entities for the purpose of facilitating collaborative efforts
23 involving environmental protection and restoration, natu-
24 ral resources, conservation, and recreation in connection
25 with the development, operation, and management of

1 water resources projects under the jurisdiction of the De-
2 partment of the Army.

3 **SEC. 12. CONTRIBUTIONS BY STATES AND POLITICAL SUB-**
4 **DIVISIONS.**

5 Section 5 of the Flood Control Act of 1936, as
6 amended by Public Law 208, 75th Congress (33 U.S.C.
7 701h) is further amended by inserting the words “or envi-
8 ronmental restoration” after the words “flood control”.

9 **SEC. 13. RECREATION USER FEES.**

10 (a) During fiscal years 1999 through 2002, the Sec-
11 retary may withhold from the special account established
12 pursuant to 16 U.S.C. 460l–6a(i)(1)(A) 100 percent of the
13 amount of receipts above a baseline of \$34,000,000 per
14 each fiscal year received from fees imposed at recreation
15 sites under the administrative jurisdiction of the Depart-
16 ment of the Army pursuant to 16 U.S.C. 460l–6a(b). The
17 amounts withheld shall be retained by the Secretary and
18 shall be available, without further appropriation, for ex-
19 penditure by the Secretary in accordance with the provi-
20 sions of this section. Such amounts shall remain available
21 through September 30, 2005.

22 (b) In order to increase the quality of the visitor expe-
23 rience at public recreational areas and to enhance the pro-
24 tection of resources, the amounts withheld pursuant to
25 subsection (a) and available for expenditure may only be

1 used for backlogged repair and maintenance projects (in-
2 cluding projects relating to health and safety) and for in-
3 terpretation, signage, habitat or facility enhancement, re-
4 source preservation, annual operation (including fee collec-
5 tion), maintenance, and law enforcement related to public
6 use.

7 (c)(1) Eighty percent of the total amount withheld
8 by the Secretary shall be available for expenditure without
9 further appropriation at the specific site from which such
10 funds, above baseline, are collected, and shall be accounted
11 for separately.

12 (2) Twenty percent of the total amount withheld by
13 the Secretary shall be available for expenditure without
14 further appropriation for use on an agency-wide basis and
15 shall be accounted for separately.

16 **SEC. 14. SHORELINE MANAGEMENT PROGRAM FEES.**

17 No later than 12 months after the date of enactment
18 of this Act and every five years thereafter, the Secretary
19 shall review the Shoreline Management Program adminis-
20 tered by the Army Corps of Engineers at water resources
21 development projects under the jurisdiction of the Depart-
22 ment of the Army to determine the costs associated with
23 administering the Program. Each review conducted pursu-
24 ant to this section shall include an analysis of the fee
25 schedule in place at the time the review is initiated. If

1 the Secretary determines that adjustments to the fee
2 schedule are necessary in order to ensure collection of rev-
3 enues sufficient to cover the costs of administering the
4 Program, the Secretary may make those adjustments in
5 accordance with applicable regulations.

6 **SEC. 15. WATER RESOURCES DEVELOPMENT STUDIES FOR**
7 **THE PACIFIC REGION.**

8 Section 444 of the Water Resources Development Act
9 of 1996 (110 Stat. 3747) is amended by striking the
10 phrase “interest of navigation” and inserting the following
11 in lieu thereof: “interests of water resources development,
12 including navigation, flood damage reduction, and environ-
13 mental restoration”.

14 **SEC. 16. WATER RESOURCES FOUNDATION.**

15 (a) ESTABLISHMENT.—There is established the
16 Water Resources Foundation (hereinafter referred to as
17 the “Foundation”) as a charitable and nonprofit corpora-
18 tion domiciled in the District of Columbia, which is not
19 an agency or establishment of the United States.

20 (b) PURPOSES.—The purposes of the Foundation are
21 to—

22 (1) encourage, accept, and administer private
23 gifts of money, and of real and personal property for
24 the benefit of, or in connection with, the activities
25 and services of the Army Corps of Engineers in

1 managing natural resources at water resources de-
2 velopment projects administered by the Department
3 of the Army;

4 (2) undertake and conduct such other activities
5 as will further the conservation and management of
6 natural, scenic, historic and recreational resources at
7 such projects;

8 (3) further a stewardship ethic among Amer-
9 ican citizens to conserve and utilize the diverse natu-
10 ral resources available at such projects;

11 (4) initiate and support programs that broaden
12 and enhance the services, facilities, and educational
13 and interpretive activities for visitors to such
14 projects; and

15 (5) strengthen and improve the various means
16 by which the Army Corps of Engineers uses its
17 human and financial resources to manage the natu-
18 ral resources at such projects.

