



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

REPLY TO

CECW-P

JUN 17 2015

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Implementation Guidance for Section 1028 of the Water Resources Reform and Development Act of 2014 – Clarification of Mitigation Authority

1. Section 1028 of WRRDA 2014 provides discretionary authority for the Secretary to carry out measures to improve habitat for fish species within the boundaries and downstream of a water resources project constructed by the Secretary that includes a fish hatchery, if the Secretary has been explicitly authorized to compensate for fish losses associated with the project and, if the Secretary determines that the measures are feasible, consistent with the authorized project purposes and the fish hatchery, and in the public interest. Further, Section 1028 specifies that the non-federal interest shall contribute 35 percent of the total cost of carrying out activities under Section 1028, including the costs relating to the provision or acquisition of required lands, easements, rights-of-way, dredged material disposal areas and relocations; and, that the non-federal interest shall be responsible for 100 percent of the costs of operation, maintenance, replacement, repair and rehabilitation of the measures carried out under Section 1028. A copy of Section 1028 of WRRDA 2014 is enclosed.
2. At such times as funds are provided, a feasibility study of measures to improve habitat at constructed Corps project with a fish hatchery may be undertaken if there is an explicit Congressional authorization to compensate for fish losses at that project. The feasibility study will be conducted in accordance with the implementation guidance for Sections 1001 and 1002 of WRRDA 2014, the policies and procedures for ecosystem restoration projects found in Appendix E of ER 1105-2-100 and the SMART Planning Principles. It will be cost shared 50 percent Federal and 50 percent non-Federal. In addition, the report shall be completed following the report guidelines for project authorized without a report as specified in Appendix H of ER 1105-2-100. Funding to carry out feasibility studies under this authority may be considered in accordance with the annual Budget Engineering Circular (EC).
3. The focus of the feasibility study should be on addressing opportunities for improving fish species habitat consistent with the Corps of Engineers mission of aquatic ecosystem restoration and should identify the National Ecosystem Restoration (NER) plan. The feasibility study may include, but shall not be limited to, analyzing those measures that would be beneficial only to species listed under the Endangered Species Act. Any measures proposed for implementation will be limited to existing project lands and to that portion of the stream or other water body found directly below the existing federal project, including the associated riparian zones.

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4. Upon completion and approval of a feasibility study that identifies feasible measures, such measures may be considered for construction funding in accordance with existing budgetary policies and procedures. The non-federal interest's share of implementing the measures is 35 percent, and includes the provision or acquisition of required lands, easements, rights-of-way, dredged material disposal areas and relocations. In addition, the non-federal interest shall be responsible for 100 percent of the costs of operation, maintenance, replacement, repair and rehabilitation of the measures.

  
THEODORE A. BROWN, P. E.  
Chief, Planning and Policy  
Directorate of Civil Works

Encl

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SEC. 1028. CLARIFICATION OF MITIGATION AUTHORITY.

(a) In General.--The Secretary may carry out measures to improve fish species habitat within the boundaries and downstream of a water resources project constructed by the Secretary that includes a fish hatchery if the Secretary--

(1) has been explicitly authorized to compensate for fish losses associated with the project; and

(2) determines that the measures are--

(A) feasible;

(B) consistent with authorized project purposes and the fish hatchery; and

(C) in the public interest.

(b) Cost Sharing.--

(1) In general.--Subject to paragraph (2), the non-Federal interest shall contribute 35 percent of the total cost of carrying out activities under this section, including the costs relating to the provision or acquisition of required land, easements, rights-of-way, dredged material disposal areas, and relocations.

(2) Operation and maintenance.--The non-Federal interest shall contribute 100 percent of the costs of operation, maintenance, replacement, repair, and rehabilitation of the measures carried out under this section.