

CECW-PA/CECW-E

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS AND DISTRICT
COMMANDS

SUBJECT: Policy Guidance Letter No. 43, Cost Sharing for Dam Safety Assurance

1. Purpose. This Policy Guidance Letter provides guidance for determining the apportionment of costs of project modifications for dam safety assurance purposes, under Section 1203 of the Water Resources Development Act of 1986 (WRDA 86).

2. Background.

a. Legislation. Section 1203 of WRDA 1986 requires that costs incurred in modifications for dam safety assurance shall be recovered in accordance with provisions of subsection (a)(1). Fifteen percent of the cost of the modification, are to be assigned to project purposes in accordance with the cost allocation in effect for the project at the time the modification work is initiated, and shared in accordance with cost sharing in effect at the time of initial project construction. Costs assigned to irrigation will be recovered by the Secretary of Interior in accordance with Public Law 98-404. Repayment of costs, except for irrigation, may be made, with interest, over a period not to exceed 30 years in accordance with provisions of subsection (a)(2).

b. Need for Policy.

(1) The application of section 1203 requirements to Corps of Engineers projects has been difficult. The intent of this legislation was to require cost sharing for dam safety modifications at Corps of Engineers projects, on the same basis that costs were shared for Bureau of Reclamation dam safety work. Since Corps projects may not include vendible project purposes and a "formal" cost allocation, interpretation of a statute based upon Bureau of Reclamation projects is not straightforward.

(2) Early determination of the requirements for sponsorship, and the identification of sponsors, is essential in order to solicit sponsor input and to obtain expressions of intent to participate in the work. Uncertainty about sponsorship and lack of meaningful sponsor involvement in the scope and extent of dam safety repairs has delayed dam safety assurance work.

3. Applicability. Dam safety assurance modifications are those modifications which are required by new hydrologic or seismic data or changes in state-of-the-art design or construction criteria deemed necessary for safety purposes. These criteria are defined more specifically in the forthcoming ER 1110-2-1155. Work that does not meet these criteria is accomplished as maintenance or as major rehabilitation. An example of the other work would be installation of a cutoff wall to correct seepage.

4. Policy. All dam safety assurance modifications are subject to the cost sharing

requirements of section 1203. The basis for cost sharing will be the cost sharing for the basic project, based on a cost allocation, project or local cooperation agreement, letter of assurance from a local interest, or contract for use of storage, whichever was used for initial project construction cost sharing or for subsequent reallocation.

5. Procedure.

a. Requirements for cost sharing sponsorship, and the identification of non-Federal sponsors must occur early in the study process, to insure the appropriate communication with non-Federal interests on the difficult subject of cost sharing. Before initiating discussions with project sponsors on cost sharing, your interpretation on the need for sponsorship and the application of the generic guidance contained in this letter must be forwarded to CECW-P for approval.

b. Draft dam safety assurance evaluation reports will include documentation of substantive involvement and coordination with non-Federal sponsors, and expressions of their willingness to cost share in the dam safety assurance work.

c. Fifteen percent of the cost of the dam safety modification will be allocated among purposes and shared with the appropriate project sponsors. General procedures for determining the amount of sponsor cost are outlined in the following paragraphs for the situations described in paragraph 4.

(1) Projects with a Formal Cost Allocation. In this case, 15 percent of the cost of the modification for dam safety will be allocated among project purposes in the same percent as the construction expenditures in joint-use facilities are allocated in the cost allocation currently in effect. The cost allocated to each project purpose will then be shared in the same percentage as when the project was constructed, or when the purpose was added, whichever is appropriate. For large reservoir projects it is likely that the cost assigned to flood control is 100% Federal. The cost assigned to power generation is most likely 100% non-Federal (to be reimbursed by the sale of the power). Costs may have been allocated to water supply or to conservation. Costs allocated directly to water supply are 100 percent non-Federal costs. Where costs have been allocated to conservation, water supply users may have contracted for a portion or all of the conservation storage. In such cases, the contract will need to be modified if it does not include provision of payment for the proposed work. For illustrative purposes: assume a dam safety modification cost of \$15 million, and a formal cost allocation that assigns 60% of the construction costs to hydropower, of which 45% is the hydropower joint-use construction costs; and, 40% of the construction costs to flood control. Under this example, hydropower interests would have to repay \$1,012,500 ($\$15,000,000 \times 0.45 \times 0.15$). If there was no sharing of the initial construction costs allocated to flood control, all of the modification costs assigned to flood control would be Federal. If a sponsor shared in the initial construction costs allocated to flood control, the dam safety costs assigned to flood control would be shared on the same percentage basis. In cases where storage is reallocated from flood control to another purpose, the sponsor for the added purpose is responsible for repaying a share of the dam safety modification costs. For example, if a contract is executed for water

