



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

SACW

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

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development Act of 2020, Federal Interest Determination

1. Section 117 of the Water Resources Development Act (WRDA) of 2020 amends Section 905 of WRDA 1986 (33 U.S.C. 2282) and directs the Secretary, at the request of the non-Federal interest for a feasibility study that would benefit an economically disadvantaged community, to determine the Federal interest in carrying out the feasibility study and the projects that may be proposed in the study. The section authorizes the Secretary to determine the Federal interest for not more than 3 studies for covered communities each fiscal year. The Federal Interest Determination (FID) must be carried out at full Federal expense for a cost of not more than \$200,000 and must be completed not later than 120 days after the date on which funds are made available to the Secretary. In the event the Secretary determines that a study or project is not in the Federal interest but could still result in a technically sound and environmentally acceptable plan, Section 117 requires the Secretary to issue a report to the non-Federal interest with recommendations on how the non-Federal interest might modify the proposal such that the project could be in the Federal interest and feasible. Section 117 of WRDA 2020 and Section 905 of WRDA 1986, as amended by Section 117, are enclosed.
2. This section is applicable to Headquarters and all Divisions, Districts, and Field Offices of the U.S. Army Corps of Engineers (Corps) with civil works responsibilities.
3. References:
 - a. SACW memorandum (Implementation Guidance for Section 160 of the Water Resources Development Act of 2020, Definition of Economically Disadvantaged Community), dated 14 March 2023.
 - b. SACW memorandum (Partnering with Non-Federal Interests), 10 September 2019.
4. Definitions.
 - a. The term "community" means a collection of people in a geographic area having one or more characteristic in common. The geographic area may be contained within or cross the boundaries of political subdivisions of a State.

SACW

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

b. The term “economically disadvantaged community” means a community as defined in reference 3.a.

c. The term “covered community” means a community that is not an economically disadvantaged community but that the Secretary has found to have a compelling need for a FID. A community demonstrates a compelling need for a FID when the community satisfies one or more of the following criteria:

(1) The community includes, or is located within, a geographic area identified by the head of a Federal agency as qualifying for priority or preference for Federal funding due to the area’s need for economic development or revitalization.

(2) The community includes or is located within, a geographic area covered by a Presidential declaration of emergency, or declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-5207), issued within the ten calendar years preceding the calendar year during which the non-Federal interest requests a FID;

(3) The community is a community that sustained damage during two or more flood events, hurricane and storm damage, or a coastal storm within the 10 calendar years preceding the calendar year during which the non-Federal interest requests a FID. The flood events need not have resulted in a Presidential declaration of emergency or disaster.

d. The term “eligible study” means a feasibility study that the Secretary is authorized to undertake, that could primarily benefit an economically disadvantaged community or covered community that will require specific project authorization by Congress.

5. Subject to the availability of funding, annually (January) the Assistant Secretary of the Army for Civil Works (ASA(CW)) will issue a Federal Register Notice that provides notification that interested non-Federal interests can submit requests to the appropriate District Commander for a FID. The Federal Register Notice will include information on what a FID is, who is eligible, where to request one, and how to request one.

6. Annually, in conjunction with the release of the Federal Register Notice, District Commanders will conduct outreach with economically disadvantaged communities and covered communities in the Commanders area of responsibility. Outreach will consist of District Commanders identifying economically disadvantaged communities in their area of responsibility and directly contacting these communities in writing, and advising them of Corps authorities, programs, resources, including the Corps ability to conduct FIDs upon request.

SACW

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

7. Annually (October), District Commanders will provide a report on their outreach efforts to the Chief of the Programs Integration Division, Corps Headquarters. The Chief of Program Integration Division will package all the district reports on outreach into one document with a summary and provide the report and summary to the Deputy Assistant Secretary of the Army for Civil Works, Management and Budget (DASA M&B).

8. The purpose of a FID is to determine if there is at least one reasonable alternative that if investigated under a feasibility study could potentially result in a water resources development project being recommended for congressional authorization. The completion of a FID by a District Commander is not considered a Major Federal Action. The non-Federal interest is an integral partner in the FID evaluation and will be provided the opportunity to participate in the FID determination process.

9. A FID will be based on existing information to the greatest extent practicable, identify problems and opportunities, identify potential solutions, indicate whether expected relative costs compared to relative benefits (monetary and non-monetary) are reasonable, and identify potential environmental impacts of future reasonable actions. In making the FID, the District Commander will consider whether reasonable alternatives exist that may be technically feasible, environmentally acceptable, and based upon preliminary estimates would be cost effective. The District Commander will consider the breadth of known economic, environmental, and social benefits that may accrue to the economically disadvantaged community, including those identified by the relevant community.

