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	Water Resources Policies and Authorities MODIFICATIONS TO COMPLETED PROJECTS	
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DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, D.C. 20314

DAEN-CWR-R

Regulation
No. 1165-2-119

20 September 1982

Water Resources Policies and Authorities
MODIFICATIONS TO COMPLETED PROJECTS

1. Purpose. To coalesce guidance on the use of available authorities, as compared to the need for new project authorizations, for study and accomplishment of modifications to completed projects.

2. Applicability. This regulation applies to all Headquarters, USACE elements and all field operating activities (FOAs) having Civil Works responsibilities.

3. References.

- a. Section 216 of the Flood Control Act of 1970.
- b. ER 1105-2-10 (Chapter 4)
- c. ER 1105-2-20 (Chapter 7)
- d. ER 1110-2-240
- e. ER 1130-2-334
- f. ER 1130-2-417

4. Definitions.

a. Original project development. Planning, land acquisition, design and construction which fulfilled the initial project authorization requirements (plus, if applicable, similar accomplishments for any subsequently completed project modifications).

b. Completed project. A project, or separately funded portion of a project, is considered complete when any one of the following conditions is met:

(1) When contracts, or hired labor activities, for all work included in the plan of improvement contemplated when final appropriations were made by Congress have been physically completed.

(2) Same as (1) above, except that a determination was made that some element of work was not required.

(3) More than two years have elapsed since the year completion funds were appropriated and only minor work items remain to be completed.

c. Project modifications. Changes in project operation, change in real estate interest, physical change of a project feature, the addition of project features, or changes in the purposes of a project.

5. General. Significant modifications to completed projects - modifications which involve new Federal construction or real estate acquisition in order to serve new purposes, to increase the scope of services to authorized purposes beyond that intended at the time of project construction, or to extend services to new beneficiaries (areas) - require authorization by Congress. Ordinarily, such authorization is achieved through the General Investigations program as a consequence of a feasibility (survey) report submitted to Congress in response to a specific directive from the Congress, usually in recognition of local interests' perceptions of needs. It is, however, a general policy of the Chief of Engineers that completed Corps projects be observed and monitored by the Corps to ascertain whether they continue to function in a satisfactory manner and whether potential exists for better serving the public interest. Such monitoring may be accomplished coincidentally in carrying out existing project inspection programs, as a by-product of contacts with local interests and other Federal agencies, and through the day-to-day observations of on-site Corps personnel charged with project operations. Whenever reporting officers find that changes in a completed project may be desirable, investigations should be undertaken to document the need for and feasibility of project modification. To the extent possible, modifications to completed projects should be accomplished under existing authorities. Pertinent existing authorities are discussed in paragraphs 6 through 10. If a needed modification cannot be accomplished using these authorities, additional authorization must be sought as discussed in paragraphs 11 and 12.

6. Modification Under Existing Authority, General.

a. Project authority. Project authorizations may provide authority for the Chief of Engineers to modify project operation or facilities to account for conditions expected at a future date. Because of the range of authority which may be available in project authorizations, it is not possible to detail the modifications which may be undertaken in this manner. Prior to proposing modifications using other authorities, reporting officers should thoroughly review the legislative history and related project documents for the individual project of concern to determine if sufficient authority already exists within the specific project authorities.

b. Project deficiencies. Occasionally, a project may deserve modification because its original development was inherently deficient. Given certain conditions and qualifications, measures to correct such deficiencies may be undertaken. This subject is covered in detail in paragraph 7 in connection with completed projects that are operated and maintained by local interests. The criteria set forth for modifications

to correct deficiencies in such projects are also generally applicable to projects operated and maintained by the Corps.

7. Modification Under Existing Authority, Local Protection Projects.

The general rule is that Federal construction and funding authorities cease once a project is transferred to local interests for operation and maintenance. Thus in most cases additional Congressional authorization is required for any proposed Federal work associated with completed local protection projects. An exception is for work to correct design or construction deficiencies (see, also, paragraph 8b). A design or construction deficiency is a flaw in the Federal design or construction of a project that significantly interferes with the project's authorized purposes or full usefulness as intended by Congress at the time of original project development. Corrective action, therefore, falls within the purview of the original project authority. Project modifications which can appropriately be undertaken without further authorization, to correct project deficiencies, are discussed below:

a. Eligible works. Works proposed to correct a design or construction deficiency may be recommended for accomplishment under existing project authority without further Congressional authorization if the proposed corrective action meets all of the following conditions:

(1) It is required to make the project function as initially intended by the designer in a safe, viable and reliable manner; e.g., pass the original design flow without failure. This does not mean that the project must meet present-day design standards. However, if current engineering analysis or actual physical distress indicates the project will fail, corrections may be considered a design or construction deficiency if the other criteria are met.

