



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

CEMP-CR

MAY 17 2017

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1172 of the Water Resources Development Act of 2016 (WRDA 2016), Easements for Electric, Telephone, or Broadband Service Facilities

1. This memorandum provides implementation guidance on section 1172 of the WRDA 2016. Section 1172 prohibits the Secretary from collecting consideration for an easement across water resources development project land for the electric, telephone, or broadband service facilities of a nonprofit organization eligible for financing under the Rural Electrification Act of 1936 (REA), 7 U.S.C. 901 *et seq.* Section 1172 of WRDA 16 is enclosed.
2. As provided in section 1172(a), "water resources development project" means a project under the administrative jurisdiction of the Corps of Engineers that is subject to 36 C.F.R. Part 327.
3. To qualify for an easement for no consideration under this section, an organization must submit the following to the district real estate office:
 - a. Documentation demonstrating that it operates on a not-for-profit, cost-of-service basis; and
 - b. Documentation demonstrating that the electric, telephone, or broadband service facilities it intends to construct (or has constructed, in the case of easement renewals) are eligible for financing under the REA. The organization does not need to have sought financing from the Rural Utilities Service in order to qualify, but must demonstrate that the facilities are electric, telephone, or broadband facilities that serve rural areas, as those terms are defined in the REA. Adding or including non-eligible facilities in the easement area will disqualify the organization from section 1172's exemption from payment of rent.
4. Section 1172 does not affect the authority of the Secretary under 10 U.S.C. 2695 or 31 U.S.C. 9701 to collect amounts necessary to cover administrative expenses incurred by the Secretary in granting the easements.

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5. This section applies only to easements or easement renewals executed after the date of enactment of WRDA 2016. Easements that collect consideration on an annual basis will be amended to eliminate the requirement to collect consideration.

6. Questions regarding this implementation guidance should be directed to Theodore Nettles, Real Estate Specialist, Real Estate Division, at (202) 761-5542, Theodore.L.Nettles@usace.army.mil.

Encl

A handwritten signature in black ink, appearing to read 'Brenda M. Johnson-Turner', with a stylized flourish at the end.

BRENDA M. JOHNSON-TURNER
Chief, Real Estate Division
Directorate of Military Programs

SEC. 1172. EASEMENTS FOR ELECTRIC, TELEPHONE, OR BROADBAND SERVICE FACILITIES.

(a) DEFINITION OF WATER RESOURCES DEVELOPMENT PROJECT.—In this section, the term “water resources development project” means a project under the administrative jurisdiction of the Corps of Engineers that is subject to part 327 of title 36, Code of Federal Regulations (or successor regulations).

(b) NO CONSIDERATION FOR EASEMENTS.—The Secretary may not collect consideration for an easement across water resources development project land for the electric, telephone, or broadband service facilities of nonprofit organizations eligible for financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.).

(c) ADMINISTRATIVE EXPENSES.—Nothing in this section affects the authority of the Secretary under section 2695 of title 10, United States Code, or under section 9701 of title 31, United State Code, to collect funds to cover reasonable administrative expenses incurred by the Secretary.