DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-PD

2 MAR 2001

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Implementation Guidance for Section 210 of the Water Resources Development Act of 2000 (WRDA 2000)

1. In general, Section 210 of WRDA 2000 provides the authority by which nonprofit entities may act as a non-Federal sponsor for certain projects undertaken by the U.S. Army Corps of Engineers. The three provisions that are amended by this section are Section 312 of the WRDA 1990, Environmental Dredging; Section 602 of the WRDA 1986, Lakes Program; and Section 1135 of WRDA1986, Project Modifications for Improvement of the Environment. A copy of each of these amended provisions is enclosed for your information.

2. In implementing projects under the authorities cited above, a sponsor may be any nonprofit organization that is financially capable of providing the non-Federal share of the project costs and undertaking any required operation, maintenance, repair, replacement, and rehabilitation of the project. Additionally, a potential sponsor must also be able to provide the required lands, easements, rights-of-way, relocations and dredged or excavated material disposal areas.

3. For projects undertaken pursuant to these authorities, the affected local government must consent, in writing, to the non-profit entity being a sponsor. Early in the planning phase the districts must identify and coordinate with "the affected local government(s)". In most cases this will be the smallest unit of government that has jurisdiction or an interest in the project based on the location of effects. However, for larger and/or more complex projects, multiple jurisdictions may be involved. The written consent must be provided prior to execution of the Project Cooperation Agreement. Note that the need to obtain written consent from the affected local government is a new requirement for projects implemented under the authority of Section 1135 of WRDA 1986.

FOR THE COMMANDER:

James F. Johnson

Encls

JAMES F. JOHNSON
Chief, Planning and Policy
Directorate of Civil Works

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Section 312 of the Water Resources Development Act of 1990, as amended (33 U.S.C. § 1272):

Section 312. Environmental Dredging.

(a) Operation and maintenance of navigation projects. Whenever necessary to meet the requirements of the Federal Water Pollution Control Act [33 USC §§ 3351 et seq.], the Secretary, in consultation with the Administrator of the Environmental Protection Agency, may remove and remediate, as part of operation and maintenance of a navigation project, contaminated sediments outside the boundaries of and adjacent to the navigation channel.

(b) Nonproject specific.

(1) In general. The Secretary may remove and remediate contaminated sediments from the navigable waters of the United States for the purpose of environmental enhancement and water quality improvement if such removal and remediation is requested by a non-Federal sponsor and the sponsor agrees to pay 35 percent of the cost of such removal and remediation.

(2) Maximum amount. The Secretary may not expend more than $ 50,000,000 in a fiscal year to carry out this subsection.

(c) Joint plan requirement. The Secretary may only remove and remediate contaminated sediments under subsection (b) in accordance with a joint plan developed by the Secretary and interested Federal, State, and local government officials. Such plan must include an opportunity for public comment, a description of the work to be undertaken, the method to be used for dredged material disposal, the roles and responsibilities of the Secretary and non-Federal sponsors, and identification of sources of funding.

(d) Disposal costs. Costs of disposal of contaminated sediments removed under this section shall be[a] shared as a cost of construction.

(e) Limitation on statutory construction. Nothing in this section shall be construed to affect the rights and responsibilities of any person under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(f) Priority work. In carrying out this section, the Secretary shall give priority to work in the following areas:

(1) Brooklyn Waterfront, New York.

(2) Buffalo Harbor and River, New York.

(3) Ashtabula River, Ohio.

(4) Mahoning River, Ohio.

(5) Lower Fox River, Wisconsin.

(6) Passaic River and Newark Bay, New Jersey.

(7) Snake Creek, Bixby, Oklahoma.

(8) Willamette River, Oregon.

(g) Nonprofit entities. Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), for any project carried out under this section, a non-Federal sponsor may include a nonprofit entity, with the consent of the affected local government.

Section 602 of the Water Resources Development Act of 1986, as amended by section 210 of the Water Resources Development Act of 2000:

Section 602. Lakes Program.