10. Any non-Federal interest for an eligible study may request in writing a FID. The FID may be requested at any time. All information provided in the request is public information. Therefore, information that is confidential business information, should not be disclosed, or other information that a non-Federal interest would not want to appear publicly, should not be included in the request. A Feasibility Cost Share Agreement is not required for a District Commander to complete a FID.

11. A request for a FID by an economically disadvantaged community must include:

- a. A description of the water resources problem that the study would address, including a description of the study area, scope, and scale of the problem.
- b. A description of the potential benefits of the project to include a discussion of the benefits to the community, and considering economic, environmental, and social benefits.
- c. Identification of the economically disadvantaged community or communities that will be benefited by the study and include a map of the study area with the economically disadvantaged community labeled.

SACW

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

d. If known, the request should identify the feasibility study authority under which a feasibility study could be executed.

12. A request for a FID by a covered community must include:

a. A description of the water resources problem that the study would address, including a description of the study area, scope, and scale of the problem.

b. A description of the potential benefits of the project to include a discussion of the benefits to the community.

c. Identification of the covered community or communities that will be benefited by the study and include a map of the study area with the covered communities labeled.

d. If known, the request should identify the feasibility study authority under which a feasibility study could be executed.

e. For a covered community based on the criterion described in Paragraph 4.c(1), a copy of the publication or official written correspondence from the responsible Federal agency designating the geographic area included in or containing the community as an area that qualifies for priority or preference for Federal funding due to the area's need for economic development or revitalization.

f. For a covered community based on the criterion described in Paragraph 4.c(2), a description of the Federal emergency or disaster and the damage sustained by the community as a result of the event.

g. For a covered community based on the criterion described in paragraph 4.c(3), a description of the flood events and damage sustained by the community as a result of the event(s).

13. In order to ensure consistency in completing FIDs, within 60-days of issuance of this guidance, the Director of Civil Works, Corps Headquarters will develop an execution plan for how a FID will be executed, scheduled, and funded by District Commanders. That draft plan will be provided to the ASA(CW) for review and approval. The plan will include information on the type of information and analysis required to complete a FID, to include the use of available information, disciplines required to complete a FID, role of the non-Federal interest in the FID, a general budget for conducting a FID, and a schedule for completing a FID. The FID shall include a recommendation for ways to implement a study if a FID is positive or recommended modifications that a NFI could consider if a FID is negative.

SACW

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

14. Eligibility will be evaluated as follows:

- a. A community's status as an economically disadvantaged community will be evaluated using the data sources and methodology described in reference 3.a.
- b. A community's status as a covered community based on the criterion described in Paragraph 4.c(1) will be evaluated using information submitted in the non-Federal interest's request for a FID.
- c. A community's status as a covered community based on the criterion described in Paragraph 4.c(2) will be evaluated using the database of disaster and emergency declarations available on the public-facing website of the Federal Emergency Management Agency and information submitted in the non-Federal interest's request for a FID.
- d. A community's status as a covered community based on the criterion described in Paragraph 4.c(3) will be evaluated using information contained in the non-Federal interest's request and the data sources and methodology described in the plan discussed in Paragraph 13.

15. For a FID conducted under this authority, the FID will have the following four milestones scheduled than reported to the Chief of the Programs Integration Division, Corps Headquarters by the appropriate District Commander.

- a. Initiation of the FID (day 1).
- b. Completion of the FID (NLT day 90).
- c. District Commander's decision (NLT day 120).
- d. District Commander's notification to the non-Federal interest. District Commanders will provide non-Federal interests FID schedule within 5 days of initiation and notify non-Federal Interests, in writing, within five days of the Commanders decision.

16. A FID will be carried out at 100 percent Federal expense at a cost of not more than \$200,000.

- a. The cost of a FID will not be included for purposes of the maximum Federal cost under Section 1001(a)(2) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 22282c(a)(2)).

SACW

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

b. When funds are appropriated for completing FIDs, a programmatic line item will be created. Funds will be allocated to individual study efforts at the districts and tracked through individual AMSCOs. Upon completion of a FID, District Commanders will return any unused funds to the Corps Headquarters Master AMSCO within 60-days.

c. The budget request documentation will consist of a Section 117 Support Paper for which the non-Federal interest has requested a FID. The Support Paper must include sufficient information to demonstrate that the FID supports an economically disadvantaged community or a covered community.

d. The time period during which a FID is being completed will not be included in schedule for purposes of completing a final feasibility report under Section 1001(a)(1) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282c(a)(1)).

