

EMP Legislation

WATER RESOURCES DEVELOPMENT ACT OF 1986 P.L. 99-662

SEC. 1103. UPPER MISSISSIPPI RIVER PLAN.

(a)(1) This section may be cited as the “Upper Mississippi River Management Act of 1986”.

(2) To ensure the coordinated development and enhancement of the Upper Mississippi River system, it is hereby declared to be the intent of Congress to recognize that system as a nationally significant ecosystem and a nationally significant commercial navigation system. Congress further recognizes that the system provides a diversity of opportunities and experiences. The system shall be administered and regulated in recognition of its several purposes.

(b) For purposes of this section—

(1) the terms “Upper Mississippi River system” and “system” mean those river reaches having commercial navigation channels on the Mississippi River main stem north of Cairo, Illinois; the Minnesota River, Minnesota; Black River, Wisconsin; Saint Croix River, Minnesota and Wisconsin; Illinois River and Waterway, Illinois; and Kaskaskia River, Illinois;

(2) the term “Master Plan” means the comprehensive master plan for the management of the Upper Mississippi River system, dated January 1, 1982, prepared by the Upper Mississippi River Basin Commission and submitted to Congress pursuant to Public Law 95-502;

(3) the term “GREAT I, GREAT II, and GRRM studies” means the studies entitled “GREAT Environmental Action Team—GREAT I—A Study of the Upper Mississippi River”, dated September 1980, “GREAT River Environmental Action Team—GREAT II—A Study of the Upper Mississippi River” dated December 1980, and “GREAT River Resource Management Study”, dated September 1982; and

(4) the term “Upper Mississippi River Basin Association” means an association of the State of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, formed for the purpose of cooperative effort and united assistance in the comprehensive planning for the use, protection, growth, and development of the Upper Mississippi River System.

(c)(1) Congress hereby approves the Master Plan as a guide for future water policy on the Upper Mississippi River system. Such approval shall not constitute authorization of any recommendation contained in the Master Plan.

(2) Section 101 of Public Law 95-502 is amended by striking out the last two sentences of subsection (b), striking out subsection (i), striking out the final sentence of subsection (j), and redesignating subsection “(j)” as subsection “(i)”.

(d)(1) The consent of the Congress is hereby given to the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, or any two or more of such States, to enter into negotiations for agreements, not in conflict with any law of the United States, for cooperative effort and mutual assistance in the comprehensive

planning for the use, protection, growth, and development of the Upper Mississippi River system, and to establish such agencies, joint or otherwise, or designate an existing multi-State entity, as they may deem desirable for making effective such agreements. To the extent required by Article I, section 10 of the Constitution, such agreements shall become final only after ratification by an Act of Congress.

(2) The Secretary is authorized to enter into cooperative agreements with the Upper Mississippi River Basin Association or any other agency established under paragraph (1) of this subsection to promote and facilitate active State government participation in the river system management, development, and protection.

(3) For the purpose of ensuring the coordinated planning and implementation of programs authorized in subsections (e) and (h)(2) of this section, the Secretary shall enter into an interagency agreement with the Secretary of the Interior to provide for the direct participation of, and transfer of funds to, the Fish and Wildlife Service and any other agency or bureau of the Department of the Interior for the planning, design, implementation, and evaluation of such programs.

(4) The Upper Mississippi River Basin Association or any other agency established under paragraph (1) of this subsection is hereby designated by Congress as the caretaker of the master plan. Any changes to the master plan recommended by the Secretary shall be submitted to such association or agency for review. Such association or agency may make such comments with respect to such recommendations and offer other recommended changes to the master plan as such association or agency deems appropriate and shall transmit such comments and other recommended changes to the Secretary. The Secretary shall transmit such recommendations along with the comments and other recommended changes of such association or agency to the Congress for approval within 90 days of the receipt of such comments or recommended changes.

(e)(1) The Secretary, in consultation with the Secretary of the Interior and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, is authorized to undertake, as identified in the master plan—

(A) a program for the planning, construction, evaluation of measures for fish and wildlife habitat rehabilitation and enhancement;

(B) implementation of a long-term resource monitoring program; and

(C) implementation of a computerized inventory and analysis system.

