



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 1139 of the Water Resources Development Act (WRDA) of 2016, Dam Safety Repair Projects

1. The Assistant Secretary of the Army, Civil Works approved on 22 March 2019 Section 1139 of WRDA 2016. 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, Jacob Davis, Program Manager, Dam Safety Program, Engineering and Construction Division, at (202) 761-4643 or jacob.r.davis@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
ASSISTANT SECRETARY OF THE ARMY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

22 MAR 2019

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

SUBJECT: Implementation Guidance for Section 1139 of the Water Resources Development Act 2016, Dam Safety Repair Projects

1. Section 1139 of the Water Resource Development Act of 2016 (WRDA 2016) directs the Secretary to (1) issue guidance on the circumstances under which the special cost sharing of Section 1203(a) of the Water Resources Development Act of 1986 (WRDA 1986) (33 U.S.C. §467n(a)) relating to state-of-the-art design or construction criteria deemed necessary for safety purposes applies to a dam safety repair project; (2) to assist district offices of the U.S. Army Corps of Engineers (Corps) in communicating with non-Federal interests when entering into and implementing cost-sharing agreements for dam safety repair projects; and (3) to assist District Commanders in communicating with non-Federal interests concerning the estimated and final cost-share responsibilities of the non-Federal interests under agreements for dam safety repair projects. A copy of sections 1139 of WRDA 2016 and 1203 of WRDA 1986 is enclosed.
2. Section 1203 of WRDA 1986 provides special cost-sharing for modification of dams and related facilities constructed or operated by the Corps, the cause of which results from new hydrologic or seismic data or changes in state-of-the-art design or construction criteria deemed necessary for safety purposes. Army policy, reflected in Engineer Regulation 1110-2-1156, addresses the application of Section 1203 cost sharing to modifications needed to address new hydrologic or seismic data. This guidance addresses the application of Section 1203 cost sharing for modifications related to changes in the state-of-the-art design or construction criteria.
3. The more favorable project cost sharing established by Section 1203 of WRDA 1986 shall be applied where the Secretary deems modifications to a dam to be caused by changes in the state-of-the-art design or construction criteria and necessary for safety purposes. District Commanders are in the best position to identify changes in the state-of-the-art design or construction criteria and the causal connection between the change in the state-of-the-art criteria and a dam mode of failure, as well as whether the modification to the dam is needed for safety purposes. District Commanders will prepare a decision document for approval by the Assistant Secretary of the Army for Civil Works (ASA(CW)) documenting the statutory requirements, i.e. the modification of the dam or related facilities, the construction or operation of the dam or related facilities by the Corps, the specific change in the state-of-the-art design or construction criteria,

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and how this particular change requires a modification to the dam or related facilities for safety purposes.

4. District Commanders will provide information to non-Federal interests at the time of entering into project agreements that require non-Federal contribution toward the operation, maintenance, repair, and rehabilitation of a Corps operated dam, including water supply agreements, explaining that future costs could include dam safety modifications. In addition to holding at least one public forum during the development of alternatives for rehabilitation of the dam and prior to initiating modification work on dams operated by the Corps, District Commanders will communicate, in writing, to local communities and other stakeholders, including water supply users, power marketing agencies, and power marketing customers, the concern, alternatives considered and their cost, the proposed work and associated costs, and expected impact on, as well as required contributions from, project beneficiaries.

5. The Director of Civil Works shall modify all policies, regulations, and guidance documents within the next 60 days to align with this new guidance. Guidance shall be reviewed and approved by my office before being finalized.

6. 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.

7. 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)

Enclosures

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

Water Resources Development Act of 2016, Section 1139 – Dam Safety Repair Projects

The Secretary shall issue guidance

- (1) on the types of circumstances under which the requirement in section 1203(a) of the Water Resources Development Act of 1986 (33 U.S.C. 467n(a)) relating to state-of-the-art design or construction criteria deemed necessary for safety purposes applies to a dam safety repair project;
- (2) to assist district offices of the Corps of Engineers in communicating with non-Federal interests when entering into and implementing cost-sharing agreements for dam safety repair projects; and
- (3) to assist the Corps of Engineers in communicating with non-Federal interests concerning the estimated and final cost-share responsibilities of the non-Federal interests under agreements for dam safety repair projects.

Water Resources Development Act of 1986, Section 1203 - Dam Safety

(a) After the date of enactment of this Act, costs incurred in the modification by the Secretary of dams and related facilities constructed or operated by the Secretary, the cause of which results from new hydrologic or seismic data or changes in state-of-the-art design or construction criteria deemed necessary for safety purposes, shall be recovered in accordance with the provisions in this subsection:

(1) Fifteen percent of the modification costs shall be assigned to project purposes in accordance with the cost allocation in effect for the project at the time the work is initiated. Non-Federal interests shall share the costs assigned to each purpose in accord with the cost sharing in effect at the time of initial project construction: Provided, that the Secretary of the Interior shall recover costs assigned to irrigation in accordance with repayment provisions of Public Law 98-404.

(2) Repayment under this subsection, with the exception of costs assigned to irrigation, may be made, with interest, over a period of not more than thirty years from the date of completion of the work. The interest rate used shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the applicable reimbursable period during the month preceding the fiscal year in which the costs are incurred, plus a premium of one-eighth of one percentage point for transaction costs. To the extent that more than one interest rate is determined pursuant to the preceding sentence, the Secretary of the Treasury shall establish an interest rate at the weighted average of the rates so determined.

(b) Nothing in this section affects the authority of the Secretary to perform work pursuant to Public Law 84-99, as amended (33 U.S.C. 701n) or cost sharing for such work.