



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 1153 of the Water Resources Development Act (WRDA) of 2018, Construction of Water Resources Development Projects by Non-Federal Interests

1. The Assistant Secretary of the Army, Civil Works approved on 12 April 2019 Section 1153 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, Ada Benavides, Senior Policy Advisor, Planning and Policy Division, at (202) 761-0415 or [ada.benavides@usace.army.mil](mailto:ada.benavides@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

APR 12 2019

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

SUBJECT: Implementation Guidance for Section 1153 of the Water Resources Development Act of 2018, Construction of Water Resources Development Projects by Non-Federal Interests

1. Section 1153 of the Water Resources Development Act of 2018 (WRDA 2018) further amends Section 204 of the Water Resources Development Act of 1986 (WRDA 1986) (33 U.S.C. 2232), which authorizes a non-Federal interest to undertake construction of certain water resources development projects, to provide that the projects must be Federally authorized; to provide exceptions to permitting requirements in certain situations; to provide that any studies, engineering, and technical assistance provided by the U.S. Army Corps of Engineers (Corps) to the non-Federal interest is not eligible for credit or reimbursement; to require provision of certain data and documentation to the non-Federal interest; and to authorize credit or reimbursement as discrete segments of the project or separable elements are completed. Section 1153 of WRDA 2018 is enclosed.

2. Non-Federal interests may carry out federally authorized water resources development projects, with potential credit or reimbursement, subject to certain requirements.

3. In general, non-Federal interests must obtain any permit or approval required in connection with the project or separable element under Federal or state law and must ensure that a final environmental impact statement or environmental assessment, as appropriate, for the project or separable element has been completed. However, in the case of a water resources development project authorized for construction based on a feasibility report prepared by the Corps, a non-Federal interest is not required to obtain any Federal permits or approvals that would not be required if the Secretary carried out the project or separable element, unless significant new circumstances or information relevant to environmental issues have arisen since development of the project recommendation. The non-Federal interest is required to comply with the same technical and legal requirements that would apply if the project were carried out by the Secretary, including mitigation required to offset environmental impacts of the project or separable element as determined by the Assistant Secretary of the Army for Civil Works (ASA(CW)). In addition, the non-Federal interest is still required to obtain any state certifications required under Federal law to carry out the project. This exemption to obtaining Federal permits and approvals does not apply to a water resources development project that is authorized based on a feasibility report completed by a non-Federal interest under Section 203 of WRDA 1986, as amended.

**SUBJECT: Implementation Guidance for Section 1153 of the Water Resources Development Act of 2018, Construction of Water Resources Development Projects by Non-Federal Interests**

4. Section 204 authorizes the Secretary to undertake all necessary studies, engineering, and technical assistance on construction for any project to be undertaken by the non-Federal interest and provide technical assistance in obtaining any permits necessary for the construction, if the non-Federal interest contracts with the ASA(CW) to furnish the United States all funds necessary for the Corps to undertake studies, engineering, or technical assistance. Funds provided by non-Federal interests under this subsection are not eligible for credit or reimbursement. The provision of assistance under Section 204(c), as well as the memorandum of agreement (MOA) for the provision of such assistance, require the approval of the Major Subordinate Command (MSC) Commander. Corps headquarters will develop a template MOA, which will be posted on the Corps Agreement Website. In carrying out this section, the ASA(CW) shall ensure that the use of funds accepted from a non-Federal interest will not affect his or her impartial decision making , either substantively or procedurally. Nothing in this section may be construed to waive any requirement of Section 3142 of title 40, United States Code.

5. At the written request of a non-Federal interest, the Corps District Commander shall transfer to the non-Federal interest all relevant data and documentation under the control of the U.S. Army with respect to that water resources development project. The District Commander shall transfer non-proprietary data and documentation not later than 90 days after the non-Federal interest requests the data and documentation.

6. The Director of Civil Works is directed to modify, amend or update Engineer Regulation (ER) 1165-2-504, any companion guidance to that ER, and other relevant documents, such as Regulatory Guidance Letters, that support the implementation of this provision. All modifications, amendments, or updates of relevant guidance documents will be provided as drafts for ASA(CW) review within 60 days of the issuance of this guidance.

7. 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.