(2) Each program referred to in paragraph (1) shall be carried out for ten years. Before the last day of such ten-year period, the Secretary, in consultation with the Secretary of the Interior and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, shall conduct an evaluation of such programs and submit a report on the results of such evaluation to Congress. Such evaluation shall determine each such program's effectiveness, strengths, and weaknesses and contain recommendations for the modification and continuance or termination of such program.

(3) For purposes of carrying out paragraph (1)(A) of this subsection, there is authorized to be appropriated to the Secretary not to exceed \$8,200,000 for the first fiscal year beginning after the date of enactment of this Act, not to exceed \$12,400,000 for the second fiscal year beginning after the date of enactment of this Act, and not to exceed \$13,000,000 per fiscal year for each of the succeeding eight fiscal years.

(4) For purposes of carrying out paragraph (1)(B) of this subsection, there is authorized to be appropriated to the Secretary not to exceed \$7,680,000 for the first fiscal year beginning after the date of enactment of this Act and not to exceed \$5,080,000 per fiscal year for each of the succeeding nine fiscal years.

(5) For purposes of carrying out paragraph (1)(C) of this subsection, there is authorized to be appropriated to the Secretary not to exceed \$40,000 for the first

fiscal year beginning after the date of enactment of this Act, not to exceed \$280,000 for the second fiscal year beginning after the date of enactment of this Act, not to exceed \$1,220,000 for the third fiscal year beginning after the date of enactment of this Act, and not to exceed \$875,000 per fiscal year for each of the succeeding seven fiscal years.

(6)(A) Notwithstanding the provisions of subsection (a)(2) of this section, the costs of each project carried out pursuant to paragraph (1)(A) of this subsection shall be allocated between the Secretary and the appropriate non-Federal sponsor in accordance with the provisions of section 906 of this Act.

(B) Notwithstanding the provisions of subsection (a)(2) of this section, the cost of implementing the activities authorized by paragraphs (1)(B) and (1)(C) of this subsection shall be allocated in accordance with the provisions of section 906 of this Act, as if such activity was required to mitigate losses to fish and wildlife.

(7) None of the funds appropriated pursuant to any authorization contained in this subsection shall be considered to be chargeable to navigation.

(f)(1) The Secretary, in consultation with any agency established under subsection (d)(1) of this section, is authorized to implement a program of recreational projects for the system substantially in accordance with the recommendations of the GREAT I, GREAT II, and GRRM studies and the master plan reports. In addition, the Secretary, in consultation with any such agency, shall, at Federal expense, conduct an assessment of the economic benefits generated by recreational activities in the system. The cost of each such project shall be allocated between the Secretary and the appropriate non-Federal sponsor in accordance with title I of this Act.

(2)(A) for purposes of carrying out the program of recreational projects authorized in paragraph (1) of this subsection, there is authorized to be appropriated to the Secretary not to exceed \$500,000 per fiscal year for each of the first ten fiscal years beginning after the effective date of this section.

(B) For purposes of carrying out the assessment of the economic benefits of recreational activities as authorized in paragraph (1) of this subsection, there is authorized to be appropriated to the Secretary not to exceed \$300,000 per fiscal year for the first and second fiscal years beginning after the computerized inventory and analysis system implemented pursuant to subsection (e)(1)(C) of this section is fully functional and \$150,000 for the third such fiscal year.

(g) The Secretary shall, in his budget request, identify those measures developed by the Secretary, in consultation with the Secretary of Transportation and any agency established under subsection (d)(1) of this section, to be undertaken to increase the capacity of specific locks throughout the system by employing nonstructural measures and making minor structural improvements.

(h)(1) The Secretary, in consultation with any agency established under subsection (d)(1) of this section, shall monitor traffic movements on the system for the purpose of verifying lock capacity, updating traffic projections, and refining the economic evaluation so as to verify the need for future capacity expansion of the system.

