



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

REPLY TO
ATTENTION OF

CECW-I

FEB 23 2015

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Sections 6001 and 6003 of the Water Resources Reform and Development Act of 2014 – Deauthorization of Inactive Projects and Backlog Prevention

1. Sections 6001 and 6003 of the Water Resources Reform and Development Act (WRRDA) of 2014 establish new procedures and reporting requirements related to deauthorizing certain projects, programs, and separable elements, and to managing the backlog of uncompleted work. This guidance governs implementation of those sections. A copy of Sections 6001 and 6003 of WRRDA 2014 is enclosed.

2. Projects and Programs Covered by This Guidance. This guidance applies to authorized water resources development projects, authorized environmental infrastructure assistance projects and programs, and separable elements, as defined below.

a. Water Resources Development Projects. Water resources development projects are projects specifically authorized by Congress that produce water resources development outputs. Water resources development projects do not include major rehabilitation projects, dam safety assurance projects, seepage control projects, static instability correction projects, deficiency correction projects, or dredged material disposal facilities. Water resources development projects also do not include Continuing Authorities Programs, the activities thereunder, or other line items listed under the "remaining items" heading for the Construction appropriation in annual appropriations reports.

b. Environmental Infrastructure Assistance Projects and Programs. Environmental infrastructure assistance projects and programs include both those authorized for construction assistance and those authorized for planning, design, or technical assistance only, and include each assistance project individually authorized for construction assistance under section 219 of the Water Resources Development Act (WRDA) of 1992, as amended.

c. Separable Elements. A separable element is any portion of an authorized water resources development project that: a) is physically separable from other portions of that project; and b) achieves hydrologic effects or produces physical or economic benefits that are separately identifiable from those produced by other portions of that project.

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The following elements of an authorized water resources development project also qualify as separable elements: an element for which there is an executed design agreement or project partnership agreement specific to that element; an element that has received funding specified for that element; an element that was authorized separately from or as an amendment to the authorization for the remainder of the water resources development project, that was separately identified in the authorization for the water resources development project, or for which a statute specifies an authorized cost, estimated cost, or amount authorized to be appropriated; an element that has been placed in service or for which the Government or the non-federal partner has assumed operation and maintenance; an element that has been deauthorized; or the remaining portion of the water resources development project apart from other separable elements identified in accordance with this guidance. The components of authorized environmental infrastructure assistance projects and programs are not separable elements.

3. Construction Funding and Obligations; Phase. For purposes of this guidance:

a. Federal construction funding is funding from the Construction appropriation, from the Construction sub-account within the Mississippi River and Tributaries appropriation, or from another appropriation in the case where a statute specifies that the appropriation be used for construction.

b. Non-federal construction funding is funding provided under the Rivers and Harbors Contributed Funds account for construction of Water Resources Development Projects, for construction of Separable Elements, or for cost sharing on Environmental Infrastructure Assistance Projects and Programs.

c. If an authorized water resources development project or separable element has not received federal construction funding or non-federal construction funding, then the current phase will be reported pursuant to paragraphs 5 and 6 as Preconstruction Engineering and Design (PED). If the project or separable element has received construction funding, then the current phase will be reported as construction. However, the project or separable element will not be reported if construction is fully funded (the federal balance to complete is zero), or if its construction is physically complete or close enough to physical completion that it can provide the authorized services and perform the authorized functions. Different separable elements of the same authorized water resources development project may have different phases.

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d. The current phase for all authorized environmental infrastructure assistance projects and programs will be reported as construction. This is because such projects and programs are not funded from the Investigations account.

e. An obligation for construction is the obligation of federal or non-federal construction funding.

4. Cost to Complete. For purposes of this guidance:

a. For an authorized water resources development project or separable element, the total project cost should be estimated as follows:

(1) If the project or element has a fully funded cost estimate (including price level adjustments for all work and inflation through construction for programmed work), adjust the estimate for price level changes between the price level of the estimate and the latest price level.

(2) If the project or element does not have a fully funded cost estimate, adjust the authorized cost, if any, for price level changes only, or, if there is no authorized cost, adjust the estimate in the decision document on which the authorization was based for price level changes only.

