



WATER RESOURCES DEVELOPMENT ACT OF 1996



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February 24, 2004

**SELECTED PROVISIONS OF THE WATER RESOURCES
DEVELOPMENT ACT OF 1996**

[As Amended Through P.L. 108–201, February 24, 2004]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Water Resources Development Act of 1996”.

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TITLE II—GENERAL PROVISIONS

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SEC. 206. AQUATIC ECOSYSTEM RESTORATION.

(a) **GENERAL AUTHORITY.**—The Secretary may carry out an aquatic ecosystem restoration and protection project if the Secretary determines that the project—

- (1) will improve the quality of the environment and is in the public interest; and
- (2) is cost-effective.

(b) **COST SHARING.**—

(1) **IN GENERAL.**—Non-Federal interests shall provide 35 percent of the cost of construction of any project carried out under this section, including provision of all lands, easements, rights-of-way, and necessary relocations.

(2) **FORM.**—Before October 1, 2003, the Federal share of the cost of a project under this section may be provided in the form of reimbursements of project costs.

(c) **AGREEMENTS.**—

(1) **IN GENERAL.**—Construction of a project under this section shall be initiated only after a non-Federal interest has entered into a binding agreement with the Secretary to pay the non-Federal share of the costs of construction required by this section and to pay 100 percent of any operation, maintenance, and replacement and rehabilitation costs with respect to the project in accordance with regulations prescribed by the Secretary.

(2) **NONPROFIT ENTITIES.**—Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), for any project carried out under this section, a non-Federal interest may include a nonprofit entity, with the consent of the affected local government.

(d) **COST LIMITATION.**—Not more than \$5,000,000 in Federal funds may be allotted under this section for a project at any single locality.

(e) FUNDING.—There is authorized to be appropriated to carry out this section \$25,000,000 for each fiscal year.

(22 U.S.C. 2330)

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SEC. 208. RECREATION POLICY AND USER FEES.

(a) RECREATION POLICY.—

(1) IN GENERAL.—The Secretary shall provide increased emphasis on, and opportunities for recreation at, water resources projects operated, maintained, or constructed by the Corps of Engineers.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on specific measures taken to implement this subsection.

(b) USER FEES.—

(1) * * *

(2) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall prepare and submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report, with respect to fiscal years 1995 and 1996, on—

(A) the amount of day-use fees collected under section 210(b) of the Flood Control Act of 1968 (16 U.S.C. 460d–3(b)) at each water resources development project; and

(B) the administrative costs associated with the collection of the day-use fees at each water resources development project.

(c) ALTERNATIVE TO ANNUAL PASSES.—

(1) IN GENERAL.—The Secretary shall evaluate the feasibility of implementing an alternative to the \$25 annual pass that the Secretary currently offers to users of recreation facilities at water resources projects of the Corps of Engineers.

(2) ANNUAL PASS.—The evaluation under paragraph (1) shall include the establishment on a test basis of an annual pass that costs \$10 or less for the use of recreation facilities, including facilities at Raystown Lake, Pennsylvania.

(3) REPORT.—Not later than December 31, 1999, the Secretary shall transmit to Congress a report on the results of the evaluation carried out under this subsection, together with recommendations concerning whether annual passes for individual projects should be offered on a nationwide basis.

(4) EXPIRATION OF AUTHORITY.—The authority to establish an annual pass under paragraph (2) shall expire on the¹ December 31, 2003.

(16 U.S.C. 460d)

SEC. 209. RECOVERY OF COSTS.

Amounts recovered under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) for any response action taken by the Secretary in

¹ So in law. Probably should strike “the”.

support of the civil works program of the Department of the Army and any other amounts recovered by the Secretary from a contractor, insurer, surety, or other person to reimburse the Department of the Army for any expenditure for environmental response activities in support of the Army civil works program shall be credited to the appropriate trust fund account from which the cost of such response action has been paid or will be charged.