(2) It is not required because of changed conditions.

(3) It is generally limited to the existing project features. Remedial measures which require land acquisitions or new project structures must not change the scope or function of the authorized project.

(4) It is justified by safety or economic considerations.

(5) It is not required because of inadequate local maintenance. Local responsibilities for maintenance of local protection projects are stated in 33CFR208.10.

b. Ineligible works. A project may be considered or described as deficient for many reasons; however, a project deficiency is not correctable without further Congressional authorization unless it is a product of Federal engineering or construction efforts related to express project purposes. While a project may be deficient because it does not satisfy or fulfill contemporary needs, the deficiency is not a design or construction deficiency if it results from causes external to the project design or construction effort. Examples of external causes are: inadequate operation and maintenance by local interests; changed

development in the project area (e.g. shift from agriculture to urban uses, making a higher degree of protection desirable); increased runoff efficiency of the watershed (e.g. as a consequence of upstream urban development or other land clearing practices which may tend to reduce the degree of protection of the project); and other non-project-related changes in the river regimen (e.g. alteration of the natural aggradation, degradation, or meandering processes). Note: if project development failed to properly account for the natural river processes and project associated changes to those processes, a design or construction deficiency is usually indicated. Construction to correct a design or construction deficiency should be limited to the necessary corrective work and should be consistent with original project purposes at the time of initial construction; such corrective work will not be undertaken or extended to expand or change the authorized scope, function, or purpose of a project or to modernize an otherwise soundly constructed project.

c. Justification and cost sharing. The proposed corrective work should be justified incrementally by current economic considerations (future project costs and benefits; the sunk costs for the original project development excluded) unless it is otherwise shown that the work is necessary for safety reasons. Cost sharing for correction of design or construction deficiencies should be consistent with the cost sharing in the original project authorization.

Consideration of modifications under this authority allows for correction of design or construction deficiencies regardless of their period of discovery and does not limit the scope of inquiry to considerations of "state of the art technology" or fault at the time of construction. Recommendations for proposed work to correct design and construction deficiencies (in other Corps projects as may be deemed appropriate as well as in local protection projects as discussed above) should be addressed to CDR USACE (DAEN-CWO-M) WASH DC 20314.

8. Modification Under Existing Authority, Multiple Purpose Projects.

a. Operations and maintenance authority. For projects operated and maintained by the Corps, the Corps responsibility for acceptable management of the project to serve the public interest confers a broad authority for making, as part of its operations and maintenance efforts, reasonable changes and additions to project facilities within the project boundaries as may be needed to properly operate the project or minimize maintenance. This may include, if appropriate, change in existing Federal real estate interest; it does not include acquisitions in detached areas where Federal real estate interest was not acquired for the original project development. There are, in addition, several specifically recognized ways in which projects operated and maintained by the Corps may be modified within existing authorities. These are discussed in the following subparagraphs.

b. Dam safety assurance. This program has been established to provide for modification of Corps dam projects which are considered to have potential safety hazards in light of present-day standards and

knowledge. The program is intended to facilitate upgrading of those project features with deficiencies related to dam safety that are within the Chief of Engineers discretionary authority and cannot be corrected under other funding programs (i.e., programs for routine maintenance or for rehabilitation to permit continued effective operation of a project as it was originally intended to function). In addition to certain kinds of structural works, modifications under this particular program may extend to acquisition of new real estate interest downstream of spillways if existing interest is inadequate relative to the safety criteria of ER 1110-2-1451. Guidance regarding the kinds of work eligible for funding and implementation under the dam safety assurance program is provided in ER 1130-2-417. Except that any needed change in real estate interest would remain the responsibility of local interests, this program is equally applicable to Corps-constructed dams which serve as local protection projects, or elements thereof, and have been turned over to local interests for operations and maintenance.

