

108TH CONGRESS
1ST SESSION

H. R. 2566

To reform the Army Corps of Engineers.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2003

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

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 “Army Corps of Engineers Reform Act of 2003”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Secretary defined.

TITLE I—PROJECT PLANNING REFORM

Sec. 101. Principles and guidelines.

Sec. 102. Stakeholder advisory committees.

Sec. 103. Independent review.

Sec. 104. Public access to information.

Sec. 105. Benefit-cost analysis.

Sec. 106. Project criteria.

TITLE II—MITIGATION

Sec. 201. Full mitigation.

Sec. 202. Concurrent mitigation.

Sec. 203. Mitigation tracking system.

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 considered and
16 fully mitigated.

17 (5) Affected interests must play a larger role in
18 the oversight of Corps of Engineers project develop-
19 ment.

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

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

4 (2) To provide independent review of Corps of
5 Engineers feasibility studies, general reevaluation
6 studies, and environmental impact statements.

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

9 (4) To enhance the involvement of affected in-
10 terests in Corps of Engineers feasibility studies, gen-
11 eral reevaluation studies, and environmental impact
12 statements.

13 (5) To revise Corps of Engineers planning prin-
14 ciples to meet the economic and environmental needs
15 of riverside and coastal communities.

16 (6) To ensure that environmental analyses be
17 considered as co-equal to economic analyses in the
18 assessment of Corps of Engineers projects, recog-
19 nizing the need for sound science in the evaluation
20 of the impacts on the health of aquatic ecosystems.

21 (7) To ensure that the Corps of Engineers is
22 making appropriate, up-to-date calculations in con-
23 ducting cost-benefit analyses of Corps of Engineers
24 projects.

1 **SEC. 3. SECRETARY DEFINED.**

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

4 **TITLE I—PROJECT PLANNING**
5 **REFORM**

6 **SEC. 101. PRINCIPLES AND GUIDELINES.**

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

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

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

14 “(b) REVISION OF PRINCIPLES AND GUIDELINES.—
15 Not later than 1 year after the date of enactment of the
16 Army Corps of Engineers Reform Act of 2003, the Sec-
17 retary shall revise the principles and guidelines of the
18 Corps of Engineers for water resources projects—

19 “(1) to provide for the consideration of ecologi-
20 cal restoration costs under Corps of Engineers eco-
21 nomic models;

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

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

26 “(4) to incorporate new analytical techniques;

1 “(5) to encourage, to the maximum extent prac-
2 ticable, the restoration of aquatic ecosystems; and

3 “(6) to ensure that water resources projects are
4 justified by benefits that accrue to the public at
5 large and not to a limited number of private busi-
6 nesses.

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

10 **SEC. 102. STAKEHOLDER ADVISORY COMMITTEES.**

11 (a) IN GENERAL.—Upon receipt of a written request
12 by any person or governmental entity, the Secretary shall
13 establish for a water resources project that is authorized
14 or substantially modified after the date of enactment of
15 this Act a stakeholder advisory committee to assist the
16 Secretary with the development of feasibility studies, gen-
17 eral reevaluation studies, and environmental impact state-
18 ments for the project.

19 (b) DURATION OF REVIEWS.—A stakeholder advisory
20 committee established for a project under this section may
21 provide advice to the Secretary during planning and de-
22 sign of the project, beginning with the initiation of the
23 project’s draft feasibility study and ending with the
24 issuance of the project’s draft environmental impact state-
25 ment.

1 (c) MEMBERSHIP.—A stakeholder advisory com-
2 mittee established for a project under this section shall
3 be composed of representatives of State and local agencies,
4 tribal organizations, public interest groups, industry, sci-
5 entific, and academic organizations, Federal agencies, and
6 other interested citizens. The membership shall represent
7 a balance of the social, economic, and environmental inter-
8 ests in the project.

9 (d) ROLE.—A stakeholder advisory committee estab-
10 lished for a project under this section shall advise the Sec-
11 retary but shall not be required to make a formal rec-
12 ommendation.

13 (e) COSTS.—The costs of a stakeholder advisory com-
14 mittee established for a project under this section—

15 (1) shall be a Federal expense;

16 (2) shall not exceed \$250,000; and

17 (3) shall be considered as part of the total cost
18 of the project.