19 (c) LIMITATIONS AND CONFLICTS OF INTERESTS.—

20 (1) The Foundation shall not participate or intervene in
21 a political campaign on behalf of any candidate for public
22 office.

23 (2) No director, officer, or employee of the Founda-
24 tion shall participate, directly or indirectly, in the consid-

1 eration or determination of any question before the Foun-
2 dation affecting—

3 (A) the financial interests of the director, offi-
4 cer, or employee; or

5 (B) the interests of any corporation, partner-
6 ship, entity, or organization in which such director,
7 officer, or employee—

8 (i) is an officer, director, or trustee; or

9 (ii) has any direct or indirect financial in-
10 terest.

11 (d) TAX EXEMPT STATUS.—For purposes of section
12 501(c)(3) of title 26 of the United States Code, the Foun-
13 dation shall be treated as organized and operated exclu-
14 sively for charitable purposes in calendar years 1998 and
15 1999. For calendar years 2000 and thereafter, the Foun-
16 dation shall be required to maintain its tax exempt status
17 in the manner as prescribed by the Secretary of the Treas-
18 ury for similar tax exempt organizations.

19 (e) BOARD OF DIRECTORS AND GOVERNANCE OF
20 THE FOUNDATION.—

21 (1) The Foundation shall have a governing
22 Board of Directors (hereinafter referred to as the
23 “Board”), which shall consist of nine Directors, each
24 of whom shall be a United States citizen and none
25 of whom shall be an employee of the Federal govern-

1 ment. Members of the Board shall be appointed by
2 the Secretary and shall be educated in or have ac-
3 tual experience in natural or cultural resource man-
4 agement, recreation management, or law. To the ex-
5 tent practicable, the membership of the Board shall
6 represent diverse points of view relating to natural
7 and cultural resource issues. The Secretary or a des-
8 ignee shall serve as a liaison to the Board. Appoint-
9 ment to the Board shall not constitute employment
10 by, or the holding of an office of, the United States
11 for the purposes of any Federal law.

12 (2) Within one year after the date of enactment
13 of this Act, the Secretary shall appoint the initial
14 members of the Board of Directors. Of these initial
15 members, three shall be appointed for a term of two
16 years, three members shall be appointed for a term
17 of three years, and three members shall be appointed
18 for a term of four years. All subsequent appoint-
19 ments to the Board shall be for a term of four years.

20 (3) The Chairperson shall be elected by the
21 Board from its members. A chairperson shall serve
22 for a two-year term and may be re-elected to the
23 post during the Chairperson's tenure as a Director.

1 (4) A majority of the current voting member-
2 ship of the Board shall constitute a quorum for the
3 transaction of business.

4 (5) The Board shall meet at the call of the
5 Chairperson at least once a year. If a Director
6 misses three consecutive regularly scheduled meet-
7 ings, that individual may be removed from the
8 Board by majority vote of the Board of Directors
9 and that vacancy filled in accordance with paragraph
10 (2) of this subsection.

11 (6) Voting members of the Board shall serve
12 without pay, but may be reimbursed for the actual
13 and necessary traveling and subsistence expenses in-
14 curred by them in the performance of their duties
15 for the Foundation. Such reimbursement may not
16 exceed such amount as would be authorized under
17 section 5703 of title 5, for the payment of expenses
18 and allowances for individuals employed intermit-
19 tently in the Federal Government service.

20 (7) The Board may complete the organization
21 of the Foundation by appointing employees, adopt-
22 ing a constitution and bylaws consistent with the
23 purposes of the Foundation and the provisions of
24 this section, and undertaking such acts as may be

1 necessary to function and carry out the provisions of
2 this section.

3 (8) Officers and employees shall not be ap-
4 pointed or hired by the Board until the Foundation
5 has sufficient funds to pay for their services. Such
6 officers or employees of the Foundation shall not be
7 considered Federal employees for any purpose, in-
8 cluding the provisions of title 5, governing appoint-
9 ments in the competitive service, and may be paid
10 without regard to the provisions of chapter 51 and
11 subchapter III of chapter 53 of such title relating to
12 classification and General Schedule pay rates, except
13 that no individual so appointed may receive pay in
14 excess of the annual rate of basic pay in effect for
15 Level V of the Executive Schedule.

16 (9) Prior to the appointment or hiring of any
17 other individual, the Board shall appoint an individ-
18 ual to serve as the Executive Director of the Board,
19 who shall serve at the direction of the Board as its
20 chief operating officer and who shall be knowledge-
21 able and experienced in matters relating to natural
22 and cultural resource management.

23 (f) CORPORATE POWERS AND OBLIGATIONS.—

24 (1) The Foundation—

25 (A) shall have perpetual succession;

1 (B) may conduct business throughout the
2 several States, territories, and possessions of
3 the United States;

4 (C) shall have its principal offices in the
5 Washington, D.C. metropolitan area; and

6 (D) shall at all times maintain a des-
7 ignated agent in the District of Columbia au-
8 thorized to accept service of process for the
9 Foundation.

