

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2963

To reform the United States Army Corps of Engineers.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 2002

Mr. JOHNSON introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To reform the United States 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.**

4 This Act may be cited as the “Corps of Engineers  
5 Reform Act of 2002”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **CORPS.**—The term “Corps” means the  
9 Corps of Engineers.

10 (2) **SECRETARY.**—The term “Secretary” means  
11 the Secretary of the Army.

1 **SEC. 3. INLAND WATERWAY REFORM.**

2 (a) CONSTRUCTION.—Section 102(a) of the Water  
3 Resources Development Act of 1986 (33 U.S.C. 2212(a))  
4 is amended—

5 (1) in the first sentence, by striking “One-half  
6 of the costs of construction” and inserting “Forty-  
7 five percent of the costs of construction”; and

8 (2) by striking the second sentence and insert-  
9 ing “Fifty-five percent of those costs shall be paid  
10 only from amounts appropriated from the Inland  
11 Waterways Trust Fund.”.

12 (b) OPERATION AND MAINTENANCE.—Section 102 of  
13 the Water Resources Development Act of 1986 (33 U.S.C.  
14 2212) is amended by striking subsections (b) and (c) and  
15 inserting the following:

16 “(b) OPERATION AND MAINTENANCE.—

17 “(1) FEDERAL SHARE.—The Federal share of  
18 the cost of operation and maintenance shall be 100  
19 percent in the case of—

20 “(A) a project described in paragraph (1)  
21 or (2) of subsection (a); or

22 “(B) the portion of the project authorized  
23 by section 844 that is allocated to inland navi-  
24 gation.

25 “(2) SOURCE OF FEDERAL SHARE.—

1           “(A) GENERAL FUND.—In the case of a  
2 project described in paragraph (1) or (2) of  
3 subsection (a) with respect to which the cost of  
4 operation and maintenance is less than or equal  
5 to 1 cent per ton mile, or in the case of the por-  
6 tion of the project authorized by section 844  
7 that is allocated to inland navigation, the Fed-  
8 eral share under paragraph (1) shall be paid  
9 only from amounts appropriated from the gen-  
10 eral fund of the Treasury.

11           “(B) GENERAL FUND AND INLAND WATER-  
12 WAYS TRUST FUND.—In the case of a project  
13 described in paragraph (1) or (2) of subsection  
14 (a) with respect to which the cost of operation  
15 and maintenance is greater than 1 but less than  
16 or equal to 10 cents per ton mile—

17           “(i) 45 percent of the Federal share  
18 under paragraph (1) shall be paid only  
19 from amounts appropriated from the gen-  
20 eral fund of the Treasury; and

21           “(ii) 55 percent of the Federal share  
22 under paragraph (1) shall be paid only  
23 from amounts appropriated from the In-  
24 land Waterways Trust Fund.

1           “(C) INLAND WATERWAYS TRUST FUND.—  
 2           In the case of a project described in paragraph  
 3           (1) or (2) of subsection (a) with respect to  
 4           which the cost of operation and maintenance is  
 5           greater than 10 cents per ton mile, 100 percent  
 6           of the Federal share under paragraph (1) shall  
 7           be paid only from amounts appropriated from  
 8           the Inland Waterways Trust Fund.”.

9 **SEC. 4. INDEPENDENT REVIEW.**

10       (a) DEFINITIONS.—In this section:

11           (1) AFFECTED STATE.—The term “affected  
 12           State”, with respect to a water resources project,  
 13           means a State or portion of a State that—

14                   (A) is located, at least partially, within the  
 15                   drainage basin in which the project is carried  
 16                   out; and

17                   (B) would be economically or environ-  
 18                   mentally affected as a result of the project.

19           (2) DIRECTOR.—The term “Director” means  
 20           the Director of Independent Review appointed under  
 21           subsection (c)(1).

22       (b) PROJECTS SUBJECT TO INDEPENDENT RE-  
 23       VIEW.—

24           (1) IN GENERAL.—The Secretary shall ensure  
 25           that each draft feasibility report, draft general re-

1 evaluation report, and draft environmental impact  
2 statement for each water resources project described  
3 in paragraph (2) is subject to review by an inde-  
4 pendent panel of experts established under this sec-  
5 tion.

