



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-CO

NOV 01 2017

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1113 of the Water Resources Development Act of 2016 (WRDA 2016), Authority to Permit a Non-Federal Interest to Carry Out Maintenance Activities for an Authorized Navigation Project

1. Section 1113 of WRDA 2016 authorizes the Secretary to permit a non-federal interest to carry out maintenance activities for an authorized navigation project (or a separable element of an authorized navigation project), with potential reimbursement, subject to several requirements. The authority in Section 1113 terminates 10 years after the date of enactment of WRDA 2016. Section 1113 of WRDA 2016 is enclosed.

2. This guidance is applicable to all HQUSACE elements, major subordinate commands (MSC), and district commands having a Civil Works navigation responsibility.

a. A non-federal interest undertaking maintenance dredging activities under Section 1113 must meet the requirements of Section 221(b) of the Flood Control Act of 1970, as amended, applicable to non-federal sponsors for water resources development projects.

b. Equipment used in carrying out the maintenance dredging activities must meet U.S. Army Corps of Engineers (Corps) standards and comply with provisions of EM 385-1-1, Safety and Health Requirements Manual.

c. Environmental compliance with all applicable laws must be completed before the non-federal interest undertakes maintenance dredging activities under Section 1113.

d. A non-federal interest carrying out approved maintenance dredging activities under Section 1113 does not involve 33 U.S.C. 408.

e. A non-federal interest is fully responsible and liable for maintenance dredging activities it carries out under Section 1113.

3. Prior to the non-federal interest initiating maintenance dredging activities for which reimbursement is sought, the Assistant Secretary of the Army (Civil Works) (ASA(CW)) must approve the proposal and a Memorandum of Agreement (MOA) for such work must be executed. The following procedures apply:

a. The non-federal interest must submit to the district commander a request letter and plan that provides the necessary details of the proposed maintenance dredging activities

CECW-CO

SUBJECT: Implementation Guidance for Section 1113 of the Water Resources Development Act of 2016 (WRDA 2016), Authority to Permit a Non-Federal Interest to Carry Out Maintenance Activities for an Authorized Navigation Project

to be undertaken by the non-federal interest using its equipment and personnel and / or contractor, including how minimum project dimensions will be determined. The plan must document in detail how use of the proposed maintenance dredging activities are in accordance with the operation and maintenance manual or related document that supports the operation and maintenance of the project. The plan will also document that the equipment to be provided by the non-federal interest meet the requirements of EM 385-1-1 and other relevant U.S. Army Corps of Engineers regulations. The non-federal interest request letter and plan will include, at a minimum:

(1) Identification of the authorized navigation project, a description of the authorized project dimensions, and a detailed explanation of the proposed dredging activities needed to ensure that the project is maintained to not less than the minimum project dimensions.

(2) A description and map of the location within the project of the proposed maintenance dredging activities, and description of intended navigation benefits.

(3) A description of the proposed dredged material placement site and location, including a map.

(4) The timing and method of the proposed maintenance dredging.

(5) A listing of vehicles, vessels, machinery, or other specialized equipment to be used by the non-federal interest that comply with the requirements for inspection criteria, operational aids, environmental considerations, operating rules, and guarding and safety devices.

(6) A listing of qualified contractors or employees of the non-federal interest who are authorized to operate vessels, machinery or other specialized equipment associated with the maintenance dredging activities. Employees or contractors for the non-federal interest must have the proper training, license, and/or experience to carry out the maintenance dredging activities.

(7) Security clearances for all contractors and employees for the non-federal interest must be validated, when appropriate, as determined by the district commander.

(8) An Accident Prevention Plan consistent with provisions of EM 385-1-1.

(9) The estimated cost of the maintenance dredging activities.

(10) The design, engineering plans, and specifications for the proposed maintenance dredging activities.

CECW-CO

SUBJECT: Implementation Guidance for Section 1113 of the Water Resources Development Act of 2016 (WRDA 2016), Authority to Permit a Non-Federal Interest to Carry Out Maintenance Activities for an Authorized Navigation Project

b. The district will assess the adequacy of the information submitted by the non-federal interest to determine whether the proposed maintenance dredging activities meet the requirements of the applicable O&M manual, federal laws and regulations and navigation needs, and provides the intended navigation benefits. The dredging activities must be work that the Corps otherwise would have undertaken as normal maintenance.

c. After confirming the adequacy and completeness of the non-federal interest's plan, the district commander will transmit the plan along with the district's assessment to the MSC commander. The MSC commander will review the district's assessment and forward the plan, along with MSC commander's recommendation, to the respective Headquarters (HQ) Regional Integration Team (RIT) for review and processing to the ASA(CW) for a decision.

d. If the ASA(CW) approves the non-federal interest's plan, an MOA for such maintenance activities must be executed prior to the non-federal interest initiating the maintenance dredging activities. The Headquarters will assist the district receiving a request under Section 1113 in developing the MOA, which must be approved by the ASA(CW).

e. In undertaking the maintenance dredging activities, the non-federal interest must comply with all applicable federal laws and regulations that would apply to such maintenance activities if carried out by the Corps. In addition, the non-federal interest is responsible for obtaining all required state and local permits or licenses, prior to initiating maintenance dredging.

