

1 **DIVISION D—ENERGY AND WATER DEVEL-**
2 **OPMENT AND RELATED AGENCIES AP-**
3 **PROPRIATIONS ACT, 2021**

4 TITLE I

5 CORPS OF ENGINEERS—CIVIL

6 DEPARTMENT OF THE ARMY

7 CORPS OF ENGINEERS—CIVIL

8 The following appropriations shall be expended under
9 the direction of the Secretary of the Army and the super-
10 vision of the Chief of Engineers for authorized civil func-
11 tions of the Department of the Army pertaining to river
12 and harbor, flood and storm damage reduction, shore pro-
13 tection, aquatic ecosystem restoration, and related efforts.

14 INVESTIGATIONS

15 For expenses necessary where authorized by law for
16 the collection and study of basic information pertaining
17 to river and harbor, flood and storm damage reduction,
18 shore protection, aquatic ecosystem restoration, and re-
19 lated needs; for surveys and detailed studies, and plans
20 and specifications of proposed river and harbor, flood and
21 storm damage reduction, shore protection, and aquatic
22 ecosystem restoration projects, and related efforts prior to
23 construction; for restudy of authorized projects; and for
24 miscellaneous investigations, and, when authorized by law,
25 surveys and detailed studies, and plans and specifications

1 of projects prior to construction, \$153,000,000, to remain
2 available until expended: *Provided*, That the Secretary
3 shall initiate nine new study starts during fiscal year
4 2021: *Provided further*, That the Secretary shall not devi-
5 ate from the new starts proposed in the work plan, once
6 the plan has been submitted to the Committees on Appro-
7 priations of both Houses of Congress.

8 CONSTRUCTION

9 For expenses necessary for the construction of river
10 and harbor, flood and storm damage reduction, shore pro-
11 tection, aquatic ecosystem restoration, and related
12 projects authorized by law; for conducting detailed studies,
13 and plans and specifications, of such projects (including
14 those involving participation by States, local governments,
15 or private groups) authorized or made eligible for selection
16 by law (but such detailed studies, and plans and specifica-
17 tions, shall not constitute a commitment of the Govern-
18 ment to construction); \$2,692,645,000, to remain avail-
19 able until expended; of which such sums as are necessary
20 to cover the Federal share of construction costs for facili-
21 ties under the Dredged Material Disposal Facilities pro-
22 gram shall be derived from the Harbor Maintenance Trust
23 Fund as authorized by Public Law 104–303; and of which
24 such sums as are necessary to cover 35 percent of the
25 costs of construction, replacement, rehabilitation, and ex-

1 pansion of inland waterways projects, shall be derived
2 from the Inland Waterways Trust Fund, except as other-
3 wise specifically provided for in law.

4 MISSISSIPPI RIVER AND TRIBUTARIES

5 For expenses necessary for flood damage reduction
6 projects and related efforts in the Mississippi River allu-
7 vial valley below Cape Girardeau, Missouri, as authorized
8 by law, \$380,000,000, to remain available until expended,
9 of which such sums as are necessary to cover the Federal
10 share of eligible operation and maintenance costs for in-
11 land harbors shall be derived from the Harbor Mainte-
12 nance Trust Fund: *Provided*, That the Secretary shall ini-
13 tiate one new study start in fiscal year 2021: *Provided*
14 *further*, That the Secretary shall not deviate from the work
15 plan, once the plan has been submitted to the Committees
16 on Appropriations of both Houses of Congress.

17 OPERATION AND MAINTENANCE

18 For expenses necessary for the operation, mainte-
19 nance, and care of existing river and harbor, flood and
20 storm damage reduction, aquatic ecosystem restoration,
21 and related projects authorized by law; providing security
22 for infrastructure owned or operated by the Corps, includ-
23 ing administrative buildings and laboratories; maintaining
24 harbor channels provided by a State, municipality, or
25 other public agency that serve essential navigation needs