10 (2) The serving of notice to, or service of proc-
11 ess upon, the agent required under this subsection,
12 or mailed to the business address of such agent,
13 shall be deemed as service upon or notice to the
14 Foundation.

15 (3) The Foundation shall have an official seal
16 selected by the Board which shall be judicially no-
17 ticed.

18 (4) To carry out its purposes, the Foundation
19 shall have, in addition to powers otherwise author-
20 ized under this section, the usual powers of a cor-
21 poration in the District of Columbia, including the
22 power—

23 (A) to accept, receive, solicit, hold, admin-
24 ister and use any gift, devise, or bequest, either
25 absolutely or in trust, of real or personal prop-

1 erty or any income therefrom or other interest
2 therein;

3 (B) to acquire by purchase or exchange
4 any real or personal property or interest there-
5 in;

6 (C) unless otherwise required by the in-
7 strument of transfer, to sell, donate, lease, in-
8 vest, reinvest, retain or otherwise dispose of any
9 property or income therefrom;

10 (D) to sue and be sued, and complain and
11 defend itself in any court of competent jurisdic-
12 tion, except that the Directors of the Board
13 shall not be personally liable, except for gross
14 negligence;

15 (E) to enter into contracts or other ar-
16 rangements with public agencies, private orga-
17 nizations, and persons and to make such pay-
18 ments as may be necessary to carry out its
19 functions; and

20 (F) to do any and all acts necessary and
21 proper to carry out the purposes of the Founda-
22 tion.

23 (g) PROPERTY.—

24 (1) The Foundation may acquire, hold, and dis-
25 pose of lands, waters, or other interests in real prop-

1 erty by donation, gift, devise, purchase or exchange.
2 For the purposes of this section, an interest in real
3 property shall include, but not be limited to, mineral
4 and water rights, rights of way, and easements ap-
5 purtenant or in gross. Nothing in this section shall
6 be construed to be applied to real or personal prop-
7 erty of the United States of America.

8 (2) No lands or waters, or interests therein,
9 that are owned by the Foundation and are deter-
10 mined by the Secretary to be valuable for purposes
11 established in this section shall be subject to con-
12 demnation by any State or political subdivision, or
13 any agent or instrumentality thereof.

14 (h) ADMINISTRATIVE SUPPORT.—The Secretary may
15 reimburse the Foundation for expenses incurred pursuant
16 to subsection (e) of this section, except that reimburse-
17 ment for traveling and subsistence payments may not ex-
18 ceed then current Federal Government per diem rates.

19 (i) AUDITS AND REPORT REQUIREMENTS.—

20 (1) For purposes of the Act entitled “An Act
21 for audit of accounts of private corporations estab-
22 lished under Federal law”, approved August 30,
23 1964 (36 U.S.C. 1101 through 1103; Public Law
24 88–504) the Foundation shall be treated as a pri-
25 vate corporation established under Federal law.

1 (2) The Foundation shall transmit to the Sec-
2 retary each year a report of its proceedings and ac-
3 tivities of the previous year, including a full and
4 complete statement of its receipts, expenditures, and
5 investments.

6 (j) **RELEASE FROM LIABILITY.**—The United States
7 shall not be liable for any debts, defaults, acts or omissions
8 of the Foundation nor shall the full faith and credit of
9 the United States extend to any obligations of the Foun-
10 dation.

11 (k) **ACTIVITIES OF THE FOUNDATION AND ARMY**
12 **CORPS OF ENGINEERS.**—The activities of the Foundation,
13 authorized under the provisions of this Act shall be supple-
14 mental to and shall not preempt any authority or respon-
15 sibility of the Army Corps of Engineers under any other
16 provision of law.

17 (l) **AUTHORIZATION OF APPROPRIATIONS.**—For the
18 purposes of reimbursing the Foundation for certain costs,
19 as provided for in subsection (h) of this section, there is
20 authorized to be appropriated to the Department of the
21 Army \$300,000 for each of fiscal years 1999, 2000, and
22 2001.

23 **SEC. 17. REGULATORY PROGRAM FUNDING.**

24 (a) The Secretary shall establish and collect fees from
25 permit applicants for the evaluation of commercial permit

1 applications; the preparation of Environmental Impact
2 Statements as required by the National Environmental
3 Policy Act of 1969 in connection with such commercial
4 permit applications; and the delineation of wetlands for
5 major developments affecting wetlands.