c. Changes in water control plans. Authorities for the allocation and regulation of reservoir storage in projects operated by the Corps are in the acts authorizing the projects. Proposed changes in water control plans must be carefully reviewed to determine the extent of change which may be undertaken consistent with the authorizing legislation. With some specific exceptions, revised plans for purposes not encompassed by the existing project authority require new Congressional authorization. Further Congressional authorization is not required to add municipal and industrial water supply, water quality, and recreation and fish and wildlife purposes if the related revisions in regulation would not significantly affect operation of the project for the originally authorized purposes. Often proposals for changes in regulation, whether to alter the services provided in terms of originally authorized purposes or to add new purposes, contemplate increases in length of time waters are stored at various levels in the reservoir. Such proposals may require upgrading of interests in reservoir lands on which flowage easements were obtained. The impacts of these factors along with all other benefits and costs should be considered in any decision to change a water control plan. Policies and procedures regarding development of water control plans are contained in ER 1110-2-240.

d. Addition of water supply. Pursuant to the Water Supply Act of 1958, reallocation of reservoir storage to add water supply (as a purpose) to a completed project may be undertaken under the Chief's discretionary authority when it will have no significant effect on other authorized purposes and will involve no major structure or operational change. In addition, local interests and adjacent or nearby property owners may be allowed under license, granted for an administrative charge, to install facilities across project lands to withdraw minor amounts of water for which storage is not required and which does not affect project purposes. (This does not constitute a water supply "purpose.") Policies concerning the modification of a project to serve water supply functions are described in ER 1105-2-20 (Chapter 7).

e. Changes to meet water quality needs. Although water quality legislation does not require a permit for discharges from reservoirs,

downstream water quality standards should be met whenever feasible. Existing projects should be evaluated and reported in accordance with ER 1130-2-334, and those found incompatible with state standards (or which otherwise are not meeting their potential to best serve downstream water quality needs) should be studied in detail to determine the justification for upgrading releases and to establish an appropriate course of action. Recommendations to modify a project for water quality reasons must be based on thorough analyses to insure that the best uses are made of the available resources. The analyses should include effects on project purposes, technical feasibility, environmental considerations, reasonableness of alternative actions, and economic impacts. Any action proposed by the Corps should be on the basis that it is engineeringly feasible, environmentally and socially acceptable, and related costs are justified on the basis of combined national economic development (NED) and environmental quality (EQ) effects. Proposals to modify projects for water quality reasons should be submitted to CDR USACE (DAEN-CWE-HW) WASH DC 20314. Upgrading of sanitary facilities at project recreation areas to meet state standards will be accomplished under the Code 710 program (see the following subparagraph).

f. Recreation and fish and wildlife enhancement. Pursuant to Section 4 of the Flood Control Act of 1944, as amended, the addition of facilities for recreation and fish and wildlife may be undertaken on project lands. Procedures for such development are provided in annual program guidance on Recreation Facilities at Completed Projects, Code 710 Program. This program is applicable to all completed projects, regardless of whether recreation was included as a purpose in the original project development, including projects encompassing recreational development under the terms of the Federal Water Project Recreation Act, 9 July 1965 (Public Law 89-72). For projects authorized prior to 9 July 1965 without recreation as a project purpose, recreation developments under Code 710 may include limited acquisition of additional lands beyond the existing project boundaries if needed to afford a project recreation area. Justified fish and wildlife facilities to enhance recreation may be developed on project lands under this program, but not mitigation measures (which, if they cannot be undertaken within the general operations and maintenance authority, require new Congressional authorization). Local interests will be required to contribute 50 percent of the development costs and assume operations and maintenance of Code 710 facilities; except that for those projects less than 60 percent completed as of 7 March 1974 their contribution toward development costs of fish and wildlife enhancement components need only be 25 percent. In the absence of a cost-sharing sponsor additional facilities will not be provided regardless of whether increased levels of visitation indicate a demand therefor, except for sanitary facilities. Sanitary facilities may be up-graded under the Code 710 program, at full Federal cost, if this is necessary to adequately serve visitation or meet state water quality standards. Also, existing facilities originally provided at full Federal expense and subsequently degraded as a consequence of public use may be rehabilitated without cost-sharing (with operations and maintenance funding; not Code 710). Questions regarding the Code 710 program reporting and funding procedures should be addressed to CDR USACE (DAEN-CWO-R) WASH DC 20314.