1 of general commerce, where authorized by law; surveying
2 and charting northern and northwestern lakes and con-
3 necting waters; clearing and straightening channels; and
4 removing obstructions to navigation, \$3,849,655,000, to
5 remain available until expended, of which such sums as
6 are necessary to cover the Federal share of eligible oper-
7 ation and maintenance costs for coastal harbors and chan-
8 nels, and for inland harbors shall be derived from the Har-
9 bor Maintenance Trust Fund; of which such sums as be-
10 come available from the special account for the Corps of
11 Engineers established by the Land and Water Conserva-
12 tion Fund Act of 1965 shall be derived from that account
13 for resource protection, research, interpretation, and
14 maintenance activities related to resource protection in the
15 areas at which outdoor recreation is available; and of
16 which such sums as become available from fees collected
17 under section 217 of Public Law 104–303 shall be used
18 to cover the cost of operation and maintenance of the
19 dredged material disposal facilities for which such fees
20 have been collected: *Provided*, That 1 percent of the total
21 amount of funds provided for each of the programs,
22 projects, or activities funded under this heading shall not
23 be allocated to a field operating activity prior to the begin-
24 ning of the fourth quarter of the fiscal year and shall be
25 available for use by the Chief of Engineers to fund such

1 emergency activities as the Chief of Engineers determines
2 to be necessary and appropriate, and that the Chief of En-
3 gineers shall allocate during the fourth quarter any re-
4 maining funds which have not been used for emergency
5 activities proportionally in accordance with the amounts
6 provided for the programs, projects, or activities.

7
8 REGULATORY PROGRAM

8 For expenses necessary for administration of laws
9 pertaining to regulation of navigable waters and wetlands,
10 \$210,000,000, to remain available until September 30,
11 2022.

12 FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

13 For expenses necessary to clean up contamination
14 from sites in the United States resulting from work per-
15 formed as part of the Nation's early atomic energy pro-
16 gram, \$250,000,000, to remain available until expended.

17 FLOOD CONTROL AND COASTAL EMERGENCIES

18 For expenses necessary to prepare for flood, hurri-
19 cane, and other natural disasters and support emergency
20 operations, repairs, and other activities in response to
21 such disasters as authorized by law, \$35,000,000, to re-
22 main available until expended.

23 EXPENSES

24 For expenses necessary for the supervision and gen-
25 eral administration of the civil works program in the head-

1 quarters of the Corps of Engineers and the offices of the
2 Division Engineers; and for costs of management and op-
3 eration of the Humphreys Engineer Center Support Activ-
4 ity, the Institute for Water Resources, the United States
5 Army Engineer Research and Development Center, and
6 the United States Army Corps of Engineers Finance Cen-
7 ter allocable to the civil works program, \$206,000,000, to
8 remain available until September 30, 2022, of which not
9 to exceed \$5,000 may be used for official reception and
10 representation purposes and only during the current fiscal
11 year: *Provided*, That no part of any other appropriation
12 provided in this title shall be available to fund the civil
13 works activities of the Office of the Chief of Engineers
14 or the civil works executive direction and management ac-
15 tivities of the division offices: *Provided further*, That any
16 Flood Control and Coastal Emergencies appropriation
17 may be used to fund the supervision and general adminis-
18 tration of emergency operations, repairs, and other activi-
19 ties in response to any flood, hurricane, or other natural
20 disaster.

21 OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY

22 FOR CIVIL WORKS

23 (INCLUDING RESCISSION OF FUNDS)

24 For the Office of the Assistant Secretary of the Army
25 for Civil Works as authorized by 10 U.S.C. 3016(b)(3),

1 \$5,000,000, to remain available until September 30, 2022:
2 *Provided*, That not more than 75 percent of such amount
3 may be obligated or expended until the Assistant Sec-
4 retary submits to the Committees on Appropriations of
5 both Houses of Congress the report required under section
6 101(d) of this Act and a work plan that allocates at least
7 95 percent of the additional funding provided under each
8 heading in this title, as designated under such heading in
9 the explanatory statement described in section 4 (in the
10 matter preceding division A of this consolidated Act), to
11 specific programs, projects, or activities: *Provided further*,
12 That of the unobligated balances available from amounts
13 appropriated in prior Acts under this heading, \$500,000
14 is hereby rescinded: *Provided further*, That no amounts
15 may be rescinded from amounts that were designated by
16 the Congress as an emergency requirement pursuant to
17 a concurrent resolution on the budget or the Balanced
18 Budget and Emergency Deficit Control Act of 1985.

