DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

SACW

15 March 2022

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Implementation of Environmental Justice and the Justice40 Initiative

1. Purpose. This memorandum provides interim guidance and direction to the U.S. Army Corps of Engineers (USACE) Civil Works programs related to the implementation of environmental justice and the Justice40 Initiative. This memorandum applies to all Civil Works programs and missions, other than the Regulatory Program. Separate guidance will be forthcoming to address environmental justice in the Regulatory Program.

2. References.

a. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994

b. Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, January 20, 2021

c. Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, January 20, 2021

d. Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, January 27, 2021

e. Office of Management and Budget Memorandum M-21-28, Interim Implementation Guidance for the Justice40 Initiative, July 20, 2021

f. Comprehensive Documentation of Benefits in Decision Document, January 5, 2021, issued by the Assistant Secretary of the Army (Civil Works). Any amendments or replacements of this document in the future will supersede this reference and shall be incorporated as such.

g. Alaskan Natives Claims Settlement Act, as amended (43 U.S. Code Chapter 33)

h. Indian Self-Determination and Education Assistance Act, as amended (25 U.S. Code Chapter 46)

i. Water Resources Development Act (WRDA) of 2020, December 27, 2020

3. Environmental justice policy. Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income regarding the development, implementation and enforcement of environmental laws, regulations, and policies, with no group bearing a disproportionate burden of environmental harms and risks. Environmental justice and disproportionate impacts to disadvantaged communities shall be considered throughout the Civil Works programs and in all phases of project planning and decision-making, consistent with the goals and objectives of various Administration policies (reference 2.a. - 2.e.). Environmental justice is achieved when everyone enjoys the same degree of protections and equal access to Civil Works programs and services to achieve a healthy environment in which to live. In studying, planning, designing, constructing, and operating USACE Civil Works projects or providing assistance, USACE shall work to meet the needs of disadvantaged communities by reducing disparate environmental burdens, removing barriers to participation in decision-making, and increasing access to benefits provided by Civil Works programs to disadvantaged communities within USACE authorities. USACE will work to accommodate and encourage participation of all communities as partners in the assessments of need, studies, planning development, and implementation. If adverse effects of Civil Works programs and services are identified, USACE will take steps to avoid, minimize, or mitigate those impacts to the greatest extent reasonable. USACE will not work to achieve these goals alone but rather will work collaboratively with other federal, state and local governments, Indian tribes, and disadvantaged communities to ensure the Civil Works program delivers benefits to all citizens in impacted communities. In general, USACE Civil Works will focus environmental justice activities into three broad areas: 1) improving outreach and access to USACE Civil Works information and resources; 2) improving access to USACE Civil Works technical service programs (e.g., Planning Assistance to States and Floodplain Management Services programs) and maximizing the reach of Civil Works projects to benefit the disadvantaged communities, in particular as it relates to climate resiliency; and, 3) ensuring any updates to USACE Civil Works policies and guidance will not result in a disproportionate impact on disadvantaged communities.

4. Priority action areas. This guidance focuses on priority action areas for environmental justice in Civil Works, including the Justice40 Initiative, Tribal Partnership Program, Planning Assistance to States, and Floodplain Management Services, as well as more broadly to study, design, construction, and operation phases of projects primarily for flood risk management, coastal storm risk management, and aquatic ecosystem restoration. It also includes the Continuing Authorities Program and Environmental Infrastructure, where applicable under the relevant authorities. The guidance below details how environmental justice should be considered as an interim measure for these programs until such time as final guidance is issued. Any additional guidance by the Administration will also be incorporated in future implementation for a consistent government-wide approach. There are other areas which intersect with,

and/or advance environmental justice (e.g., tribal consultation policy, Principles, Requirements, and Guidelines, and compliance with the National Environmental Policy Act); however, this guidance focuses on the areas highlighted above. This does not mean environmental justice should not be a priority for those other areas. I also fully support USACE's Natural Resources Management as it provides many benefits to disadvantaged communities such as recreational opportunities and passive forms of enjoyment, among others.

