



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

REPLY TO
ATTENTION OF

FEB 11 2015

CECW-P

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Sections 1015 and 1023 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), Contributed Funds

1. Section 1015 of WRRDA 2014 (Enclosure 1) amends the contributed funds authority codified in 33 U.S.C. 701h. It expands this authority to allow the U.S. Army Corps of Engineers (USACE) to accept voluntarily contributed funds from states and political subdivisions as well as from other non-Federal interests. It clarifies that the authority to accept and expend contributed funds applies as well to authorized projects on the inland waterways. Further, section 1015 requires notification of both the Authorization and Appropriations Committees and changes the timing to require notification prior to the acceptance of the contributed funds. In addition, section 1015 includes a separate provision that authorizes USACE to accept funds to operate a hurricane barrier project to support recreational activities at or in the vicinity of the project; guidance on this provision will be issued separately. A copy of 33 U.S.C. 701h is enclosed.
2. Section 1023 of WRRDA 2014 amends Section 902 of the Water Resources Development Act of 1986 (WRDA 1986) (Enclosure 2), as amended (33 U.S.C. 2280) to provide that USACE may accept contributed funds to carry out any authorized water resources development project that has exceeded its maximum cost. A copy of 33 U.S.C. 2280 is enclosed.
3. Applicability. This guidance is applicable to all HQUSACE elements, major subordinate commands (MSC), districts, laboratories and field operating activities (FOA) having Civil Works functions. This guidance supersedes the guidance in ER 1165-2-30, Acceptance and Return of Required, Contributed or Advanced Funds, dated 30 October 1998, as it pertains to Contributed Funds; CECW-P Memorandum, subject: Contributed Funds, dated 2 July 2007; and CECW-PB Memorandum, subject: Implementation Guidance for Section 111 of the FY12 Energy and Water Development Appropriations Act, Contributed Funds, dated 2 April 2012.
4. Policies.
 - a. Contributed Funds are those funds above any statutorily required non-Federal cost share provided voluntarily by states, or a political subdivision thereof, or other non-Federal interests, with no credit or repayment authorized for such funds for authorized work that is being undertaken by USACE. "states" means the several states, the District of Columbia, the commonwealths, territories, and possessions of the United States, and Federally recognized Tribes. Non-Federal interests is defined in section 221 of the Flood Control Act of 1970, as

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amended (42 U.S.C. 1962d-5b) and means a legally constituted public body or a nonprofit entity with the consent of the affected local government.

b. While 33 U.S.C. 560 provides separate contributed funds authority related to authorized navigation projects, 33 U.S.C. 701h is a comprehensive authority covering all project purposes. The authority in 33 U.S.C. 701h and this guidance, including the requirement for Committee notification, will be used for all proposals involving contributed funds, except for those proposals traditionally considered voluntary contributions for recreation and environmental protection and restoration pursuant to section 203 of WRDA 1992 (33 U.S.C. 2325) and the Challenge Partnership Program pursuant to section 225 of WRDA 1992 (33 U.S.C. 2328). Proposals for the acceptance of contributions pursuant to sections 203 and 225 of WRDA 1992 should continue to follow the guidance and procedures set forth in ER 1130-2-500.

c. The authority in 33 U.S.C. 701h allows for the acceptance and expenditure of contributed funds for the study, design, construction, and operation and maintenance of Federally authorized water resources development studies and projects, including studies and projects in the Continuing Authorities Program (CAP) and studies and projects on the inland waterways. It does not provide for the acceptance of contributed funds related to environmental infrastructure assistance.

d. 33 U.S.C. 701h provides for the acceptance of contributed funds to be expended "in connection with funds appropriated by the United States."

(1) General Rule: To meet the above requirement, there are two main points at which appropriated funds must have been provided: 1) initiation of the feasibility study with Investigations or Mississippi River & Tributaries (Investigations) (MR&T (I)) funds, and 2) initiation of project construction with Construction or Mississippi River and Tributaries (Construction) (MR&T (C)) funds. Once there has been the initial provision of Investigations or MR&T (I) funds, contributed funds may be accepted throughout the study and design of a project. Once there has been the initial provision of Construction or MR&T (C) funds, contributed funds may be accepted throughout the construction and operation and maintenance of a project.

(2) Special Cases:

(a) For a CAP project, once Federal funds have been provided to initiate the study, contributed funds may be accepted for further study, design, construction, and operation and maintenance of the project.

