



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

CECW-P/CECC-G

SEP 19 2006

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS

SUBJECT: Cost Sharing for Lands Associated with Fish and Wildlife Mitigation

1. PURPOSE: This memorandum provides guidance on the policy applicable to cost-sharing of lands, easements, rights of way, and relocations (LERRs) associated with fish and wildlife mitigation for water resources development projects, including continuing authorities program projects. The guidance will be applied prospectively to ongoing and future pre-authorization and pre-Project Cooperation Agreement (PCA) planning activities.
2. BACKGROUND. Following enactment of the Water Resources Development Act of 1986 (WRDA 86), LERRs needed for fish and wildlife mitigation were treated in the same manner as LERRs needed for a project generally. That is, the non-Federal sponsor was responsible for the provision of LERRs, including those needed for mitigation, *with the non-Federal sponsor receiving credit for the value of LERRs provided toward its cost share*. In most cases, this approach did not affect the non-Federal sponsor's ultimate cost share, which generally is a set percentage of total project costs. However, for example, in the case of a structural flood damage reduction project, the non-Federal cost share can vary from a minimum of 35 percent (as increased by WRDA 96) to a maximum of 50 percent of total project costs. Therefore, under this approach, a non-Federal sponsor would be responsible for the cost of LERRs, including LERRs required for fish and wildlife mitigation, up to 45 percent of total project costs. (In all cases, the non-Federal sponsor is required to pay in cash at least 5 percent of the costs assigned to structural flood damage reduction.)
3. SECTION 906(c) OF WRDA 86, AS AMENDED BY SECTION 933 OF WRDA 92. Section 906(c) of WRDA 86 governs the cost sharing for fish and wildlife mitigation at Corps of Engineers water resources development projects. By Section 933 of WRDA 1992, Congress amended Section 906(c) of WRDA 1986, to read, in pertinent part, as emphasized: "costs incurred after the date of enactment of this Act (WRDA 86), including lands, easements, rights-of-way, and relocations, for implementation and operation, maintenance, and rehabilitation to mitigate damages to fish and wildlife shall be allocated among authorized project purposes in accordance with applicable cost allocation procedures and shall be subject to cost sharing or reimbursement to the same extent as such other purposes are shared or reimbursed." Section 933 has the effect of overturning the post-WRDA 86 approach administratively imposed for LERRs needed for fish and wildlife mitigation. Rather than treating LERRs needed for fish and wildlife mitigation as part of the non-Federal responsibility to provide LERRs, the costs of LERRs needed for mitigation are assigned to the project purpose(s) causing the need for such mitigation and are subject to construction cost sharing established for that project purpose. To date the effect of Section 933

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has not been reflected in planning and policy guidance. A recent fish and wildlife mitigation cost sharing policy issue raised by a non-Federal sponsor of a navigation project has highlighted the need for this policy clarification.

4. POLICY. For all ongoing projects or project modifications in the pre-authorization feasibility phase, fish and wildlife mitigation LERR costs will be assigned to the project purpose(s) causing the need for such mitigation and be subject to construction cost sharing established for that project purpose. Questions on post authorization and post PCA application of the policy should be referred to the appropriate HQ Regional Integration Team for resolution in consultation with Policy and Counsel. The enclosed paper illustrates some typical applications of this policy for navigation and flood damage reduction projects. You will note that this policy may actually increase non-Federal costs over post WRDA 86 policy for navigation harbor projects where navigation LERR are less than 10 percent of General Navigation Facilities (GNF) costs while decreasing the non-Federal share where navigation LERR costs exceed 10 percent of GNF costs. Depending on the non-mitigation LERR costs, the non-Federal costs of flood damage reduction projects with fish and wildlife mitigation LERR will remain the same or decrease when compared to the post WRDA 86 policy. The acquisition of LERRs for the project, including those required for fish and wildlife mitigation, will continue to be a non-Federal responsibility with the option of Federal acquisition reserved for exceptional circumstances as provided in current policy. For flood damage reduction and other purposes under Section 103 of WRDA 86, as amended, the cost of operation and maintenance of fish and wildlife mitigation lands will be a non-Federal responsibility, and for navigation harbors under Section 101 of WRDA 1986, as amended, such costs will be a Federal responsibility except as provided for those projects with a depth in excess of 45 feet.

