

106TH CONGRESS  
2D SESSION

# H. R. 4879

To reform the Army Corps of Engineers.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2000

Mr. KIND (for himself, Mr. BLUMENAUER, and Ms. BALDWIN) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To reform the Army Corps of Engineers.

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 “Corps of Engineers Reform Act of 2000”.

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definition of Secretary.

### TITLE I—PROJECT PLANNING

- Sec. 101. Independent review.
- Sec. 102. Stakeholder involvement.
- Sec. 103. Monitoring.
- Sec. 104. Recommendations.
- Sec. 105. Principles and guidelines.

Sec. 106. Environmental Advisory Board.

TITLE II—MITIGATION

Sec. 201. Full mitigation.

Sec. 202. Concurrent mitigation.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) The Army Corps of Engineers is the pri-  
4 mary Federal agency responsible for developing and  
5 managing the Nation’s harbors, waterways, shore-  
6 lines, and water resources.

7 (2) Scarce Federal resources require more effi-  
8 cient use of Corps of Engineers funding and greater  
9 oversight of Corps of Engineers analyses.

10 (3) Demand for recreation, clean water, and  
11 healthy wildlife habitat must be reflected in the  
12 Corps of Engineers project planning process.

13 (4) The social and environmental impacts of  
14 dams, levees, shoreline stabilization structures, and  
15 other projects must be adequately mitigated.

16 (5) Affected interests must play a larger role in  
17 Corps of Engineers project development.

18 (b) PURPOSES.—The purposes of this Act are as fol-  
19 lows:

20 (1) To ensure that the Nation’s water resources  
21 investments are economically justified and enhance  
22 the environment.

1           (2) To provide independent review of Corps of  
2 Engineers feasibility studies.

3           (3) To ensure that mitigation for Corps of En-  
4 gineers projects is successful and cost-effective.

5           (4) To enhance the involvement of affected in-  
6 terests in Corps of Engineers feasibility studies.

7           (5) To revise Corps of Engineers planning prin-  
8 ciples to meet the economic and environmental needs  
9 of riverside and coastal communities.

10 **SEC. 3. DEFINITION OF SECRETARY.**

11         In this Act, the term “Secretary” means the Sec-  
12 retary of the Army.

13         **TITLE I—PROJECT PLANNING**

14 **SEC. 101. INDEPENDENT REVIEW.**

15         Title IX of the Water Resources Development Act of  
16 1986 (100 Stat. 4183 et seq.) is amended by adding at  
17 the end the following:

18 **“SEC. 952. INDEPENDENT REVIEW.**

19         “(a) PROJECTS SUBJECT TO INDEPENDENT RE-  
20 VIEW.—The Secretary shall ensure that feasibility reports  
21 for the following water resources projects are subject to  
22 review by an independent panel of experts established  
23 under this section:

24           “(1) Projects with an estimated total cost of  
25 more than \$25,000,000, including mitigation costs.

1           “(2) Projects that are controversial, as de-  
2           scribed in subsection (f).

3           “(b) OFFICE OF INDEPENDENT REVIEW.—

4           “(1) ESTABLISHMENT.—There is established in  
5           the Corps of Engineers an Office of Independent Re-  
6           view (in this section referred to as the ‘Office’).

7           “(2) DIRECTOR.—

8           “(A) APPOINTMENT.—The head of the Of-  
9           fice shall be the Director of the Office of Inde-  
10          pendent Review (in this section referred to as  
11          the ‘Director’), who shall be appointed by the  
12          Secretary for a term of 3 years.

13          “(B) QUALIFICATIONS.—The Secretary  
14          shall select the Director from among individuals  
15          who are distinguished scholars.

16          “(C) TERMS.—An individual may not serve  
17          for more than 1 term as the Director.

18          “(3) DUTIES.—The Director shall establish a  
19          panel of experts to review each project subject to re-  
20          view under subsection (a).

21          “(c) ESTABLISHMENT OF PANELS.—

22          “(1) MEMBERSHIP.—A panel of experts estab-  
23          lished by the Director for a project shall be com-  
24          posed of not less than 5 and not more than 9 inde-  
25          pendent experts who represent a balance of areas of

1 expertise, including biologists, engineers, and econo-  
2 mists.

3 “(2) LIMITATION ON APPOINTMENTS.—The Di-  
4 rector shall not appoint an individual to serve on a  
5 panel of experts for a project if the individual has  
6 a financial or close professional association with any  
7 organization or group with a strong financial or or-  
8 ganizational interest in the project.

9 “(3) CONSULTATION.—The Director shall con-  
10 sult with the National Academy of Sciences in devel-  
11 oping lists of individuals to serve on panels of ex-  
12 perts under this section.

13 “(4) COMPENSATION.—An individual serving on  
14 a panel of experts under this section shall be com-  
15 pensated at a rate of pay to be determined by the  
16 Secretary.

