



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

CECW-P

MAY 05 2017

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1129 of the Water Resources and Development Act of 2016 (WRDA 2016), Application of Section 1156 Cost Sharing Waiver to Indian Tribes and Territories

1. Section 1129 of WRDA 16 further amends Section 22 of WRDA 1974, as amended (42 U.S.C. 1962d-16), to authorize application of the cost sharing waiver provided under Section 1156 of WRDA 1986, as amended (33 U.S.C. 2310), to assistance provided under Section 22 to Indian Tribes and to certain specified territories of the United States. Section 22, 1129 and 1156, as amended, are enclosed.
2. The cost sharing waiver amount established under Section 1156 of WRDA 1986, as amended, is \$455,000. The adjusted amount was calculated using an inflation factor based on the composite index for the first quarter of FY 1986 and the composite index for the third quarter of FY 2014 contained in the Civil Works Construction Cost Index System guidance in effect on March 31, 2014 (EM 1110-2-1304).
3. The adjusted waiver amount of up to \$455,000 is applied to assistance under Section 22 provided to Federally Recognized Indian Tribes, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Marianas only if the agreement for such assistance is executed on or after December 16, 2016. For assistance to these entities, up to \$455,000 is excluded from the amount cost shared, with the waiver amount funded with Federal funds. For a comprehensive plan pursuant to Section 22(a)(1), the amount of the waiver is included in calculating the limit on expenditure of Federal funds in any one State in any one year. The template agreements for Section 22 posted on the Civil Works Agreements website are being updated to include optional language to address the waiver.
4. Existing Section 22 agreements executed on or after December 16, 2016 may be amended to add waiver language, consistent with the guidance in this memorandum, if the agreement involves Federally Recognized Tribes, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Marianas. The District must submit the negotiated amendment to the MSC or Division Planning Assistance to States Program Manager for coordination with Division Counsel prior to Division approval. The District Commander is authorized to execute the amendment after its approval.

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5. Questions regarding this implementation guidance should be directed to Ada Benavides, Senior Policy Advisor, Planning and Policy Division, at (202) 761-0415, Ada.Benavides@usace.army.mil.



Encl

THEODORE A. BROWN, P.E.
Chief, Planning and Policy
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SEC. 22. PLANNING ASSISTANCE TO STATES (42 U.S.C. 1962d-16)

(a) Federal and State cooperation.

(1) Comprehensive plans. The Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate with any State, group of States, or non-Federal interest working with a State or group of States in the preparation of comprehensive plans for the development, utilization, and conservation of the water and related resources of drainage basins, watersheds, or ecosystems located within the boundaries of such State or group of States, including plans to comprehensively address water resources challenges, and to submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out such plans.

(2) Technical assistance.

(A) In general. At the request of a governmental agency or non-Federal interest, the Secretary may provide technical assistance to such agency or non-Federal interest in managing water resources.

(B) Types of assistance. Technical assistance under this paragraph may include provision and integration of hydrologic, economic, and environmental data and analyses.

(b) Fees.

(1) Establishment and collection. For the purpose of recovering 50 percent of the total cost of providing assistance pursuant to subsection (a), the Secretary of the Army is authorized to establish appropriate fees, as determined by the Secretary, and to collect such fees from States and other non-Federal public bodies to whom assistance is provided under subsection (a).

(2) Contributed funds. The Secretary may accept and expend funds in excess of the fees established under paragraph (1) that are provided by a State or other non-Federal interest for assistance under this section.

(3) In-kind services. The non-Federal contribution for preparation of a plan subject to the cost sharing program under this subsection may be made by the provision of services, materials, supplies, or other in-kind services necessary to prepare the plan.

(4) Deposit and use. Fees collected under this subsection shall be deposited into the account in the Treasury of the United States entitled, "Contributions and Advances, Rivers and Harbors, Corps of Engineers (8862)" and shall be available until expended to carry out this section.

(c) Authorization of appropriations.

(1) Federal and State cooperation. There is authorized to be appropriated not to exceed \$ 30,000,000 annually to carry out subsection (a)(1) except that not more than \$ 5,000,000 in Federal funds shall be expended in any one year in any one State. The Secretary may allow 2 or more States to combine all or a portion of the funds that the Secretary makes available to the States in carrying out subsection (a)(1).

(2) Technical assistance. There is authorized to be appropriated \$ 15,000,000 annually to carry out subsection (a)(2), of which not more than \$ 2,000,000 annually may be used by the Secretary to enter into cooperative agreements with nonprofit organizations to provide assistance to rural and small communities.

(d) Annual submission of proposed activities. Concurrent with the President's submission to Congress of the President's request for appropriations for the Civil Works Program for a fiscal year, the Secretary shall submit to the Committee on Transportation and Infrastructure of the

House of Representatives and the Committee on Environment and Public Works of the Senate a report describing the individual activities proposed for funding under subsection (a)(1) for that fiscal year.

(e) "State" defined. For the purposes of this section, the term "State" means the several States of the United States, Indian tribes, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(f) Special rule. The cost-share for assistance under this section provided to Indian tribes, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands shall be as provided under section 1156 of the Water Resources Development Act of 1986 (33 U.S.C. 2310).

SEC. 1129. PLANNING ASSISTANCE TO STATES.

Section 22 of the Water Resources Development Act of 1974 (42 U.S.C. 1962d–16) is amended by adding at the end the following:

“(f) SPECIAL RULE.—The cost-share for assistance under this section provided to Indian tribes, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands shall be as provided under section 1156 of the Water Resources Development Act of 1986 (33 U.S.C. 2310).”

SEC. 1156. COST SHARING FOR TERRITORIES AND INDIAN TRIBES.

(a) In general. The Secretary shall waive local cost-sharing requirements up to \$200,000 for all studies and projects—

(1) In American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, Puerto Rico, and the Trust Territory of the Pacific Islands; and

(2) For any Indian tribe (as defined in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130)).

(b) Inflation adjustment. The Secretary shall adjust the dollar amount specified in subsection (a) for inflation for the period beginning on November 17, 1986, and ending on June 10, 2014.