



**DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108**

DEC 11 2017

**MEMORANDUM FOR THE COMMANDING GENERAL OF THE U.S. ARMY CORPS
OF ENGINEERS**

SUBJECT: Revisions to Implementation Guidance for Section 1030 of the Water Resources Reform and Development Act (WRRDA) of 2014, Continuing Authorities

1. Section 1030 of WRRDA 2014 increases the programmatic limits and per project limits for certain Continuing Authority Program (CAP) authorities and for the Flood Plain Management Services (FPMS) Program. In addition, it provides that the Water Resources Development Act (WRDA) of 2007 cost sharing amendment for beneficial use of dredged material does not apply to certain projects. Further, it provides that the entire non-federal share for projects under Section 1135 of WRDA 1986 may be provided by in-kind contributions. Finally, Section 1030 directs that the Secretary publish in the Federal Register the criteria used for prioritizing the annual funding for CAP projects and on an annual basis the status of each CAP project. Section 1030 is enclosed.

2. This guidance supersedes Implementation Guidance for Section 1030 of WRRDA 2014, dated 3 December 2014.

3. Section 1030 of WRRDA 2014 increases annual programmatic limits and per-project limits on federal participation as follows: Section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577), annual program limit increases to \$50 million and federal per-project limit increases to \$10 million; Section 111 of the River and Harbor Act of 1968 (33 U.S.C. 426i), federal per-project limit increases to \$10 million; Section 204 of WRDA of 1992 (33 U.S.C. 2326) annual program limit increases to \$50 million and federal per-project limit increases to \$10 million; Section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), federal per-project limit increases to \$10 million; Section 1135 of WRDA 1986 (33 U.S.C. 2309a), federal per-project limit increases to \$10 million; Section 206 of WRDA 1996 (33 U.S.C. 2330), federal per-project limit increases to \$10 million; and Section 14 of the Flood Control Act of 1946 (33 U.S.C. 701r), annual program limit increases to \$20 million and federal per-project limit increases to \$5 million. In accordance with the Assistant Secretary of the Army (Civil Works) memorandum, dated March 21, 2017, the following guidance is provided on increasing the federal participation limit for these CAP projects.

a. In general, the increased federal per-project limits authorized in WRRDA 2014 will be applied only to those projects whose initial federal construction contract was awarded on or after June 10, 2014. Model Project Partnership Agreements (PPAs) are being updated to reflect the increased federal participation limits. Existing agreements

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do not need to be amended solely to reflect increased annual program limits. An existing PPA whose initial construction contract was awarded on or after June 10, 2014 should be amended to reflect the increased federal participation limit authorized by WRRDA 2014. Review and approval of a PPA amendment for this purpose is delegated to the MSC Commander and may not be further delegated. Division Counsel review of, and concurrence in, the amendment is required prior to approval by the MSC commander. The District Commander is authorized to execute the amendment after its approval.

b. For projects whose initial federal construction contract was awarded before June 10, 2014, specific approval by the Director of Civil Works (DCW) must be obtained before the per project limit may be increased. The DCW will only consider an increase to the per-project limit for projects approved for deficiency corrections and for projects where construction cost increases are for in-scope work and were caused by federal funding delays, acquisition complications, or resolution of contract disputes. The DCW will not consider requests to amend agreements where the project is fiscally completed or where the federal portion of the project costs were known to be above the federal per-project limit and the sponsor agreed to pay those additional costs at the time the agreement was executed. Once DCW approval is obtained, review and approval of an amendment for this purpose is delegated to the MSC Commander and may not be further delegated. Division Counsel review of the amendment is required prior to approval by the MSC Commander. The District Commander is authorized to execute the amendment after its approval.

4. Executed PPAs for Section 1135 projects whose initial federal construction contract was or will be awarded on or after June 10, 2014 should also be amended to reflect that the non-federal sponsor may provide its full cost share through in-kind contributions. Review and approval of an amendment for this purpose is delegated to the MSC Commander and may not be further delegated. Division Counsel review of the amendment is required prior to approval by the MSC Commander. The District Commander is authorized to execute the amendment after its approval.

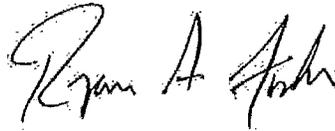
5. Section 1030(d) of WRRDA 2014 amends Section 2037 of WRDA 2007, which amended section 204 of WRDA 1992, to provide that the WRDA 2007 cost sharing amendment does not apply to any beneficial use of dredged material project authorized in WRDA 2007 if a report of the Chief of Engineers for the project was completed prior to the date of enactment of WRDA 2007. For those projects, the cost sharing for the beneficial use of dredged material is 75 percent federal and 25 percent non-federal. Those projects include Hamilton Airfield Wetlands Ecosystem Restoration Expansion, California, authorized by Section 3018 of WRDA 2007; Poplar Island Expansion, Maryland, authorized by Section 3087 of WRDA 2007; and, Louisiana Coastal Area Beneficial Use of Dredged Material, Louisiana, authorized by Section 7006(d) of WRDA 2007.