(b) For water supply storage reallocation studies, the following will apply:

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(i) For studies that will be funded with Operation or Maintenance (O&M) or Mississippi River and Tributaries (MR&T (M)) funds only, contributed funds may be accepted even if Federal funds have not been provided for the study.

(ii) For studies initiated using O&M or MR&T (M) funds, after which it is determined that the study will continue on a cost shared basis using Investigations or MR&T (I) funds, Investigations or MR&T (I) funds must have been provided for the cost shared portion of the study before contributed funds may be accepted.

(iii) For studies that will be funded with Investigations or MR&T (I) funds only, Investigations or MR&T (I) funds must have been provided before contributed funds may be accepted.

(iv) Existing planning and budgetary guidance will be followed when determining whether to fund a water supply reallocation study under O&M, MR&T (M), Investigations or the MR&T (I) account. See Appendix E of ER 1105-2-100 for planning guidance on funding reallocation of storage studies.

e. Notwithstanding that a project has exceeded its maximum cost under Section 902 of WRDA 1986, contributed funds may be accepted to carry out the project if the use of such funds does not increase the Federal share of the cost of the project. The maximum Federal share of the cost of the project will be determined based on the Section 902 amount on the date of execution of the Project Partnership Agreement (PPA), or the amendment to the PPA, that provides for the acceptance of the contributed funds.

f. The acceptance of contributed funds does not change the requirement that the study, design, construction, and operation and maintenance must be undertaken in accordance with Federal laws, regulations, and policies.

g. In general, Federal participation in cost shared periodic renourishment of hurricane and storm damage reduction projects is limited to a maximum of 50 years. During this period of Federal participation, contributed funds may be accepted in addition to the non-Federal cost share to undertake periodic renourishment. At the end of the period of Federal participation, the non-Federal sponsor is solely responsible for any additional periodic renourishment as part of its operation and maintenance responsibilities although USACE may undertake such work on behalf of the non-Federal sponsor if the non-Federal sponsor pays all costs of such work.

h. A Memorandum of Agreement (MOA) will be used for the acceptance of contributed funds in the following scenarios: (1) maintenance dredging for which there is no non-Federal cost share; (2) a water supply reallocation study for which there is no non-Federal cost share; (3) a cycle of periodic nourishment that otherwise would be cost shared except that the project's non-Federal sponsor is providing all funds needed for such cycle of nourishment;

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and (4) any other proposal involving contributed funds where no non-Federal cost share is required. Model MOAs involving the acceptance of contributed funds are being developed and will be posted on the PPA web page as they are finalized.

i. Except for a cycle of periodic renourishment as described in paragraph 4.h., when the proposal involves contributed funds that are in addition to a required non-Federal cost share, language regarding contributed funds will be included in the cost sharing agreement for the work or in an amendment to such agreement if there is already an executed cost sharing agreement for the work. Check with HQUSACE (CECW-PC and Office of Counsel) for samples of language required in the cost sharing agreement.

5. Procedures for Implementation.

a. In response to an inquiry from a potential contributor, a district may explain generally the policies and procedures for the acceptance of contributed funds and may provide a copy of a draft contributed funds agreement. The district may not initiate negotiations until the Assistant Secretary of the Army (Civil Works) (ASA(CW)) has submitted the draft notification letters to the Office of Management and Budget (OMB) for clearance.

b. Current CECW-I procedures for Committee notification will be followed. To initiate the Committee notification process, the district must submit the following information through the MSC to the applicable HQUSACE Regional Integration Team (RIT). After receipt of the required information, the RIT will coordinate the draft Committee notification letters and other information within HQUSACE (at a minimum with Office of Counsel, CECW-PC, and the applicable Business Line Manager). After receipt of concurrence from the reviewers, the RIT will provide the following documents to CECW-IF for transmittal to ASA(CW) for approval, coordination with OMB and Committee notification.

