



Report to Congress
Water Resources Reform and Development Act of
2014 Section 1043(b)
Non-Federal Project Implementation Pilot Program
January 2020

Introduction

Section 1043(b) of the Water Resources Reform and Development Act (WRRDA 2014) of 2014 (P.L. 113-121) directed the establishment of a pilot program to evaluate the cost effectiveness and project delivery efficiency of allowing non-Federal interests to carry out authorized flood risk management, hurricane and storm damage reduction, coastal harbor and channel inland navigation, and aquatic ecosystem restoration projects. Further, Section 1043(b) provides that all laws and regulations that would apply to the Secretary, if the Secretary were carrying out the project, shall apply to a non-Federal interest carrying out the project. In addition, it provides that nothing changes the cost-sharing of a project carried out under this authority. Section 1043(b) allows for the transfer of funds appropriated for the project, as well as funds appropriated for the Section 1043(b) pilot program, to cover the federal share of such construction, except that sufficient funds for the U.S. Army Corps of Engineers (Corps) to carry out its responsibilities related to the project and pilot program must be retained. In addition to funds appropriated for specific projects, it authorizes the appropriation of funds to carry out the pilot program.

Section 1043(b) requires the Secretary to submit a report to the House Committee on Transportation and Infrastructure and Senate Committee on Environment and Public Works detailing the results of the pilot program carried out under section 1043. Specifically, to evaluate the cost-effectiveness and project delivery efficiencies, the report should address the following:

- a) A description of the progress of the non-Federal interest in meeting milestones in detailed project schedules;
- b) Identification of project delivery and cost-saving alternatives that reduce the backlog of authorized Corps projects;
- c) Evaluation of the technical, financial, and organizational efficiencies of a non-Federal interest carrying out the design, execution, management, and construction of one or more projects;
- d) Evaluation of alternatives for the decentralization of the project management, design, and construction for authorized Corps water resources projects; and
- e) Any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.

Projects under the Pilot Program

Section 1043 provides that authority to commence pilot projects under Section 1043(b) terminates on June 10, 2019. To date, only two projects are proceeding under Section 1043(b). These two projects are Clear Creek, TX, and McCook Reservoir, IL, both

Flood Risk Management Projects. These projects are in their construction infancy; therefore, this report does not provide recommendations or an analysis of the requirements, b thru e above under the Introduction section. A summary of the projects' construction status to date is described below.

Clear Creek, Texas.

The Clear Creek, TX, Flood Risk Management Project, is managed by the Harris County Flood Control District. A Project Partnership Agreement (PPA) was signed on June 6, 2019, with a construction cost of \$265,165,000, and a construction duration of 4 years and 7 months. The estimated construction completion is projected for May 2025. Several construction contracts are planned for award starting June 2020. Three contracts will be awarded between June 2020 and October 2020 and one contract on February 2021. It is expected that these contracts will be completed by February 2025, and subject to change pending approval of the construction project schedule.