(42 U.S.C. 9607 nt)

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SEC. 211. CONSTRUCTION OF FLOOD CONTROL PROJECTS BY NON-FEDERAL INTERESTS.

(a) **AUTHORITY.**—Non-Federal interests are authorized to undertake flood control projects in the United States, subject to obtaining any permits required pursuant to Federal and State laws in advance of actual construction.

(b) **STUDIES AND DESIGN ACTIVITIES.**—

(1) **BY NON-FEDERAL INTERESTS.**—A non-Federal interest may prepare, for review and approval by the Secretary, the necessary studies and design documents for any construction to be undertaken pursuant to subsection (a).

(2) **BY SECRETARY.**—Upon request of an appropriate non-Federal interest, the Secretary may undertake all necessary studies and design activities for any construction to be undertaken pursuant to subsection (a) and provide technical assistance in obtaining all necessary permits for such construction if the non-Federal interest contracts with the Secretary to provide to the United States funds for the studies and design activities during the period in which the studies and design activities will be conducted.

(c) **COMPLETION OF STUDIES AND DESIGN ACTIVITIES.**—In the case of any study or design documents for a flood control project that were initiated before the date of the enactment of this Act, the Secretary may complete and transmit to the appropriate non-Federal interests the study or design documents or, upon the request of such non-Federal interests, terminate the study or design activities and transmit the partially completed study or design documents to such non-Federal interests for completion. Studies and design documents subject to this subsection shall be completed without regard to the requirements of subsection (b).

(d) **AUTHORITY TO CARRY OUT IMPROVEMENT.**—

(1) **IN GENERAL.**—

(A) **STUDIES AND DESIGN ACTIVITIES UNDER SUBSECTION (b).**—

(i) **IN GENERAL.**—A non-Federal interest may carry out construction for which studies and design documents are prepared under subsection (b) only if the Secretary approves the project for construction.

(ii) **CRITERIA FOR APPROVAL.**—The Secretary shall approve a project for construction if the Secretary determines that the project is technically sound, economically justified, and environmentally acceptable and meets the requirements for obtaining the appro-

priate permits required under the authority of the Secretary.

(iii) NO UNREASONABLE WITHHOLDING OF APPROVAL.—The Secretary shall not unreasonably withhold approval of a project for construction.

(iv) NO EFFECT ON REGULATORY AUTHORITY.—Nothing in this subparagraph affects any regulatory authority of the Secretary.

(B) STUDIES AND DESIGN ACTIVITIES UNDER SUBSECTION (c).—Any non-Federal interest that has received from the Secretary under subsection (c) a favorable recommendation to carry out a flood control project, or separable element of a flood control project, based on the results of completed studies and design documents for the project or element may carry out the project or element if a final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been filed for the project or element.

(2) PERMITS.—Any plan of improvement proposed to be implemented in accordance with this subsection (other than paragraph (1)(A)) shall be deemed to satisfy the requirements for obtaining the appropriate permits required under the Secretary's authority. Such permits shall be granted subject to the non-Federal interest's acceptance of the terms and conditions of such permits if the Secretary determines that the applicable regulatory criteria and procedures have been satisfied.

(3) MONITORING.—The Secretary shall monitor any project for which a permit is granted under this subsection in order to ensure that such project is constructed, operated, and maintained in accordance with the terms and conditions of such permit.

(e) REIMBURSEMENT.—

(1) GENERAL RULE.—Subject to appropriations Acts, the Secretary may reimburse any non-Federal interest an amount equal to the estimate of the Federal share, without interest, of the cost of any authorized flood control project, or separable element of a flood control project, constructed pursuant to this section and provide credit for the non-Federal share of the project—

(A) if, after authorization and before initiation of construction of the project or separable element, the Secretary approves the plans for construction of such project by the non-Federal interest;

(B) if the Secretary finds, after a review of studies and design documents prepared pursuant to this section, that construction of the project or separable element is economically justified and environmentally acceptable; and

(C) if the construction work is substantially in accordance with plans prepared under subsection (b).