(1) The 4 draft Committee notification letters and the Sample letters for contributed funds are posted on the PPA web page. For projects subject to Section 902 of WRDA 1986, the Committee notification letters will also specify if the project exceeds its maximum cost under Section 902;

(2) A letter from the contributor stating: the amount contributing; its understanding that no repayment or credit for contributed funds is authorized; and its understanding that acceptance of such funds will not constitute or imply any commitment to budget or appropriate funds for the project in the future;

(3) If the contributor is a nonprofit entity, a letter from the affected local government documenting its consent of the contributor providing funds for use on the study or project;

(4) An information paper which describes: (a) project authorization history and the status of project implementation, including any existing cost share agreements and

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responsibilities for implementation; (b) brief summary describing that contributor qualifies as one of the entities described in paragraph 4.a. of this guidance; (c) description of work to be performed with the contributed 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 district for which funds have been appropriated by Congress; and (g) identification of the appropriate agreement that will be needed for the acceptance of these contributed funds, and whether a model contributed funds MOA agreement is available; and

(5) If the contributed funds are proposed for use on a water supply storage reallocation study, documentation of the waiver to conduct the reallocation study is required from the USACE Dam Safety Officer in accordance with Chapter 24 of ER 1110-2-1156.

c. When ASA(CW) submits the draft Committee notification letters to OMB for clearance, CECW-IF will notify the RIT, which will then notify the MSC and district that the district can begin negotiations of the agreement. Negotiations of the agreement can be initiated once the district is notified of ASA(CW) submittal of the draft letters to OMB, and review of the draft agreement package can be undertaken prior to completion of Committee notification. However, the agreement cannot be formally approved for execution until Committee notification has been completed.

d. Following completion of Committee notification and acknowledgment, CECW-IF will notify the RIT, which will then notify the MSC and district that Committee notification has been completed.

e. If an approved model MOA will be used, the district will submit the draft agreement package to the MSC for approval by the MSC Commander. Any questions on whether the agreement is consistent with law or policy need to be raised to the applicable RIT. For any MOAs that contains substantive deviations from the model language, the district will follow the submission procedures and requirements in paragraph 5.f. of this guidance. For MOAs that follow the model language, the materials to be provided with a request for approval must include:

(1) The draft agreement that has been negotiated with the contributor and includes all necessary project specific information;

(2) The model agreement used to draft the agreement;

(3) Certificate of Legal Review signed by district counsel specifying whether the use of the model agreement is appropriate and legally sufficient based on the facts of the particular contributed funds proposal; and

(4) If the contributed funds are to be used for construction activities, documentation that all necessary environmental coordination and documentation has been completed - see

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Section VIII.d. of the PPA Checklist for a list of necessary environmental coordination requirements.

f. If there is no model agreement applicable to the particular contributed funds proposal or the proposed MOA contains substantive deviations from the model language, the district will submit the draft agreement package through the MSC to the RIT for approval by the Director of Civil Works. The materials provided with the request must include:

(1) The draft agreement that has been negotiated with the contributor and includes all necessary project specific information;

(2) A detailed explanation of deviations from the applicable model or sample and detailed rationale for such deviations;

(3) Certificate of Legal Review signed by district counsel specifying whether the agreement is appropriate and legally sufficient based on the facts of the particular contributed funds proposal;

(4) If the contributed funds are to be used for construction activities, documentation that all necessary environmental coordination and documentation has been completed - see Section VIII.d. of the PPA Checklist for a list of necessary environmental coordination requirements; and

(5) Copy of non-Federal interest's written request and district's information paper.

6. After completing work undertaken with contributed funds, resolving any claims or appeals, and completing a final accounting, a district is authorized to refund any contributed funds not obligated.

7. 33 U.S.C 701h also authorizes USACE, while carrying out construction or maintenance of a Federal project, to undertake additional work that is not part of the cost shared Federal project if a non-Federal interest pays all costs associated with such additional work. Some examples of additional work include dredging of non-Federal berthing areas, channels, and slips and the placement or disposal of sand at a site other than the least cost environmentally acceptable alternative. This additional work does not involve the acceptance of contributed funds as that term is used in this memorandum. In addition, these proposals are not subject to the requirement for Committee notification associated with the acceptance of contributed funds.

a. Provisions dealing with dredging of non-Federal berthing areas, channels, and slips are already included in the Navigation Model PPA approved in 2004. In addition, amendment of an executed PPA to add provisions on additional work is considered a non-substantive deviation. As stated in the implementation memo for the Navigation Model, approval of

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amendments for non-substantive deviations is delegated to the MSC Commander and may not be further delegated. In those cases where there is no executed PPA for the project, an MOA for the dredging of non-Federal berthing areas, channels, and slips may be used. In such cases, the district must submit the MOA, along with the information listed in paragraph 5.f. of this guidance, through the MSC to the RIT for approval by the Director of Civil Works. Once a model MOA for dredging of non-Federal berthing areas, channels, and slips is approved, the district will follow the procedures for review and approval of the MOA in paragraph 5.e. of this guidance.

b. Proposals for sand placement or other additional work must be submitted by the district through the MSC to the RIT for approval by the Director of Civil Works. The district must submit the MOA, along with the information listed in paragraph 5.f. of this guidance. Once models are developed for sand placement and other additional work, the district will follow the procedures for review and approval of the MOA in paragraph 5.e. of this guidance.