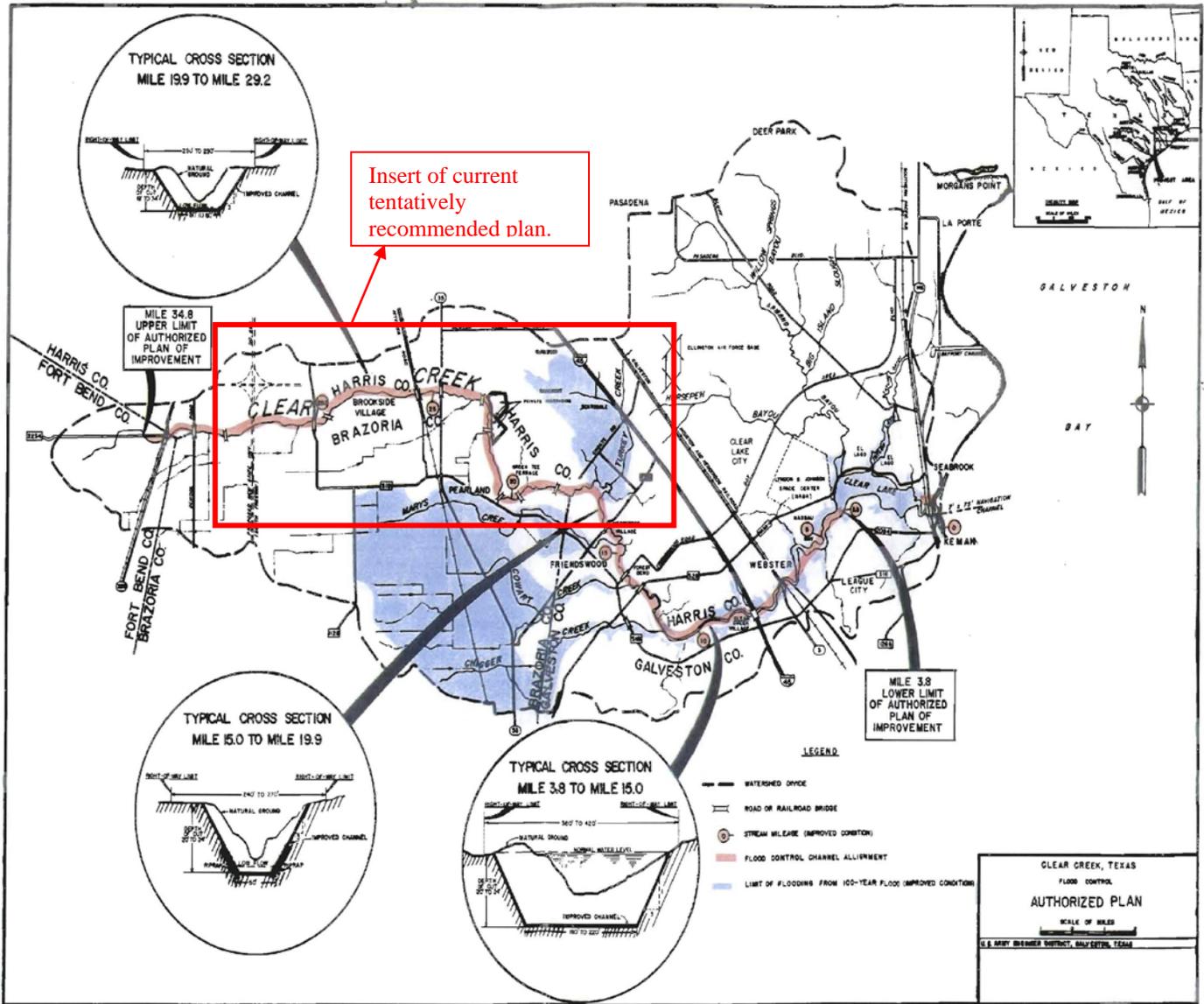
Activities currently underway after signing of the PPA include:

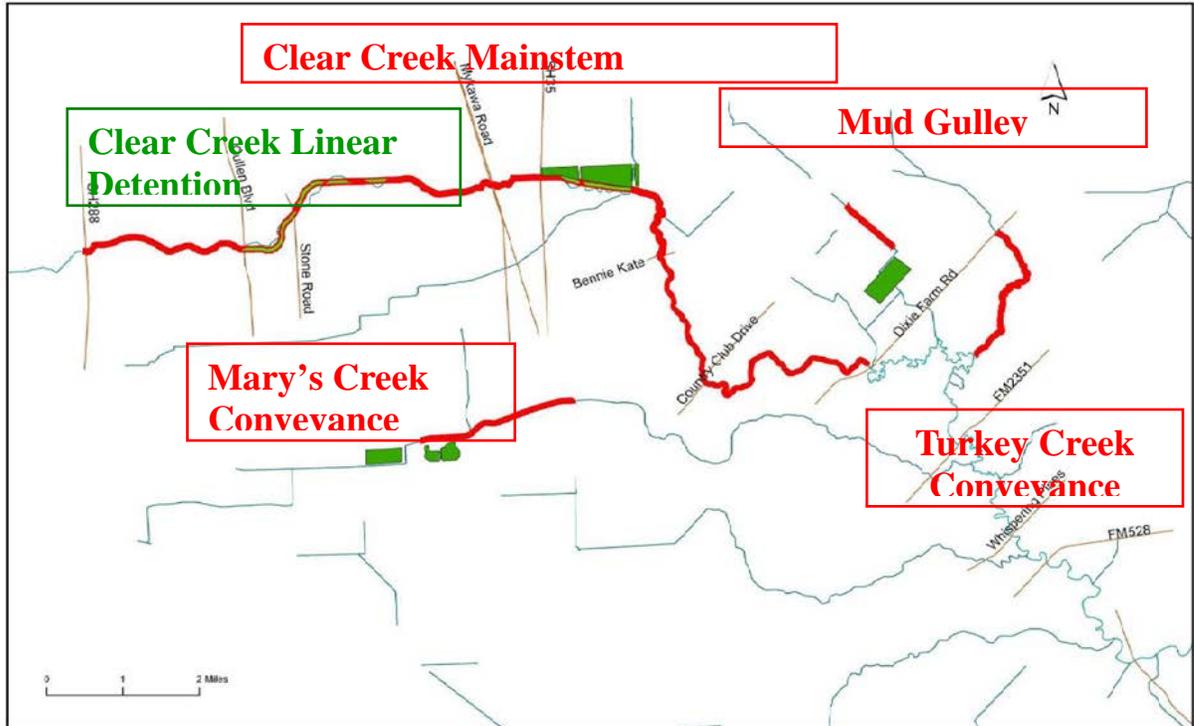
- a) Project Management Plan (PMP) approval.
- b) Programmatic Cultural Resources agreement (dependent on State Historic Preservation Office approval).
- c) Detailed construction schedule under development by Non-Federal Sponsor (scheduled submission for Corps approval is December 2019).
- d) Verification of project compliance with NEPA and other applicable environmental and historic preservation statutes.
- e) Working on four Contract awards (July 2022-February 2025).