(2) SPECIAL RULES.—

(A) REIMBURSEMENT OR CREDIT.—For work (including work associated with studies, planning, design, and construction) carried out by a non-Federal interest with respect to a project described in subsection (f), the Secretary

shall, subject to the availability of appropriations, reimburse, without interest, the non-Federal interest an amount equal to the estimated Federal share of the cost of such work, or provide credit (depending on the request of the non-Federal interest) for the non-Federal share of such work, if such work is later recommended by the Chief of Engineers and approved by the Secretary.

(B) CREDIT.—If the non-Federal interest for a project described in subsection (f) carries out work before completion of a reconnaissance study by the Secretary and if such work is determined by the Secretary to be compatible with the project later recommended by the Secretary, the Secretary shall credit the non-Federal interest for its share of the cost of the project for such work.

(3) MATTERS TO BE CONSIDERED IN REVIEWING PLANS.—In reviewing plans under this subsection, the Secretary shall consider budgetary and programmatic priorities and other factors that the Secretary considers appropriate.

(4) MONITORING.—The Secretary shall regularly monitor and audit any project for flood control approved for construction under this section by a non-Federal interest to ensure that such construction is in compliance with the plans approved by the Secretary and that the costs are reasonable.

(5) LIMITATION ON REIMBURSEMENTS.—The Secretary may not make any reimbursement under this section until the Secretary determines that the work for which reimbursement is requested has been performed in accordance with applicable permits and approved plans.

(6) SCHEDULE AND MANNER OF REIMBURSEMENT.—

(A) BUDGETING.—The Secretary shall budget and request appropriations for reimbursements under this section on a schedule that is consistent with a Federal construction schedule.

(B) COMMENCEMENT OF REIMBURSEMENTS.—Reimbursements under this section may commence on approval of a project by the Secretary.

(C) CREDIT.—At the request of a non-Federal interest, the Secretary may reimburse the non-Federal interest by providing credit toward future non-Federal costs of the project.

(D) SCHEDULING.—Nothing in this paragraph affects the discretion of the President to schedule new construction starts.

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(33 U.S.C. 701b-13)

SEC. 212. ENGINEERING AND ENVIRONMENTAL INNOVATIONS OF NATIONAL SIGNIFICANCE.

(a) SURVEYS, PLANS, AND STUDIES.—To encourage innovative and environmentally sound engineering solutions and innovative environmental solutions to problems of national significance, the Secretary may undertake surveys, plans, and studies and prepare reports that may lead to work under existing civil works authorities or to recommendations for authorizations.

(b) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$1,000,000 for each of fiscal years 1997 through 2000.

(2) FUNDING FROM OTHER SOURCES.—The Secretary may accept and expend additional funds from other Federal agencies, States, or non-Federal entities for purposes of carrying out this section.

(33 U.S.C. 2313a)

SEC. 213. LEASE AUTHORITY.

Notwithstanding any other provision of law, the Secretary may lease space available in buildings for which funding for construction or purchase was provided from the revolving fund established by the 1st section of the Civil Functions Appropriations Act, 1954 (33 U.S.C. 576; 67 Stat. 199), under such terms and conditions as are acceptable to the Secretary. The proceeds from such leases shall be credited to the revolving fund for the purposes set forth in such Act.

(33 U.S.C. 576b)

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SEC. 215. NATIONAL DAM SAFETY PROGRAM.

(a) PURPOSE.—The purpose of this section is to reduce the risks to life and property from dam failure in the United States through the establishment and maintenance of an effective national dam safety program to bring together the expertise and resources of the Federal and non-Federal communities in achieving national dam safety hazard reduction. It is not the intent of this section to preempt any other Federal or State authorities nor is it the intent of this section to mandate State participation in the grant assistance program to be established under this section.

