



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 1166 of the Water Resources Development Act (WRDA) of 2018, Advance Funds for Water Resources Development Projects

1. The Assistant Secretary of the Army, Civil Works approved on 12 April 2019 Section 1166 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.

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
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APR 12 2019

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

SUBJECT: Implementation Guidance for Section 1166 of the Water Resources Development Act of 2018, Advanced Funds for Water Resources Development Projects

1. References:

a. Implementation Guidance for Sections 1015 and 1023 of the Water Resources, Reform, and Development Act of 2014 (WRRDA 2014), Contributed Funds, dated 11 February 2015

b. Memorandum; Establishment of a 120-day Performance Metric for Processing Contributed Funds for Operation & Maintenance (O&M) Dredging Using a Model Contributed Funds Memorandum Of Agreement, dated 19 February 2015

c. Engineer Regulation 1165-2-30, Acceptance and Return of Required, Contributed or Advance Funds, dated 30 October 1998

2. Section 1166 of the Water Resources Development Act of 2018 (WRDA 2018) amends the Act of October 15, 1940 (33 U.S.C. 701h-1) to allow for advanced funds to be accepted for all types of water resources development projects and clarifies the entities that are considered under the term "State." Section 1166 provides general direction that for any provision of law that authorizes a non-Federal interest to provide, advance, or contribute funds to the Secretary for the development or implementation of a water resources development project, the Secretary shall ensure, to the maximum extent practicable, that the use by a non-Federal interest of such authorities does not adversely affect: (1) the process or timeline for development and implementation of other water resources development projects by other non-Federal entities that do not use such authorities; or (2) the process for including such projects in the President's annual budget submission to Congress. Lastly Section 1166 repeals Section 11 of the Act of March 3, 1925 (33 U.S.C. 561). Section 1166 of WRDA 2018 and 33 U.S.C. 701h-1 are enclosed.

3. Reference 1.c. is rescinded.

4. Guidance on contributed funds is provided in 1.a. and 1.b. and in paragraph 7 of this memorandum.

SUBJECT: Implementation Guidance for Section 1166 of the Water Resources Development Act of 2018, Advanced Funds for Water Resources Development Projects

5. The authority provided in 33 U.S.C. 701h-1 allows the Assistant Secretary of the Army for Civil Works (ASA(CW)) to accept advanced funds from a state or political subdivision thereof to implement a federally authorized water resources development project. Advanced funds are non-Federal funds provided as an advance of the Federal share of the cost of construction of an authorized water resources development project, or the Federal share of the cost of a cycle of operation and maintenance of a constructed navigation project, with eligibility for potential repayment. Advanced funds are in addition to funds provided to meet any required non-Federal cost share. As provided in 33 U.S.C. 701h-1, the term "State" means the several States, the District of Columbia, the commonwealths, territories, and possessions of the United States, and Indian tribes (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(e)).

a. A proposal from a State or political subdivision thereof offering advanced funds to the Assistant Secretary of the Army for Civil Works (ASA(CW)) will be considered only if the State or political subdivision thereof is offering to provide all funds, covering both the Federal and non-Federal share of the total project costs required to construct an authorized water resources development project or separable element thereof. In the case of an authorized and constructed navigation project, all funds for a cycle of operation and maintenance for that project are required. In addition, in the case of a project for which the Section 902 maximum project cost is exceeded, the proposal must provide for the provision of all funds in excess of the Section 902 limit, with acknowledgment that no credit or repayment for that excess amount will be provided. The Federal share of funds advanced, within the Section 902 limit, is eligible for repayment, without interest, only if federal funds are appropriated for that purpose.

b. Acceptance of advanced funds does not take the place of, or obviate the need for, a new start determination related to Federal funding. Additionally, the process for, and consideration of, inclusion of such projects in the President's budget remains the same. In the event that Federal funds are provided for construction of the project, those funds may be used only for the Federal share of contracts not yet awarded, or in the case of an awarded base plus option contract, for the Federal share of an option not yet exercised. The repayment of the Federal share of any costs committed for Government labor costs or contract obligations prior to the date of an allocation of Federal funds is subject to funds being provided for such purpose.

c. Section 1166(c) of WRDA 2018 repealed 33 U.S.C. 561, which addressed the acceptance of advanced funds for specifically authorized navigation projects. The acceptance of advanced funds for such projects will follow the guidance provided in this memorandum, which is applicable to the acceptance of advanced funds for all authorized water resources development projects.

SUBJECT: Implementation Guidance for Section 1166 of the Water Resources Development Act of 2018, Advanced Funds for Water Resources Development Projects

6. Procedure.

a. In response to an inquiry from a state or political subdivision thereof, a district may explain generally the policies and procedures for acceptance of advanced funds.

b. Corps Headquarters procedures for Congressional Committee notification will be followed. To initiate the Committee notification process, the appropriate District Commander must submit the following information through the Major Subordinate Command (MSC) to the applicable U.S. Army Corps of Engineers (Corps) Headquarters Regional Integration Team (RIT).

c. The RIT will provide the following documents to the Chief, Future Directions Branch who will transmit the documents and a recommendation to the Office of the ASA(CW) within 30 days of the request being received at headquarters:

(1) Draft Committee notification letters to the Chairmen and Ranking Members of the House and Senate Appropriations Subcommittees on Energy and Water Development.