supply that assigned 1.5% of the joint-use cost of major replacements to a water supply sponsor, this sponsor would be required to repay \$33,750 of the dam safety costs ($\$15,000,000 \times 0.15 \times 0.015$).

(2) Projects Without a Formal Cost Allocation, but With a Signed Project or Local Cooperation Agreement. A cooperation agreement for the initial project construction may contain an allocation or assignment of costs among project purposes. For projects with this type of agreement, 15 percent of the cost of the dam safety modification will be assigned to project purposes in the same manner as costs were allocated for the project or local cooperation agreement, and shared in the same percentage according to the terms of the agreement. The percent joint-use facilities cost should be used if available, otherwise the assignment is based on percent of total cost. For illustrative purposes: assume a dam safety modification of \$15,000,000; a local cooperation agreement requiring a sponsor to provide a one-time payment of \$3,000,000 toward the construction of a project with an actual initial construction cost of \$60,000,000. The sponsor in this example would be required to repay \$112,500 ($0.05 \times 0.15 \times \$15,000,000$).

(3) Projects without a Formal Cost Allocation or a Signed Project or Local Cooperation Agreement. In most cases where there is no signed agreement, there was some sort of a letter of intent at the time of construction which indicated what local interests would provide, such as lands, easements, rights-of-way or relocations. These projects will require a review of letters of intent or other documentation of arrangements for provision of relocations, etc., or of cash contributions by a sponsor at the time of project construction. If a sponsor accomplished some portion of the required work, such as relocations, or made a cash-contribution, the value of the work or the contribution should be converted to a percent of total project initial cost. Fifteen percent of the cost of dam safety modification will be shared in the same percentage as the percentage of total project initial cost, computing the non-Federal share as the percent of contribution to total cost. The percentage should be computed based on actual rather than estimated costs of construction, if available. For example, if non-Federal interests contributed LERRD valued at \$500,000, and the actual construction cost was \$50,000,000, the non-Federal share of initial construction was one percent. In this case the non-Federal share of a \$15 million dam safety assurance modification would be \$22,500 ($\$15,000,000 \times 0.15 \times 0.01$).

(4) Contract for Storage. In some cases water supply storage may have been reallocated from conservation or from flood control storage. The agreement for the reallocation of storage is a contract. The terms of the contract will specify what storage capacity is provided in return for the payment amount. The contract usually defines how the amount paid by the contract holder was computed and shows the basis for the assignment of costs. The share of cost to be paid for the dam safety modification should be allocated in the same percent as the cost of joint use facilities was allocated. In such a case, the contract will need to be modified if it does not include provision for payment for the proposed work.

6. Cost Recovery. Recovery of the non-Federal share of the dam safety assurance modification cost will be determined by the current arrangement for project cost recovery. For costs which are reimbursable through the sale of power, the share of dam safety cost will be reported to the power marketing agency for recovery in the same manner as major rehabilitation costs. For cost sharing based on a project local cooperation agreement which does not have a provision for dam safety cost sharing, the agreement will need to be modified to include the dam safety costs, or a new agreement will be required. Where the project cost sharing was based on a letter of intent, an agreement will be negotiated with the sponsor. In the case of water supply, the existing contract may need to be modified, or a new contract signed to cover the dam safety cost sharing. If no current agreement addresses this cost, the sponsor may elect to repay the cost, with interest, over a period up to 30 years in accordance with provisions of Section 1203(a)(2) of the Water Resources Development Act of 1986.

FOR THE COMMANDER:

STANLEY G. GENEGA
Major General, USA
Director of Civil Works

CF:
CECW-P
CECW-MA
RET TO: CECW-PA
CECW-PR
CECW-EP