6 (b) There is hereby established as a special account
7 in the Treasury of the United States the “Army Civil
8 Works Regulatory Program Account” (hereafter referred
9 to as the “Regulatory Program Account”) into which shall
10 be deposited fees collected by the Secretary pursuant to
11 subsection (a) of this section. Amounts deposited into the
12 Regulatory Program Account shall be available to the Sec-
13 retary, as provided in Appropriation Acts, to apply toward
14 the costs incurred by the Department of the Army in ad-
15 ministering laws pertaining to the regulation of the navi-
16 gable waters of the United States including wetlands, in
17 addition to appropriations otherwise available for the same
18 purpose.

19 **SEC. 18. FLOOD MITIGATION NEAR PIERRE, SOUTH DA-**
20 **KOTA.**

21 (a) GENERAL.—(1) To provide full operation capabil-
22 ity to carry out the authorized purposes of the Missouri
23 River Main Stem dams that are part of the Pick-Sloan
24 Missouri River Basin Program authorized by section 9 of
25 the Act entitled “An Act authorizing the construction of

1 certain public works on rivers and harbors for flood con-
2 trol, and other purposes” approved December 22, 1944,
3 the Secretary may acquire from willing sellers such land
4 and property in the vicinity of Pierre, South Dakota, or
5 floodproof or relocate such property within the project
6 area, as the Secretary determines is adversely affected by
7 the full wintertime Oahe Powerplant releases, provided
8 that non-Federal interests pay 35 percent of the cost of
9 the work. Any lands that are acquired under this authority
10 will be kept in public ownership and will be dedicated and
11 maintained in perpetuity for a use that is compatible with
12 any remaining flood threat.

13 (2) The Secretary may not obligate funds to imple-
14 ment this section until the Secretary has completed a re-
15 port addressing the criteria for selecting which properties
16 are to be acquired, relocated or floodproofed, and a plan
17 for implementing such measures. This report should be
18 completed no later than one year after funding is made
19 available. The report and implementation plan should be
20 coordinated with the Federal Emergency Management
21 Agency, and both should be prepared in consultation with
22 other Federal agencies, and State and local officials, and
23 residents. Such report should take into account informa-
24 tion from prior and ongoing studies.

1 (b) STUDY COST-SHARING REQUIREMENTS.—The
2 cost of studies conducted under this authority shall be
3 shared in accordance with section 105 of the Water Re-
4 sources Development Act of 1986 (100 Stat. 4088–4089),
5 as amended.

6 (c) AUTHORIZATION FOR APPROPRIATIONS.—There
7 is authorized to be appropriated to carry out this section
8 funds not to exceed \$25,000,000.

9 **SEC. 19. LOWER MISSOURI RIVER AQUATIC RESTORATION**
10 **PROJECTS.**

11 (a) IN GENERAL.—Not later than one year after
12 funds are made available for such purposes, the Secretary
13 shall finalize a comprehensive report—

14 (1) identifying a general implementation strat-
15 egy and overall plan for environmental restoration
16 and protection along the Lower Missouri River be-
17 tween Gavins Point Dam and the confluence of the
18 Missouri and Mississippi Rivers; and

19 (2) recommending individual environmental res-
20 toration projects that can be considered by the Sec-
21 retary for implementation under section 206 of the
22 Water Resources Development Act of 1996 (110
23 Stat. 3679–3680).

24 (b) SCOPE OF PROJECTS.—Any environmental res-
25 toration projects carried out pursuant to subsection (a)

1 shall provide for such activities and measures as the Sec-
2 retary determines to be necessary to protect and restore
3 fish and wildlife habitat without adversely affecting pri-
4 vate property rights or water related needs of the region
5 surrounding the Missouri River, including flood control,
6 navigation, and enhancement of water supply and shall in-
7 clude some or all of the following components:

8 (1) modification and improvement of navigation
9 training structures to protect and restore fish and
10 wildlife habitat;

11 (2) modification and creation of side channels
12 to protect and restore fish and wildlife habitat;

13 (3) restoration and creation of island fish and
14 wildlife habitat;

15 (4) creation of riverine fish and wildlife habitat;
16 and

17 (5) physical and biological monitoring for evalu-
18 ating the success of the projects.

19 (c) COORDINATION.—The Secretary shall, to the
20 maximum extent practicable, integrate projects carried out
21 in accordance with this section with other Federal, tribal,
22 and State restoration activities.

23 (d) COST SHARING.—The report to be carried out
24 pursuant to subsection (a) shall be undertaken at full Fed-
25 eral expense.

1 **SEC. 20. PAYMENT OPTION, MOOREFIELD, WEST VIRGINIA.**

2 The Secretary may permit the non-Federal sponsor
3 for the project for flood control, Moorefield, West Virginia,
4 to pay without interest the remaining non-Federal cost
5 over a period not to exceed thirty years to be determined
6 by the Secretary.

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