5. Benefits to disadvantaged communities. As described in this memorandum for purposes of environmental justice implementation, benefits entail a wide array of areas, from those listed in references 2.e. and 2.f to the more general benefits provided by each Civil Works program and mission area. The measurement of benefits for purposes of this memorandum are discussed in more detail below, where applicable.

6. Justice40 Initiative. I am committed to furthering the Administration's goals under the whole-of-government Justice40 Initiative (reference 2.e) to help achieve the target to deliver at least 40% of the overall benefits from Federal investments in climate and critical clean water and waste infrastructure to disadvantaged communities. For purposes of implementation of the Civil Works Program to assist the Administration in the Justice40 Initiative goals, USACE will use investments as the metric to measure benefits, essentially providing that 40% of USACE investments in climate and critical clean water and waste infrastructure must benefit disadvantaged communities. USACE will strive to achieve the 40% goal under Justice40 Initiative for specific programs, such as Planning Assistance to States, Floodplain Management Services, and the Tribal Partnership Program, as well as in a more general sense for areas such as construction investments. This memorandum provides the initial strategy for USACE to comply with reference 2.e. and implement the Justice40 Initiative pending further Administration guidance. However, this memorandum provides a strategy for implementation to achieve the broader goals of the Administration regarding environmental justice, and therefore is not limited to the Justice40 Initiative.

7. WRDA 2020 provisions. Under reference 2.i., several WRDA 2020 provisions required the Secretary of the Army to define terms, such as "economically disadvantaged communities." The interim definitions to be used for implementing this memorandum (see paragraph 14) are consistent with the proposed approach for the WRDA 2020 Implementation Guidance.

8. Planning Assistance to States and Floodplain Management Services. Although work conducted under these programs is done upon request of the partner, there are still opportunities where USACE can ensure portions of the overall investments for each of the programs goes towards benefitting disadvantaged communities. Through this memorandum, I am directing that the USACE conduct an analysis of how we can best fund and meet for each program an investment strategy to target benefits to disadvantaged communities, including consideration of the Justice40 Initiative targets,

followed by a briefing to my office on the analysis and strategy. In undertaking the analysis, the USACE shall host an internal nationwide meeting for the managers of these programs to discuss how best to incorporate the objectives of this memorandum into the programs. My staff will participate in these sessions in listening mode for awareness. The USACE shall engage the state-level POCs for these programs to assist in development of the overall investment strategy. In addition, the strategy shall include identification of outreach methods to be performed at the district level to ensure disadvantaged communities are engaged to broaden awareness of the opportunities and services these programs can provide. The briefing to my office shall occur the week of March 28, 2022, with expected finalization of the strategy to occur by April 29, 2022.

9. Tribal Partnership Program. For the Tribal Partnership Program, 100% of investment benefits goes towards Tribal Nations, and geographic areas within Tribal jurisdictions are included in the definition of disadvantaged communities (references 2.a. - 2.e.). The current efforts underway to develop comprehensive program guidance will help to ensure this program reaches its maximum potential recognizing the commitment of this Administration to Tribal Nations. This memorandum directs that such guidance be ready for my office's review by September 01, 2022 with recurring working sessions with my staff in the intervening months.

10. Investigation and Studies and Planning. For projects which are in the study and planning phases, we will take a more proactive approach towards achieving environmental justice. This may take time to achieve, but the end result will be an approach to studies which will focus on a comprehensive evaluation of the total benefits of each plan including equal consideration of applicable benefit types in the study scope of work where the disadvantaged communities play a key role in the effort to advance their needs. This new approach goes beyond "doing no harm" to focus on putting the disadvantaged communities at the front and center of studies. This will require a commitment starting at the earliest phase in the process. USACE is directed to initiate outreach and engage disadvantaged communities early in the process to identify and address problems. The early engagement will be used to help scope the study. USACE will also ensure they follow reference 2.f. when undertaking studies, with a particular focus on those areas which advance environmental justice. We must make it a priority to find ways to invest in achieving environmental justice and studies play a key role in that investment strategy. USACE is directed to brief me by April 29, 2022, on options as to how to meet these policy goals to also include consideration of funding, the role of the non-federal sponsors, project alternatives, and timelines.