(b) EFFECT ON OTHER DAM SAFETY PROGRAMS.—Nothing in this section (including the amendments made by this section) shall preempt or otherwise affect any dam safety program of a Federal agency other than the Federal Emergency Management Agency, including any program that regulates, permits, or licenses any activity affecting a dam.

(33 U.S.C. 467 nt)

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SEC. 216. HYDROELECTRIC POWER PROJECT UPRATING.

(a) IN GENERAL.—In carrying out the operation, maintenance, rehabilitation, and modernization of a hydroelectric power generating facility at a water resources project under the jurisdiction of the Department of the Army, the Secretary may, to the extent funds are made available in appropriations Acts or in accordance with subsection (c), take such actions as are necessary to optimize the efficiency of energy production or increase the capacity of the facility, or both, if, after consulting with the heads of other appropriate Federal and State agencies, the Secretary determines that such actions—

- (1) are economically justified and financially feasible;

(2) will not result in any significant adverse effect on the other purposes for which the project is authorized;

(3) will not result in significant adverse environmental impacts;

(4) will not involve major structural or operational changes in the project; and

(5) will not adversely affect the use, management, or protection of existing Federal, State, or tribal water rights.

(b) CONSULTATION.—Before proceeding with any proposed uprating under subsection (a), the Secretary shall provide affected State, tribal, and Federal agencies with a copy of the proposed determinations under subsection (a). If the agencies submit comments, the Secretary shall accept those comments or respond in writing to any objections those agencies raise to the proposed determinations.

(c) USE OF FUNDS PROVIDED BY PREFERENCE CUSTOMERS.—In carrying out this section, the Secretary may accept and expend funds provided by preference customers under Federal law relating to the marketing of power.

(d) APPLICATION.—This section does not apply to any facility of the Department of the Army that is authorized to be funded under section 2406 of the Energy Policy Act of 1992 (16 U.S.C. 839d–1).

(e) EFFECT ON OTHER AUTHORITY.—This section shall not affect the authority of the Secretary and the Administrator of the Bonneville Power Administration under section 2406 of the Energy Policy Act of 1992 (16 U.S.C. 839d–1; 106 Stat. 3099).

(33 U.S.C. 2321a)

SEC. 217. DREDGED MATERIAL DISPOSAL FACILITY PARTNERSHIPS.

(a) ADDITIONAL CAPACITY.—

(1) PROVIDED BY SECRETARY.—At the request of a non-Federal interest with respect to a project, the Secretary may provide additional capacity at a dredged material disposal facility constructed by the Secretary beyond the capacity that would be required for project purposes if the non-Federal interest agrees to pay, during the period of construction, all costs associated with the construction of the additional capacity.

(2) COST RECOVERY AUTHORITY.—The non-Federal interest may recover the costs assigned to the additional capacity through fees assessed on third parties whose dredged material is deposited at the facility and who enter into agreements with the non-Federal interest for the use of the facility. The amount of such fees may be determined by the non-Federal interest.

(b) NON-FEDERAL USE OF DISPOSAL FACILITIES.—

(1) IN GENERAL.—The Secretary—

(A) may permit the use of any dredged material disposal facility under the jurisdiction of, or managed by, the Secretary by a non-Federal interest if the Secretary determines that such use will not reduce the availability of the facility for project purposes; and

(B) may impose fees to recover capital, operation, and maintenance costs associated with such use.

(2) USE OF FEES.—Notwithstanding section 401(c) of the Federal Water Pollution Control Act (33 U.S.C. 1341(c)) but

subject to advance appropriations, any monies received through collection of fees under this subsection shall be available to the Secretary, and shall be used by the Secretary, for the operation and maintenance of the disposal facility from which the fees were collected.