19 (f) APPLICABILITY OF FEDERAL ADVISORY COM-
20 MITTEE ACT.—The Federal Advisory Committee Act (5
21 U.S.C. App.) shall apply to a stakeholder advisory com-
22 mittee established under this section.

23 **SEC. 103. INDEPENDENT REVIEW.**

24 (a) PROJECTS SUBJECT TO INDEPENDENT RE-
25 VIEW.—

1 (1) IN GENERAL.—The Secretary shall ensure
2 that feasibility studies, general reevaluation studies,
3 and environmental impact statements for each water
4 resources project described in paragraph (2) are
5 subject to review by an independent panel of experts
6 established under this section.

7 (2) PROJECTS SUBJECT TO REVIEW.—A project
8 shall be subject to review under paragraph (1) if—

9 (A) the project has an estimated total cost
10 of more than \$25,000,000, including mitigation
11 costs;

12 (B) the Governor of an affected State re-
13 quests the establishment of an independent
14 panel of experts for the project;

15 (C) the Director of the United States Fish
16 and Wildlife Service determines that the project
17 is likely to have a significant adverse impact on
18 fish or wildlife after implementation of proposed
19 mitigation plans;

20 (D) the head of a Federal agency charged
21 with reviewing the project determines that the
22 project is likely to have a significant adverse im-
23 pact on environmental, cultural, or other re-
24 sources under the jurisdiction of the agency

1 after implementation of proposed mitigation
2 plans; or

3 (E) the Secretary determines that the
4 project is controversial under paragraph (3).

5 (3) CONTROVERSIAL PROJECTS.—Upon receipt
6 of a written request by an interested party or on the
7 initiative of the Secretary, the Secretary shall deter-
8 mine whether or not a project is controversial under
9 paragraph (2)(E). The Secretary shall determine
10 that a project is controversial if the Secretary finds
11 that—

12 (A) there is a significant public dispute as
13 to the size, nature, or effects of the project; or

14 (B) there is a significant public dispute as
15 to the economic or environmental costs or bene-
16 fits of the project.

17 (4) AFFECTED STATE DEFINED.—In paragraph
18 (2)(B), the term “affected State” means a State
19 that is at least partially within the drainage basin in
20 which the project is located and would be economi-
21 cally or environmentally affected as a consequence of
22 the project.

23 (b) OFFICE OF INDEPENDENT REVIEW.—

24 (1) ESTABLISHMENT.—There is established in
25 the Office of the Assistant Secretary of the Army for

1 Civil Works an Office of Independent Review (in this
2 section referred to as the “Office”).

3 (2) DIRECTOR.—

4 (A) APPOINTMENT.—The head of the Of-
5 fice shall be the Director of the Office of Inde-
6 pendent Review (in this section referred to as
7 the “Director”), who shall be appointed by the
8 Secretary for a term of 3 years.

9 (B) QUALIFICATIONS.—The Secretary
10 shall select the Director from among individuals
11 who are distinguished scholars. In making the
12 selection, the Secretary shall consider any rec-
13 ommendations made by the Inspector General
14 of the Army.

15 (C) LIMITATION ON APPOINTMENTS.—The
16 Secretary shall not appoint an individual to
17 serve as the Director if the individual has a fi-
18 nancial or close professional association with
19 any organization or group with a strong finan-
20 cial or organizational interest in an ongoing
21 water resources project.

22 (D) TERMS.—An individual may not serve
23 for more than 1 term as the Director.

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

4 (c) ESTABLISHMENT OF PANELS.—

5 (1) IN GENERAL.—As soon as practicable after
6 the Secretary selects a preferred alternative for a
7 project subject to review under subsection (a), the
8 Director shall establish a panel of experts to review
9 the project.

10 (2) MEMBERSHIP.—A panel of experts estab-
11 lished by the Director for a project shall be com-
12 posed of not less than 5 and not more than 9 inde-
13 pendent experts who represent a balance of areas of
14 expertise, including biologists, engineers, and econo-
15 mists.

16 (3) LIMITATION ON APPOINTMENTS.—The Di-
17 rector shall not appoint an individual to serve on a
18 panel of experts for a project if the individual has
19 a financial or close professional association with any
20 organization or group with a strong financial or or-
21 ganizational interest in the project.

22 (4) CONSULTATION.—The Director shall con-
23 sult with the National Academy of Sciences in devel-
24 oping lists of individuals to serve on panels of ex-
25 perts under this section.