Once the PMP and detailed construction schedule are approved in 2019, the construction activities' durations as scheduled and construction sequence of the project by the Non-Federal sponsor can be compared to the historical Corps' durations including the schedule durations for procurement, design, review, award, and construction completion. In support of expeditious project delivery the sponsor accelerated Architect and Engineering procurement and is considering application of a Design-Build approach.

The comparison of construction activities, durations and approaches will allow an initial assessment of any cost-effectiveness and efficiency by allowing the non-Federal interests to construct federal projects.

Figure 1. Clear Creek, Texas Authorized Plan.





McCook Reservoir, Illinois.

The McCook Reservoir, IL, Flood Risk Management Project, is managed by the Metropolitan Water Reclamation District (MWRD) of Greater Chicago. The PPA was signed on January 31, 2019, with a construction cost of \$46,667,000, cost-shared at 75 percent Federal and 25 percent non-Federal. Total project construction will take ten years from 2019 to 2029. Construction for rock wall stabilization and miscellaneous site work will occur each year as the quarry is mined into the final configuration of the reservoir. A contract to convert the quarry to a reservoir will occur in the last two years of construction.

Activities performed after signing of the PPA include:

- a) Sponsor maintained funds provided by the Federal government for the construction of the project in an interest-bearing account. Interest earned on the amount will be remitted to the Federal government annually in accordance with the PPA.
- b) Detailed PMP outlining the scope, outputs, budget, design, and construction resource requirements necessary for implementation of the Project was submitted for approval. The Project Management Plan was approved on April 30, 2019.
- c) A detailed project schedule, based on estimated funding levels, that lists all deadlines for each milestone remaining in the construction phase of the project was approved on July 30, 2019.

d) Sponsor submitted a quarterly progress report on July 30, 2019 detailing all work accomplished under the PPA for the period April-June 2019. The next report for the quarter July-September 2019 is due on October 31, 2019.

e) A quarterly financial report (for April-June 2019) in accordance with 2 C.F.R. 200.327 using Standard Form 425 was submitted to the Corps by the sponsor. The next report for the quarter July-September 2019 is due by October 31, 2019.

f) The draft scope of work statement to acquire design and construction monitoring services for the project was also submitted. The statement of work is under review by the government for adherence to Federal labor laws and procurement standards.

g) The Corps will review and approve the plans and specifications for the first contracts in summer 2020 prior to solicitation.

In addition, the sponsor's schedule includes the award of multiple construction contracts over ten years. Based on the sponsor's detailed project schedule, the contract award schedule is shown here:

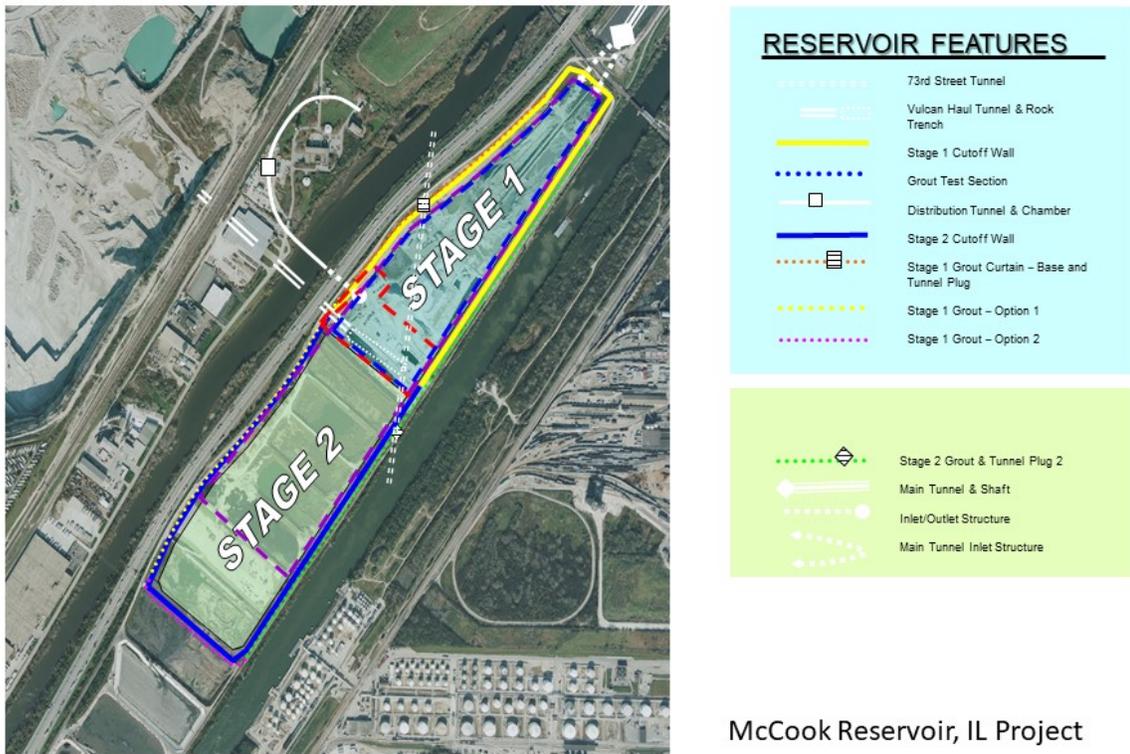
- Contract #1 was completed in FY 2019 and the Section 1043 expenditure was for reimbursement, allowed by the PPA, for the 73rd Street Tunnel Plug. The cost was \$1,969,813.
- Contract #2 is for two years. It will be awarded in summer 2020 and is estimated at \$2 million.
- Contract #3 is for two years. It will be awarded in summer 2020 and is estimated at \$1.5 million.
- Contract #4 is for two years of rock wall stabilization. It will be awarded in summer 2022 and is estimated at \$2.6 million.
- Contract #5 is for two years of miscellaneous site work including instrumentation. It will be awarded in summer 2023 and is estimated at \$1 million.
- Contract #6 is for two years. It will be awarded in summer 2024 and is estimated at \$2.6 million.
- Contract #7 is for three years. It will be awarded in summer 2026 and is estimated at \$3.2 million.
- Contract #8 is will be awarded in 2028 and is estimated at \$21.3 million.

It will be difficult to provide clear metrics on sponsor cost-effectiveness and efficiency for the first eight years of the project due to the limited scope of the work planned for that

period. The majority of the work is scheduled to occur in the last two years of the project construction.

It is anticipated that additional projects will be implemented under Section 1043 if Congress extends the authority to commence new projects. Until then, the Corps will continue to submit an annual report to Congress with the progress made on the construction of the two existing projects and discuss any cost-effectiveness and efficiencies gained by allowing the non-Federal sponsors to implement these projects. The assessment related to cost-effectiveness and efficiencies if any, will be discussed with the sponsors.

Figure 2. McCook Reservoir Project, Illinois.



Appendix

WRRDA 2014, Section 1043(b).

(b) NON-FEDERAL PROJECT IMPLEMENTATION PILOT PROGRAM

(1) IN GENERAL. Not later than 180 days after the date of enactment of this Act, the Secretary shall establish and implement a pilot program to evaluate the cost-effectiveness and project delivery efficiency of allowing non-Federal interests to carry out flood risk management, hurricane and storm damage reduction, coastal harbor and channel inland navigation, and aquatic ecosystem restoration projects.