(c) PUBLIC-PRIVATE PARTNERSHIPS.—

(1) IN GENERAL.—The Secretary may carry out a program to evaluate and implement opportunities for public-private partnerships in the design, construction, management, or operation of dredged material disposal facilities in connection with construction or maintenance of Federal navigation projects. If a non-Federal interest is a sponsor of the project, the Secretary shall consult with the non-Federal interest in carrying out the program with respect to the project.

(2) PRIVATE FINANCING.—

(A) AGREEMENTS.—In carrying out this subsection, the Secretary may enter into an agreement with a non-Federal interest with respect to a project, a private entity, or both for the acquisition, design, construction, management, or operation of a dredged material disposal facility (including any facility used to demonstrate potential beneficial uses of dredged material) using funds provided in whole or in part by the private entity.

(B) REIMBURSEMENT.—If any funds provided by a private entity are used to carry out a project under this subsection, the Secretary may reimburse the private entity over a period of time agreed to by the parties to the agreement through the payment of subsequent user fees. Such fees may include the payment of a disposal or tipping fee for placement of suitable dredged material at the facility.

(C) AMOUNT OF FEES.—User fees paid pursuant to subparagraph (B) shall be sufficient to repay funds contributed by the private entity plus a reasonable return on investment approved by the Secretary in cooperation with the non-Federal interest with respect to the project and the private entity.

(D) FEDERAL SHARE.—The Federal share of such fees shall be equal to the percentage of the total cost that would otherwise be borne by the Federal Government as required pursuant to existing cost-sharing requirements, including section 103 of the Water Resources Development Act of 1986 (33 U.S.C. 2213) and section 204 of the Water Resources Development Act of 1992 (33 U.S.C. 2325).

(E) BUDGET ACT COMPLIANCE.—Any spending authority (as defined in section 401(c)(2) of the Congressional Budget Act of 1974 (2 U.S.C. 651(c)(2))) authorized by this section shall be effective only to such extent and in such amounts as are provided in appropriation Acts.

(33 U.S.C. 2326a)

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SEC. 229. SUPPORT OF ARMY CIVIL WORKS PROGRAM.

(a) GENERAL AUTHORITY.—In carrying out research and development in support of the civil works program of the Department

of the Army, the Secretary may utilize contracts, cooperative research and development agreements, cooperative agreements, and grants with non-Federal entities, including State and local governments, colleges and universities, consortia, professional and technical societies, public and private scientific and technical foundations, research institutions, educational organizations, and non-profit organizations.

(b) COMMERCIAL APPLICATION.—With respect to contracts for research and development, the Secretary may include requirements that have potential commercial application and may use such potential application as an evaluation factor where appropriate.

(33 U.S.C. 2313b)

SEC. 230. BENEFITS TO NAVIGATION.

In evaluating potential improvements to navigation and the maintenance of navigation projects, the Secretary shall consider, and include for purposes of project justification, economic benefits generated by cruise ships as commercial navigation benefits.

(33 U.S.C. 2284a)

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SEC. 232. SCENIC AND AESTHETIC CONSIDERATIONS.

In conducting studies of potential water resources projects, the Secretary shall consider measures to preserve and enhance scenic and aesthetic qualities in the vicinity of such projects.

(33 U.S.C. 2284b)

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SEC. 234. INTERAGENCY AND INTERNATIONAL SUPPORT AUTHORITY.

(a) IN GENERAL.—The Secretary may engage in activities in support of other Federal agencies or international organizations to address problems of national significance to the United States.

(b) CONSULTATION.—The Secretary may engage in activities in support of international organizations only after consulting with the Secretary of State.

(c) USE OF CORPS' EXPERTISE.—The Secretary may use the technical and managerial expertise of the Corps of Engineers to address domestic and international problems related to water resources, infrastructure development, and environmental protection.

(d) FUNDING.—There is authorized to be appropriated to carry out this section \$250,000 for fiscal year 2001 and each fiscal year thereafter. The Secretary may accept and expend additional funds from other Federal agencies or international organizations to carry out this section.