(2) The Secretary, in consultation with the Secretary of the Interior and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, shall determine the need for river rehabilitation and environmental enhancement and protection based on the condition of the environment, project developments, and projected environmental impacts from implementing any proposals resulting from recommendations made under subsection (g) and paragraph (1) of this subsection.

(3) There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subsection.

(i)(1) The Secretary shall, as he determines feasible, dispose of dredged material from the system pursuant to the recommendations of the GREAT I, GREAT II, and GRRM studies.

(2) The Secretary shall establish and request appropriate Federal funding for a program to facilitate productive uses of dredged material. The Secretary shall work with the States which have, within their boundaries, any part of the system to identify potential users of dredged material.

(j) The Secretary is authorized to provide for the engineering, design, and construction of a second lock at Locks and Dam 26, Mississippi River, Alton, Illinois and Missouri, at a total cost of \$220,000,000, with a first Federal cost of \$220,000,000. Such second lock shall be one hundred and ten feet by six hundred feet and shall be constructed at or in the vicinity of the location of the replacement lock authorized by section 102 of Public Law 95-502. Section 102 of this Act shall apply to the project authorized by this subsection.

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SEC. 906. FISH AND WILDLIFE MITIGATION.

(a)(1) In the case of any water resources project which is authorized to be constructed by the Secretary before, on, or after the date of enactment of this Act, construction of which has not commenced as of the date of enactment of this Act, and which necessitates the mitigation of fish and wildlife losses, including the acquisition of lands or interests in lands to mitigate losses to fish and wildlife, as a result of such project, such mitigation, including acquisition of the lands or interests—

(A) shall be undertaken or acquired before any construction of the project (other than such acquisition) commences, or

(B) shall be undertaken or acquired concurrently with lands and interests in lands for project purposes (other than mitigation of fish and wildlife losses),

whichever the Secretary determines is appropriate, except that any physical construction required for the purposes of mitigation may be undertaken concurrently with the physical construction of such project.

(2) For the purposes of this subsection, any project authorized before the date of enactment of this Act on which more than 50 percent of the land needed for the project, exclusive of mitigation lands, has been acquired shall be deemed to have commenced construction under this subsection.

(b)(1) After consultation with appropriate Federal and non-Federal agencies, the Secretary is authorized to mitigate damages to fish and wildlife resulting from any water resources project under this jurisdiction, whether completed, under construction, or to be constructed. Such mitigation may include the acquisition of lands, or interests therein, except that—

(A) acquisition under this paragraph shall not be by condemnation in the case of projects completed as of the date of enactment of this Act or on which at least 10 percent of the physical construction on the project has been completed as of the date of enactment of this Act; and

(B) acquisition of water, or interests therein, under this paragraph, shall not be by condemnation.

The Secretary, shall, under the terms of this paragraph, obligate no more than \$30,000,000 in any fiscal year. With respect to any water resources project, the authority under this subsection shall not apply to measures that cost more than \$7,500,000 or 10 percent of the cost of the project, whichever is greater.

(2) Whenever, after his review, the Secretary determines that such mitigation features under this subsection are likely to require condemnation under subparagraph (a) or (B) of paragraph (1) of this subsection, the Secretary shall transmit to Congress a report on such proposed modification, together with his recommendations.

(c) Costs incurred after the date of enactment of this Act for implementation and operation, maintenance, and rehabilitation to mitigate damages to fish and wildlife shall be allocated among authorized project purposes in accordance with applicable cost allocation procedures, and shall be subject to cost sharing or reimbursement to the same extent as such other project costs are shared or reimbursed, except that when such costs are covered by contracts entered into prior to the date of enactment of this Act, such costs shall not be recovered without the consent of the non-Federal interests or until such contracts are complied with or renegotiated.

(d) After the date of enactment of this Act, the Secretary shall not submit any proposal for the authorization of any water resources project to the Congress unless such report contains (1) a recommendation with a specific plan to mitigate fish and wildlife losses created by such project, or (2) a determination by the Secretary that such project will have negligible adverse impact on fish and wildlife. Specific mitigation plans shall ensure that impacts to bottomland hardwood forests are mitigated in-kind, to the extent possible. In carrying out this subsection, the Secretary shall consult with appropriate Federal and non-Federal agencies.

