



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

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

SUBJECT: Tribal Partnership Program – Non-Traditional Water Resources Development Projects

1. References:

a. Section 203 of the Water Resources Development Act (WRDA) of 2000, as amended. 33 U.S.C. 2269. Tribal partnership program (TPP).

b. Section 101 of WRDA 1986, as amended. 33 USC 2211. Harbors.

c. Section 103 of WRDA 1986, as amended. 33 USC 2213. Flood control and other purposes.

d. Section 1156 of WRDA 1986, as amended. 33 USC 2310. Cost sharing for Territories and Indian tribes.

e. Letter to the Assistant Secretary of the Army for Civil Works from the Gila River Indian Community (GRIC), dated May 18, 2022.

2. Background.

a. The United States has a unique trust obligation to federally recognized Indian tribes and their citizens. This obligation, and the responsibilities inherent in the relationship are based on the U.S. Constitution, treaties, statutes, Executive Orders, and other federal laws that define the United States' trust responsibility to Indian tribes and their citizens. Certain principles are fundamental to the trust responsibility and include: (1) respecting tribal sovereignty and self-determination; (2) being responsive and informative in all communications and interactions with Indian tribes; and (3) working in partnership with Indian tribes on mutually beneficial projects.

b. The TPP is a program that creates opportunities for the U.S. Army Corps of Engineers (Corps) to work closely with and support Tribal Nations through the use of the Corps' capabilities and resources to advance the interests of Tribal communities. Specifically, the TPP, authorizes the Secretary, in cooperation with Indian tribes and the heads of other federal agencies, to carry out water-related planning activities, or

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activities relating to the study, design, and construction of water resources development projects, that will substantially benefit Indian tribes; and are located primarily within Indian country or in proximity to Alaska Native villages. An activity conducted under the Program may address: projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources; watershed assessments and planning activities; and such other projects as the Secretary, in cooperation with Indian tribes and the heads of other federal agencies, determines to be appropriate. See reference 1.a.

3. Construction of Non-traditional Water Resources Development Projects.

a. The TPP provides authority for the Corps to carry out projects that address the preservation of cultural and natural resources and such other projects as the Secretary, in cooperation with Indian tribes and the heads of other federal agencies, determines to be appropriate. These projects are not typically considered a traditional Corps water resources development project.

b. Pursuant to this memorandum, and consistent with the principles inherent in the federal trust responsibility, the TPP shall be implemented more broadly to provide the Army the flexibility to include projects that are not typically considered a traditional Corps water resources development project. The TPP comprehensive guidance under development shall incorporate these additional “non-traditional” activities under the Program. Further, until such updated TPP comprehensive guidance is issued, the Corps Districts may consider and recommend TPP studies and projects that address the preservation of cultural and natural resources and such other projects determined to be appropriate based on meeting both of the following criteria:

- (1) related to a water resource; and,
- (2) aligns with Corps capabilities and core competency.

The Corps shall elevate those non-traditional projects which do not meet such criteria as soon as practicable (e.g., prior to signing a feasibility cost sharing agreement) to the Office of the Secretary of the Army for Civil Works (ASA(CW)) for a decision by the ASA(CW), in cooperation with Indian tribes and the heads of other federal agencies. In addition, all non-traditional projects under paragraph 3.b. which exceed the current authorized federal programmatic limit for TPP provided by Congress in WRDA must also be elevated as soon as practicable for a decision by the ASA(CW) as to how to proceed.

4. Implementation Considerations for All TPP Projects. The recommendations under TPP must specifically address the determination that the project is feasible and includes the appropriate cost sharing. This determination of feasibility includes that the project is technically feasible; the economic, environmental, and social benefits to the Tribal

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Nation outweigh the costs; the project is cost-effective; and the project is environmentally acceptable. The Corps should consider the breadth of benefits provided including those identified by the relevant Tribal Nation. The primary driver in the implementation consideration is whether the project will substantially benefit Indian Tribes.

a. Study. It is presumed that a project that qualifies under the criteria above is within the federal interest. The federal objective for these studies is to substantially benefit the Indian Tribe. The study includes all activities required to demonstrate that federal participation in the project is warranted and appropriate and is cost shared 50% Federal and 50% Tribal. It is anticipated that the study size, scope, and complexity would be commensurate with the cost of the project.

b. Implementation. The TPP specifically provides that the non-federal share of costs of design and construction of a water resources development project shall be assigned to the appropriate project purposes described in references 1.b. and 1.c. and shared in the same percentages as the purposes to which the costs are assigned. Those statutory cites establish generic cost sharing for water resources development projects based on the project purposes. The design and construction costs of projects for the preservation of cultural and natural resources will be shared in accordance with the cost sharing for navigation, flood risk management, coastal storm risk management, aquatic ecosystem restoration, depending on the causal factors necessitating the project. For other recommended projects, the cost sharing should be assigned to the project purpose for which the proposed activity most closely aligns. For example, for a proposed project including an upgrade to a Tribal irrigation system that would reduce evaporative losses, conserve water resources, prevent growth of aquatic weed, and provide power to an irrigation system (reference 1.d.), the project purpose most closely aligns with the agricultural water supply cost-shared at 65% Federal and 35% Tribal partner.

c. The cost share waiver of Section 1156 of WRDA 1986, as amended, may be applied to both the study and the implementation phase of the project (reference 1.e.).

5. In addition, this memorandum directs the Corps to use the utmost flexibility in utilizing and accommodating Tribal expertise and resources in all phases of the TPP program execution, from Indigenous knowledge, to technical expertise in project design and construction, to contracting capability. Many Tribal Nations are as capable or more capable as any other partner for a Corps Civil Works project, and in many areas can equal the Corps' capabilities.

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6. Questions regarding this matter may be directed to Stacey Jensen, Assistant for
Regulatory and Tribal Affairs, Office of the Assistant Secretary of the Army (Civil
Works), at (703) 459-6026 or stacey.m.jensen.civ@army.mil.



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