(1) The requirements of the National Environmental Policy Act and all other applicable environmental statutes and executive orders must be satisfied. Dredging and other work in navigable waters by a non-federal interest will require permits from the Corps under the following authorities, as applicable: Section 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. A list of related environmental laws that may apply to Corps of Engineers permits is provided in 33 CFR 320.3. For Department of Army permits, the Corps district regulatory staff should use the environmental compliance documentation for the federal water resources project prepared by district staff that was approved by the district commander, if the documentation is up to date. If the maintenance dredging activity for a project will be performed by the non-federal sponsor (or its contractor) for that project, the maintenance dredging activity is already covered by the federal water resources project authorization. A separate Department of the Army permit is not required as long as that maintenance dredging is limited to the navigation project covered by the federal water resources project authorization. Any additional dredging will require Department of the Army authorization from the district regulatory office.

CECW-CO

SUBJECT: Implementation Guidance for Section 1113 of the Water Resources Development Act of 2016 (WRDA 2016), Authority to Permit a Non-Federal Interest to Carry Out Maintenance Activities for an Authorized Navigation Project

(2) Other applicable federal laws and regulations may include, but are not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act); the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655) and the regulations contained in 49 CFR Part 24; Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto; Buy American Act (41 U.S.C. 8302); Clean Air Act (42 U.S.C. 7606); Clean Water Act (33 U.S.C. 1368); Jones Act (46 U.S.C. 55109); Shipping Act (46 U.S.C. 55109); Utilization of Small Business Act (15 U.S.C. 631, 644); and Equal Opportunity for Veterans Act (38 U.S.C. 4212). The district commander should be prepared to provide copies of language used by the Corps in its standard contracts to serve as a guide for the non-federal interest in developing its contract.

(3) If the existing real property interests are not sufficient for the performance of maintenance activities under Section 1113, the non-federal interest will be required to undertake acquisition of additional real property interests in accordance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24.

(4) Prior to commencement of each iteration of maintenance dredging, the non-federal interest must conduct or obtain current hydrographic surveys to determine the existing conditions of the navigation channel. Upon completion of each iteration of maintenance, the non-federal interest must perform an after maintenance dredging hydrographic survey to determine the quantity of material dredged and the resultant condition of the channel. All hydrographic surveys shall be performed in accordance with Engineering Manual 1110-1-1003, Navstar Global Positioning System Surveying, and shall be referenced to the appropriate datum.

(5) As soon as practicable after each fiscal year, or after the last maintenance dredging episode of the fiscal year, the non-federal interest must provide to the district commander all necessary documentation of the work performed, such as dredging quantities, location of dredging, location of dredged material placement site, condition of the channel or feature, and the actual costs associated with operation and maintenance of the dredge. The non-federal interest will only be eligible to be reimbursed for maintenance dredging performed within the constructed dimensions of the navigation project, which would include any approved advanced maintenance and allowable overdepth dredging, or for other maintenance activities within authorized dimensions or specified limits.

CECW-CO

SUBJECT: Implementation Guidance for Section 1113 of the Water Resources Development Act of 2016 (WRDA 2016), Authority to Permit a Non-Federal Interest to Carry Out Maintenance Activities for an Authorized Navigation Project

(6) The dredge provided by the non-federal interest to perform the maintenance dredging activities will be provided at no cost to the federal government and not eligible for reimbursement.

f. Any reimbursement is subject to the district commander determining that the maintenance activities have been performed in accordance with the terms of the MOA, applicable permits and the approved plans and specifications and further that the costs are reasonable, allocable, and allowable. Further, reimbursement is limited to the lesser of the actual cost associated with the operation and maintenance of the dredge, except the equipment shall be provided at no cost to the government, during the period of time that the dredge is used in the performance of work for the federal government or the actual fiscal year federal appropriations that are made available for the portion of the maintenance dredging activities for which the dredge was used.

4. If the ASA(CW) approves the non-federal interest maintenance dredging proposal and an MOA for such work is executed, the non-federal interest is fully responsible for maintenance dredging of the project or feature during the term of the MOA. Budgeting for maintenance dredging to be performed by the non-federal interest will be considered in accordance with current budgetary guidance and procedures. Subject to the conditions in paragraph 3.f. and to the extent dredging funds for the project are available, the district will reimburse the non-federal interest for dredging activities undertaken pursuant to the MOA.