(e) In those cases when the Secretary, as part of any report to Congress, recommends activities to enhance fish and wildlife resources, the first costs of such enhancement shall be a Federal cost when—

(1) such enhancement provides benefits that are determined to be national, including benefits to species that are identified by the National Marine Fisheries Service as of national economic importance, species that are subject to treaties or international convention to which the United States is a party, and anadromous fish;

(2) such enhancement is designed to benefit species that have been listed as threatened or endangered by the Secretary of the Interior under the terms of the Endangered Species Act, as amended (16 U.S.C. 1531, et seq.), or

(3) such activities are located on lands managed as a national wildlife refuge.

When the benefits of enhancement do not qualify under the preceding sentence, 25 percent of such first costs of enhancement shall be provided by non-Federal interests under a schedule of reimbursement determined by the Secretary. The non-Federal share of operation, maintenance, and rehabilitation of activities to enhance fish and wildlife resources shall be 25 percent.

(f) Fish and wildlife enhancement measures carried out as part of the project for Atchafalaya Floodway System, Louisiana, authorized by Public Law 99-88, and the project for Mississippi Delta Region, Louisiana, authorized by the Flood Control Act of 1965, shall be considered to provide benefits that are national for purposes of this section.

(g) The provisions of subsections (a), (b), and (d) shall be deemed to supplement the responsibility and authority of the Secretary pursuant to the Fish and Wildlife Coordination Act, and nothing in this section is intended to affect that Act.

WATER RESOURCES DEVELOPMENT ACT OF 1990

SEC. 405. UPPER MISSISSIPPI RIVER PLAN.

Section 1103 of the Water Resources Development Act of 1986 (33 U.S.C. 652) is amended—

- (1) in paragraph (e)(2) by striking “ten” and inserting “15”;
 - (2) in paragraph (e)(3) by striking “eight” and inserting “13”;
 - (3) in paragraph (e)(4) by striking “nine” and inserting “14”;
 - (4) in paragraph (e)(5) by striking “seven” and inserting “12”;
- and
- (5) in paragraph (f)(2)(A) by striking “ten” and inserting “15”.

WATER RESOURCES DEVELOPMENT ACT OF 1992

SEC. 107. UPPER MISSISSIPPI RIVER PLAN.

(a) EXTENSION OF AUTHORIZATION. —Section 1103(e) of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)) is amended—

- (1) in paragraph (2) by striking “ten” each place it appears and inserting “15”;
- (2) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and
- (3) by inserting after paragraph (5) the following new paragraph:

“(6) TRANSFER OF AMOUNTS.—

“(A) GENERAL RULE.—Subject to subparagraph (B), for each fiscal year beginning after September 30, 1992, the Secretary, in consultation with the Secretary of the Interior, and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, may transfer not to exceed 20 percent of the amount appropriate to carry out each of subparagraphs (A), (B), and (C) of paragraph (1) to carry out any other of such subparagraphs.

“(B) LIMITATION.—The aggregate amounts obligated in fiscal years 1988 through 2002—

- “(i) to carry out paragraph (1)(A) may not exceed \$189,600,000;
- “(ii) to carry out paragraph (1)(B) may not exceed \$78,800,000; and
- “(iii) to carry out paragraph (1)(C) may not exceed \$12,040,000.”.

(b) FISH AND WILDLIFE HABITAT REHABILITATION AND ENHANCEMENT PROJECTS. —Section 1103(e) of such Act is amended by striking paragraph (7)(A), as redesignated by subsection (a)(2), and inserting the following new paragraph:

“(7)(A) Notwithstanding the provisions of subsection (a)(2) of this section, the costs of each project carried out pursuant to paragraph (1)(A) of this subsection shall be allocated between the Secretary and the appropriate non-Federal sponsor in accordance with the provisions of section 906(e) of this Act; except that the costs of operation and maintenance of projects located on Federal lands or lands owned or operated by a State or local government shall be borne by the Federal; State, or local agency that is responsible for management activities for fish and wildlife on such lands.”.