5. PERMANENT GUIDANCE. This guidance is effective immediately and will be incorporated into permanent guidance as it is updated.

FOR THE COMMANDER:

Encl


DON T. RILEY
Major General, USA
Director of Civil Works

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DISTRIBUTION:

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COST SHARING EXAMPLES

STRUCTURAL FLOOD DAMAGE REDUCTION

Example 1: Structural flood damage reduction project with a total project cost of \$1,000,000, consisting of \$100,000 for lands, easements, rights-of-way, and dredged material disposal areas (LERRDs) excluding LERRDs for mitigation; \$800,000 for flood damage reduction facilities; \$50,000 for LERRDs for mitigation; and \$50,000 for mitigation construction costs

- Under either the post-WRDA 1986 approach or section 906(c) of WRDA 86, as amended, the non-Federal sponsor's cost is \$350,000, or 35% of total project cost, its minimum share for flood damage reduction projects. The non-Federal sponsor's share will consist of credit in the amount of \$150,000 for LERRDs provided with an additional cash contribution of \$200,000 to bring its share to the minimum requirement of 35% of total project costs

Example 2: Structural flood damage reduction project with a total project cost of \$1,000,000, consisting of \$300,000 for LERRDs excluding LERRDs for mitigation; \$550,000 for flood damage reduction facilities; \$50,000 for LERRDs for mitigation; and \$50,000 for mitigation construction

- Under the post-WRDA 1986 approach, the non-Federal sponsor's share is \$400,000, or 40% of total project costs. The cost of all LERRDs, *including* those for mitigation, (up to 45% of total project cost) is a non-Federal expense. In this case, the costs of LERRDs, *including* those for mitigation, are \$350,000. In addition, the non-Federal sponsor must pay \$50,000, i.e., the 5% cash requirement.

Under section 906(c) of WRDA 86, as amended, by section 933 of WRDA 92, the non-Federal sponsor's share is \$350,000, or 35 % of total project costs. The cost of LERRDs *excluding* those for mitigation, (up to 45% of total project cost) is a non-Federal expense. In this case, the cost of LERRDs, *excluding* those for mitigation, is \$300,000, or 30% of total project costs. In addition, the non-Federal sponsor must pay \$50,000, i.e., the 5% cash requirement. In this case, the cost of LERRs, *excluding* those for mitigation, combined with the 5% cash satisfies the requirement for a minimum cost share of 35% of total project costs.

**COST SHARING EXAMPLES
NAVIGATION EXAMPLES**

Example 1: Harbor Project (Navigation) to Deepen an Existing Entrance Channel from 35 feet to 40 feet. Total Project Cost of \$1.1 Million Including \$50,000 LERR (excluding mitigation), General Navigation Facilities Cost of \$900,000 and Fish and Wildlife Mitigation Cost of \$50,000 for LERR and \$100,000 for Construction

Total Project Cost	GNF	LERR	F&W Mitigation (LERR)	F&W Mitigation (Construction)
\$1,100,000	\$900,000	\$ 50,000	\$ 50,000	\$100,000

Cost Sharing Breakdown Post WRDA 86 (Mitigation LERR treated the same as Navigation LERR)

Item	Total Cost	Federal Cost	Federal %	Non-Federal Cost	Non-Federal %
GNF (Nav.)	\$ 900,000	\$ 675,000	75%	\$225,000	25%
GNF (Mit. Const)	\$ 100,000	\$ 75,000	75%	\$ 25,000	25%
Subtotal GNF	\$1,000,000	\$750,000	75%	\$250,000	25%
Additional 10% Share over up to 30 years)		-\$100,000		\$100,000	
Credit for Nav. LERR applied to 10% share		\$ 50,000		- \$ 50,000	
Credit for Mit. LERR applied to 10% share		\$ 50,000		- \$ 50,000	
Total GNF	\$1,000,000	\$ 750,000	75%	\$250,000	25%
LERR (Nav.)	\$ 50,000	\$ 0	0%	\$ 50,000	100%
LERR (Mit.)	\$ 50,000	\$ 0	0%	\$ 50,000	100%
Total LERR	\$ 100,000	\$ 0	0%	\$100,000	100%
Total Cost Share	\$1,100,000	\$750,000	68%	\$350,000	32%