11. Construction. For projects which already have been authorized, we will continue to strive to achieve the Administration's goal for environmental justice by investing in projects which benefit disadvantaged communities. As long as an overall project will result in benefits towards disadvantaged communities it will count towards an investment in environmental justice, since the project works holistically and cannot be piecemealed to achieve the overall benefits provided. Decisions regarding investments

will need to be made to ensure the Administration's objectives regarding environmental justice are met. The investment decisions to achieve the overall objectives will be made at the program level. Although these projects were not necessarily specifically designed to benefit disadvantaged communities prior to this memorandum, these projects nonetheless do provide such benefits and as such should be considered in our contribution towards the Administration's environmental justice objectives.

12. Methods for significant but incidental benefits. While the benefits at the focus of this memorandum relate specifically to those identified in paragraphs 5 and 6 above, there are also significant but incidental benefits which we should ensure are accounted for in describing a project. These are things which are also highlighted as important to the Administration, such as recreational access for disadvantaged communities, water quality improvements, and carbon sequestration. These may not be the driving force for assessing benefits under USACE authorities and mission areas but they are significant nonetheless and we should ensure greater awareness is provided regarding these benefits.

13. Initial outreach and continued engagement. To achieve the goals outlined in this memorandum, there must be an evolution as to how USACE engages and builds relationships with communities. Initial outreach to disadvantaged communities will be conducted by my office with assistance from USACE. This national-level initial engagement will include a series of virtual sessions to obtain feedback and input on developing a final guidance document. As stated in paragraph 3 of this memorandum, environmental justice shall be considered in all aspects of Civil Works and as such the national engagement opportunities will have a broader focus. It is then imperative that there be follow up and support for the national-level engagement with more targeted focus at the local level. Districts should engage tribal, state and local governments and engage local communities to discuss these matters and to raise public awareness of the available USACE programs and their benefits.

The USACE is directed to develop an outreach and strategic plan to best deliver on the local engagement component required to fully achieve the intent of the environmental justice mission for my review by April 29, 2022. This energized outreach strategy should capitalize on a broad range of community meetings and other organized community-level opportunities, and engage communities to truly listen to their needs. We must strive to align our missions and authorities with their vision of the future to address their needs and enable community resilience to the extent practicable. The plan must also include consideration of the role of non-federal sponsors, utilization of the Collaboration and Public Participation Center of Expertise and the Collaboration Community of Practice, and include specific plans for the programs discussed in paragraphs 8 and 9. Also, continued engagement with my office is needed to ensure appropriate policy implementation and execution is occurring. Therefore, my staff will arrange for a quarterly meeting to review progress and execution for implementation of this memorandum.

14. Tools. The Administration's Council on Environmental Quality recently released a beta version of the Climate and Economic Justice Screening Tool (https://screeningtool.geoplatform.gov/en) per EO 14008 to provide a consistent government-wide identification of communities with environmental justice concerns. USACE shall default to using such Tool for purposes of implementing this memorandum, focusing on the climate change and the critical clean water and waste infrastructure (i.e., as implemented through the USACE Environmental Infrastructure program) categories and their associated definitions. However, there are additional tools which are available for use to provide further support and description of these communities. This includes the Environmental Protection Agency's EJScreen Tool (https://www.epa.gov/ejscreen) which provides helpful information to describe the attributes of a community in a complementary way to the Climate and Economic Justice Screening Tool. In addition, where local tools may be available such tools can be used to supplement the Climate and Economic Justice Screening Tool with additional specificity for a particular situation. These include state-specific tools (e.g., California's CalEnviroScreen Tool, New Jersey's Environmental Justice Mapping Tool, Maryland's Environmental Justice Screen Tool, and North Carolina's Community Mapping System), and various other local and academic tools, as applicable and appropriate.

MICHAEL L. CONNOR
Assistant Secretary of the Army
(Civil Works)

CF:
DCG-CEO
DCW