17 “(5) TRAVEL EXPENSES.—An individual serv-  
18 ing on a panel of experts under this section shall re-  
19 ceive travel expenses, including per diem in lieu of  
20 subsistence, in accordance with sections 5702 and  
21 5703 of title 5, United States Code.

22 “(d) DUTIES OF PANELS.—A panel of experts estab-  
23 lished for a project under this section shall—

1           “(1) review the feasibility report prepared for  
2 the project after the identification of a preferred al-  
3 ternative;

4           “(2) receive written and oral comments of a  
5 technical nature concerning the project from the  
6 public; and

7           “(3) submit to the Secretary a report con-  
8 taining the panel’s economic, engineering, and envi-  
9 ronmental analyses of the project, including the pan-  
10 el’s conclusions on the feasibility report, with par-  
11 ticular emphasis on areas of public controversy.

12          “(e) DURATION OF PROJECT REVIEWS.—A panel of  
13 experts shall complete its review of a project under this  
14 section not later than 180 days after the date of establish-  
15 ment of the panel.

16          “(f) CONTROVERSIAL PROJECTS.—For purposes of  
17 subsection (a), a project shall be considered to be a con-  
18 troversial project if—

19           “(1) the Secretary determines that the project  
20 is subject to a substantial degree of public con-  
21 troversy;

22           “(2) the affected State objects to the project; or

23           “(3) pursuant to the Fish and Wildlife Coordi-  
24 nation Act (16 U.S.C. 661 et seq.), the United  
25 States Fish and Wildlife Service determines that the

1 project is likely to have a significant adverse effect  
2 on fish and wildlife after taking into account any  
3 proposed mitigation plan.

4 “(g) RECOMMENDATIONS OF PANEL.—After receiv-  
5 ing a report on a project from a panel of experts under  
6 this section, the Secretary shall—

7 “(1) consider any recommendations contained  
8 in the report;

9 “(2) make the report available for public re-  
10 view; and

11 “(3) include a copy of the report in any report  
12 transmitted to Congress concerning the project.

13 “(h) COSTS.—The cost of conducting a review of a  
14 project under this section shall not exceed \$250,000 and  
15 shall be considered as part of the total cost of the project.  
16 The Secretary may waive the \$250,000 limitation in the  
17 preceding sentence for good cause.”.

18 **SEC. 102. STAKEHOLDER INVOLVEMENT.**

19 (a) IN GENERAL.—Section 905 of the Water Re-  
20 sources Development Act of 1986 (33 U.S.C. 2282) is  
21 amended by adding at the end the following:

22 “(e) STAKEHOLDER ADVISORY GROUP.—

23 “(1) IN GENERAL.—The Secretary shall estab-  
24 lish a stakeholder advisory group to assist the Sec-  
25 retary with the development of each feasibility study

1 under subsection (a) and to enhance public partici-  
2 pation in the feasibility study.

3 “(2) MEMBERSHIP.—The membership of the  
4 advisory group shall include balanced representation  
5 of social, economic, and environmental interest  
6 groups.

7 “(3) APPLICABILITY OF FEDERAL ADVISORY  
8 COMMITTEE ACT.—The Federal Advisory Com-  
9 mittee Act (15 U.S.C. App.) shall apply to the advi-  
10 sory group.”.

11 **SEC. 103. MONITORING.**

12 Title IX of the Water Resources Development Act of  
13 1986 (100 Stat. 4183 et seq.) is further amended by add-  
14 ing at the end the following:

15 **“SEC. 953. MONITORING.**

16 “The Secretary shall monitor the economic and envi-  
17 ronmental results (including the results of mitigation) of  
18 each water resources project with an estimated total cost  
19 of more than \$25,000,000, for a period of not less than  
20 15 years, and shall provide annual reports to Congress on  
21 the performance of the project. The cost of such moni-  
22 toring shall be a Federal expense.”.

1 **SEC. 104. RECOMMENDATIONS.**

2 Title IX of the Water Resources Development Act of  
3 1986 (100 Stat. 4183 et seq.) is further amended by add-  
4 ing at the end the following:

5 **“SEC. 954. RECOMMENDATIONS.**

6 “The Secretary shall not recommend an initial rec-  
7 ommended plan for a proposed project until all project  
8 costs, including mitigation costs, have been calculated.”.

9 **SEC. 105. PRINCIPLES AND GUIDELINES.**

10 Section 209 of the Flood Control Act of 1970 (42  
11 U.S.C. 1962–2) is amended to read as follows:

12 **“SEC. 209. CONGRESSIONAL STATEMENT OF OBJECTIVES.**

13 “(a) IN GENERAL.—It is the intent of Congress that  
14 economic development and environmental protection and  
15 restoration be co-equal goals of water resources planning  
16 and development.