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

9 (A) the project has an estimated total cost  
10 of more than \$30,000,000, including mitigation  
11 costs;

12 (B) the Governor of an affected State, or  
13 the Director of a Federal agency with jurisdic-  
14 tion over resources affected by the proposed  
15 project requests the establishment of a panel of  
16 independent experts to review the project; and

17 (C) the Secretary determines under para-  
18 graph (3) that the proposed project is con-  
19 troversial.

20 (3) WRITTEN REQUESTS.—Not later than 30  
21 days after the date on which the Secretary receives  
22 a written request of an interested party, or on the  
23 initiative of the Secretary, the Director shall deter-  
24 mine whether a water resources project is controver-  
25 sial.

1 (c) DIRECTOR OF INDEPENDENT REVIEW.—

2 (1) APPOINTMENT.—The Secretary of the  
3 Army shall appoint in the Office of the Inspector  
4 General of the Department of the Army a Director  
5 of Independent Review.

6 (2) QUALIFICATIONS.—The Secretary of the  
7 Army shall select the Director from among individ-  
8 uals who are distinguished experts in biology, hy-  
9 drology, engineering, economics, or another dis-  
10 cipline relating to water resources management.

11 (3) LIMITATION ON APPOINTMENTS.—The  
12 Army Inspector General shall not appoint an indi-  
13 vidual to serve as the Director if the individual has  
14 a financial interest in or close professional associa-  
15 tion with any entity with a strong financial interest  
16 in a water resources project that, on the date of ap-  
17 pointment of the Director, is—

18 (A) under construction;

19 (B) in the preconstruction engineering and  
20 design phase; or

21 (C) under feasibility or reconnaissance  
22 study by the Corps.

23 (4) TERMS.—

1 (A) IN GENERAL.—The term of a Director  
2 appointed under this subsection shall be 6  
3 years.

4 (B) TERM LIMIT.—An individual may  
5 serve as the Director for not more than 2 non-  
6 consecutive terms.

7 (5) DUTIES.—The Director shall establish a  
8 panel of experts to review each water resources  
9 project that is subject to review under subsection  
10 (b).

11 (d) ESTABLISHMENT OF PANELS.—

12 (1) IN GENERAL.—After the date on which the  
13 Secretary issues a draft feasibility report, draft gen-  
14 eral reevaluation report, or draft environmental im-  
15 pact statement relating to a water resources project  
16 that is subject to review under subsection (b)(2), the  
17 Director shall establish a panel of experts to review  
18 the project.

19 (2) MEMBERSHIP.—A panel of experts estab-  
20 lished by the Director for a water resources project  
21 shall be composed of not less than 5 nor more than  
22 9 independent experts (including 1 or more biolo-  
23 gists, engineers, and economists) who represent a  
24 range of areas of expertise.

1           (3) LIMITATION ON APPOINTMENTS.—The Di-  
2           rector shall not appoint an individual to serve on a  
3           panel of experts for a project if the individual has  
4           a financial interest in or close professional associa-  
5           tion with any entity with a strong financial interest  
6           in the project.

7           (4) CONSULTATION.—The Director may consult  
8           with the Academy in developing lists of individuals  
9           to serve on panels of experts under this section.

10          (5) COMPENSATION.—An individual serving on  
11          a panel of experts under this section shall be com-  
12          pensated at a rate of pay to be determined by the  
13          Inspector General.

14          (6) TRAVEL EXPENSES.—A member of a panel  
15          of experts under this section shall be allowed travel  
16          expenses, including per diem in lieu of subsistence,  
17          at rates authorized for an employee of an agency  
18          under subchapter I of chapter 57 of title 5, United  
19          States Code, while away from the home or regular  
20          place of business of the member in the performance  
21          of the duties of the panel.

22          (e) DUTIES OF PANELS.—A panel of experts estab-  
23          lished for a water resources project under this section  
24          shall—



1           (1) review each draft feasibility report, draft  
2           general reevaluation report, and draft environmental  
3           impact statement prepared for the project to iden-  
4           tify—

5                   (A) technical errors;

6                   (B) outdated and inaccurate data; and

7                   (C) flawed economic and environmental  
8           methodologies and models;

9           (2) receive from the public written and oral  
10          comments concerning the project; and

11          (3) not later than the deadline established  
12          under subsection (f), submit to the Secretary a re-  
13          port concerning the economic, engineering, and envi-  
14          ronmental analysis of the project, including the con-  
15          clusions and recommendations of the panel.