(3) Notwithstanding the above, in accordance with subsection 6001(d)(2)(B) of WRRDA 2014, the total project cost reported shall not exceed the maximum project cost under section 902 of WRDA 1986, as amended (33 U.S.C. 2280), where applicable. Maximum project cost shall be computed in accordance with Appendix G of ER 1105-2-100.

(4) The estimated total federal cost is the federal share of total project cost.

b. For an authorized environmental infrastructure assistance project or program, the estimated total federal cost is the amount authorized to be appropriated.

c. The federal cost to complete a phase is equal to the total federal cost for that phase, minus allocations of federal funding to date provided or allocable to that phase. The federal cost to complete an authorized water resources development project or separable element is equal to the federal cost to complete PED plus the federal cost to complete construction.

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5. Minimum Funding List. A Minimum Funding List will be prepared after each Fiscal Year (FY) in accordance with Section 1001(b)(3) of WRDA 86, as amended by section 6001(b) of WRRDA 2014. Current phase will be reported in accordance with paragraph 3, above. The amount required to complete the current phase is the federal cost to complete the current phase and will be reported in accordance with paragraph 4, above.

6. Comprehensive Backlog Report.

a. A Comprehensive Backlog Report will be prepared in accordance with Section 1001(b)(4) of WRDA 1986, as amended by section 6001(b) of WRRDA 2014. The report will be limited to water resources development projects, separable elements, and environmental infrastructure assistance projects and programs for which the federal cost to complete the construction phase is greater than zero (see paragraphs 3 and 4, above).

b. "Original budget authority" in subsection 1001(b)(4)(B)(ii) is the authorized project cost for an authorized water resources development project or separable element, or the amount authorized to be appropriated for an authorized environmental infrastructure assistance project or program, without adjustment for price levels or inflation in either case.

c. "Estimated cost of completion" in subsection 1001(b)(4)(B)(v) is the federal cost to complete all phases.

7. One-Time Deauthorization. Subsections 6001(c) and (d) create processes for the deauthorization of authorized water resources development projects, separable elements, and authorized environmental infrastructure assistance programs with a combined federal cost to complete of at least \$18 billion. The following guidance governs the processes established by these subsections.

a. Authorization Date. The authorization date is the date of the original authorization or, if the authorization has been modified, the date of the most recent such modification.

b. Post-Authorization Study. A post-authorization study is one of the following, if performed after authorization: a feasibility study or report; a review under Section 216 of the Flood Control Act of 1970; a general reevaluation study; a limited reevaluation study; or a study for a portion of the Comprehensive Everglades Restoration Program that results in a project implementation report under title VI of WRDA 2000. The post-authorization study may have been funded from any appropriation. For purposes of this paragraph, a limited reevaluation study is a study that updates benefits or reevaluates

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the feasibility of a project or separable element, rather than simply estimating price level adjustments or updating other information.

c. The Interim Deauthorization List will be limited to projects, programs, and separable elements that meet all four of the following criteria:

(1) The project, program, or separable element has an authorization date, as defined above, before November 8, 2007; and

(2) Neither federal construction funding nor non-federal construction funding has been obligated for construction of the project, program, or separable element in FY 2009 or thereafter; and

3. The project, program, or separable element has received neither an initial work allowance of federal funding from any appropriation, nor any non-federal funding in the Rivers and Harbors Contributed Funds account, for a post-authorization study, as defined above, in FY 2009 or thereafter; and

4. The phase reported in accordance with paragraph 3, above, is PED or construction (that is, the federal cost to complete the construction phase is greater than zero), and the project, program, or separable element is not physically complete nor is it close enough to physical completion that it can provide the authorized services and perform the authorized functions.

d. The Interim Deauthorization List will include the authorization date and the federal cost to complete for each project, program, or separable element.

e. The draft Final Deauthorization List submitted by HQUSACE to the Office of the Assistant Secretary of the Army for Civil Works (SACW) will include data for each project, program, or separable element necessary to apply the “sequencing of projects” specified in subsection 6001(d)(3)(A). These include authorization dates and recommendations from HQUSACE to SACW on projects, programs, and separable elements critical to the interests of the United States. In concert, a draft Appendix will be prepared as described in subsection 6001(d)(3)(B). These materials will be provided to SACW within 60 days after the end of the 90-day review period.

