



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

CECW-P

FEB 16 2018

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1038(2) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), Integrating Section 1122(i) of the Water Resources Development Act of 2016, Reduction of Federal Cost for Hurricane and Storm Damage Reduction Projects

1. Section 1038 of WRRDA 2014 was completed and signed on 5 February 2018. The implementation guidance is posted in the U.S. Army Corps of Engineers website: <http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/>.
2. Questions regarding this implementation guidance should be directed to Jeffrey Strahan, Planning and Policy Division, at (202) 761-8643 or Jeffrey.P.Strahan@usace.army.mil.

A handwritten signature in blue ink, appearing to read "J. Dalton".

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

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DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
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FEB -5 2018

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

SUBJECT: Implementation Guidance for Section 204 of the Water Resources Development Act of 1992, as amended by Section 1038(2) of the Water Resources Reform and Development Act of 2014 and Section 1122(i)(2) of Water Resources Development Act 2016 - Regional Sediment Management

1. Section 1038(2) of Water Resources Reform and Development Act of 2014 (WRRDA 14) amends Section 204(d) of Water Resources Development Act (WRDA) 1992, as amended (33 USC 2326) (formerly referred to as Section 207), to authorize the Secretary to select, with the consent of the non-Federal interest, a disposal method that is not the least cost option if the Secretary determines that the incremental costs of the disposal method are reasonable in relation to the flood and storm damage and flood reduction benefits, including shoreline protection, protection against loss of life, and damage to improved property and the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetlands and control of shoreline erosion.

Section 1122(i)(2) of WRDA 2016 further amends Section 204(d), as amended, by providing that disposal under Section 204(d) may include a single or periodic application of sediment for beneficial use and shall not require operation and maintenance. Additionally, Section 1122(i)(2) authorizes the Secretary to accept funds from a non-Federal interest to dispose of dredged material as provided under section 103(d)(1) of WRDA 1986, as amended, which directs that all costs assigned to privately owned shores (where use of such shores is limited to private interests) or to the prevention of losses of private lands shall be borne by non-Federal interests. Section 204, as amended, is enclosed.

2. This memorandum replaces paragraph 6 of the implementation guidance for Section 2037 of WRDA 2007 issued on 8 April 2008. A separate memorandum shall be issued by the Assistant Secretary of the Army for Civil Works (ASA-CW), acting on behalf of the Secretary of the Army, to update the guidance for implementation of the traditional Section 204 Program to reflect the amendments made by Section 1038 of WRRDA 2014, paragraphs (1) and (3), and by Section 1122(i)(1) of WRDA 2016.

SUBJECT: Implementation Guidance for Regional Sediment Management—
Section 204 of the Water Resources Development Act (WRDA) of 1992,
as amended by Section 1038(2) of the Water Resources Reform and
Development Act of 2014 (WRRDA 2014) and Section 1122(i)(2) of WRDA 2016

3. Section 204(d), as amended, provides that, in developing and carrying out a federal water resources development project involving the disposal of dredged material, the ASA-CW may select, with the consent of the non-Federal interest, a disposal method that is not the least cost option, if the ASA-CW determines that the incremental costs of the disposal method are reasonable in relation to the environmental benefits or flood and storm damage reduction benefits. Flood and storm damage reduction benefits may include benefits from shoreline protection, protection against loss of life, and prevention of damage to improved property.

4. Provided a qualified non-Federal interest is willing to share in the costs of beneficial use exceeding the Base Plan or least cost disposal option, districts may pursue placement of material under the authority of section 204(d). It must be determined at the beginning of the feasibility study process if the authority in Section 204(d) will be used. If 204(d) will be used, the decision criteria in this guidance applies. Prior guidance for the traditional Section 204 program still applies if Section 204(d) will not be used. In addition, in accordance with Section 1038(1), placement for the purposes of improving environmental conditions in marsh and littoral systems, stabilizing stream channels, enhancing shorelines, and supporting state and local risk management adaptation strategies, may also be considered.