9. Modification Under Existing Authority, Navigation Projects. The Chief of Engineers has but limited discretion with respect to modification of completed navigation projects without new authorization. The River and Harbor Act of 1909 provides (Section 6) an authority for complete reconstruction of aged or outmoded lock and dam structures on authorized waterways and is permissive to modifications (in the replacements) to better serve navigation. This permits the Corps to study the need for such replacements with operations and maintenance funding; however, accomplishment of any recommended replacement project requires, as a minimum, the approval of the Secretary of the Army. Recommendations may, if they embody significant modifications, be submitted by the Secretary to Congress for specific authorization. The River and Harbor Act of 1915 provides (Section 5) an authority to increase channel dimensions, beyond those specified in project authorization documents, at entrances, bends, sidings and turning places as necessary to allow the free movement of vessels. Exercise of this authority is confined to original project development; it has no general application to completed projects. (Modification of channel dimensions after project completion requires new authorization or a finding of design or construction deficiency.) Where not otherwise precluded by project authorization, the location of a completed channel may be altered during the course of the periodic maintenance program if the maintenance can thereby be more economically accomplished and related aids to navigation are readily adjustable to suit the restored channel dimensions at the shifted location.

10. Modification Under Existing Authority, Other Projects. Paragraphs 7,8 and 9 deal with the most common types of Corps projects. For other types, the possible basis for modification under existing authority may be drawn, inferentially, from their comparabilities (or incomparabilities) with the types covered.

11. Modifications Under Continuing Authorities of the Chief of Engineers. If a desirable project modification cannot be accomplished by using one of the various existing authorities discussed in preceding paragraphs, the modification may be suitable for consideration, authorization, and accomplishment under the continuing authorities program of the Chief of Engineers. This program consists of legislative authorities under which the Secretary of the Army, acting through the Chief of Engineers, is authorized to plan, design and construct certain types of water resources improvements without specific Congressional approval. Project modifications considered for authorization under this program will be targeted to meeting additional needs for flood control, navigation or beach erosion control rather than to adjustments of the completed project so as to better meet the needs the project was originally intended to serve. Modifications under this program are limited to complete-within-themselves, incrementally justified, improvements which will not impair or substantially change the project's capability to continue serving its original, Congressionally-authorized purposes. Nor may they be, in any way, substitutions for uncompleted Congressionally-authorized project modifications. Except for the legislatively imposed limitations on Federal costs (and the fact that a

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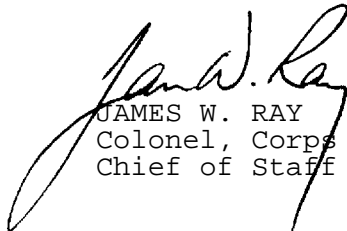
Congressional authorization of modification would not be limited in its potential for changing originally authorized purposes or subsequent modifications) a modification authorized under the continuing authorities program is identical in force and relationship to the existing project as a modification specifically authorized by Congress as discussed in paragraph 11, below. Policies and procedures for implementing improvements under this program are provided in ER 1105-2-10 (Chapter 4).

12. Modifications Requiring Congressional Authorization. If a desirable modification cannot suitably be pursued under any of the authorities or programs discussed in the preceding paragraphs, implementation will require additional Congressional authorization. The necessary studies and report preparation required to obtain such authorization should be undertaken using existing Congressional study authorities which request a review of the specific project or basin, if available. If such specific study authorities are not available, Section 216 of the Flood Control Act of 1970 (Public Law 91-611) may be used. Section 216 states:

"The Secretary of the Army, acting through the Chief of Engineers, is authorized to review the operation of projects the construction of which has been completed and which were constructed by the Corps of Engineers in the interest of navigation, flood control, water supply, and related purposes, when found advisable due to significantly changed physical or economic conditions, and to report thereon to Congress with recommendations on the advisability of modifying the structures or their operation, and for improving the quality of the environment in the overall public interest."

Studies undertaken using the authority provided by Section 216 will be accomplished using the "Review of Completed Projects Program." Requests for guidance regarding funding, reporting and processing of reports to obtain additional authorization using this program should be addressed to CDR USACE (DAEN-CWP) WASH DC 20314.

FOR THE COMMANDER:


JAMES W. RAY
Colonel, Corps of Engineers
Chief of Staff