



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

CEMP-CR

09 OCT 2014

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 2026 of the Water Resources Development Act (WRDA) 2007 - Leasing Authority

1. This memorandum provides implementation guidance for Section 2026 of WRDA 2007 which amended 16 U.S.C. § 460d originally enacted 22 December 1944 and amended over time.
2. Generally, 16 U.S.C. § 460d authorizes the Secretary of the Army to: construct, maintain and operate public park and recreation facilities at water resource development projects; to permit the construction, maintenance, and operation of such facilities by local entities; and to grant leases of lands, including structures or facilities thereon, at water resources development projects for such periods and upon such terms as the Secretary deems reasonable. In addition, the Act authorizes a reduced or nominal rent for leases to nonprofit organizations, and both a preference to and an option of no monetary consideration to Federal, state and local governmental agencies for leases or licenses for the use of any portion of a project area for any public purpose when in the public interest. The Act also provides that in leases or licenses to Federal, state, or local governmental agencies for lands to be utilized for the development and conservation of fish and wildlife, forest, and other natural resources ("fish and wildlife leases and licenses"), the lessee or licensee may cut timber and harvest crops to further such beneficial uses and to collect and utilize the proceeds of any sales of timber and crops in the development, conservation, maintenance, and utilization of any such leased or licensed land.
3. Section 2026 of WRDA 2007 further amends 16 U.S.C. § 460d to grant federally recognized Indian tribes the same rights as Federal, state and local governmental agencies under the act: a) both a preference, and option for no monetary consideration for leases or licenses for the use of any portion of a project area for any public purpose when in the public interest; and b) to cut timber and harvest crops as necessary for beneficial uses, and to collect and utilize the proceeds of any sales of timber and crops for fish and wildlife leases or licenses. This change in the law will be reflected in the forthcoming ER 405-1-80 (Management and Outgrant Programs) that will replace the current ER 405-1-12, Chapter 8, regarding policy and guidance on issuing outgrants and may be incorporated, as appropriate, into any outgrants currently under consideration.
4. Any questions regarding this guidance should be addressed to Tonya Bright, CEMP-CR, at 202-761-4904.

FOR THE COMMANDER:



BRENDA M. JOHNSON-TURNER
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SEC. 2026 of WRDA 2007

SEC. 2026. LEASING AUTHORITY.

Section 4 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and other purposes", approved December 22, 1944 (16 U.S.C. 460d), is amended—

(1) by inserting "federally recognized Indian tribes and" before "Federal" the first place it appears;

(2) by inserting "Indian tribes or" after "considerations, to such"; and

(3) by inserting "federally recognized Indian tribe" after

"That in any such lease or license to a".

16 U.S.C. 460d (as amended)

§460d. Construction and operation of public parks and recreational facilities in water resource development projects; lease of lands; preference for use; penalty; application of section 3401 of title 18; citations and arrests with and without process; limitations; disposition of receipts.

The Chief of Engineers, under the supervision of the Secretary of the Army, is authorized to construct, maintain, and operate public park and recreational facilities at water resource development projects under the control of the Department of the Army, to permit the construction of such facilities by local interests (particularly those to be operated and maintained by such interests), and to permit the maintenance and operation of such facilities by local interests. The Secretary of the Army is also authorized to grant leases of lands, including structures or facilities thereon, at water resource development projects for such periods, and upon such terms and for such purposes as he may deem reasonable in the public interest: Provided, That leases to nonprofit organizations for park or recreational purposes may be granted at reduced or nominal considerations in recognition of the public service to be rendered in utilizing the leased premises: Provided further, That preference shall be given to federally recognized Indian tribes and Federal, State, or local governmental agencies, and licenses or leases where appropriate, may be granted without monetary considerations, to such Indian tribes or agencies for the use of all or any portion of a project area for any public purpose, when the Secretary of the Army determines such action to be in the public interest, and for such periods of time and upon such conditions as he may find advisable: And provided further, That in any such lease or license to a federally recognized Indian tribe¹ Federal, State, or local governmental agency which involves lands to be utilized for the development and conservation of fish and wildlife, forests, and other natural resources, the licensee or lessee may be authorized to cut timber and harvest crops as may be necessary to further such beneficial uses and to collect and utilize the proceeds of any sales of timber and crops in the development, conservation, maintenance, and utilization of such lands. Any balance of proceeds not so utilized shall be paid to the United States at such time or times as the Secretary of the Army may determine appropriate. The water areas of all such projects shall be open to public use generally for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such areas along the shores of such projects shall be maintained for general public use, when such use is determined by the Secretary of the Army not to be contrary to the public interest, all under such rules and regulations as the Secretary of the Army may deem necessary, including but not limited to prohibitions of dumping and unauthorized disposal in any manner of refuse, garbage, rubbish, trash, debris, or litter of any kind at such water resource development projects, either into the waters of such projects or onto any land federally owned and administered by the Chief of Engineers. Any violation of such rules and regulations shall be punished by a fine of not more than \$500 or imprisonment for not more than six months, or both. Any persons charged with the violation of such rules and regulations may be tried and sentenced in accordance with the provisions of section 3401 of title 18. All persons designated by the Chief of Engineers for that purpose shall have the authority to issue a citation for violation of the regulations adopted by the Secretary of the Army, requiring the appearance of any person charged with violation to appear before the United States magistrate judge, within whose jurisdiction the water resource development project is located, for trial; and upon sworn information of any competent person any United States magistrate judge in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said regulations. No use of any area to which this section applies shall be permitted which is inconsistent with the laws for the protection of fish and game of the State in which such area is situated. All moneys received by the United States for leases or privileges shall be deposited in the Treasury of the United States as miscellaneous receipts.