



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

CECW-P

JUL 05 2018

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1126 of the Water Resources Development Act of 2016 (WRDA 2016), Study of Water Resources Development Projects by Non-Federal Interests

1. The existing Section 1126 of WRDA 2016 is rescinded in its entirety and replaced with the enclosed implementation guidance. The new guidance was completed and signed on 21 June 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 Amy Frantz, Senior Policy Advisor, Planning and Policy Division, at 202-761-0106 or Amy.K.Frantz@usace.army.mil.

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

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

DISTRIBUTION:

COMMANDERS, REGIONAL BUSINESS AND PROGRAMS DIRECTORS,
GREAT LAKES AND OHIO RIVER DIVISION, CELRD
MISSISSIPPI VALLEY DIVISION, CEMVD
NORTH ATLANTIC DIVISION, CENAD
NORTHWESTERN DIVISION, CENWD
PACIFIC OCEAN DIVISION, CEPOD
SOUTH ATLANTIC DIVISION, CESAD
SOUTH PACIFIC DIVISION, CESP
SOUTHWESTERN DIVISION, CESWD



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

JUN 21 2018

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

SUBJECT: Implementation Guidance for Section 1126 of the Water Resources Development Act of 2016 (WRDA 2016) – Study of Water Resources Development Projects by Non-Federal Interests (Revised)

1. References:

- a. WRDA 1986, Section 203 (33 U.S.C.2231)
- b. WRDA 2014, Section 1014(a)
- c. Engineering Regulation 1165-2-209, Studies of Water Resources Development Projects by Non-Federal Interests, dated February 4, 2016
- d. WRDA 2016, Section 1126
- e. Implementation Guidance for Section 1126 of the Water Resources Development Act of 2016 (WRDA 2016) – Study of Water Resources Development Projects by Non-Federal Interests, dated April 27, 2017. (rescinded)

2. The purpose of this memorandum is to provide guidance regarding the provision of technical assistance to a non-Federal interest undertaking a feasibility study of a proposed water resources development project pursuant to Section 203. This guidance replaces ref 1.e., which is rescinded in its entirety and supersedes the following paragraphs of ref 1.c., paragraph 7, and paragraph 2.h(1) of the Appendix B. This guidance does not affect previous agreements that identify and commit to specific technical assistance.

3. Section 1126 of WRDA 2016 further amends ref a. and provides: “[a]t the request of a non-Federal interest, the Secretary may provide to the non-Federal interest technical assistance relating to any aspect of a feasibility study if the non-Federal interest contracts with the Secretary to pay all costs of providing such technical assistance.” Technical assistance includes activities such as providing factual or technical information, running models, and providing information on how the U.S. Army Corps of Engineers (Corps) conducts its project formulation process. Technical assistance does

SUBJECT: Implementation Guidance for Section 1126 of the Water Resources Development Act of 2016 (WRDA 2016) – Study of Water Resources Development Projects by Non-Federal Interests (Revised)

not include the review of work products developed by the non-federal interest or carrying out inherently Federal governmental functions. In addition it does not imply an endorsement or approval of a project.

4. The completion of the Federal environmental compliance decisions under Federal law resolving Federal legal and policy requirements must be performed by the Federal government when there is a Federal action necessitating such compliance. The completion of these inherently Federal governmental functions must be undertaken with Federal appropriations.

5. The non-Federal interest must satisfactorily address in their report that the proposed project, based upon a review of the Engineering, Economics, and Environmental compliance requirements, is a feasible action. The information provided in the non-Federal interest's report may be used by the Assistant Secretary of the Army for Civil Works (ASA-CW) in the review and feasibility determination and by the Federal government to expedite subsequent Federal compliance. The ASA-CW will initiate a review of the report upon receipt and may direct the completion of inherently Federal governmental functions to be completed by the appropriate District using Federal appropriations.

6. Provision of technical assistance requires execution of a Memorandum of Agreement (MOA) with the non-Federal interest paying all costs of assistance upfront. Authority to approve the MOA is delegated to the Major Subordinate Command (MSC) Commander, with no further delegation authority. MOAs shall explicitly state that the technical assistance provided does not constitute an endorsement or approval of a project. Authority to approve the scope of work that will be conducted under the MOA is delegated to the appropriate District Commander.

7. Engineering Regulation 1165-2-209 will be updated to incorporate this guidance.

8. Questions regarding this implementation guidance may be directed to Gib Owen, Office of the Assistant Secretary of the Army for Civil Works at gib.a.owen.civ@mail.mil or 703-695-4641.



R. D. JAMES
Assistant Secretary of the Army
(Civil Works)

2 Encls

WRDA 1986

SEC. 203 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2231):

Study of water resources development projects by non-Federal interests

(a) SUBMISSION TO SECRETARY

(1) IN GENERAL. A non-Federal interest may undertake a feasibility study of a proposed water resources development project and submit the study to the Secretary.

(2) GUIDELINES. To assist non-Federal interests, the Secretary, as soon as practicable, shall issue guidelines for feasibility studies of water resources development projects to provide sufficient information for the formulation of the studies.

(b) REVIEW BY SECRETARY. The Secretary shall review each feasibility study received under subsection (a)(1) for the purpose of determining whether or not the study, and the process under which the study was developed, each comply with Federal laws and regulations applicable to feasibility studies of water resources development projects.

(c) SUBMISSION TO CONGRESS. Not later than 180 days after the date of receipt of a feasibility study of a project under subsection (a)(1), 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 report that describes

(1) the results of the Secretary's review of the study under subsection (b), including a determination of whether the project is feasible;

(2) any recommendations the Secretary may have concerning the plan or design of the project; and

(3) any conditions the Secretary may require for construction of the project.

(d) CREDIT. If a project for which a feasibility study has been submitted under subsection (a)(1) is authorized by a Federal law enacted after the date of the submission to Congress under subsection (c), the Secretary shall credit toward the non-Federal share of the cost of construction of the project an amount equal to the portion of the cost of developing the study that would have been the responsibility of the United States if the study had been developed by the Secretary.

(e) TECHNICAL ASSISTANCE. At the request of a non-Federal interest, the Secretary may provide to the non-Federal interest technical assistance relating to any aspect of a feasibility study if the non-Federal interest contracts with the Secretary to pay all costs of providing such technical assistance.

WRDA 2016

SEC. 1126. STUDY OF WATER RESOURCES DEVELOPMENT PROJECTS BY NON-FEDERAL INTERESTS.

Section 203 of the Water Resources Development Act of 1986 (33 U.S.C. 2231) is amended by adding at the end the following:

(e) **TECHNICAL ASSISTANCE.** At the request of a non-Federal interest, the Secretary may provide to the non-Federal interest technical assistance relating to any aspect of a feasibility study if the non-Federal interest contracts with the Secretary to pay all costs of providing such technical assistance.

Enclosure