(a) Subject to section 903(a) of [the Water Resources Development Act of 1986], the Secretary shall carry out programs for the removal of silt, aquatic growth, and other material in the following lakes:

(1) Albert Lea Lake, Freeborn County, Minnesota, removal of silt and aquatic growth;

(2) Lake George, Hobart, Indiana, and in that part of Deep River upstream of such lake through Lake Station, Indiana, removal of silt, aquatic growth, and other material and construction of silt traps or other devices to prevent and abate the deposit of sediment in Lake George and such part of Deep River;

(3) Greenwood Lake and Belcher Creek, New Jersey, removal of silt and stumps;

(4) Sauk Lake and its tributary streams in the vicinity of Sauk Centre, Stearns County, Minnesota, removal of silt and aquatic growth;

(5) Deal lake, Monmouth County, New Jersey, removal of silt and stumps and the control of pollution from nonpoint sources;

(6) Lake Worth, Tarrant County, Texas, removal of silt and aquatic growth, including construction of silt traps and providing other devices or equipment to prevent and abate the further deposit of sediment in Lake Worth; such project shall also provide for the use of dredged material from Lake Worth for the reclamation of despoiled land;

(7) Hamlet City Lake, Hamlet, North Carolina, removal of accumulated silt and debris including construction of silt traps and providing other devices or equipment to prevent and abate the further deposit of sediment in Hamlet City Lake;

(8) Lake Herman, Lake County, South Dakota, removal of excess silt; and

(9) Gorton's Pond, Warwick, Rhode Island, mitigation activities recommended in the 1982 Environmental Protection Agency diagnostic feasibility study, including the installation of retention basins, the dredging of inlets and outlets in recommended areas and the disposal of dredge material, and weed harvesting and nutrient inactivation.

(b) The non-Federal share of the cost of each project carried out under this section shall be 25 percent.

(c) The Secretary shall report to the Administrator of the Environmental Protection Agency the plans for and the results of the program under subsection (a), together with such recommendations as the Secretary determines are necessary to carry out the program for freshwater lakes under section 314 of the Federal Water Pollution Control Act.

(d) NONPROFIT ENTITIES.--Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), for any project carried out under this section, a non-Federal interest may include a nonprofit entity with the consent of the affected local government.

(e) There is authorized to be appropriated $40,000,000 for fiscal years beginning after September 30, 1986, to carry out this section. Not more than $8,000,000 may be obligated for any project under subsection (a).

Section 1135 of the Water Resources Development Act of 1986, as amended (33 U.S.C. § 2309a):

Section 1135. Project Modifications for Improvement of Environment

(a) Review of project operations. The Secretary is authorized to review water resources projects constructed by the Secretary to determine the need for modifications in the structures and operations of such projects for the purpose of improving the quality of the environment in the public interest and to determine if the operation of such projects has contributed to the degradation of the quality of the environment.

(b) Modification program. The Secretary is authorized to carry out a program for the purpose of making such modifications in the structures and operations of water resources projects constructed by the Secretary which the Secretary determines (1) are feasible and consistent with the authorized project purposes, and (2) will improve the quality of the environment in the public interest.

(c) Restoration of environmental quality.

(1) In general. If the Secretary determines that construction of a water resources project by the Secretary or operation of a water resources project constructed by the Secretary has contributed to the degradation of the quality of the environment, the Secretary may undertake measures for restoration of environmental quality and measures for enhancement of environmental quality that are associated with the restoration, through modifications either 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.

(2) Control of sea lamprey. Congress finds that—

(A) the Great Lakes navigation system has been instrumental in the spread of sea lamprey and the associated impacts on its fishery; and

(B) the use of the authority under this subsection for control of sea lamprey at any Great Lakes basin location is appropriate.

(d) Non-Federal share; limitation on maximum Federal expenditure. The non-Federal share of the cost of any modifications or measures carried out or undertaken pursuant to subsection (b) or (c) shall be 25 percent. Not more than 80 percent of the non-Federal share may be in kind, including a facility, supply, or service that is necessary to carry out the modification or measure. Not more than $ 5,000,000 in Federal funds may be expended on any single modification or measure carried out or undertaken pursuant to this section.

(e) Coordination. The Secretary shall coordinate any actions taken pursuant to this section with appropriate Federal, State, and local agencies.

(f) Biennial report. Beginning in 1992 and every 2 years thereafter, the Secretary shall transmit to Congress a report on the results of reviews conducted under subsection (a) and on the programs conducted under subsections (b) and (c).

(g) Nonprofit entities. Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. § 1962d-5b), a non-Federal sponsor for any project carried out under this section may include a nonprofit entity, with the consent of the affected local government.

(h) Funding. There is authorized to be appropriated not to exceed $ 25,000,000 annually to carry out this section.

(i) Definition. In this section, the term "water resources project constructed by the Secretary" includes a water resources project constructed or funded jointly by the Secretary and the head of any other Federal agency (including the Natural Resources Conservation Service).