19 WATER INFRASTRUCTURE FINANCE AND INNOVATION
20 PROGRAM ACCOUNT

21 For the cost of direct loans and for the cost of guar-
22 anteed loans, as authorized by the Water Infrastructure
23 Finance and Innovation Act of 2014, \$12,000,000, to re-
24 main available until expended, for safety projects to main-
25 tain, upgrade, and repair dams identified in the National

1 Inventory of Dams with a primary owner type of state,
2 local government, public utility, or private: *Provided*, That,
3 no project may be funded with amounts provided under
4 this heading for a dam that is identified as jointly owned
5 in the National Inventory of Dams and where one of those
6 joint owners is the Federal Government: *Provided further*,
7 That such costs, including the cost of modifying such
8 loans, shall be as defined in section 502 of the Congres-
9 sional Budget Act of 1974: *Provided further*, That these
10 funds are available to subsidize gross obligations for the
11 principal amount of direct loans, including capitalized in-
12 terest, and total loan principal, including capitalized inter-
13 est, any part of which is to be guaranteed, not to exceed
14 \$950,000,000: *Provided further*, That, within 30 days of
15 enactment of this Act, the Secretary, in consultation with
16 the Office of Management and Budget, shall transmit a
17 report to the Committees on Appropriations of the House
18 of Representatives and the Senate that provides: (1) an
19 analysis of how subsidy rates will be determined for loans
20 financed by appropriations provided under this heading in
21 this Act; (2) a comparison of the factors that will be con-
22 sidered in estimating subsidy rates for loans financed
23 under this heading in this Act with factors that will be
24 considered in estimates of subsidy rates for other projects
25 authorized by the Water Infrastructure Finance and Inno-

1 vation Act of 2014, including an analysis of how both sets
2 of rates will be determined; and (3) an analysis of the
3 process for developing draft regulations for the Water In-
4 frastructure Finance and Innovation program, including
5 a crosswalk from the statutory requirements for such pro-
6 gram, and a timetable for publishing such regulations:
7 *Provided further*, That the use of direct loans or loan guar-
8 antee authority under this heading for direct loans or com-
9 mitments to guarantee loans for any project shall be in
10 accordance with the criteria published in the Federal Reg-
11 ister on June 30, 2020 (85 FR 39189) pursuant to the
12 fourth proviso under the heading “Water Infrastructure
13 Finance and Innovation Program Account” in division D
14 of the Further Consolidated Appropriations Act, 2020
15 (Public Law 116–94): *Provided further*, That none of the
16 direct loans or loan guarantee authority made available
17 under this heading shall be available for any project unless
18 the Secretary and the Director of the Office of Manage-
19 ment and Budget have certified in advance in writing that
20 the direct loan or loan guarantee, as applicable, and the
21 project comply with the criteria referenced in the previous
22 proviso: *Provided further*, That any references to the Envi-
23 ronmental Protection Agency (EPA) or the Administrator
24 in the criteria referenced in the previous two provisos shall
25 be deemed to be references to the Army Corps of Engi-

1 neers or the Secretary of the Army, respectively, for pur-
2 poses of the direct loans or loan guarantee authority made
3 available under this heading: *Provided further*, That, for
4 the purposes of carrying out the Congressional Budget Act
5 of 1974, the Director of the Congressional Budget Office
6 may request, and the Secretary shall promptly provide,
7 documentation and information relating to a project iden-
8 tified in a Letter of Interest submitted to the Secretary
9 pursuant to a Notice of Funding Availability for applica-
10 tions for credit assistance under the Water Infrastructure
11 Finance and Innovation Act Program, including with re-
12 spect to a project that was initiated or completed before
13 the date of enactment of this Act.

