



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

CECW-P

MAR 25 2019

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Revised Implementation Guidance for Section 1001 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), Vertical Integration and Acceleration of Studies as Amended by Section 1330(b) of the Water Resources Development Act (WRDA) of 2018

1. The Assistant Secretary of the Army (Civil Works) approved on 8 March 2019 Section 1001 of WRRDA 2014. The attached guidance is also posted for internal and external use on the Corps' official WRDA website:
<http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/>.

2. Please ensure wide dissemination and immediate adherence to this guidance. Please note this guidance supersedes prior Implementation Guidance for Section 1001 of WRRDA 2014 dated 9 April 2015. The headquarters POC for this guidance is Lisa Kiefel, Planning and Policy Division, at Lisa.D.Kiefel@usace.army.mil or (202) 761-0626.

JAMES C. DALTON, P.E.
Director of Civil Works

DISTRIBUTION:

COMMANDERS, REGIONAL BUSINESS AND PROGRAMS DIRECTORS,
GREAT LAKES AND OHIO RIVER DIVISION, CELRD
MISSISSIPPI VALLEY DIVISION, CEMVD
NORTH ATLANTIC DIVISION, GENAD
NORTHWESTERN DIVISION, CENWD
PACIFIC OCEAN DIVISION, CEPD
SOUTH ATLANTIC DIVISION, CESAD
SOUTH PACIFIC DIVISION, CESP
SOUTHWESTERN DIVISION, CESWD



DEPARTMENT OF THE ARMY
ASSISTANT SECRETARY OF THE ARMY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

MAR -8 2019

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

SUBJECT: Implementation Guidance for Section 1001 of the Water Resources Reform and Development Act of 2014, Vertical Integration and Acceleration of Studies as amended by Section 1330(b) of the Water Resources Development Act of 2018

1. Section 1001 of Water Resources Reform, and Development Act of 2014 (WRRDA 2014) (Public Law 113-121) provides that, to the extent practicable, U.S. Army Corps of Engineers (Corps) final feasibility reports will be completed in three years and will have a maximum federal cost of \$3 million and that Corps districts, divisions and headquarters review will be concurrent. Section 1001 provides further that the Secretary of the Army may extend the timeline and/or approve federal costs greater than \$3 million, subject to notification of the non-Federal sponsor and the Senate Committee on Environment and Public Works and the House of Representatives Committee on Transportation and Infrastructure (Committees). Section 1001 also provides that the authorization for a particular feasibility study terminates if the study is not completed within certain timeframes. Section 1330(b) of the Water Resources Development Act of 2018 (WRDA 2018) extends the timeline for a feasibility study to ten years. Section 1001 of WRRDA 2014 as amended by Section 1330(b) of WRDA 2018 is enclosed.
2. This guidance supersedes the implementation guidance for Section 1001, dated April 9, 2015.
3. This implementation guidance applies to all feasibility studies of proposed water resources development projects that are initiated after June 10, 2014, except for feasibility studies conducted under the Continuing Authorities Program.
4. To the extent practicable, feasibility studies will be completed within three years. In calculating the duration of the feasibility study, the study is initiated when the Feasibility Cost Sharing Agreement (FCSA) is executed or, for those feasibility studies for which a FCSA is not required, when federal funding is allocated to initiate the study, and ends with the signing of the decision document (e.g., Chief's Report or Director's Report) or other document as appropriate.
5. Section 1001 provides that if a study will not be completed within three years, the Assistant Secretary of the Army for Civil Works (ASA(CW)) may approve a total of up to seven additional years to complete the study, as long as the study duration does not

SUBJECT: Implementation Guidance for Section 1001 of the Water Resources Reform and Development Act of 2014, Vertical Integration and Acceleration of Studies as amended by Section 1330(b) of the Water Resources Development Act of 2018

exceed ten years total. Exemptions to the three year base study period may be requested in any increment, up to the seven year limit as mandated in Section 1330(b) of WRDA 2018. If the study is not completed as of the last day of the approved timeline, the study is deauthorized.