(2) PURPOSES. The purposes of the pilot program are:

(A) to identify project delivery and cost-saving alternatives that reduce the backlog of authorized Corps of Engineers projects;

(B) to evaluate the technical, financial, and organizational efficiencies of a non-Federal interest carrying out the design, execution, management, and construction of 1 or more projects; and

(C) to evaluate alternatives for the decentralization of the project management, design, and construction for authorized Corps of Engineers water resources projects.

(3) ADMINISTRATION.

(A) IN GENERAL. In carrying out the pilot program, the Secretary shall

(i) identify a total of not more than 20 projects for flood risk management, hurricane and storm damage reduction (including levees, floodwalls, flood control channels, and water control structures), coastal harbor and channels, inland navigation, and aquatic ecosystem restoration that have been authorized for construction, including

(I) not more than 12 projects that have been authorized for construction prior to the date of enactment of this Act and that

(aa)(AA) have received Federal funds prior to the date of enactment of this Act; or (BB) for more than 2 consecutive fiscal years, have an unobligated funding balance for that project in the Corps of Engineers construction account; and

(bb) to the maximum extent practicable, are located in each of the divisions of the Corps of Engineers;

(II) not more than 3 projects that have been authorized for construction prior to the date of enactment of this Act that have not received Federal funds in the period beginning on the date on which the project was authorized and ending on the date of enactment of this Act; and

(III) not more than 5 projects that have been authorized for construction, but did not receive the authorization prior to the date of enactment of this Act;

(ii) notify the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the identification of each project under the pilot program;

(iii) in collaboration with the non-Federal interest, develop a detailed project management plan for each identified project that outlines the scope, budget, design,

and construction resource requirements necessary for the non-Federal interest to execute the project, or a separable element of the project;

(iv) on the request of the non-Federal interest, enter into a project partnership agreement with the non-Federal interest for the non-Federal interest to provide full project management control for construction of the project, or a separable element of the project, in accordance with plans approved by the Secretary;

(v) following execution of the project partnership agreement, transfer to the non-Federal interest to carry out construction of the project, or a separable element of the project

(I) if applicable, the balance of the unobligated amounts appropriated for the project, except that the Secretary shall retain sufficient amounts for the Corps of Engineers to carry out any responsibilities of the Corps of Engineers relating to the project and pilot program; and

(II) additional amounts, as determined by the Secretary, from amounts made available under paragraph (8), except that the total amount transferred to the non-Federal interest shall not exceed the updated estimate of the Federal share of the cost of construction, including any required design; and

(vi) regularly monitor and audit each project being constructed by a non-Federal interest under this section to ensure that the construction activities are carried out in compliance with the plans approved by the Secretary and that the construction costs are reasonable.

(B) DETAILED PROJECT SCHEDULE. Not later than 180 days after entering into an agreement under subparagraph (A)(iv), each non-Federal interest, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule, based on estimated funding levels, that lists all deadlines for each milestone in the construction of the project.

(C) TECHNICAL ASSISTANCE. On the request of a non-Federal interest, the Secretary may provide technical assistance to the non-Federal interest, if the non-Federal interest contracts with and compensates the Secretary for the technical assistance relating to

(i) any study, engineering activity, and design activity for construction carried out by the non-Federal interest under this subsection; and

(ii) expeditiously obtaining any permits necessary for the project.

(4) COST SHARE. Nothing in this subsection affects the cost-sharing requirement applicable on the day before the date of enactment of this Act to a project carried out under this subsection.

(5) REPORT.

(A) IN GENERAL. Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report detailing the results of the pilot program carried out under this subsection, including

(i) a description of the progress of non-Federal interests in meeting milestones in detailed project schedules developed pursuant to paragraph (2)(B); and

(ii) any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.

(B) UPDATE Not later than 5 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an update of the report described in subparagraph (A).

(C) FAILURE TO MEET DEADLINE. If the Secretary fails to submit a report by the required deadline under this paragraph, the Secretary shall 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 detailed explanation of why the deadline was missed and a projected date for submission of the report.

(6) ADMINISTRATION. All laws and regulations that would apply to the Secretary if the Secretary were carrying out the project shall apply to a non-Federal interest carrying out a project under this subsection.

(7) TERMINATION OF AUTHORITY. The authority to commence a project under this subsection terminates on the date that is 5 years after the date of enactment of this Act.

(8) AUTHORIZATION OF APPROPRIATIONS. In addition to any amounts appropriated for a specific project, there is authorized to be appropriated to the Secretary to carry out the pilot program under this subsection, including the costs of administration of the Secretary, \$25,000,000 for each of fiscal years 2019 through 2023.