



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

CECW-P

APR 17 2019

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Revised Implementation Guidance for Section 1115 of the Water Resources Development Act (WRDA) of 2018, Property Acquisition

1. The Assistant Secretary of the Army, Civil Works approved on 12 April 2019 Section 1115 of WRDA 2018. The attached implementation guidance is posted for internal and external use on the U.S. Army Corps of Engineers official WRDA website:
<http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/>.
2. Please ensure wide dissemination of this guidance. Questions regarding this implementation guidance should be directed to the Headquarters POC, Theodore Nettles, Realty Specialist, Real Estate Community of Practice, at (202) 761-5542 or theodore.l.nettles@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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APR 12 2019

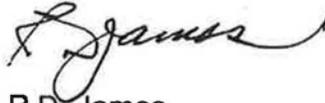
MEMORANDUM FOR THE COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Implementation Guidance for Section 1115, Water Resources Development Act of 2018, Property Acquisition

1. Section 1115 of the Water Resources Development Act of 2018 (WRDA 2018) directs that the Secretary shall first consider the minimum interest in real property necessary to support the water resources development project for which such interest is acquired. The Secretary shall consider, with respect to a State, the procedures that the State uses to acquire, or require the acquisition of, interests in land. Section 1115 of WRDA 2018 is enclosed.
2. It is the policy of U.S. Army Corps of Engineers (Corps), as provided in Engineer Regulation 405-1-12, Chapter 12, Paragraph 12-9, Determining the Appropriate Interest to Acquire, to acquire, or to require a non-Federal sponsor to provide, the minimum interest in real property necessary to support a project. Paragraphs 12-9 b-d provide guidance on which types of interests are to be used to support specific project types, with leeway provided that greater or lesser interests may be appropriate depending upon the purposes of a project or other circumstances relating to project requirements or a particular acquisition. The Corps will continue to follow Real Estate policy, as stated in ER 405-1-12.
3. In general, a non-Federal sponsor must have the authority and full capability under state law to acquire the interests identified in paragraph 12-9 of ER 405-1-12 as required for the project to enter into studies and projects with the Corps. State or local statutory restrictions on a non-Federal sponsor's capability alone will not be sufficient to justify deviation from the interests identified in paragraph 12-9 of ER 405-1-12. State procedures must comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, P.L. 91-646, and the implementing regulations found in Part 24 of Title 49 of the Code of Federal Regulations.
4. This guidance shall be transmitted to the appropriate Corps Division and District Commanders and posted to the Corps' WRDA website within five business days of receipt (written or electronic) from this office. Guidance shall be transmitted and posted as is and without additional guidance attached.

SUBJECT: Implementation Guidance for Section 1115, Water Resources Development Act of 2018, Property Acquisition

5. Questions regarding this implementation guidance should 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)

Enclosure

cf: MG Scott Spellmon, Deputy Commanding General, Civil and Emergency Operations
James Dalton, Director of Civil Works

Water Resources Development Act of 2018, Section 1115. Property Acquisition

(a) **IN GENERAL.** In acquiring an interest in land, or requiring a non-Federal interest to acquire an interest in land, the Secretary shall, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, first consider the minimum interest in real property necessary to support the water resources development project for which such interest is acquired.

(b) **DETERMINATION.** In determining an interest in land under subsection (a), the Secretary shall first consider a temporary easement or other interest designed to reduce the overall cost of the water resources development project for which such interest is acquired, reduce the time to complete such project, and minimize conflict with property owners related to such project.

(c) **PROCEDURES USED IN STATE.** In carrying out subsection (a), the Secretary shall consider, with respect to a State, the procedures that the State uses to acquire, or require the acquisition of, interests in land, to the extent that such procedures are generally consistent with the goals of a project or action.

Engineer Regulation 405-1-12

Chapter 12, Paragraph 12-9. Determining the Appropriate Interest to Acquire.

a. General. It is the policy of USACE to acquire, or to require a non-Federal sponsor to provide, the minimum interest in real property necessary to support a project. The interests described in the following paragraphs have been determined to represent the minimum interest generally required to support the described purposes or features and must be utilized unless otherwise approved as described in subparagraph e of this paragraph. Greater or lesser interests may be appropriate depending upon the purposes of a project or other circumstances relating to project requirements or a particular acquisition.

b. Fee Title. Generally, fee title is required for the following:

- (1) dam sites;
- (2) lock and dam sites;
- (3) disposal and borrow areas required for future maintenance work;
- (4) public access areas;
- (5) recreation; and
- (6) fish and wildlife mitigation lands, ecosystem restoration, and other environmental purposes. However, a lesser, or easement estate, may be appropriate based on the extent of interest required for the operation or requirements of a project.
- (7) disposal areas located on fast land that are required for commercial navigation projects for a harbor or inland harbor.

c. Permanent Easements. Generally, permanent easements are required for the following:

- (1) levees, floodwalls and other permanent structures;
- (2) flowage areas;
- (3) ponding areas for dry dams;
- (4) channel rectification works and adequate access thereto;
- (5) areas impacted by induced flooding where the impact rises to the level of a taking;
- (6) roads;
- (7) waterway improvements and the right to permanently flood areas needed for navigation pools;
- (8) the construction and maintenance of aids to navigation (the location and extent of land required for aids to navigation shall be coordinated by the District Commander with the local Coast Guard District Commander at the time the land is being obtained).

d. Temporary Easements. Generally, temporary easements are required for the following:

- (1) adequate access and work areas required during construction of the project;
- (2) disposal areas for all projects other than commercial navigation projects for a harbor or inland harbor if needed only to support construction; and

(3) Borrow Areas. While a temporary easement is generally required to support borrowing of materials, it is noted that small amounts of borrow materials, or disposal capacity, may sometimes be supplied by the construction contractor through use of a readily available commercial site. If so determined by an analysis conducted by PM, Engineering, Real Estate and other District and non-Federal sponsor offices, and if no other constraints exist, the construction contract solicitation documents should clearly request bids therefor and provision of such materials or capacity by the construction contractor would be in the nature of a construction item not LERRD (lands, easements, rights-of-way, relocations, and dredged or excavated material disposal areas). In no instance, however, should a contractor be required to provide lands, easements or rights-of-way (LER) for the project in support of borrow or disposal.

e. Approval Authority. Unless approved as part of a Real Estate Plan (REP) contained in an approved decision document for the project, requests to deviate from application of the interests required by subparagraphs b., c., or d. of this paragraph, together with adequate justification, must be forwarded in writing through Division to HQUSACE (ATTN: CERE-AP) for coordination, review and approval.