8. Annual Deauthorization Process. The annual deauthorization process prescribed in section 1001 of WRDA 1986, as amended, will be applied in FY 2015 only to those water resources development projects, separable elements, and authorized environmental infrastructure assistance programs with authorization dates, as defined above, on or

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after November 8, 2007 and for which there were no obligations for planning, design, or construction in any account in Fiscal Year (FY) 2010 or thereafter. This is to dovetail with the one-time deauthorization process under subsections 6001(c) through (e) of WRRDA 2014, described in paragraph 7, above, which applies to projects, programs, and separable elements with construction authorization dates, as defined above, before November 8, 2007. Thereafter, the annual process will be applied to all projects, programs, and separable elements that remain authorized for construction following the one-time deauthorization and for which there were no obligations for planning, design, or construction in any account in the then-current FY or any of the preceding five full FYs. Additional guidance will be provided in the future.

9. Automatic Deauthorization. Subsection 6003(a) provides for automatic deauthorization of any water resources development project, separable element, or environmental infrastructure assistance project or program that was authorized in WRRDA 2014 and for which there are no obligations for construction (see paragraph 3) during the 7 years following the date of enactment. Additional guidance will be provided in the future.

10. Report on Ongoing Construction. A report on ongoing construction will be prepared in accordance with subsection 6003(b). It will identify authorized water resources development projects, separable elements, and environmental infrastructure assistance projects and programs that are in the construction phase, as discussed in paragraph 3, above. The construction backlog for those projects is the federal cost to complete.

11. Milestones and Data Requirements.

a. The schedules for preparation of the annual deauthorization report for projects not funded in FY 2010 or thereafter (paragraph 8, above), the Minimum Funding List (paragraph 6, above), the Comprehensive Backlog Report (paragraph 6, above), and the Interim Deauthorization List (paragraph 7, above) will be synchronized. Requirements and suspenses for updating data to support the synchronized schedules will be specified in separate correspondence from CECW-I.

b. To expedite the Interim and Final Deauthorization Lists, the 90-day review period for public comment and consultation on the Interim Deauthorization List in accordance with Section 6001(c)(3) will take place beginning on the same date as its submittal and publication in accordance with Section 6001(c)(4). Comments will be provided to SACW for consideration in formulating the Final Deauthorization List in accordance with subsection 6001(d)(3)(A).

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c. Agreements supporting non-federal contributions qualifying under subsection 6001(e)(2)(A) will be expedited. To avoid deauthorization of the project, program, or separable element, within the specified 180 days both the agreement must be executed and the non-federal funding must be provided under the terms of the agreement.

12. Point of contact is Mr., Mark Mugler, who can be reached at 202-761-4103 or mark.w.mugler@usace.army.mil.



STEVEN L. STOCKTON, P.E.
Director of Civil Works

Encl

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WRRDA 2014 LANGUAGE

SEC. 6001. DEAUTHORIZATION OF INACTIVE PROJECTS.

(a) Purposes.—The purposes of this section are—

(1) to identify \$18,000,000,000 in water resources development projects authorized by Congress that are no longer viable for construction due to—

- (A) a lack of local support;
- (B) a lack of available Federal or non-Federal resources; or
- (C) an authorizing purpose that is no longer relevant or feasible;

(2) to create an expedited and definitive process to deauthorize water resources development projects that are no longer viable for construction; and

(3) to allow the continued authorization of water resources development projects that are viable for construction.

(b) Comprehensive Status Reports.—Section 1001(b) of the Water Resources Development Act of 1986 (33 U.S.C. 579a(b)) is amended by adding at the end the following:

“(3) MINIMUM FUNDING LIST.—At the end of each fiscal year, 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 available on a publicly accessible Internet site in a manner that is downloadable, searchable, and sortable, a list of—

“(A) projects or separable elements of projects authorized for construction for which funding has been obligated during the current fiscal year or any of the 6 preceding fiscal years;

“(B) the amount of funding obligated for each such project or separable element per fiscal year;

“(C) the current phase of each such project or separable element of a project; and

“(D) the amount required to complete the current phase of each such project or separable element.