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6. Sections 1030(a) (2) and (3) of WRRDA 2014 require that the Secretary publish in the Federal Register the criteria used for prioritizing the annual funding for CAP projects and on an annual basis the status of each CAP project. The information on status of CAP projects will include the name and a short description of each active CAP project, the cost estimate to complete each active CAP project, and the funding available in that fiscal year for each CAP authority. This information is also to be provided to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure. CECW-IP is responsible for these activities.

7. Section 1030(h) of WRRDA 2014 amends Section 206 of the Flood Control Act of 1970 to increase the program limit for the FPMS Program from \$15 million to \$50 million. The existing guidance on FPMS in ER 1105-2-100, Appendix G, should continue to be followed.

8. This guidance will be incorporated into ER 1105-2-100, Appendix F, when it is updated.



RYAN A. FISHER
Acting Assistant Secretary of the Army
(Civil Works)

Encl

SEC. 1030. CONTINUING AUTHORITY.

(a) CONTINUING AUTHORITY PROGRAMS.-

(1) DEFINITION OF CONTINUING AUTHORITY PROGRAM PROJECT.-In this subsection, the term "continuing authority program" means 1 of the following authorities:

(A) Section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s).

(B) Section 111 of the River and Harbor Act of 1968 (33 U.S.C. 426i).

(C) Section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330).

(D) Section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a).

(E) Section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577).

(F) Section 3 of the Act of August 13, 1946 (33 U.S.C. 426g).

(G) Section 14 of the Flood Control Act of 1946 (33 U.S.C. 701 r).

(H) Section 103 of the River and Harbor Act of 1962 (Public Law 87-874; 76 Stat. 1178).

(I) Section 204(e) of the Water Resources Development Act of 1992 (33 U.S.C. 2326(e)).

(J) Section 208 of the Flood Control Act of 1958 (33 U.S.C. 701b-8a).

(K) Section 104(a) of the River and Harbor Act of 1958 (33 U.S.C. 61 O(a)).

(2) PRIORITIZATION.-Not later than 1 year after the date of enactment of this Act, the Secretary shall publish in the Federal Register and on a publicly available website, the criteria the Secretary uses for prioritizing annual funding for continuing authority program projects.

(3) ANNUAL REPORT.-Not later than 1 year after the date of enactment of this Act and each year thereafter, the Secretary shall publish in the Federal Register and on a publicly available website, a report on the status of each continuing authority program, which, at a minimum, shall include-

(A) the name and a short description of each active continuing authority program project;

(B) the cost estimate to complete each active project;

and

(C) the funding available in that fiscal year for each continuing authority program.

(4) CONGRESSIONAL NOTIFICATION.-On publication in the Federal Register under paragraphs (2) and (3), 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 copy of all information published under those paragraphs.

(b) SMALL RIVER AND HARBOR IMPROVEMENT PROJECTS.-Section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577) is amended-

(1) in subsection (a), by striking "\$35,000,000" and inserting "\$50,000,000"; and

(2) in subsection (b), by striking "\$7,000,000" and inserting "\$10,000,000".

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(c) SHORE DAMAGE PREVENTION OR MITIGATION.-Section 111(c) of the River and Harbor Act of 1968 (33 U.S.C. 426i(c)) is amended by striking "\$5,000,000" and inserting "\$10,000,000".

(d) REGIONAL SEDIMENT MANAGEMENT.-

(1) IN GENERAL-Section 204 of the Water Resources Development Act of 1992 (33 U.S.C. 2326) is amended(

A) in subsection (c)(1)(C), by striking "\$5,000,000" and inserting "\$10,000,000"; and

(B) in subsection (g), by striking "\$30,000,000" and inserting "\$50,000,000".

(2) APPLICABILITY.-Section 2037 of the Water Resources Development Act of 2007 (121Stat.1094) is amended by adding at the end the following:

"(c) APPLICABILITY.-The amendment made by subsection (a) shall not apply to any project authorized under this Act if a report of the Chief of Engineers for the project was completed prior to the date of enactment of this Act."

(e) SMALL FLOOD CONTROL PROJECTS.-Section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s) is amended in the third sentence by striking "\$7,000,000" and inserting "\$10,000,000".

(f) PROJECT MODIFICATIONS FOR IMPROVEMENT OF ENVIRONMENT.-Section 1135(d) of the Water Resources Development Act of 1986 (33 U.S.C. 2309a(d)) is amended-

(1) in the second sentence, by striking "Not more than 80 percent of the non-Federal share may be" and inserting "The non-Federal share may be provided"; and

(2) in the third sentence, by striking "\$5,000,000" and inserting "\$10,000,000".

(g) AQUATIC ECOSYSTEM RESTORATION.-Section 206(d) of the Water Resources Development Act of 1996 (33 U.S.C. 2330(d)) is amended by striking "\$5,000,000" and inserting "\$10,000,000".

(h) FLOODPLAIN MANAGEMENT SERVICES.-Section 206(d) of the Flood Control Act of 1960 (33 U.S.C. 709a(d)) is amended by striking "\$15,000,000" and inserting "\$50,000,000".

(i) EMERGENCY STREAMBANK AND SHORELINE PROTECTION. Section 14 of the Flood Control Act of 1946 (33 U.S.C. 701 r) is amended-

(1) by striking "\$15,000,000" and inserting "\$20,000,000";
and

(2) by striking "\$1,500,000" and inserting "\$5,000,000".