5. The decision-making criteria that will be used in determining whether to use an environmentally beneficial disposal method that is not the least cost alternative is whether the incremental cost is reasonable in relation to the environmental benefits achieved. Where the incremental federal costs do not exceed the lesser of 25% of total Base Plan disposal costs or \$300,000, the incremental costs are judged to be "reasonable" in relation to the environmental benefits without the need for detailed analysis including incremental analysis. For environmentally beneficial disposal methods that have incremental federal costs which exceed the lesser of 25% of total Base Plan disposal costs or \$300,000, the incremental costs must be justified by demonstrating that the monetary and non-monetary benefits (outputs) of the ecosystem restoration project justify its incremental costs above the Base Plan. Where the environmentally beneficial use involves separable increments, each increment must be justified.

It must be demonstrated that the environmental resources to be protected, restored, or created are valuable, the environmental outputs can be quantified and described, and federal and state resource agencies support the environmentally beneficial disposal method. The environmental disposal method would be subject to appropriate environmental compliance requirements to include the National Environmental Policy Act requirements.

6. The decision-making criteria that will be used in determining whether to use a

SUBJECT: Implementation Guidance for Regional Sediment Management—Section 204 of the Water Resources Development Act (WRDA) of 1992, as amended by Section 1038(2) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) and Section 1122(i)(2) of WRDA 2016

disposal method with flood or storm damage reduction benefits that is not the least cost option is whether the incremental cost is reasonable in relation to the flood or storm risk reduction benefits achieved and the reduced risk against loss of life and damage to improved property. Where the incremental federal costs are the lesser of 25% of total Base Plan disposal costs or \$300,000, the incremental costs are judged to be "reasonable" in relation to the flood or storm risk reduction benefits without the need for detailed analysis. For beneficial disposal methods that have incremental federal costs which exceed the lesser of 25% of the Base Plan or \$300,000, the incremental costs must be justified by demonstrating that the benefits of the project justify its incremental costs by having a benefit-to-cost ratio of 1.0 or greater. Where the beneficial use involves separable increments, each increment must be justified.

It must still be demonstrated that the benefits achieved are those that would normally be considered in a flood risk reduction or coastal storm risk reduction project and that all necessary conditions for federal participation, in accordance with the project purpose, are met. Federal and state resource agencies must support the selected disposal method. The disposal method would be subject to appropriate National Environmental Policy Act requirements.

7. Documentation and approval of placements under Section 204(d) will generally follow the same guidelines in ER 1105-2-100, Appendix F that current Section 204 studies must follow, unless otherwise specified in this guidance.

8. Placement of dredged material under the authority of section 204(d) will primarily be on a one-time basis only. These projects are formulated as placements and shall not require operation and maintenance. However, multiple placements may be considered for the same site over several years but would need to be justified each time. They would not be considered continuing construction. Multiple placements for disposal of material at a single site will be subject cumulatively to the per project federal participation limit of \$10,000,000.

9. In general, temporary real property interests may be sufficient to provide the affirmative rights necessary to place dredged material under the authority of section 204(d). However, for section 204(d) placements justified based on environmental benefits, required lands must generally be owned in fee by the non-Federal interest or another non-Federal public body for purposes compatible with environmental restoration. In cases where required lands are subject to permanent restrictive easements or covenants designed to protect and conserve habitat values, approval of non-standard interests and estates will follow the process in ER 1105-2-100, Appendix F. For 204(d) placements involving shoreline or beach nourishment, permanent conditions of public use and access, as described in

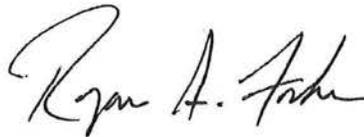
SUBJECT: Implementation Guidance for Regional Sediment Management—
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paragraph 6h of ER 1165-2-130, are a prerequisite to federal participation in the incremental costs of beneficial use exceeding the Base Plan. In accordance with section 1122(i)(2), a non-Federal interest may fund all costs associated with beneficial placement of material on beaches where permanent conditions of public use and access have not been established.

10. Placement of material under section 204(d) will be considered a separate activity within the Section 204 Program, and expenditures will count against the Section 204 programmatic limit. Coordination with the District Continuing Authorities Program Manager will be needed to insure proper funding. Cost sharing will be in accordance with Section 103(a) through (d) of WRDA 1986, as amended (33 USC 2213), consistent with the project purpose.