(2) A letter from the state or political subdivision thereof stating its offer to provide all funds required to construct the project or separable element thereof, or for a cycle of operation and maintenance, as applicable; the estimated amount of the cost of the work, and its acknowledgment that acceptance of such funds will not constitute or imply any commitment to budget, or appropriate Federal funds for the project in the future.

(3) A concise information paper which describes: (a) project authorization history and the status of project implementation, including any existing cost share agreements and responsibilities for implementation; (b) summary describing that the eligibility of the State or political subdivision thereof to provide advanced funds; (c) description of work to be performed with the advanced funds; (d) estimated cost of such work; (e) rationale of why accomplishment of such work is advantageous in the public interest; (f) discussion of any impact on other work in the Corps for which funds have been appropriated by Congress.

d. Pending completion of the Committee notification process, the Headquarters Agreements' Team will be available to assist the responsible District Commander in developing a draft Advanced Funds Agreement. The Office of the ASA(CW) will notify headquarters when the Committee notification process has been completed. The RIT will then notify the MSC and District Commanders that the district can begin negotiation of the agreement. The District will submit the negotiated draft agreement package through the MSC to the RIT for Headquarters review, with the Director of Civil Works authorized to approve the agreement for execution. The materials provided with the

SUBJECT: Implementation Guidance for Section 1166 of the Water Resources Development Act of 2018, Advanced Funds for Water Resources Development Projects

request must include: (a) the negotiated draft agreement, including all necessary project specific information; (b) explanation of deviations from the Headquarters-developed draft agreement and detailed rationale for such deviations; (c) Certificate of Legal Review signed by District Counsel specifying whether the agreement is appropriate and legally sufficient based on the facts of the particular advanced funds proposal; (d) non-Federal Sponsor's Self Certification of Financial Capability and other required Certifications, (e) funds allocation table, and (f) completed PPA Checklist.

7. In accordance with Section 1166(b) of WRDA 2018, the Secretary shall ensure, to the maximum extent practicable, that the use of any authority that allows a non-Federal interest to provide, advance, or contribute funds to the Secretary for the development or implementation of a water resources development project (including Sections 203 and 204 of WRDA 1986, as amended (33 U.S.C. 2231, 2232), 33 U.S.C. 701h, and 33 U.S.C. 701h-1), does not adversely affect (1) the process or timeline for development and implementation of other water resources development projects by other non-Federal entities that do not use such authorities; or (2) the process for including such projects in the President's annual budget submission to Congress under 31 U.S.C. 1105(a). Guidance for Sections 203 and 204 of Water Resources Development Act of 1986, as amended, allowing for non-Federal interests' study and construction of federally authorized water resources development projects, can be found in ER 1165-2-209 and ER 1165-2-504, respectively.

8. 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.

9. 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 202 520 4867.



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 1166. Advanced Funds for Water Resources Development Studies and Projects

(a) CONTRIBUTIONS BY STATES AND POLITICAL SUBDIVISIONS FOR IMMEDIATE USE ON AUTHORIZED FLOOD-CONTROL WORK; REPAYMENT.

The Act of October 15, 1940 (33 U.S.C. 701h-1) is amended

(1) by striking “a flood-control project duly adopted and authorized by law” and inserting “a federally authorized water resources development project,”;

(2) by striking “such work” and inserting “such project”;

(3) by striking “from appropriations which may be provided by Congress for flood-control work” and inserting “if appropriations are provided by Congress for such purpose”; and

(4) by adding at the end the following: “For purposes of this Act, the term “State” means the several States, the District of Columbia, the commonwealths, territories, and possessions of the United States, and Indian tribes (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(e)).”

(b) NO ADVERSE EFFECT ON PROCESSES. In implementing any provision of law that authorizes a non-Federal interest to provide, advance, or contribute funds to the Secretary for the development or implementation of a water resources development project (including sections 203 and 204 of the Water Resources Development Act of 1986 (33 U.S.C. 2231, 2232), section 5 of the Act of June 22, 1936 (33 U.S.C. 701h), and the Act of October 15, 1940 (33 U.S.C. 701h-1)), the Secretary shall ensure, to the maximum extent practicable, that the use by a non-Federal interest of such authorities does not adversely affect

(1) the process or timeline for development and implementation of other water resources development projects by other non-Federal entities that do not use such authorities; or

(2) the process for including such projects in the President’s annual budget submission to Congress under section 1105(a) of title 31, United States Code.

(c) ADVANCES BY PRIVATE PARTIES; REPAYMENT. Section 11 of the Act of March 3, 1925 (Chapter 467; 33 U.S.C. 561) is repealed.

33 U.S.C. 701h-1

Whenever any State or political subdivision thereof shall offer to advance funds for a federally authorized water resources development project, the Secretary of the Army may in his discretion, receive such funds and expend the same in the immediate prosecution of such project. The Secretary of the Army is authorized and directed to repay without interest, if appropriations are provided by Congress for such purpose, the moneys so contributed and expended: *Provided, however,* That no repayment of funds which may be contributed for the purpose of meeting any conditions of local cooperation imposed by Congress, or under the authority of section 701h of this title, shall be made. For purposes of this Act, the term "State" means the several States, the District of Columbia, the commonwealths, territories, and possessions of the United States, and Indian tribes (as defined in section 5304(e) of Title 25).