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8. Questions regarding this implementation guidance should be directed to Andrea Walker, Office of the Assistant Secretary of the Army for Civil Works, at [andrea.e.walker.civ@mail.mil](mailto:andrea.e.walker.civ@mail.mil) or 202 761 0027.

Enclosure



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

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

**Water Resources Development Act of 2018, Section 1153 - Construction of Water Resources Development Projects by Non-Federal Interests**

Section 204 of the Water Resources Development Act of 1986 (33 U.S.C. 2232) is amended

(1) in subsection (b)

(A) in paragraph (1), in the matter preceding subparagraph (A), by inserting "federally authorized" before "water resources development project";

(B) in paragraph (2)(A), by inserting ", except as provided in paragraph (3)" before the semicolon; and

(C) by adding at the end the following:

(3) PERMIT EXCEPTION.

(A) IN GENERAL. For a project described in subsection (a)(1) or subsection (a)(3), or a separable element thereof, with respect to which a written agreement described in subparagraph (B) has been entered into, a non-Federal interest that carries out a project under this section shall not be required to obtain any Federal permits or approvals that would not be required if the Secretary carried out the project or separable element unless significant new circumstances or information relevant to environmental concerns or compliance have arisen since development of the project recommendation.

(B) WRITTEN AGREEMENT. For purposes of this paragraph, a written agreement shall provide that the non-Federal interest shall comply with the same legal and technical requirements that would apply if the project or separable element were carried out by the Secretary, including all mitigation required to offset environmental impacts of the project or separable element as determined by the Secretary.

(C) CERTIFICATIONS. Notwithstanding subparagraph (A), if a non-Federal interest carrying out a project under this section would, in the absence of a written agreement entered into under this paragraph, be required to obtain a certification from a State under Federal law to carry out the project, such certification shall still be required if a written agreement is entered into with respect to the project under this paragraph.

(4) DATA SHARING.

(A) IN GENERAL. If a non-Federal interest for a water resources development project begins to carry out that water resources development project under this section, the non-Federal interest may request that the Secretary transfer to the non-Federal interest all relevant data and documentation under the control of the Secretary with respect to that water resources development project.

(B) DEADLINE. Except as provided in subparagraph (C), the Secretary shall transfer the data and documentation requested by a non-Federal interest under subparagraph (A) not later than the date that is 90 days after the date on which the non-Federal interest so requests such data and

documentation.

(C) LIMITATION. Nothing in this paragraph obligates the Secretary to share any data or documentation that the Secretary considers to be proprietary information.

(2) by amending subsection (c) to read as follows:

(c) STUDIES AND ENGINEERING.

(1) IN GENERAL. When requested by an appropriate non-Federal interest, the Secretary shall undertake all necessary studies, engineering, and technical assistance on construction for any project to be undertaken under subsection (b), and provide technical assistance in obtaining all necessary permits for the construction, if the non-Federal interest contracts with the Secretary to furnish the United States funds for the studies, engineering, or technical assistance on construction in the period during which the studies, engineering, or technical assistance on construction are being conducted.

(2) NO WAIVER. Nothing in this section may be construed to waive any requirement of section 3142 of title 40, United States Code.

(3) LIMITATION. Funds provided by non-Federal interests under this subsection shall not be eligible for credit or reimbursement under subsection (d).

(4) IMPARTIAL DECISIONMAKING. In carrying out this section, the Secretary shall ensure that the use of funds accepted from a non-Federal interest will not affect the impartial decision making of the Secretary, either substantively or procedurally.”; and

(3) in subsection (d)

(A) in paragraph (3)

(i) in subparagraph (A), by striking “; and” and inserting a semicolon;

(ii) in subparagraph (B)(ii), by striking the period at the end and inserting “; and” and

(iii) by adding at the end the following:

“(C) in the case of reimbursement, appropriations are provided by Congress for such purpose.”; and

(B) in paragraph (5)

(i) by striking “flood damage reduction” each place it appears and inserting “water resources development”;

(ii) in subparagraph (A), by striking “for a discrete segment of a” and inserting “for carrying out a discrete segment of a federally authorized”; and

(iii) in subparagraph (D), in the matter preceding clause (i), by inserting “to be carried out” after “project”.