



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 1161 of the Water Resources Development Act (WRDA) of 2018, Cost and Benefit Feasibility Assessment

1. The Assistant Secretary of the Army, Civil Works approved on 12 April 2019 Section 1161 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, Willem Helms, Program Manager, Homeland Security, at (202) 761-5909 or willem.h.helms@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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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 1161 of the Water Resources Development Act of 2018, Cost and Benefit Feasibility Assessment

1. Section 1161(a) of the Water Resources Development Act of 2018 (WRDA 2018) amends section 5(a) of the Act of August 18, 1941 (33 U.S.C. 701n) to provide the U.S. Army Corps of Engineers (Corps)' Chief of Engineers with express authority to repair or restore Federal and non-Federal flood risk management (FRM) projects and Federally authorized coastal storm risk management (CSRM) projects when the costs of the repair or restoration work exceed the benefits, if the non-Federal sponsor agrees to pay all costs in excess of benefits and the Secretary determines that the damage to the structure was not a result of negligent operation or maintenance and that repair of the project could benefit another Corps project. Section 5(a) of the Act of August 18, 1941, as amended by Section 1161(a) of WRDA 2018 is enclosed.
2. Section 1161(b) provides for repair or restoration work formulated for a non-Federal flood risk management (FRM) project during the three fiscal years preceding fiscal year 2019 that was determined to have costs in excess of benefits to remain eligible for funding until the last day of the third fiscal year following fiscal year 2019, regardless of the non-Federal FRM project's status in the Rehabilitation and Inspection Program (RIP), if the Secretary determines that the damage to the structure was not a result of negligent operation or maintenance and that repair of the non-Federal FRM project could benefit another Corps project. Section 1161(b) of WRDA 2018 is enclosed.
3. Although the authority provided in Section 1161(a) to carry out repair or restoration work when costs exceed benefits extends to both FRM and CSRM projects, the Corps will apply the authority to FRM projects and CSRM projects no longer in a period of Federal participation only. When repair or restoration of federally authorized CSRM projects in a period of Federal participation is not economically justified on the basis of a single event, repair or restoration is customarily accomplished by accelerating the next cycle of cost-shared renourishment.
4. For work to repair or restore a Federal or non-Federal FRM project formulated after the date of this guidance that is determined to have costs in excess of benefits, a non-Federal interest may provide funds in an amount sufficient to result in a benefit cost

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ratio of unity or higher in order to allow the Corps to consider funding necessary repairs or restorations. If the non-Federal interest is willing to provide the necessary funding, the Project Information Report (PIR) will document the cause of the damage and determine if repair of the project could benefit another water resources development project constructed by the Corps. If the District Commander determines in the PIR that deferred or deficient operation or maintenance did not cause the damage and that repairing the FRM project could benefit another Corps project, the repair or restoration work will be considered for funding under the Flood Control and Coastal Emergencies account based on the damage classification system utilized by the Corps to prioritize repair and restoration assistance authorized by section 5(a).

5. For repair or restoration work formulated during fiscal year 2016, 2017, or 2018 for a non-Federal FRM project that was determined to have costs in excess of benefits, a non-Federal interest willing to provide funds in sufficient amounts to result in a benefit-to-cost ratio of unity should contact the responsible Corps District Commander and provide documentation demonstrating that the damage was not caused by deferred or deficient operation or maintenance and that repair of the non-Federal FRM project could benefit another Corps project. If the District Commander determines that the damage was not caused by deferred or deficient operation or maintenance and that repair of the non-Federal FRM project could benefit another Corps project, the repair or restoration work will be considered for funding under the Flood Control and Coastal Emergency account based on the damage classification system utilized by the Corps to prioritize repair and restoration work authorized by section 5(a).