16          (f) DURATION OF PROJECT REVIEWS.—Not later  
17          than 180 days after the date of establishment of a panel  
18          of experts for a water resources project under this section,  
19          the panel shall complete each required review of the  
20          project and all other duties of the panel relating to the  
21          project.

22          (g) FINAL ISSUANCE OF REPORTS AND STATE-  
23          MENTS.—Before issuing a final feasibility report, final  
24          general reevaluation report, or final environmental impact

1 statement for a water resources project, the Secretary  
2 shall—

3 (1) take into consideration any recommenda-  
4 tions contained in the report described in subsection  
5 (e)(3) for the water resources project; and

6 (2) prepare and include in the final feasibility  
7 report, final general reevaluation report, or final en-  
8 vironmental impact statement—

9 (A) the report of the panel; and

10 (B) for any recommendations of the panel  
11 not adopted by the Secretary, a written expla-  
12 nation of the reasons why the recommendations  
13 were not adopted.

14 (h) COSTS.—The cost of conducting a review of a  
15 water resources project under this section—

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

17 (2) shall be considered to be part of the total  
18 cost of the project; and

19 (3) shall be a Federal expense.

20 (i) 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. 5. MITIGATION.**

2 (a) CONCURRENT MITIGATION.—Section 906(a) of  
3 the Water Resources Development Act of 1986 (33 U.S.C.  
4 2283(a)) is amended—

5 (1) by striking “(a)(1) In the case” and insert-  
6 ing the following:

7 “(a) MITIGATION.—

8 “(1) IN GENERAL.—In the case”;

9 (2) in paragraph (1), by indenting subpara-  
10 graphs (A) and (B) appropriately;

11 (3) in paragraph (2), by striking “(2) For the  
12 purposes” and inserting the following:

13 “(3) COMMENCEMENT OF CONSTRUCTION.—  
14 For the purposes”; and

15 (4) by inserting after paragraph (1) the fol-  
16 lowing:

17 “(2) IMPLEMENTATION OF MITIGATION.—

18 “(A) IN GENERAL.—To ensure concurrent  
19 mitigation, the Secretary shall implement re-  
20 quired mitigation under paragraph (1) as expe-  
21 ditiously as practicable, but not later than—

22 “(i) the last day of construction of the  
23 project or separable element of the project;

24 or

25 “(ii) in a case in which completion of  
26 mitigation by the date described in clause

1 (i) is physically impracticable because 1 or  
2 more sites for the remaining mitigation are  
3 or will be disturbed by project construction  
4 (as determined by the Secretary), not later  
5 than the end of the next fiscal year imme-  
6 diately following the last day of construc-  
7 tion.

8 “(B) AVAILABILITY OF FUNDS.—Funds  
9 made available for preliminary engineering and  
10 design, construction, or operations and mainte-  
11 nance may be used to carry out this sub-  
12 section.”.

13 (b) FULL MITIGATION.—Section 906(d) of the Water  
14 Resources Development Act of 1986 (33 U.S.C. 2283(d))  
15 is amended—

16 (1) by striking paragraph (1) and inserting the  
17 following:

18 “(1) PLANS AND PROPOSALS.—

19 “(A) IN GENERAL.—After November 17,  
20 1986, the Secretary shall not submit any pro-  
21 posal for the authorization of any water re-  
22 sources project to Congress, and shall not  
23 choose a project alternative in any final record  
24 of decision, environmental impact statement, or

1 environmental assessment, unless the proposal  
2 contains—

3 “(i) a specific plan to fully mitigate  
4 fish and wildlife losses created by the  
5 project; or

6 “(ii) a determination by the Secretary  
7 that the project will have negligible adverse  
8 impact on fish and wildlife.

9 “(B) FORESTS.—A specific mitigation plan  
10 described in subparagraph (A)(i) shall ensure,  
11 to the maximum extent practicable, that im-  
12 pacts to bottomland hardwood forests are miti-  
13 gated in kind.

