

1 **DIVISION D—ENERGY AND WATER DEVEL-**
2 **OPMENT AND RELATED AGENCIES AP-**
3 **PROPRIATIONS ACT, 2023**

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, \$172,500,000, to remain
2 available until expended: *Provided*, That the Secretary
3 shall not deviate from the work plan, once the plan has
4 been submitted to the Committees on Appropriations of
5 both Houses of Congress.

6 CONSTRUCTION

7 For expenses necessary for the construction of river
8 and harbor, flood and storm damage reduction, shore pro-
9 tection, aquatic ecosystem restoration, and related
10 projects authorized by law; for conducting detailed studies,
11 and plans and specifications, of such projects (including
12 those involving participation by States, local governments,
13 or private groups) authorized or made eligible for selection
14 by law (but such detailed studies, and plans and specifica-
15 tions, shall not constitute a commitment of the Govern-
16 ment to construction); \$1,808,800,000, to remain avail-
17 able until expended; of which \$75,518,000, to be derived
18 from the Harbor Maintenance Trust Fund, shall be to
19 cover the Federal share of construction costs for facilities
20 under the Dredged Material Disposal Facilities program;
21 and of which such sums as are necessary to cover 35 per-
22 cent of the costs of construction, replacement, rehabilita-
23 tion, and expansion of inland waterways projects shall be
24 derived from the Inland Waterways Trust Fund, except
25 as otherwise specifically provided for in law: *Provided*,

1 That the Secretary shall not deviate from the work plan,
2 once the plan has been submitted to the Committees on
3 Appropriations of both Houses of Congress.

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, \$370,000,000, to remain available until expended,
9 of which \$15,390,000, to be derived from the Harbor
10 Maintenance Trust Fund, shall be to cover the Federal
11 share of eligible operation and maintenance costs for in-
12 land harbors: *Provided*, That the Secretary shall not devi-
13 ate from the work plan, once the plan has been submitted
14 to the Committees on Appropriations of both Houses of
15 Congress.

16 OPERATION AND MAINTENANCE

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

1 and charting northern and northwestern lakes and con-
2 necting waters; clearing and straightening channels; and
3 removing obstructions to navigation, \$5,078,500,000, to
4 remain available until expended, of which \$2,227,092,000,
5 to be derived from the Harbor Maintenance Trust Fund,
6 shall be to cover the Federal share of eligible operations
7 and maintenance costs for coastal harbors and channels,
8 and for inland harbors; of which such sums as become
9 available from the special account for the Corps of Engi-
10 neers established by the Land and Water Conservation
11 Fund Act of 1965 shall be derived from that account for
12 resource protection, research, interpretation, and mainte-
13 nance activities related to resource protection in the areas
14 at which outdoor recreation is available; of which such
15 sums as become available from fees collected under section
16 217 of Public Law 104–303 shall be used to cover the
17 cost of operation and maintenance of the dredged material
18 disposal facilities for which such fees have been collected;
19 and of which \$56,000,000, to be derived from the general
20 fund of the Treasury, shall be to carry out subsection (c)
21 of section 2106 of the Water Resources Reform and Devel-
22 opment Act of 2014 (33 U.S.C. 2238c) and shall be des-
23 igned as being for such purpose pursuant to paragraph
24 (2)(B) of section 14003 of division B of the Coronavirus
25 Aid, Relief, and Economic Security Act (Public Law 116–

1 136): *Provided*, That 1 percent of the total amount of
2 funds provided for each of the programs, projects, or ac-
3 tivities funded under this heading shall not be allocated
4 to a field operating activity prior to the beginning of the
5 fourth quarter of the fiscal year and shall be available for
6 use by the Chief of Engineers to fund such emergency ac-
7 tivities as the Chief of Engineers determines to be nec-
8 essary and appropriate, and that the Chief of Engineers
9 shall allocate during the fourth quarter any remaining
10 funds which have not been used for emergency activities
11 proportionally in accordance with the amounts provided
12 for the programs, projects, or activities: *Provided further*,
13 That the Secretary shall not deviate from the work plan,
14 once the plan has been submitted to the Committees on
15 Appropriations of both Houses of Congress.

16 REGULATORY PROGRAM

17 For expenses necessary for administration of laws
18 pertaining to regulation of navigable waters and wetlands,
19 \$218,000,000, to remain available until September 30,
20 2024.