11. A model memorandum of agreement may be developed for section 204(d) placements and published on the Corps website.

12. Questions regarding this implementation guidance may be directed to Gib Owen, at gib.a.owen.civ@mail.mil or 703-695-4641. Technical questions can be directed to Jeffrey Strahan, Planning and Policy Division, at (202) 761-8643 or Jeffrey.Strahan@usace.army.mil.



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

Encl

SEC. 204. REGIONAL SEDIMENT MANAGEMENT, as amended(33 U.S.C. 2326) .

(a) IN GENERAL

(1) SEDIMENT USE

(A) Sediment from Federal water resources projects

For sediment obtained through or used in the construction, operation, or maintenance of an authorized Federal water resources project, the Secretary shall develop, at Federal expense, regional sediment management plans and carry out projects at locations identified in plans developed under this section, or identified jointly by the non-Federal interest and the Secretary, for use in the construction, repair, modification, or rehabilitation of projects associated with Federal water resources projects for purposes listed in paragraph (3).

(B) Sediment from other Federal sources and non-Federal sources—

For purposes of projects carried out under this section, the Secretary may include sediment from other Federal sources and non-Federal sources, subject to the requirement that any sediment obtained from a non-Federal source shall not be obtained at Federal expense.

(2) COOPERATION The Secretary shall develop plans under this subsection in cooperation with the appropriate Federal, State, regional, and local agencies.

(3) PURPOSES FOR SEDIMENT USE IN PROJECTS The purposes of using sediment for the construction, repair, modification, or rehabilitation of Federal water resources projects are

(A) to reduce storm damage to property;

(B) to protect, restore, and create aquatic and ecologically related habitats, including wetlands; and

(C) to transport and place suitable sediment for the purposes of improving environmental conditions in marsh and littoral systems, stabilizing stream channels, enhancing shorelines, and supporting State and local risk management adaptation strategies.

(4) REDUCING COSTS To reduce or avoid Federal costs, the Secretary shall consider the beneficial use of dredged material in a manner that contributes to the maintenance of sediment resources in the nearby coastal system.

(b) SECRETARIAL FINDINGS Subject to subsection (c), projects carried out under subsection (a) may be carried out in any case in which the Secretary finds that

(1) the environmental, economic, and social benefits of the project, both monetary and nonmonetary, justify the cost of the project; and

(2) the project will not result in environmental degradation.

(c) DETERMINATION OF PROJECT COSTS

(1) COSTS OF CONSTRUCTION

(A) IN GENERAL Costs associated with construction of a project under this section or identified in a regional sediment management plan

shall be limited solely to construction costs that are in excess of the costs necessary to carry out the dredging for construction, operation, or maintenance of an authorized Federal water resources project in the most cost-effective way, consistent with economic, engineering, and environmental criteria.

(B) **COST SHARING**

(i) **IN GENERAL** Except as provided in clause (ii), the non-Federal share of the construction cost of a project under this section shall be determined as provided in subsections (a) through (d) of section 103 of the Water Resources Development Act of 1986 (33 U.S.C. 2213).

(ii) **SPECIAL RULE** Construction of a project under this section for one or more of the purposes of protection, restoration, or creation of aquatic and ecologically related habitat, the cost of which does not exceed \$750,000 and which is located in a disadvantaged community as determined by the Secretary, may be carried out at Federal expense.

(C) **TOTAL COST** The total Federal costs associated with construction of a project under this section may not exceed \$10,000,000.

(2) **OPERATION, MAINTENANCE, REPLACEMENT, AND**

REHABILITATION COSTS Operation, maintenance, replacement, and rehabilitation costs associated with a project under this section are the responsibility of the non-Federal interest.