8. This guidance will be incorporated into ER 1165-2-30 when it is updated.



STEVEN L. STOCKTON, P.E.
Director of Civil Works

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GREAT LAKES AND OHIO RIVER DIVISION, CELRD
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SOUTH PACIFIC DIVISION, CESP
SOUTHWESTERN DIVISION, CESWD

33 U.S.C. § 701h, with section 1015 of WRRDA 2014 revisions

The Secretary of War [Secretary of the Army] is authorized to receive from States and political subdivisions thereof and other non-Federal interests, such funds as may be contributed by them for work, which includes planning and design, to be expended in connection with funds appropriated by the United States for any authorized water resources development study or project, including a project for navigation on the inland waterways, whenever such work and expenditure may be considered by the Secretary of War [Secretary of the Army], on recommendation of the Chief of Engineers, as advantageous in the public interest, and the plans for any reservoir project may, in the discretion of the Secretary of War [Secretary of the Army], on recommendation of the Chief of Engineers, be modified to provide additional storage capacity for domestic water supply or other conservation storage, on condition that the cost of such increased storage capacity is contributed by local agencies and that the local agencies agree to utilize such additional storage capacity in a manner consistent with Federal uses and purposes: *Provided*, That the Secretary is authorized to receive and expend funds from a State or political subdivision thereof, and other non-Federal interests or private entities, to operate a hurricane barrier project to support recreational activities at or in the vicinity of the project, at no cost to the Federal Government, if the Secretary determines that operation for such purpose is not inconsistent with the operation and maintenance of the project for the authorized purposes of the project: *Provided further*, That when contributions made by States and political subdivisions thereof and other Federal interests, are in excess of the actual cost of the work contemplated and properly chargeable to such contributions, such excess contributions may, with the approval of the Secretary of War [Secretary of the Army], be returned to the proper representatives of the contributing interests: *Provided further*, That the term "States" means the several States, the District of Columbia, the commonwealths, territories, and possessions of the United States, and Federally recognized tribes: *Provided further*, That the term "non-Federal interest" has the meaning given that term in section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b).¹

¹Section 1015(b) of WRRDA 2014 provides: Notification for Contributed Funds.--Prior to accepting funds contributed under section 5 of the Act of June 22, 1936 (33 U.S.C. 701h), the Secretary shall provide written notice of the funds to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

Section 902 of WRDA 1986, with section 1023 of WRRDA 2014 revisions (33 U.S.C. 2230)

SECTION 902. MAXIMUM COST OF PROJECTS

(a) In general. In order to insure against cost overruns, each total cost set forth with respect to a project for water resources development and conservation and related purposes authorized to be carried out by the Secretary in this Act or in a law enacted after the date of the enactment of this Act [enacted Nov. 17, 1986], including the Water Resources Development Act of 1988, or in an amendment made by this Act or any later law with respect to such a project shall be the maximum cost of that project, except that such maximum amount--

(1) may be increased by the Secretary for modifications which do not materially alter the scope or functions of the project as authorized, but not by more than 20 percent of the total cost stated for the project in this Act, in any later law, or in an amendment made by this Act or any later law; and

(2) shall be automatically increased for--

(A) changes in construction costs applied to unconstructed features (including real property acquisitions, preconstruction studies, planning, engineering, and design) from the date of enactment of this Act [enacted Nov. 17, 1986] or any later law (unless otherwise specified) as indicated by engineering and other appropriate cost indexes; and

(B) additional studies, modifications, and actions (including mitigation and other environmental actions) authorized by this Act or any later law or required by changes in Federal law.

(b) Contributions by non-federal interests. Notwithstanding subsection (a), in accordance with section 5 of the Act of June 22, 1936 (33 U.S.C. 701h), the Secretary may accept funds from a non-Federal interest for any authorized water resources development project that has exceeded its maximum cost under subsection (a), and use such funds to carry out such project, if the use of such funds does not increase the Federal share of the cost of such project.