6. Section 1001 provides that, to the extent practicable, feasibility studies will have a maximum federal cost of \$3 million. Authorizing a federal study cost in excess of \$3 million requires approval and a determination by the ASA(CW) that the increased amount is necessary based on the complexity of the study. While neither the Corps' nor the non-Federal sponsor's costs for audits or participation on the study coordination team are included in the calculation of the study costs that are cost shared, the Corps' costs for such activities are included in calculating the maximum federal cost. In addition, the Corps' costs of the federally-funded independent external peer review panel are funded with study funds, but are not included in the calculation of the study costs that are cost shared or in the calculation of the maximum federal cost.

a. While Section 1001 provides that, in general, the maximum federal cost for a feasibility study is \$3 million, as a matter of policy, the Corps will continue to follow the 8 February 2012 Deputy Commanding General Civil Works and Emergency Operations (DCG-CEO) memorandum, U.S. Army Corps of Engineers Civil Works Feasibility Study Program Execution and Delivery. As provided in this memorandum, the total study cost (i.e., the study costs shared by the Corps and the non-Federal sponsor) generally is limited to \$3 million, with the federal cost limited to \$1.5 million. However, the DCG-CEO is authorized to approve an increase of the total study cost, including approving an increase of the federal cost from \$1.5 million federal to up to \$3 million federal. Further, no separate approval is required to increase the cost of a 100% federally funded study up to \$3 million. The DCG-CEO must promptly notify the Deputy Assistant Secretary of the Army for Management and Budget (DASA (M&B)) in writing when a cost increase is approved. Additionally, an updated project compliance memo must be provided to the DASA (M&B) within 30 days of approval of a cost increase for a project.

7. While the Assistant Secretary of the Army for Civil Works (ASA(CW)) approval of a timeline exemption or approval of more than \$3 million in federal funds is not required in advance of budgeting for additional work, ASA(CW) approval must be granted prior to the allocation of funds for the work covered by those approvals. The DCG-CEO will promptly notify the DASA M&B in writing when decisions are made to initiate budgeting for feasibility studies in excess of \$1.5 million.

8. In determining whether the study is too complex to be completed within three years and/or the \$3 million federal study cost limit, the ASA(CW) will consider the following:

- a. The type, size, location, scope, and overall cost of the project;
- b. Whether the project will use any innovative design or construction techniques;

SUBJECT: Implementation Guidance for Section 1001 of the Water Resources Reform and Development Act of 2014, Vertical Integration and Acceleration of Studies as amended by Section 1330(b) of the Water Resources Development Act of 2018

c. Whether the project will require significant action by other federal, state, or local agencies;

d. Whether there is significant public dispute as to the nature or effects of the project;

e. Whether there is significant public dispute as to the economic or environmental costs or benefits of the project; and

f. Other relevant issues.

9. Any exemption to the three-year study duration, or approval of a federal study cost in excess of \$3 million, requires the following actions:

a. The Corps will prepare an updated feasibility study schedule and cost estimate.

b. The District Commander will notify, discuss with, and obtain the non-Federal sponsor's concurrence of any change in completion of, or cost increase in the study. The District Commander will provide the updated feasibility study schedule and cost estimate to the non-Federal sponsor; and

c. Upon review and approval of a request for an exemption the ASA(CW) will provide written notice to the Committees of the exemption. The Corps is responsible for providing to the DASA Project, Planning and Review draft Committee notification letters, including identification of the specific factor(s) if a study is too complex to be completed within three years or within the \$3 million federal cost limit.

10. Any feasibility study that has been initiated since WRRDA 2014 that is not completed within the approved time frames set out in this memorandum, including exemptions approved by the ASA(CW), is no longer authorized, and the study will be terminated immediately. In the case of a study undertaken under a general authority, such as Section 216 of the Flood Control Act of 1970, the particular study will be terminated, but the general study authority is not affected.

11. Within the 90 days after execution of the FCSA for a feasibility study, or, if an agreement is not required, the date the district receives an allocation of funds to initiate a study, the Project Delivery Team will:

a. Provide a pre-coordinated schedule to the non-Federal sponsor via certified mail, as per the implementation guidance for Section 1002 of WRRDA 2014 dated 9 April 2015. All study schedules developed will ensure that personnel from the district, division, and headquarters levels concurrently conduct reviews.

b. Initiate the process for completing the federally mandated study, including

SUBJECT: Implementation Guidance for Section 1001 of the Water Resources Reform and Development Act of 2014, Vertical Integration and Acceleration of Studies as amended by Section 1330(b) of the Water Resources Development Act of 2018

environmental compliance, to include the National Environmental Policy Act (NEPA), discussed under Section 1005 (Project Acceleration) of WRRDA 2014.

c. Convene meeting(s), to include the non-Federal sponsor, of all federal, tribal, and state agencies that have jurisdiction over the project, or that may be required by law to conduct or issue a review, analysis, or opinion on or to make a determination concerning a permit or license for the study in accordance with the implementation guidance for Section 2045(e) of WRDA 2007 dated 6 April 2012; and

d. Take all steps necessary to provide information that will enable required reviews and analyses related to the project to be conducted by other agencies in a thorough and timely manner.

12. This guidance is effective immediately and will be incorporated into the Planning Guidance Notebook (ER 1105-2-100) upon the next revision.