(d) **SELECTION OF DREDGED MATERIAL DISPOSAL METHOD FOR PURPOSES RELATED TO ENVIRONMENTAL RESTORATION OR STORM DAMAGE AND FLOOD REDUCTION**

- (1) **IN GENERAL** In developing and carrying out a Federal water resources project involving the disposal of dredged material, the Secretary may select, with the consent of the non-Federal interest, a disposal method that is not the least cost option if the Secretary determines that the incremental costs of the disposal method are reasonable in relation to
- (A) the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetlands and control of shoreline erosion; or
 - (B) the flood and storm damage and flood reduction benefits, including shoreline protection, protection against loss of life, and damage to improved property.
- (2) **FEDERAL SHARE** The Federal share of such incremental costs shall be determined in accordance with subsection (c).
- (3) **SPECIAL RULE** Disposal of dredged material under this subsection may include a single or periodic application of sediment for beneficial use and shall not require operation and maintenance.
- (4) **DISPOSAL AT NON-FEDERAL COST** The Secretary may accept funds from a non-Federal interest to dispose of dredged material as

provided under section 103(d)(1) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(d)(1)).

- (e) STATE AND REGIONAL PLANS The Secretary may
 - (1) cooperate with any State or group of States in the preparation of a comprehensive State or regional sediment management plan within the boundaries of the State or among States;"
 - (2) encourage State participation in the implementation of the plan; and
 - (3) submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out the plan.

- (f) PRIORITY AREAS In carrying out this section, the Secretary shall give priority to a regional sediment management project in the vicinity of each of the following:
 - (1) Little Rock Slackwater Harbor, Arkansas.
 - (2) Fletcher Cove, California.
 - (3) Egmont Key, Florida.
 - (4) Calcasieu Ship Channel, Louisiana.
 - (5) Delaware River Estuary, New Jersey and Pennsylvania.
 - (6) Fire Island Inlet, Suffolk County, New York.
 - (7) Smith Point Park Pavilion and the TWA Flight 800 Memorial, Brookhaven, New York.
 - (8) Morehead City, North Carolina.
 - (9) Toledo Harbor, Lucas County, Ohio.
 - (10) Galveston Bay, Texas.
 - (11) Benson Beach, Washington.

- (g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$50,000,000 per fiscal year, of which not more than \$5,000,000 per fiscal year may be used for the development of regional sediment management plans authorized by subsection (e) and of which not more than \$3,000,000 per fiscal year may be used for construction of projects to which subsection (c)(1)(B)(ii) applies. Such funds shall remain available until expended.

SEC. 1122. BENEFICIAL USE OF DREDGED MATERIAL, WRDA 2016

(j) REGIONAL SEDIMENT MANAGEMENT Section 204 of the Water Resources Development Act of 1992 (33 U.S.C. 2326) is amended

(1) in subsection (a)(1)

(A) by striking "For sediment" and inserting the following:

(A) SEDIMENT FROM FEDERAL WATER RESOURCES PROJECTS For sediment; and

(B) by adding at the end the following:

(B) SEDIMENT FROM OTHER FEDERAL SOURCES AND NON-FEDERAL SOURCES For purposes of projects carried out under this section, the Secretary may include sediment from other Federal sources and non-Federal sources, subject to the requirement that any sediment obtained from a non-Federal source shall not be obtained at Federal expense.; and

(2) in subsection (d) by adding at the end the following:

(3) SPECIAL RULE Disposal of dredged material under this subsection may include a single or periodic application of sediment for beneficial use and shall not require operation and maintenance.

(4) DISPOSAL AT NON-FEDERAL COST The Secretary may accept funds from a non-Federal interest to dispose of dredged material as provided under section 103(d)(1) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(d)(1)).

SEC. 1038. REDUCTION OF FEDERAL COSTS FOR HURRICANE AND STORM DAMAGE REDUCTION PROJECTS, WRRDA 2014

Section 204 of the Water Resources Development Act of 1992 (33 U.S.C. 2326) (as amended by section 1030(d)(1)) is amended

- (2) in subsection (d)
 - (A) by striking the subsection designation and heading and inserting the following:
 - (d) SELECTION OF DREDGED MATERIAL DISPOSAL METHOD FOR PURPOSES RELATED TO ENVIRONMENTAL RESTROATION OR STORM DAMAGE AND FLOOD REDUCTION; and
 - (B) in paragraph (1), by striking "in relation to" and all that follows through the period at the end and inserting "in relation to"
 - (A) the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetlands and control of shoreline erosion; or
 - (B) the flood and storm damage and flood reduction benefits, including shoreline protection, protection against loss of life, and damage to improved property.