1 (5) COMPENSATION.—An individual serving on
2 a panel of experts under this section shall be com-
3 pensated at a rate of pay to be determined by the
4 Secretary.

5 (6) TRAVEL EXPENSES.—An individual serving
6 on a panel of experts under this section shall receive
7 travel expenses, including per diem in lieu of subsist-
8 ence, in accordance with sections 5702 and 5703 of
9 title 5, United States Code.

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

12 (1) review each feasibility study, general re-
13 evaluation study, and environmental impact state-
14 ment prepared for the project;

15 (2) assess the adequacy of the economic models
16 used by the Secretary in reviewing the project to en-
17 sure that—

18 (A) multiple methods of economic analysis
19 have been used; and

20 (B) any regional effects on navigation sys-
21 tems have been examined;

22 (3) assess the adequacy of the environmental
23 models and analyses used by the Secretary in re-
24 viewing the project;

1 (4) receive and review written and oral com-
2 ments of a technical nature concerning the project
3 from the public; and

4 (5) submit to the Secretary a report containing
5 the panel's economic, engineering, and environ-
6 mental analysis of the project, including the panel's
7 conclusions on the project's feasibility studies, gen-
8 eral reevaluation studies, and environmental impact
9 statements, with particular emphasis on areas of
10 public controversy.

11 (e) DURATION OF PROJECT REVIEWS.—A panel of
12 experts shall complete its review of a project under this
13 section not later than 180 days after the date of establish-
14 ment of the panel and shall terminate upon submission
15 of a final report to the Secretary under subsection (d)(5).

16 (f) RECOMMENDATIONS OF PANEL.—

17 (1) CONSIDERATION BY SECRETARY.—After re-
18 ceiving a report on a project from a panel of experts
19 under this section and before entering a final record
20 of decision for the project, the Secretary shall con-
21 sider any recommendations contained in the report
22 and prepare a written explanation for any rec-
23 ommendations not adopted.

24 (2) PUBLIC REVIEW; TRANSMITTAL TO CON-
25 GRESS.—After receiving a report on a project from

1 a panel of experts under this section, the Secretary
2 shall—

3 (A) make a copy of the report and any
4 written explanation of the Secretary on rec-
5 ommendations contained in the report available
6 for public review under section 104; and

7 (B) transmit to Congress a copy of the re-
8 port, together with any such written expla-
9 nation.

10 (g) COSTS.—

11 (1) IN GENERAL.—The costs of a panel of ex-
12 perts established for a project under this section—

13 (A) shall be a Federal expense;

14 (B) shall not exceed \$500,000; and

15 (C) shall be considered as part of the total
16 cost of the project.

17 (2) WAIVER.—The Secretary may waive the
18 \$500,000 limitation contained in paragraph (1)(B)
19 in cases that the Secretary determines appropriate.

20 (h) APPLICABILITY OF FEDERAL ADVISORY COM-
21 MITTEE ACT.—The Federal Advisory Committee Act (5
22 U.S.C. App.) shall apply to a panel of experts established
23 under this section.

1 **SEC. 104. PUBLIC ACCESS TO INFORMATION.**

2 (a) IN GENERAL.—The Secretary shall ensure that
3 information related to the analysis of a water resources
4 project by the Corps of Engineers, including all supporting
5 data, analytical documents, and information that the
6 Corps of Engineers has considered in its analysis, is made
7 available to any individual upon request and to the public
8 on the Internet.

9 (b) TYPES OF INFORMATION.—Information about a
10 water resources project to be made available under sub-
11 section (a) shall include any information that had been
12 made available to the project sponsor and all data used
13 by the Corps of Engineers in its justification and analysis
14 of the project.

15 (c) EXCEPTION FOR TRADE SECRETS.—

16 (1) IN GENERAL.—The Secretary shall not
17 make information available under subsection (a) that
18 the Secretary determines to be a trade secret of the
19 person who supplied the information to the Corps of
20 Engineers.

