

Planning Guidance Letter #97-01

WRDA '96 General Implementation Guidance

CECW-PM (19 November 1996)

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS

SUBJECT: Planning Guidance Letter #97-1 - WRDA 96 Implementation

1. Purpose. The purpose of this memorandum is to provide interim guidance on selected provisions of the Water Resources Development Act (WRDA) of 1996. The following provisions took effect upon enactment 12 October 1996. The guidance contained in this memorandum will enable studies and projects to proceed with minimum disruption. More detailed guidance will follow.

2. Continuing Authorities Program.

a. Sections 102, 103, 104, and 105. These studies and projects will follow normal Continuing Authorities Program (CAP) procedures. New study starts will be considered and selected for initiation based on the availability of funds and their priority relative to other un-started work.

b. Section 202a.

(1) The increase in non-Federal share from 25% to 35% applies to projects implemented under sections 14, 205, and 208.

(2) The increased non-Federal share shall not apply to: Section 205 projects whose Detailed Project Report was approved prior to enactment of this Act; sections 14 and 208 projects approved for construction by the division commander prior to enactment of this Act.

c. Section 219. The increased per project Federal cost limit applies to section 14 projects approved after enactment of this Act. Approved projects which have not yet had the Project Cooperation Agreement (PCA) executed may use the increased limit if the sponsor also agrees to the increased non-Federal contribution prescribed in section 202 of the Act.

d. Project Cooperation Agreements. Division commanders are authorized to modify the model PCAs to accommodate the cost-sharing change from 25 percent to 35 percent; and to increase the Federal project limit for section 14 from \$500,000 to \$1 million.

3. Section 1135 Program.

a. Section 204(c).

(1) This subsection amends S.1135 of WRDA 86 by inserting a new section 1135(c) that expands the definition of projects that may be pursued. If the construction or operation of a Corps project has contributed to degradation of the quality of the environment, the Secretary may undertake measures for restoration through modifications at the project site or at other locations that have been affected by the construction or operation of the project, if such measures do not conflict with the authorized project purposes. Preliminary Restoration Plans (PRPs) developed for this type of project should include a separate paragraph discussing how the Corps project contributed to the degradation of the area where restoration is proposed. Further guidance will be provided.

(2) Section 204(c) also establishes a new section 1135(d) that limits work-in-kind to no more than 80 percent of the non-Federal share; therefore, five percent of the total project modification cost must be contributed as cash or lands, easements, rights-of-way, relocations, and disposal areas. This provision does not apply to projects for which the Project Modification Report was approved prior to the date of enactment of this Act or for combined-phase small projects where the combined phase is complete and the project approved for construction before the date of enactment of this Act. The new section 1135(d) also increases the per project Federal limit to \$5 million for projects approved after the date of enactment of this Act.

b. Section 204(d) established a new S.1135(h). It defines the term "water resources project constructed by the Secretary" to include water resources projects constructed or funded jointly by the Secretary and the head of any other Federal agency (including the Natural Resources Conservation Service.) Guidance on this provision will be issued separately.

4. Flood Plain Management Plans. Section 202(c), Flood Plain Management Plans, revises section 402 of WRDA 86 to require the local sponsor to prepare and implement a flood plain management plan to reduce impacts of future flood events in the project area. This provision applies to any project or separable element for which the PCA was not signed prior to the date of enactment of WRDA 96. This also applies to Section 205 and Section 208 of the CAP. The flood plain management plan must be prepared within one year of signing of the PCA, and implemented within one year of completion of construction of the project. Procedures for complying with this provision, as well as guidelines on the flood plain management planning process and components of a flood plain management plan are being developed. Potential local sponsors should be notified of this new requirement.

5. Cost-Sharing for Feasibility Studies. Section 203 amends the feasibility cost-sharing requirements of Section 105(a) of WRDA 86. It provides that cost-sharing during the period of the study is limited to 50 percent of the cost estimate

contained in the Feasibility Cost Sharing Agreement (FCSA) and any excess resulting from a change in Federal law or a change in scope requested by the sponsor. Any other excess shall be payable (1) when the PCA is signed; or (2) if not authorized, five years after the date of the COE report; or (3) two years after study termination. The model FCSA is currently being modified and should be available shortly. This provision applies to new and previously executed FCSAs which may be amended at the request of the sponsor.

(Signed) RUSSELL L. FUHRMAN, Major General, USA, Director of Civil Works