5. The Corps of Engineers will continue to perform periodic condition surveys for the project.

6. Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103 (33 U.S.C. 2221) provides that agreements proposed for execution by the ASA(CW) or USACE shall be limited to total credits and reimbursements for all applicable projects not to exceed \$100,000,000 in each fiscal year. Amounts reimbursed to a non-federal interest under Section 1113 will be included in calculating the limit under Section 102.

7. Section 1113 provides discretionary authority to undertake an audit of any maintenance activities undertaken under this section. For those districts with executed MOAs under Section 1113 as of December 16, 2021, the district will submit, through the MSC, to the appropriate HQ RIT by March 1, 2022 a report that addresses if permitting a non-federal interest to carry out maintenance activities has resulted in (1) improved reliability and safety for navigation; and (2) cost savings to the federal government. CECW-I will consolidate the information from each RIT into a report for submission to the ASA(CW).

CECW-CO

SUBJECT: Implementation Guidance for Section 1113 of the Water Resources Development Act of 2016 (WRDA 2016), Authority to Permit a Non-Federal Interest to Carry Out Maintenance Activities for an Authorized Navigation Project

8. The authority of the Secretary under Section 1113 terminates on December 16, 2026. Therefore, any reimbursement under Section 1113 must be provided prior to that date.

9. Questions regarding this implementation guidance may be directed to Jeffrey McKee, Chief, Navigation and Operations Branch at 202-761-8648 or Jeffrey.A.McKee@usace.army.mil.



JAMES C DALTON, P.E.
Director of Civil Works

Encl

DISTRIBUTION:

COMMANDERS, REGIONAL BUSINESS AND PROGRAMS DIRECTORS,
GREAT LAKES AND OHIO RIVER DIVISION, CELRD
MISSISSIPPI VALLEY DIVISION, CEMVD
NORTH ATLANTIC DIVISION, CENAD
NORTHWESTERN DIVISION, CENWD
PACIFIC OCEAN DIVISION, CEPOD
SOUTH ATLANTIC DIVISION, CESAD
SOUTH PACIFIC DIVISION, CESP
SOUTHWESTERN DIVISION, CESWD

**WATER INFRASTRUCTURE IMPROVEMENTS FOR THE NATION ACT, P.L. 114-322,
December 16, 2016, 130 Stat 1628**

SEC. 1113. NON-FEDERAL INTEREST DREDGING AUTHORITY.

(a) **IN GENERAL.**—The Secretary may permit a non-Federal interest to carry out, for an authorized navigation project (or a separable element of an authorized navigation project), such maintenance activities as are necessary to ensure that the project is maintained to not less than the minimum project dimensions.

(b) **COST LIMITATIONS.**—Except as provided in this section and subject to the availability of appropriations, the costs incurred by a non-Federal interest in performing the maintenance activities described in subsection (a) shall be eligible for reimbursement, not to exceed an amount that is equal to the estimated Federal cost for the performance of the maintenance activities, with any reimbursement subject to the non-Federal interest complying with all Federal laws and regulations that would apply to such maintenance activities if carried out by the Secretary.

(c) **AGREEMENT.**—Before initiating maintenance activities under this section, a non-Federal interest shall enter into an agreement with the Secretary that specifies, for the performance of the maintenance activities, the terms and conditions that are acceptable to the non-Federal interest and the Secretary.

(d) **PROVISION OF EQUIPMENT.**—In carrying out maintenance activities under this section, a non-Federal interest shall—

(1) provide equipment at no cost to the Federal Government; and

(2) hold and save the United States free from any and all damage that arises from the use of the equipment of the non-Federal interest, except for damage due to the fault or negligence of a contractor of the Federal Government.

(e) **REIMBURSEMENT ELIGIBILITY LIMITATIONS.**—Costs that are eligible for reimbursement under this section are the costs of maintenance activities directly related to the costs associated with operation and maintenance of a dredge based on the lesser of—

(1) the costs associated with operation and maintenance of the dredge during the period of time that the dredge is being used in the performance of work for the Federal Government during a given fiscal year; or

(2) the actual fiscal year Federal appropriations that are made available for the portion of the maintenance activities for which the dredge was used.

(f) **AUDIT.**—Not earlier than 5 years after the date of enactment of this Act, the Secretary may conduct an audit on any maintenance activities for an authorized navigation project (or a separable element of an authorized navigation project) carried out under this section to determine if permitting a non-Federal interest to carry out maintenance activities under this section has resulted in—

(1) improved reliability and safety for navigation; and

(2) cost savings to the Federal Government.

(g) **TERMINATION OF AUTHORITY.**—The authority of the Secretary under this section terminates on the date that is 10 years after the date of enactment of this Act.