13. This guidance shall be transmitted to the appropriate Corps Division and District Commanders and posted to the Corps WRDA website within two days of receipt (written or electronic) from this office. Guidance shall be transmitted as is and without additional guidance attached.

14. Questions regarding this implementation guidance may be directed to Gib Owen, Office of the Assistant Secretary of the Army for Civil Works at gib.a.owen.civ@mail.mil or 703-695-4641.

A handwritten signature in black ink, appearing to read "R. D. James", with a stylized flourish at the end.

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, Reform, and Development Act of 2014, Section 1001 Vertical Integration and Acceleration of Studies

- (a) In General. To the extent practicable, a feasibility study initiated by the Secretary, after June 10, 2014, under section 905(a) of the Water Resources Development Act of 1986 (33 U.S.C. 2282(a)) shall
- (1) result in the completion of a final feasibility report not later than 3 years after the date of initiation;
 - (2) have a maximum Federal cost of \$3,000,000; and
 - (3) ensure that personnel from the district, division, and headquarters levels of the Corps of Engineers concurrently conduct the review required under that section.
- (b) Extension. If the Secretary determines that a feasibility study described in subsection (a) will not be conducted in accordance with subsection (a), the Secretary, not later than 30 days after the date of making the determination, shall
- (1) prepare an updated feasibility study schedule and cost estimate;
 - (2) notify the non-Federal feasibility cost-sharing partner that the feasibility study has been delayed; and
 - (3) provide written notice to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives as to the reasons the requirements of subsection (a) are not attainable.
- (c) Termination of Authorization. A feasibility study for which the Secretary has issued a determination under subsection (b) is not authorized after the last day of the 1- year period beginning on the date of the determination if the Secretary has not completed the study on or before such last day.
- (d) Exception.
- (1) In general. Notwithstanding the requirements of subsection (c), the Secretary may extend the timeline of a study by a period not to exceed 3 years, if the Secretary determines that the feasibility study is too complex to comply with the requirements of subsections (a) and (c).
 - (2) Factors. In making a determination that a study is too complex to comply with the requirements of subsections (a) and (c), the Secretary shall consider--
 - (A) the type, size, location, scope, and overall cost of the project;
 - (B) whether the project will use any innovative design or construction techniques;
 - (C) whether the project will require significant action by other Federal, State, or local agencies;
 - (D) whether there is significant public dispute as to the nature or effects of the project; and
 - (E) whether there is significant public dispute as to the economic or environmental costs or benefits of the project.
 - (3) Notification. Each time the Secretary makes a determination under this subsection, the Secretary shall provide written notice to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives as to the results of that determination, including an identification of the specific 1 or more factors used in making the determination that the project is complex.

- (4) Limitation. The Secretary shall not extend the timeline for a feasibility study for a period of more than 7 years, and any feasibility study that is not completed before that date shall no longer be authorized.
- (e) Reviews. Not later than 90 days after the date of the initiation of a study described in subsection (a) for a project, the Secretary shall
- (1) take all steps necessary to initiate the process for completing federally mandated reviews that the Secretary is required to complete as part of the study, including the environmental review process under section 1005;
 - (2) convene a meeting of all Federal, tribal, and State agencies identified under section 2045(e) of the Water Resources Development Act of 2007 (33 U.S.C. 2348(e)) that may be required by law to conduct or issue a review, analysis, or opinion on or to make a determination concerning a permit or license for the study; and
 - (3) take all steps necessary to provide information that will enable required reviews and analyses related to the project to be conducted by other agencies in a thorough and timely manner.
- (f) Interim Report. Not later than 18 months after June 10, 2014, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report that describes
- (1) the status of the implementation of the planning process under this section, including the number of participating projects;
 - (2) a review of project delivery schedules, including a description of any delays on those studies participating in the planning process under this section; and
 - (3) any recommendations for additional authority necessary to support efforts to expedite the feasibility study process for water resource projects.
- (g) Final Report.--Not later than 4 years after June 10, 2014, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report that describes
- (1) the status of the implementation of this section, including a description of each feasibility study subject to the requirements of this section;
 - (2) the amount of time taken to complete each feasibility study; and
 - (3) any recommendations for additional authority necessary to support efforts to expedite the feasibility study process, including an analysis of whether the limitation established by subsection (a)(2) needs to be adjusted to address the impacts of inflation.

**Water Resources Development Act of 2018, Section 1330(b) Project
Deauthorization and Study Extensions**

(b) STUDY EXTENSIONS.—Section 1001(d)(4) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282c (d)(4)) is amended by striking "7 years" and inserting "10 years."