14 In addition, fees authorized to be collected pursuant
15 to sections 5029 and 5030 of the Water Infrastructure
16 Finance and Innovation Act of 2014 shall be deposited
17 in this account, to remain available until expended.

18 In addition, for administrative expenses to carry out
19 the direct and guaranteed loan programs, \$2,200,000, to
20 remain available until September 30, 2022.

21 GENERAL PROVISIONS—CORPS OF
22 ENGINEERS—CIVIL
23 (INCLUDING TRANSFER OF FUNDS)

24 SEC. 101. (a) None of the funds provided in title I
25 of this Act, or provided by previous appropriations Acts

1 to the agencies or entities funded in title I of this Act
2 that remain available for obligation or expenditure in fiscal
3 year 2021, shall be available for obligation or expenditure
4 through a reprogramming of funds that:

5 (1) creates or initiates a new program, project,
6 or activity;

7 (2) eliminates a program, project, or activity;

8 (3) increases funds or personnel for any pro-
9 gram, project, or activity for which funds have been
10 denied or restricted by this Act, unless prior ap-
11 proval is received from the Committees on Appro-
12 priations of both Houses of Congress;

13 (4) proposes to use funds directed for a specific
14 activity for a different purpose, unless prior approval
15 is received from the Committees on Appropriations
16 of both Houses of Congress;

17 (5) augments or reduces existing programs,
18 projects, or activities in excess of the amounts con-
19 tained in paragraphs (6) through (10), unless prior
20 approval is received from the Committees on Appro-
21 priations of both Houses of Congress;

22 (6) INVESTIGATIONS.—For a base level over
23 \$100,000, reprogramming of 25 percent of the base
24 amount up to a limit of \$150,000 per project, study
25 or activity is allowed: *Provided*, That for a base level

1 less than \$100,000, the reprogramming limit is
2 \$25,000: *Provided further*, That up to \$25,000 may
3 be reprogrammed into any continuing study or activ-
4 ity that did not receive an appropriation for existing
5 obligations and concomitant administrative expenses;

6 (7) CONSTRUCTION.—For a base level over
7 \$2,000,000, reprogramming of 15 percent of the
8 base amount up to a limit of \$3,000,000 per project,
9 study or activity is allowed: *Provided*, That for a
10 base level less than \$2,000,000, the reprogramming
11 limit is \$300,000: *Provided further*, That up to
12 \$3,000,000 may be reprogrammed for settled con-
13 tractor claims, changed conditions, or real estate de-
14 ficiency judgments: *Provided further*, That up to
15 \$300,000 may be reprogrammed into any continuing
16 study or activity that did not receive an appropria-
17 tion for existing obligations and concomitant admin-
18 istrative expenses;

19 (8) OPERATION AND MAINTENANCE.—Unlim-
20 ited reprogramming authority is granted for the
21 Corps to be able to respond to emergencies: *Pro-*
22 *vided*, That the Chief of Engineers shall notify the
23 Committees on Appropriations of both Houses of
24 Congress of these emergency actions as soon there-
25 after as practicable: *Provided further*, That for a

1 base level over \$1,000,000, reprogramming of 15
2 percent of the base amount up to a limit of
3 \$5,000,000 per project, study, or activity is allowed:
4 *Provided further*, That for a base level less than
5 \$1,000,000, the reprogramming limit is \$150,000:
6 *Provided further*, That \$150,000 may be repro-
7 grammed into any continuing study or activity that
8 did not receive an appropriation;

9 (9) MISSISSIPPI RIVER AND TRIBUTARIES.—
10 The reprogramming guidelines in paragraphs (6),
11 (7), and (8) shall apply to the Investigations, Con-
12 struction, and Operation and Maintenance portions
13 of the Mississippi River and Tributaries Account, re-
14 spectively; and

15 (10) FORMERLY UTILIZED SITES REMEDIAL AC-
16 TION PROGRAM.—Reprogramming of up to 15 per-
17 cent of the base of the receiving project is permitted.

18 (b) DE MINIMUS REPROGRAMMINGS.—In no case
19 should a reprogramming for less than \$50,000 be sub-
20 mitted to the Committees on Appropriations of both
21 Houses of Congress.