21 (2) CRITERIA FOR TRADE SECRETS.—The Sec-
22 retary shall consider information to be a trade secret
23 only if—

24 (A) the person who supplied the informa-
25 tion to the Corps of Engineers—

1 (i) has not disclosed the information
2 to any person other than (I) an officer or
3 employee of the United States or a State
4 or local government, (II) an employee of
5 such person, or (III) a person who is
6 bound by a confidentiality agreement; and

7 (ii) has taken reasonable measures to
8 protect the confidentiality of the informa-
9 tion and intends to continue to take such
10 measures;

11 (B) the information is not required to be
12 disclosed, or otherwise made available, to the
13 public under any other Federal or State law;
14 and

15 (C) disclosure of the information is likely
16 to cause substantial harm to the competitive po-
17 sition of such person.

18 **SEC. 105. BENEFIT-COST ANALYSIS.**

19 Section 308(a) of the Water Resources Development
20 Act of 1990 (33 U.S.C. 2318(a)) is amended—

21 (1) by striking “and” at the end of paragraph

22 (1)(B);

23 (2) by striking the period at the end of para-
24 graph (2) and inserting “; and”; and

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

1 “(3) any projected benefit arising from the
2 draining, reduction, or elimination of wetlands at-
3 tributable to increases in the value of privately
4 owned property, increases in the quantity of pri-
5 vately owned property, or increases in the value of
6 privately owned services.”.

7 **SEC. 106. PROJECT CRITERIA.**

8 After the date of enactment of this Act, the Secretary
9 shall not submit to Congress any proposal to authorize or
10 substantially modify a water resources project unless the
11 proposal contains a certification by the Secretary that the
12 project minimizes to the greatest extent practicable ad-
13 verse impacts on—

14 (1) the natural hydrologic patterns of aquatic
15 ecosystems; and

16 (2) the value or native diversity of aquatic eco-
17 systems.

18 **TITLE II—MITIGATION**

19 **SEC. 201. FULL MITIGATION.**

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

22 (1) in the first sentence of paragraph (1) by in-
23 serting “fully” before “mitigate”; and

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

1 “(3) STANDARDS FOR MITIGATION.—To miti-
2 gate losses to fish and wildlife resulting from a
3 water resources project, the Secretary, at a min-
4 imum, shall acquire and restore an acre of habitat
5 to replace each acre of habitat negatively impacted
6 by the project. The mitigation plan shall include a
7 detailed and specific plan to monitor mitigation im-
8 plementation and success.

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

15 “(5) RECOMMENDATION OF PROJECTS.—The
16 Secretary shall not recommend a water resources
17 project alternative or choose a project alternative in
18 any final record of decision, environmental impact
19 statement, or environmental assessment completed
20 after the date of enactment of this paragraph unless
21 the Secretary determines that the mitigation plan
22 for the alternative has the greatest probability of
23 cost-effectively and successfully mitigating the ad-
24 verse impacts of the project on aquatic resources
25 and fish and wildlife.

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

6 **SEC. 202. CONCURRENT MITIGATION.**

7 Section 906(a)(1) of the Water Resources Develop-
8 ment Act of 1986 (33 U.S.C. 2283(a)(1)) is amended by
9 adding at the end the following: “To ensure concurrent
10 mitigation, the Secretary shall complete 50 percent of re-
11 quired mitigation before beginning project construction
12 and shall complete the remainder of required mitigation
13 as expeditiously as practicable and in no case later than
14 the last day of project construction.”.

15 **SEC. 203. MITIGATION TRACKING SYSTEM.**

16 (a) IN GENERAL.—Not later than 6 months after the
17 date of enactment of this Act, the Secretary shall establish
18 a record-keeping system to track the following informa-
19 tion:

20 (1) The amount and type of wetlands and other
21 habitat types impacted by the operation and mainte-
22 nance of each water resources project carried out by
23 the Secretary.

1 (2) The amount and type of mitigation required
2 for the operation and maintenance of each water re-
3 sources project carried out by the Secretary.

4 (3) The amount and type of mitigation that has
5 been completed for the operation and maintenance of
6 each water resources project carried out by the Sec-
7 retary.

8 (4) Wetland losses permitted under section 404
9 of the Federal Water Pollution Control Act (33
10 U.S.C. 1344) and required mitigation for such
11 losses.

12 (b) REQUIRED INFORMATION AND ORGANIZATION.—
13 The record-keeping system shall include information on
14 impacts and mitigation described in subsection (a) occur-
15 ring after 1969 and shall be organized by watershed,
16 project, permit application, and zip code.

17 (c) AVAILABILITY OF INFORMATION.—The Secretary
18 shall make information contained in the record-keeping
19 system available to the public on the Internet.

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