17 “(b) REVISION OF PRINCIPLES AND GUIDELINES.—  
18 The Secretary shall revise the principles and guidelines for  
19 flood control projects—

20 “(1) to incorporate—

21 “(A) a national ecological restoration ac-  
22 count;

23 “(B) a national economic development ac-  
24 count; and

25 “(C) an optimum trade-off plan to maxi-  
26 mize the benefits of the accounts;

1           “(2) to incorporate new techniques in risk and  
2           uncertainty analysis;

3           “(3) to eliminate biases and disincentives for  
4           nonstructural flood damage reduction projects;

5           “(4) to incorporate new analytical techniques;  
6           and

7           “(5) to encourage, to the maximum extent prac-  
8           ticable, the restoration of aquatic ecosystems.

9           “(c) UPDATE OF GUIDANCE.—The Secretary shall  
10          update the Guidance for Conducting Civil Works Planning  
11          Studies (ER 1105–2–100) to comply with this section.”.

12          **SEC. 106. ENVIRONMENTAL ADVISORY BOARD.**

13          Section 905(b) of the Water Resources Development  
14          Act of 1986 (33 U.S.C. 2282(b)) is amended—

15                 (1) by striking “(b) Before initiating” and in-  
16                 serting the following:

17                 “(b) RECONNAISSANCE STUDIES.—

18                         “(1) IN GENERAL.—Before initiating”;

19                         (2) by adding at the end the following:

20                         “(2) REVIEW BY ENVIRONMENTAL ADVISORY  
21                         BOARD.—The Environmental Advisory Board of the  
22                         Corps of Engineers shall review all reconnaissance  
23                         studies performed under this subsection to assess  
24                         whether a proposed project is likely to have environ-  
25                         mental impacts that cannot be successfully or cost-

1 effectively mitigated and shall make recommenda-  
2 tions to the Secretary based on the review. The Sec-  
3 retary shall consider the recommendations of the  
4 Environmental Advisory Board on a project before  
5 recommending that a feasibility study be conducted  
6 for the project based on a reconnaissance report.”;  
7 and

8 (3) by aligning the remainder of the text of  
9 paragraph (1) (as designated by paragraph (1) of  
10 this subsection) with paragraph (2) (as added by  
11 paragraph (2) of this subsection).

## 12 **TITLE II—MITIGATION**

### 13 **SEC. 201. FULL MITIGATION.**

14 Section 906(d) of the Water Resources Development  
15 Act of 1986 (33 U.S.C. 2283(a)) is amended—

16 (1) by striking “(d) After the date” and insert-  
17 ing the following:

18 “(d) MITIGATION PLANS AS PART OF PROJECT PRO-  
19 POSALS.—

20 “(1) IN GENERAL.—After the date”;

21 (2) in the first sentence of paragraph (1) (as so  
22 designated) by inserting “fully” before “mitigate”;

23 (3) by adding at the end the following:

24 “(2) STANDARDS FOR MITIGATION.—To miti-  
25 gate losses to fish and wildlife resulting from a

1 water resources project, the Secretary shall meet the  
2 highest standards typically required of private par-  
3 ties under related Federal programs and shall, at a  
4 minimum, acquire and restore an acre of habitat to  
5 replace each acre of habitat negatively impacted by  
6 the project. If the project negatively impact re-  
7 sources other than aquatic and terrestrial habitat,  
8 the Secretary shall take steps to ensure that im-  
9 pacted resources, such as fish killed by vessels, are  
10 replaced on at least a one-to-one basis.

11 “(3) DESIGN OF MITIGATION PROJECTS.—The  
12 Secretary shall design mitigation projects to reflect  
13 contemporary understanding of the importance of  
14 spatial distribution of habitat and the natural hy-  
15 drology of aquatic ecosystems, and shall fully miti-  
16 gate the adverse hydrologic impacts of projects.

17 “(4) RECOMMENDATION OF PROJECTS.—The  
18 Secretary shall not recommend a water resources  
19 project alternative or choose a project alternative in  
20 any final record of decision, environmental impact  
21 statement, or environmental assessment completed  
22 after the date of enactment of this paragraph unless  
23 the Secretary determines that the mitigation plan  
24 for the alternative will cost-effectively and success-

1 fully mitigate the adverse impacts of the project on  
2 aquatic resources and fish and wildlife.

3 “(5) COMPLETION OF MITIGATION BEFORE  
4 CONSTRUCTION OF NEW PROJECTS.—The Secretary  
5 shall complete all planned mitigation in a particular  
6 watershed before constructing any new water re-  
7 sources project in that watershed.”; and

8 (4) by aligning the remainder of the text of  
9 paragraph (1) (as designated by paragraph (1) of  
10 this subsection) with paragraphs (2) through (5) (as  
11 added by paragraph (3) of this subsection).

12 **SEC. 202. CONCURRENT MITIGATION.**

13 Section 906(a)(1) of the Water Resources Develop-  
14 ment Act of 1986 (33 U.S.C. 2283(a)(1)) is amended by  
15 adding at the end the following: “To ensure concurrent  
16 mitigation, the Secretary shall complete 50 percent of re-  
17 quired mitigation before beginning project construction,  
18 and shall use a proportionate amount of project construc-  
19 tion funding to complete the required mitigation.”.

○