21 FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

22 For expenses necessary to clean up contamination
23 from sites in the United States resulting from work per-
24 formed as part of the Nation's early atomic energy pro-
25 gram, \$400,000,000, to remain available until expended.

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1 FLOOD CONTROL AND COASTAL EMERGENCIES

2 For expenses necessary to prepare for flood, hurri-
3 cane, and other natural disasters and support emergency
4 operations, repairs, and other activities in response to
5 such disasters as authorized by law, \$35,000,000, to re-
6 main available until expended.

7 EXPENSES

8 For expenses necessary for the supervision and gen-
9 eral administration of the civil works program in the head-
10 quarters of the Corps of Engineers and the offices of the
11 Division Engineers; and for costs of management and op-
12 eration of the Humphreys Engineer Center Support Activ-
13 ity, the Institute for Water Resources, the United States
14 Army Engineer Research and Development Center, and
15 the United States Army Corps of Engineers Finance Cen-
16 ter allocable to the civil works program, \$215,000,000, to
17 remain available until September 30, 2024, of which not
18 to exceed \$5,000 may be used for official reception and
19 representation purposes and only during the current fiscal
20 year: *Provided*, That no part of any other appropriation
21 provided in this title shall be available to fund the civil
22 works activities of the Office of the Chief of Engineers
23 or the civil works executive direction and management ac-
24 tivities of the division offices: *Provided further*, That any
25 Flood Control and Coastal Emergencies appropriation

1 may be used to fund the supervision and general adminis-
2 tration of emergency operations, repairs, and other activi-
3 ties in response to any flood, hurricane, or other natural
4 disaster.

5 OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
6 FOR CIVIL WORKS

7 For the Office of the Assistant Secretary of the Army
8 for Civil Works as authorized by 10 U.S.C. 3016(b)(3),
9 \$5,000,000, to remain available until September 30, 2024:
10 *Provided*, That not more than 75 percent of such amount
11 may be obligated or expended until the Assistant Sec-
12 retary submits to the Committees on Appropriations of
13 both Houses of Congress the report required under section
14 101(d) of this Act and a work plan that allocates at least
15 95 percent of the additional funding provided under each
16 heading in the explanatory statement described in section
17 4 (in the matter preceding division A of this consolidated
18 Act), to specific programs, projects, or activities.

19 WATER INFRASTRUCTURE FINANCE AND INNOVATION
20 PROGRAM ACCOUNT

21 For administrative expenses to carry out the direct
22 and guaranteed loan programs authorized by the Water
23 Infrastructure Finance and Innovation Act of 2014,
24 \$7,200,000, to remain available until September 30, 2024.

1 GENERAL PROVISIONS—CORPS OF
2 ENGINEERS—CIVIL
3 (INCLUDING TRANSFER OF FUNDS)

4 SEC. 101. (a) None of the funds provided in title I
5 of this Act, or provided by previous appropriations Acts
6 to the agencies or entities funded in title I of this Act
7 that remain available for obligation or expenditure in fiscal
8 year 2023, shall be available for obligation or expenditure
9 through a reprogramming of funds that:

10 (1) creates or initiates a new program, project,
11 or activity;

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

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

18 (4) proposes to use funds directed for a specific
19 activity for a different purpose, unless prior approval
20 is received from the Committees on Appropriations
21 of both Houses of Congress;

22 (5) augments or reduces existing programs,
23 projects, or activities in excess of the amounts con-
24 tained in paragraphs (6) through (10), unless prior

1 approval is received from the Committees on Appro-
2 priations of both Houses of Congress;

3 (6) INVESTIGATIONS.—For a base level over
4 \$100,000, reprogramming of 25 percent of the base
5 amount up to a limit of \$150,000 per project, study
6 or activity is allowed: *Provided*, That for a base level
7 less than \$100,000, the reprogramming limit is
8 \$25,000: *Provided further*, That up to \$25,000 may
9 be reprogrammed into any continuing study or activ-
10 ity that did not receive an appropriation for existing
11 obligations and concomitant administrative expenses;

12 (7) CONSTRUCTION.—For a base level over
13 \$2,000,000, reprogramming of 15 percent of the
14 base amount up to a limit of \$3,000,000 per project,
15 study or activity is allowed: *Provided*, That for a
16 base level less than \$2,000,000, the reprogramming
17 limit is \$300,000: *Provided further*, That up to
18 \$3,000,000 may be reprogrammed for settled con-
19 tractor claims, changed conditions, or real estate de-
20 ficiency judgments: *Provided further*, That up to
21 \$300,000 may be reprogrammed into any continuing
22 study or activity that did not receive an appropria-
23 tion for existing obligations and concomitant admin-
24 istrative expenses;