14 “(C) CONSULTATION.—In carrying out  
15 this subsection, the Secretary shall consult with  
16 appropriate Federal and non-Federal agen-  
17 cies.”; and

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

19 “(3) STANDARDS FOR MITIGATION.—

20 “(A) IN GENERAL.—The Secretary shall  
21 not recommend a water resources project alter-  
22 native or select a project alternative in any final  
23 record of decision, environmental impact state-  
24 ment, or environmental assessment completed  
25 after the date of enactment of this paragraph

1 unless the Secretary determines that the miti-  
2 gation plan has a high probability of success-  
3 fully mitigating the adverse impacts of the  
4 project on aquatic and other resources, hydro-  
5 logic functions, and fish and wildlife.

6 “(B) REQUIREMENTS.—A mitigation plan  
7 described in subparagraph (A) shall—

8 “(i) provide for the acquisition and  
9 restoration of at least 1 acre of superior or  
10 equivalent habitat of the same type to re-  
11 place each acre of habitat negatively af-  
12 fected by the project;

13 “(ii) ensure that mitigation will result  
14 in replacement of all functions of the habi-  
15 tat negatively affected by the project, in-  
16 cluding—

17 “(I) spatial distribution; and

18 “(II) natural hydrologic and eco-  
19 logical characteristics;

20 “(iii) contain sufficient detail regard-  
21 ing the mitigation sites and restoration ac-  
22 tivities selected to permit a thorough eval-  
23 uation of—

24 “(I) the likelihood of the ecologi-  
25 cal success of the plan; and

1                   “(II) resulting aquatic and other  
2                   resource functions and habitat values;

3                   “(iv) include a detailed and specific  
4                   plan to monitor mitigation implementation  
5                   and success; and

6                   “(v) include specific ecological success  
7                   criteria by which the success of the mitiga-  
8                   tion will be evaluated.”.

9           (c) MITIGATION TRACKING SYSTEM.—Section 906 of  
10 the Water Resources Development Act of 1986 (33 U.S.C.  
11 2283) is amended by adding at the end the following:

12           “(h) MITIGATION TRACKING SYSTEM.—

13                   “(1) IN GENERAL.—Not later than 180 days  
14                   after the date of enactment of this subsection, the  
15                   Secretary shall establish a recordkeeping system to  
16                   track for each water resources project constructed,  
17                   operated, or maintained by the Secretary, and for  
18                   each permit issued under section 404 of the Federal  
19                   Water Pollution Control Act (33 U.S.C. 1344)—

20                           “(A) the quantity and type of wetland and  
21                           other types of habitat affected by the project or  
22                           permitted activity;

23                           “(B) the quantity and type of mitigation  
24                           required for the project or permitted activity;

1           “(C) the quantity and type of mitigation  
2           that has been completed for the project or per-  
3           mitted activity; and

4           “(D) the status of monitoring for the miti-  
5           gation carried out for the project or permitted  
6           activity.

7           “(2) REQUIRED INFORMATION AND ORGANIZA-  
8           TION.—The recordkeeping system shall—

9           “(A) include information on impacts and  
10          mitigation described in subsection (a) that  
11          occur after December 31, 1969; and

12          “(B) be organized by watershed, project,  
13          permit application, and zip code.

14          “(3) AVAILABILITY OF INFORMATION.—The  
15          Secretary shall make information contained in the  
16          recordkeeping system available to the public (includ-  
17          ing through the Internet).”.

18   **SEC. 6. MODERN ECONOMIC AND ENVIRONMENTAL STAND-**  
19                           **ARDS.**

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

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

23          “(a) IN GENERAL.—It is the intent of Congress that  
24   economic development and environmental protection and



1 restoration be coequal goals of water resources planning  
2 and development.

3 “(b) REVISION OF PRINCIPLES AND GUIDELINES.—

4 Not later than 1 year after the date of enactment of the  
5 Army Corps Reform Act of 2002, the Secretary of the  
6 Army, in consultation with the National Academy of  
7 Sciences, shall revise the principles and guidelines of the  
8 Corps of Engineers for water resources projects (con-  
9 sisting of Engineer Regulation 1105–2–100 and Engineer  
10 Pamphlet 1165–2–1) to reflect modern methods of meas-  
11 uring benefits and costs of water resources projects.

12 “(c) REVISION OF GUIDANCE.—The Secretary of the  
13 Army shall revise the Guidance for Conducting Civil  
14 Works Planning Studies (ER 1105–2–100) to comply with  
15 this section.”.

○