(33 U.S.C. 2323a)

SEC. 235. SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE.

(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Act should be American-made.

(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the Secretary, to the greatest extent

practicable, shall provide to each recipient of the assistance a notice describing the statement made in subsection (a).

(33 U.S.C. 2201 nt)

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TITLE V—MISCELLANEOUS PROVISIONS

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SEC. 516. SEDIMENT MANAGEMENT.

(a) **IN GENERAL.**—The Secretary may enter into cooperation agreements with non-Federal interests with respect to navigation projects, or other appropriate non-Federal entities, for the development of long-term management strategies for controlling sediments at such projects.

(b) **CONTENTS OF STRATEGIES.**—Each strategy developed under subsection (a) shall—

(1) include assessments of sediment rates and composition, sediment reduction options, dredging practices, long-term management of any dredged material disposal facilities, remediation of such facilities, and alternative disposal and reuse options;

(2) include a timetable for implementation of the strategy; and

(3) incorporate relevant ongoing planning efforts, including remedial action planning, dredged material management planning, harbor and waterfront development planning, and watershed management planning.

(c) **CONSULTATION.**—In developing strategies under subsection (a), the Secretary shall consult with interested Federal agencies, States, and Indian tribes and provide an opportunity for public comment.

(d) **DREDGED MATERIAL DISPOSAL.**—

(1) **STUDY.**—The Secretary shall conduct a study to determine the feasibility of constructing and operating an underwater confined dredged material disposal site in the Port of New York-New Jersey that could accommodate as much as 250,000 cubic yards of dredged material for the purpose of demonstrating the feasibility of an underwater confined disposal pit as an environmentally suitable method of containing certain sediments.

(2) **REPORT.**—The Secretary shall transmit to Congress a report on the results of the study conducted under paragraph (1), together with any recommendations of the Secretary that may be developed in a strategy under subsection (a).

(e) **GREAT LAKES TRIBUTARY MODEL.**—

(1) **IN GENERAL.**—In consultation and coordination with the Great Lakes States, the Secretary shall develop a tributary sediment transport model for each major river system or set of major river systems depositing sediment into a Great Lakes federally authorized commercial harbor, channel maintenance project site, or Area of Concern identified under the Great Lakes Water Quality Agreement of 1978. Such model may be

developed as a part of a strategy developed under subsection (a).

(2) REQUIREMENTS FOR MODELS.—In developing a tributary sediment transport model under this subsection, the Secretary shall build on data and monitoring information generated in earlier studies and programs of the Great Lakes and their tributaries.

(3) REPORT.—Not later than December 31, 2003, the Secretary shall transmit to Congress a report on the Secretary's activities under this subsection.

(f) GREAT LAKES STATES DEFINED.—In this section, the term "Great Lakes States" means the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Secretary to carry out this section \$5,000,000 for each of fiscal years 1998 through 2001.

(2) GREAT LAKES TRIBUTARY MODEL.—In addition to amounts made available under paragraph (1), there is authorized to be appropriated to carry out subsection (e) \$5,000,000 for each of fiscal years 2002 through 2006.

(33 U.S.C. 2326b)

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SEC. 586. PRIVATIZATION OF INFRASTRUCTURE ASSETS.

(a) IN GENERAL.—Notwithstanding the provisions of title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.), Executive Order 12803, or any other law or authority, an entity that received Federal grant assistance for an infrastructure asset under the Federal Water Pollution Control Act shall not be required to repay any portion of the grant upon the lease or concession of the asset only if—

(1) ownership of the asset remains with the entity that received the grant; and

(2) the Administrator of the Environmental Protection Agency determines that the lease or concession furthers the purposes of such Act and approves the lease or concession.

(b) LIMITATION.—The Administrator shall not approve a total of more than 5 leases and concessions under this section.

(33 U.S.C. 1281 note)

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