1 (8) OPERATION AND MAINTENANCE.—Unlim-
2 ited reprogramming authority is granted for the
3 Corps to be able to respond to emergencies: *Pro-*
4 *vided*, That the Chief of Engineers shall notify the
5 Committees on Appropriations of both Houses of
6 Congress of these emergency actions as soon there-
7 after as practicable: *Provided further*, That for a
8 base level over \$1,000,000, reprogramming of 15
9 percent of the base amount up to a limit of
10 \$5,000,000 per project, study, or activity is allowed:
11 *Provided further*, That for a base level less than
12 \$1,000,000, the reprogramming limit is \$150,000:
13 *Provided further*, That \$150,000 may be repro-
14 grammed into any continuing study or activity that
15 did not receive an appropriation;

16 (9) MISSISSIPPI RIVER AND TRIBUTARIES.—
17 The reprogramming guidelines in paragraphs (6),
18 (7), and (8) shall apply to the Investigations, Con-
19 struction, and Operation and Maintenance portions
20 of the Mississippi River and Tributaries Account, re-
21 spectively; and

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

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

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

8 (d) Not later than 60 days after the date of enact-
9 ment of this Act, the Secretary shall submit a report to
10 the Committees on Appropriations of both Houses of Con-
11 gress to establish the baseline for application of re-
12 programming and transfer authorities for the current fis-
13 cal year which shall include:

14 (1) A table for each appropriation with a sepa-
15 rate column to display the President’s budget re-
16 quest, adjustments made by Congress, adjustments
17 due to enacted rescissions, if applicable, and the fis-
18 cal year enacted level;

19 (2) A delineation in the table for each appro-
20 priation both by object class and program, project
21 and activity as detailed in the budget appendix for
22 the respective appropriations; and

23 (3) An identification of items of special congres-
24 sional interest.

1 SEC. 102. The Secretary shall allocate funds made
2 available in this Act solely in accordance with the provi-
3 sions of this Act and in the explanatory statement de-
4 scribed in section 4 (in the matter preceding division A
5 of this consolidated Act).

6 SEC. 103. None of the funds made available in this
7 title may be used to award or modify any contract that
8 commits funds beyond the amounts appropriated for that
9 program, project, or activity that remain unobligated, ex-
10 cept that such amounts may include any funds that have
11 been made available through reprogramming pursuant to
12 section 101.

13 SEC. 104. The Secretary of the Army may transfer
14 to the Fish and Wildlife Service, and the Fish and Wildlife
15 Service may accept and expend, up to \$5,400,000 of funds
16 provided in this title under the heading “Operation and
17 Maintenance” to mitigate for fisheries lost due to Corps
18 of Engineers projects.

19 SEC. 105. None of the funds in this Act shall be used
20 for an open lake placement alternative for dredged mate-
21 rial, after evaluating the least costly, environmentally ac-
22 ceptable manner for the disposal or management of
23 dredged material originating from Lake Erie or tributaries
24 thereto, unless it is approved under a State water quality
25 certification pursuant to section 401 of the Federal Water

1 Pollution Control Act (33 U.S.C. 1341): *Provided*, That
2 until an open lake placement alternative for dredged mate-
3 rial is approved under a State water quality certification,
4 the Corps of Engineers shall continue upland placement
5 of such dredged material consistent with the requirements
6 of section 101 of the Water Resources Development Act
7 of 1986 (33 U.S.C. 2211).

8 SEC. 106. None of the funds made available by this
9 Act may be used to carry out any water supply reallocation
10 study under the Wolf Creek Dam, Lake Cumberland, Ken-
11 tucky, project authorized under the Act of July 24, 1946
12 (60 Stat. 636, ch. 595).

13 SEC. 107. None of the funds made available by this
14 Act or any other Act may be used to reorganize or to
15 transfer the Civil Works functions or authority of the
16 Corps of Engineers or the Secretary of the Army to an-
17 other department or agency.

18 SEC. 108. Additional funding provided in this Act
19 shall be allocated only to projects determined to be eligible
20 by the Chief of Engineers.