“(4) COMPREHENSIVE BACKLOG REPORT.—

“(A) IN GENERAL.—The Secretary shall compile and publish a complete list of all projects and separable elements of projects of the Corps of Engineers that are authorized for construction but have not been completed.

“(B) REQUIRED INFORMATION.—The Secretary shall include on the list developed under subparagraph (A) for each project and separable element on that list—

“(i) the date of authorization of the project or separable element, including any subsequent modifications to the original authorization;

“(ii) the original budget authority for the project or separable element;

“(iii) a brief description of the project or separable element;

“(iv) the estimated date of completion of the project or separable element;

“(v) the estimated cost of completion of the project or separable element; and

“(vi) any amounts appropriated for the project or separable element that remain unobligated.

Encl (1)

“(C) PUBLICATION.—

“(i) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall submit a copy of the list developed under subparagraph (A) to—

“(I) the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives; and

“(II) the Director of the Office of Management and Budget.

“(ii) PUBLIC AVAILABILITY.—Beginning on the date the Secretary submits the report to Congress under clause (i), the Secretary shall make a copy of the list available on a publicly accessible Internet site in a manner that is downloadable, searchable, and sortable.”.

(c) Interim Deauthorization List.—

(1) IN GENERAL.—The Secretary shall develop an interim deauthorization list that identifies each water resources development project, or separable element of a project, authorized for construction before November 8, 2007, for which—

(A) construction was not initiated before the date of enactment of this Act; or

(B) construction was initiated before the date of enactment of this Act, but for which no funds, Federal or non-Federal, were obligated for construction of the project or separable element of the project during the current fiscal year or any of the 6 preceding fiscal years.

(2) SPECIAL RULE FOR PROJECTS RECEIVING FUNDS FOR POST-AUTHORIZATION STUDY.—A project or separable element of a project may not be identified on the interim deauthorization list, or the final deauthorization list developed under subsection (d), if the project or separable element received funding for a post-authorization study during the current fiscal year or any of the 6 preceding fiscal years.

(3) PUBLIC COMMENT AND CONSULTATION.—

(A) IN GENERAL.—The Secretary shall solicit comments from the public and the Governors of each applicable State on the interim deauthorization list developed under paragraph (1).

(B) COMMENT PERIOD.—The public comment period shall be 90 days.

(4) SUBMISSION TO CONGRESS; PUBLICATION.—Not later than 90 days after the date of submission of the list required by section 1001(b)(4)(A) of the Water Resources Development Act of 1986 (as added by subsection (b)), the Secretary shall—

(A) submit the interim deauthorization list to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives; and

(B) publish the interim deauthorization list in the Federal Register.

(d) Final Deauthorization List.—

(1) IN GENERAL.—The Secretary shall develop a final deauthorization list of each water resources development project, or separable element of a project, described in subsection (c)(1) that is identified pursuant to this subsection.

(2) DEAUTHORIZATION AMOUNT.—

(A) IN GENERAL.—The Secretary shall include on the final deauthorization list projects and separable elements of projects that have, in the aggregate, an estimated Federal cost to complete that is at least \$18,000,000,000.

(B) DETERMINATION OF FEDERAL COST TO COMPLETE.—For purposes of subparagraph (A), the Federal cost to complete shall take into account any allowances authorized by section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280), as applied to the most recent project schedule and cost estimate.

(3) IDENTIFICATION OF PROJECTS.—

(A) SEQUENCING OF PROJECTS.—

(i) IN GENERAL.—The Secretary shall identify projects and separable elements of projects for inclusion on the final deauthorization list according to the order in which the projects and separable elements of the projects were authorized, beginning with the earliest authorized projects and separable elements of projects and ending once the last project or separable element of a project necessary to meet the aggregate amount under paragraph (2) is identified.