Example 1 - Cost Sharing Breakdown Post Section 933 Policy (Mitigation LERR treated the same as Navigation Construction)

Item	Total Cost	Federal Cost	Federal %	Non-Federal Cost	Non-Federal %
GNF (Nav.)	\$ 900,000	\$ 675,000	75%	\$225,000	25%
GNF (Mit. Const)	\$ 100,000	\$ 75,000	75%	\$ 25,000	25%
GNF (Mit. LERR)	\$ 50,000	\$ 37,500	75%	\$ 12,500	25%
Subtotal GNF	\$1,050,000	\$787,500	75%	\$262,500	25%
Additional 10% Share over up to 30 years)		-\$105,000		\$105,000	
Credit for Nav. LERR applied to 10% share		\$ 50,000		- \$ 50,000	
Total GNF	\$1,050,000	\$ 732,500	70%	\$317,500	30%
LERR (Nav.)	\$ 50,000	\$ 0	0%	\$ 50,000	100%
Total Cost Share	\$1,100,000	\$732,500	67%	\$367,500	33%

Example 2: Harbor Project (Navigation) to Deepen an Existing Entrance Channel from 35 feet to 40 feet. Total Project Cost of \$1.1 Million Including \$100,000 LERR (excluding mitigation), General Navigation Facilities Cost of \$800,000 and Fish and Wildlife Mitigation Cost of \$100,000 for LERR and \$100,000 for Construction

Total Project Cost	GNF	LERR	F&W Mitigation (LERR)	F&W Mitigation (Construction)
\$1,100,000	\$800,000	\$ 100,000	\$ 100,000	\$100,000

Cost Sharing Breakdown Post WRDA 86 (Mitigation LERR treated the same as Navigation LERR)

Item	Total Cost	Federal Cost	Federal %	Non-Federal Cost	Non-Federal %
GNF (Nav.)	\$ 800,000	\$ 600,000	75%	\$200,000	25%
GNF (Mit. Const)	\$ 100,000	\$ 75,000	75%	\$ 25,000	25%
Subtotal GNF	\$ 900,000	\$675,000	75%	\$225,000	25%
Additional 10% Share over up to 30 years)		-\$ 90,000		\$ 90,000	
Credit for Nav. LERR applied to 10% share		\$ 90,000		- \$ 90,000	
Credit for Mit. LERR applied to 10% share		\$ 0		- \$ 0	
Total GNF	\$ 900,000	\$ 675,000	75%	\$225,000	25%
LERR (Nav.)	\$ 100,000	\$ 0	0%	\$100,000	100%
LERR (Mit.)	\$ 100,000	\$ 0	0%	\$100,000	100%
Total LERR	\$ 200,000	\$ 0	0%	\$200,000	100%
Total Cost Share	\$1,100,000	\$675,000	61%	\$425,000	39%

Example 2 - Cost Sharing Breakdown Post Section 933 (Mitigation LERR treated the same as Navigation Construction)

Item	Total Cost	Federal Cost	Federal %	Non-Federal Cost	Non-Federal %
GNF (Nav.)	\$ 800,000	\$ 600,000	75%	\$200,000	25%
GNF (Mit. Const)	\$ 100,000	\$ 75,000	75%	\$ 25,000	25%
GNF (Mit. LERR)	\$ 100,000	\$ 75,000	75%	\$ 25,000	25%
Subtotal GNF	\$1,000,000	\$750,000	75%	\$250,000	25%
Additional 10% Share over up to 30 years)		-\$100,000		\$100,000	
Credit for Nav. LERR applied to 10% share		\$100,000		- \$100,000	
Total GNF	\$1,000,000	\$ 750,000	75%	\$250,000	25%
LERR (Nav.)	\$ 100,000	\$ 0	0%	\$100,000	100%
Total Cost Share	\$1,100,000	\$750,000	68%	\$350,000	32%