16 U.S. Code § 2203 - Emergency watershed program

(a)In general.—~~The Secretary~~

(1) Authorization.—Subject to paragraph (2), the Secretary is authorized to undertake emergency watershed protection measures, including the purchase of floodplain easements, for runoff retardation and soil-erosion prevention, in cooperation with landowners and land users, as the Secretary deems necessary to safeguard lives and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or any other natural occurrence is causing or has caused a sudden impairment of that watershed.

(2) State Conservationist Determination.–The Secretary may undertake emergency watershed protection measures pursuant to paragraph (1)—

(A) after a major disaster declaration under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance (42 U.S.C. 517) with respect to the applicable watershed; or

~~(B) without a major disaster declaration described in subparagraph (A) after a determination by the applicable State Conservationist that a watershed impairment exists.~~

(B) after a natural disaster, as determined by the Secretary pursuant to [Cite Farm Bill] (7 U.S.C. 1961).

(3) Maximization of Restoration of Hydrologic Function.—

(A) IN GENERAL.—Emergency watershed protection measures for runoff retardation and soil-erosion prevention described in paragraph (1) shall restore and enhance hydrologic and habitat functions of the natural environment, to the maximum extent practicable, within a project area, and in areas influenced by a project, under this section.

(B) Built infrastructure.—For purposes of subparagraph (A), built infrastructure may be improved over pre-disaster conditions or relocated in order to restore the hydrologic and habitat functions of the natural environment within areas described in that subparagraph.

(b)Floodplain easements

(1) IN GENERAL.—

(A) ELIGIBLE PURPOSES.—A floodplain easement administered by the Secretary under this section may be used—

(i) to restore, protect, maintain, and enhance the functions of wetlands and riparian areas;

(ii) to conserve natural values, including fish and wildlife habitat, water quality, flood water retention, and groundwater recharge; ~~or~~ and

(iii) to safeguard lives and property from floods, drought, and the products of erosion.

(B) Certain activities.—The Secretary shall encourage, to the maximum extent practicable, activities under this section that restore and enhance the hydrologic and habitat functions of the land under a floodplain easement and associated land, riparian areas, stream channels, or vegetative cover.

(2) Management.—The Secretary shall have sole discretion for entering into compatible-use agreements with landowners and agreements with government agencies or nongovernmental organizations to address the maintenance and management of the vegetative cover and wetlands restoration measures on floodplain easements acquired under this section.

(3) Cost share.—With respect to land covered or proposed to be covered by a floodplain easement administered by the Secretary under this section, and associated land, riparian areas, or stream channels, the Secretary may provide up to 100 percent of the costs of—

(A) planning for restoration and enhancement activities; and

(B) carrying out those activities.

(4) Priorities.—In acquiring floodplain easements under this section, the Secretary shall give priority to—

(A) activities and land if the acquisition of the floodplain easement would significantly restore natural hydrologic function of the land, including improved groundwater recharge and improved fish or wildlife habitat; and

(B) land on which more than 1 flood event has occurred over the most recent 10-year period.

(5) Time Limits.—

(A) Acquisition.—The Secretary may not acquire a floodplain easement from the current owner of land more than 2 years after the date of a major disaster declaration or State Conservationist determination described in subsection (a)(2) with respect to the land.

(B) Restoration.—Not later than 90 days after the acquisition of a floodplain easement under subparagraph (A), the Secretary shall obligate any funding for any restoration and enhancement activities that, as of the date of the acquisition of the floodplain easement, are planned but not completed, on land covered by the floodplain easement or associated land, riparian areas, or stream channels.

(6)Modification and termination.—The Secretary may modify or terminate a floodplain easement administered by the Secretary under this section if—

(A)the current owner agrees to the modification or termination; and

(B)the Secretary determines that the modification or termination—

(i)will address a compelling public need for which there is no practicable alternative; and

(ii)is in the public interest.

(7)Consideration

(A)Termination.—As consideration for termination of an easement and associated agreements under paragraph (6), the Secretary shall enter into compensatory arrangements as determined to be appropriate by the Secretary.

(B)Modification.—In the case of a modification under paragraph (6)—

(i)as a condition of the modification, the current owner shall enter into a compensatory arrangement (as determined to be appropriate by the Secretary) to incur the costs of modification; and

(ii)the Secretary shall ensure that—

(I)the modification will not adversely affect the floodplain functions and values for which the easement was acquired;

(II)any adverse impacts will be mitigated by enrollment and restoration of other land that provides greater floodplain functions and values at no additional cost to the Federal Government; and

(III)the modification will result in equal or greater environmental and economic values to the United States.

~~(c) Floodplain Easement Without Major Disaster Declaration or State Conservationist Determination.—~~

(c) Floodplain Easements after a natural disaster.—

(1) Purpose.—~~Nonemergency~~ Floodplain easements may be used to reduce potential on-farm and downstream flood damage and restore hydrologic function on flood-prone land ~~without a major disaster declaration or State Conservationist determination described in subsection (a)(2)~~ when a natural disaster is determined by the Secretary pursuant to [Cite Farm Bill] (7 U.S.C. 1961).

(2) Authority.—During a period when a ~~major disaster declaration or State Conservationist determination described in subsection (a)(2) is not in effect with respect to certain land~~ natural disaster is determined by the Secretary pursuant to [cite Farm Bill] (7 U.S.C. 1961), the Secretary may facilitate and provide funding through the Regional Conservation Partnership Program established under subtitle I of the Food Security Act of 1985 (16 U.S.C. 3871 et seq.) for—

(A) the purchase of floodplain easements on that land by a third party, including—

(i) an agency of a State or local government or an Indian Tribe; and

(ii) a nongovernmental organization; and

(B) technical assistance to implement the program under this section through activities consistent with the eligible purposes described in subsection (b)(1)(A).

(3) Requirements.—A ~~nonemergency~~ floodplain easement described in paragraph (1)—

(A) shall allow for—

(i) restoration of habitat and ecological function; and

(ii) modification or relocation of built infrastructure; and

(B) may allow for continued cultivation of cropping systems that are compatible with periodic flooding.

(4) Applications.—Assistance under paragraph (2) shall be requested through an application submitted under the regional conservation partnership program established under subtitle I of the Food Security Act of 1985 (16 U.S.C. 3871 et seq.).

(5) Regulations.—The Secretary shall promulgate regulations to carry out this subsection.

16 U.S.C. 3871a

(1)Covered program.—The term “covered program” means the following:

(A)The agricultural conservation easement program.

(B)The environmental quality incentives program.

(C)The conservation stewardship program, not including the grassland conservation initiative under section 3839aa–25 of this title.

(D)The healthy forests reserve program established under section 6571 of this title.

(E)The conservation reserve program established under subpart B of part I of subchapter IV.

~~(F)The programs established by the Secretary to carry out the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001 et seq.), except for any program established by the Secretary to carry out section 14 (16 U.S.C. 1012) of that Act.~~

(F) The ~~nonemergency floodplain easement authority~~ Floodplain Easements after a natural disaster authority under subsection (c) of section 403 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203)