(ii) FACTORS TO CONSIDER.—The Secretary may identify projects and separable elements of projects in an order other than that established by clause (i) if the Secretary determines, on a case-by-case basis, that a project or separable element of a project is critical for interests of the United States, based on the possible impact of the project or separable element of the project on public health and safety, the national economy, or the environment.

(iii) CONSIDERATION OF PUBLIC COMMENTS.—In making determinations under clause (ii), the Secretary shall consider any comments received under subsection (c)(3).

(B) APPENDIX.—The Secretary shall include as part of the final deauthorization list an appendix that—

(i) identifies each project or separable element of a project on the interim deauthorization list developed under subsection (c) that is not included on the final deauthorization list; and

(ii) describes the reasons why the project or separable element is not included.

(4) SUBMISSION TO CONGRESS; PUBLICATION.—Not later than 120 days after the date on which the public comment period under subsection (c)(3) expires, the Secretary shall—

(A) submit the final deauthorization list and the appendix to the final deauthorization list to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives; and

(B) publish the final deauthorization list and the appendix to the final deauthorization list in the Federal Register.

(e) Deauthorization; Congressional Review.—

(1) IN GENERAL.—After the expiration of the 180-day period beginning on the date of submission of the final deauthorization report under subsection (d), a project or separable element of a project identified in the report is hereby deauthorized, unless Congress passes a joint resolution disapproving the final deauthorization report prior to the end of such period.

(2) NON-FEDERAL CONTRIBUTIONS.—

(A) IN GENERAL.—A project or separable element of a project identified in the final deauthorization report under subsection (d) shall not be deauthorized under this subsection if, before the expiration of the 180-day period referred to in paragraph (1), the non-Federal interest for the project or separable element of the project provides sufficient funds to complete the project or separable element of the project.

(B) TREATMENT OF PROJECTS.—Notwithstanding subparagraph (A), each project and separable element of a project identified in the final deauthorization report shall be treated as deauthorized for purposes of the aggregate deauthorization amount specified in subsection (d)(2).

(f) General Provisions.—

(1) DEFINITIONS.—In this section:

(A) POST-AUTHORIZATION STUDY.—The term “post-authorization study” means—

(i) a feasibility report developed under section 905 of the Water Resources Development

Act of 1986 (33 U.S.C. 2282);

(ii) a feasibility study, as defined in section 105(d) of the Water Resources Development Act of 1986 (33 U.S.C. 2215(d)); or

(iii) a review conducted under section 216 of the Flood Control Act of 1970 (33 U.S.C. 549a), including an initial appraisal that—

(I) demonstrates a Federal interest; and

(II) requires additional analysis for the project or separable element.

(B) WATER RESOURCES DEVELOPMENT PROJECT.—The term “water resources development project” includes an environmental infrastructure assistance project or program of the Corps of Engineers.

(2) TREATMENT OF PROJECT MODIFICATIONS.—For purposes of this section, if an authorized water resources development project or separable element of the project has been modified by an Act of Congress, the date of the authorization of the project or separable element shall be deemed to be the date of the most recent such modification.

SEC. 6003. BACKLOG PREVENTION.

(a) PROJECT DEAUTHORIZATION.-

(1) IN GENERAL.- A water resources development project, or separable element of such a project, authorized for construction by this Act shall not be authorized after the last day of the 7- year period beginning on the date of enactment of this Act unless funds have been obligated for construction of such project during that period.

(2) IDENTIFICATION OF PROJECTS.- Not later than 60 days after the expiration of the 7-year period referred to in paragraph (1), 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 a report that identifies the projects deauthorized under paragraph (1).

(b) REPORT TO CONGRESS.- Not later than 60 days after the expiration of the 12- year period beginning on the date of enactment of this Act, 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 available to the public, a report that contains-

(1) a list of any water resources development projects authorized by this Act for which construction has not been completed during that period;

(2) a description of the reasons the projects were not completed;

(3) a schedule for the completion of the projects based on expected levels of appropriations; and

(4) a 5-year and 10-year projection of construction backlog and any recommendations to Congress regarding how to mitigate current problems and the backlog.