6. Procedures.

a. The Cooperation Agreement for repair or restoration work covered by this Section will outline the non-Federal interest's obligation to provide funds to cover costs in excess of benefits, as well as any non-Federal cash contribution required for the remaining costs. The District Commander must submit the draft Cooperation Agreement through the Major Subordinate Command to the Director of Civil Works, Headquarters for review and approval prior to execution.

b. Any PIR for repair or restoration work described in paragraph 5 of this guidance will be updated to document the findings required by Section 1161 and to update the cost and benefit estimates based on existing conditions. The PIR update will also include an estimate of the amount the non-Federal interest must provide to result in a benefit-to-cost ratio of unity or higher.

7. The acceptance of funds provided by a non-Federal interest to pay costs in excess of benefits does not affect or alter any requirements under Federal laws, regulations, and policies otherwise applicable to design and construction of repair and restoration work or operation and maintenance of FRM and CSRM projects.

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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

Section 5(a) of the Act of August 18, 1941, as amended by Section 1161(a) of the Water Resources Development Act of 2018 (33 U.S.C. 701n).

(a) Emergency fund

(1) There is authorized an emergency fund to be expended in preparation for emergency response to any natural disaster, in flood fighting and rescue operations, or in the repair or restoration of any flood control work threatened or destroyed by flood, including the strengthening, raising, extending, realigning, or other modification thereof as may be necessary in the discretion of the Chief of Engineers for the adequate functioning of the work for flood control and subject to the condition that the Chief of Engineers may include modifications to the structure or project, or in implementation of nonstructural alternatives to the repair or restoration of such flood control work if requested by the non-Federal sponsor; in the emergency protection of federally authorized hurricane or shore protection being threatened when in the discretion of the Chief of Engineers such protection is warranted to protect against imminent and substantial loss to life and property; in the repair and restoration of any federally authorized hurricane or shore protective structure or project damaged or destroyed by wind, wave, or water action of other than an ordinary nature to either the pre-storm level or the design level of protection, whichever provides greater protection, when, in the discretion of the Chief of Engineers, such repair and restoration is warranted for the adequate functioning of the structure or project for hurricane or shore protection, subject to the condition that the Chief of Engineers may include modifications to the structure or project to address major deficiencies or implement nonstructural alternatives to the repair or restoration of the structure if requested by the non-Federal sponsor.

(2) Cost and Benefit Feasibility Assessment.

(A) Consideration of Benefits. In preparing a cost and benefit feasibility assessment for any emergency project described in paragraph (1), the Chief of Engineers shall consider the benefits to be gained by such project for the protection of

- (i) residential establishments;
- (ii) commercial establishments, including the protection of inventory; and
- (iii) agricultural establishments, including the protection of crops.

(B) Special Conditions.

(i) Authority to Carry Out Work. The Chief of Engineers may carry out repair or restoration work described in paragraph (1) that does not produce benefits greater than the cost if

- (I) the non-Federal sponsor agrees to pay an amount sufficient to make the remaining costs of the project equal to the estimated value of the benefits of the repair or restoration work; and
- (II) the Secretary determines that
 - (aa) the damage to the structure was not a result of negligent operation or maintenance; and
 - (bb) repair of the project could benefit another Corps project.

(ii) Treatment of Payments. Non-Federal payments pursuant to clause (i) shall be in addition to any non-Federal payments required by the Chief of Engineers that are applicable to the remaining costs of the repair or restoration work.

Water Resourced Development Act of 2018, Section 1161(b)

(b) Continued Eligibility. Notwithstanding a non-Federal flood control work's status in the Rehabilitation and Inspection Program carried out pursuant to section 5 of the Act of August 18, 1941 (33 U.S.C. 701n), any unconstructed emergency project for the non-Federal flood control work that was formulated during the three fiscal years preceding the fiscal year in which this Act was enacted but that was determined to not produce benefits greater than costs shall remain eligible for assistance under such section 5 until the last day of the third fiscal year following the fiscal year in which this Act was enacted if

- (1) the non-Federal sponsor agrees, in accordance with such section 5, as amended by this Act, to pay an amount sufficient to make the remaining costs of the project equal to the estimated value of the benefits of the repair or restoration work; and
- (2) the Secretary determines that
 - (A) the damage to the structure was not as a result of negligent operation or maintenance; and
 - (B) repair of the project could benefit another Corps project.