22 (c) CONTINUING AUTHORITIES PROGRAM.—Sub-
23 section (a)(1) shall not apply to any project or activity
24 funded under the continuing authorities program.

1 (d) Not later than 60 days after the date of enact-
2 ment of this Act, the Secretary shall submit a report to
3 the Committees on Appropriations of both Houses of Con-
4 gress to establish the baseline for application of re-
5 programming and transfer authorities for the current fis-
6 cal year which shall include:

7 (1) A table for each appropriation with a sepa-
8 rate column to display the President's budget re-
9 quest, adjustments made by Congress, adjustments
10 due to enacted rescissions, if applicable, and the fis-
11 cal year enacted level; and

12 (2) A delineation in the table for each appro-
13 priation both by object class and program, project
14 and activity as detailed in the budget appendix for
15 the respective appropriations; and

16 (3) An identification of items of special congres-
17 sional interest.

18 SEC. 102. The Secretary shall allocate funds made
19 available in this Act solely in accordance with the provi-
20 sions of this Act and the explanatory statement described
21 in section 4 (in the matter preceding division A of this
22 consolidated Act), including the determination and des-
23 ignation of new starts.

24 SEC. 103. None of the funds made available in this
25 title may be used to award or modify any contract that

1 commits funds beyond the amounts appropriated for that
2 program, project, or activity that remain unobligated, ex-
3 cept that such amounts may include any funds that have
4 been made available through reprogramming pursuant to
5 section 101.

6 SEC. 104. The Secretary of the Army may transfer
7 to the Fish and Wildlife Service, and the Fish and Wildlife
8 Service may accept and expend, up to \$5,400,000 of funds
9 provided in this title under the heading “Operation and
10 Maintenance” to mitigate for fisheries lost due to Corps
11 of Engineers projects.

12 SEC. 105. None of the funds in this Act shall be used
13 for an open lake placement alternative for dredged mate-
14 rial, after evaluating the least costly, environmentally ac-
15 ceptable manner for the disposal or management of
16 dredged material originating from Lake Erie or tributaries
17 thereto, unless it is approved under a State water quality
18 certification pursuant to section 401 of the Federal Water
19 Pollution Control Act (33 U.S.C. 1341): *Provided*, That
20 until an open lake placement alternative for dredged mate-
21 rial is approved under a State water quality certification,
22 the Corps of Engineers shall continue upland placement
23 of such dredged material consistent with the requirements
24 of section 101 of the Water Resources Development Act
25 of 1986 (33 U.S.C. 2211).

1 SEC. 106. None of the funds made available by this
2 Act or any other Act may be used to reorganize or to
3 transfer the Civil Works functions or authority of the
4 Corps of Engineers or the Secretary of the Army to an-
5 other department or agency.

6 SEC. 107. Additional funding provided in this Act
7 shall be allocated only to projects determined to be eligible
8 by the Chief of Engineers.

9 SEC. 108. None of the funds made available by this
10 Act may be used to carry out any water supply reallocation
11 study under the Wolf Creek Dam, Lake Cumberland, Ken-
12 tucky, project authorized under the Act of July 24, 1946
13 (60 Stat. 636, ch. 595).

14 SEC. 109. (a) When allocating the additional funding
15 provided in this title under the headings “Construction”
16 and “Mississippi River and Tributaries”, the Secretary
17 shall initiate a total of seven new construction starts dur-
18 ing fiscal year 2021.

19 (b) For new construction projects, project cost shar-
20 ing agreements shall be executed as soon as practicable
21 but no later than December 31, 2021.

22 (c) No allocation for a new start shall be considered
23 final and no work allowance shall be made until the Sec-
24 retary provides to the Committees on Appropriations of
25 both Houses of Congress an out-year funding scenario

1 demonstrating the affordability of the selected new starts
2 and the impacts on other projects.

3 (d) The Secretary shall not deviate from the new
4 starts proposed in the work plan, once the plan has been
5 submitted to the Committees on Appropriations of both
6 Houses of Congress.