17. If a District Commander concludes that there is no Federal interest to conduct a feasibility study because a project recommendation will not result, or is unlikely to result, in a recommended plan that will produce monetary or non-monetary economic benefits which equal or exceed the cost, but may result in a technically sound and environmentally acceptable plan that is otherwise consistent with Section 904 of WRDA 1986 (33 U.S.C. 2281), a report will be prepared that details recommendations for how the non-Federal interest might modify the study proposal such that the project could be in the Federal interest and feasible. The report will be provided by the District Commander to the non-Federal interest within 5 days of the Commander's determination that there is not a federal interest in the project as proposed. District Commanders will provide the report to the Chief of the Programs Integration Division, Corps Headquarters within five days of the Commander's determination that there is not a federal interest in the project as proposed.

18. Procedures.

a. Within three business days of receipt of a request for a District Commander to conduct a FID, the Chief of Planning, in coordination with the Chief of Programs, at the responsible Corps District, in conjunction with other district staff, as appropriate, will review a non-Federal interests request for a FID to confirm the non-Federal interest's eligibility as an economically disadvantaged community and refer the request to the District Commander for review and action.

b. If a request is determined eligible and approved by the District Commander, a request for funding will be made to HQ USACE Chief of the Programs Integration Division within three business days.

c. If the request is for a covered community, the District Commander will make an initial determination of eligibility within five business days and forward a

SACW

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

recommendation to the ASA(CW) via the Division Commander and appropriate Regional Integration Team at Corps Headquarters. Transmission of the District Commander's recommendation to the ASA(CW) will be done in ten business days or less, from the time the District Commander forwards a recommendation to the Division Commander. Upon approval by the ASA(CW) and funding being identified, approval will be provided by the DASA M&B to the District Commander to conduct the FID.

d. Upon a decision of a determination to conduct a FID by the District Commander for an economically disadvantaged community or the ASA(CW) for a covered community, the appropriate District Commanders will notify the non-Federal interest in writing of the determination. The 120-day requirement starts on the day the District Commander notifies the non-Federal interest that a FID will be conducted. Under no circumstances will a time exception to the 120-day requirement be considered.

e. Initiation

(1) Upon a District Commander's approval for a FID for an economically disadvantaged community or the ASA(CW) approval of a FID for a covered community and subject to the availability of funding, the District Commander will conduct the FID in accordance with the plan developed as discussed in Paragraph 13 and the milestones discussed in Paragraph 15.

(2) For FIDs that result in a determination that no Federal interest exists, the District Commander will complete the report discussed in Paragraph 17 using the \$200,000 authorized for the FID effort.

19. Approval authority for the FID is delegated to the District Commander and may not be further delegated.

20. The Chief of the Programs Integration Division, Corps Headquarters will provide semi-annual updates to the DASA M&B. Updates will include copies of any reports received from District Commanders as described in Paragraph 17.

21. Under no circumstances shall this policy be modified, supplemented, amended, or rescinded, directly or indirectly, nor shall the Corps take action not in accordance with the direction herein, without the express written approval from the ASA(CW). This guidance shall be transmitted to the appropriate Corps Division and District Commanders and posted to the Corps' WRDA website within five business days of receipt (written or electronic) from this office. Guidance shall be transmitted and posted as is and without additional guidance attached.

SACW

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

22. Questions regarding this implementation guidance should be directed to Gib Owen, Office of the ASA(CW), at gib.a.owen.civ@army.mil or 703-695-4641.

Encl

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

CF:
DCG-CEO
DCW

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

SEC. 117. FEDERAL INTEREST DETERMINATION.

Section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282) is amended by inserting after subsection (a) the following:

(b) FEDERAL INTEREST DETERMINATION.

(1) IN GENERAL.

(A) **ECONOMICALLY DISADVANTAGED COMMUNITIES.** In preparing a feasibility report under subsection (a) for a study that will benefit an economically disadvantaged community, upon request by the non-Federal interest for the study, the Secretary shall first determine the Federal interest in carrying out the study and the projects that may be proposed in the study.

(B) **OTHER COMMUNITIES.**

(i) **AUTHORIZATION.** In preparing a feasibility report under subsection (a) for a study that will benefit a covered community, upon request by the non-Federal interest for the study, the Secretary may, with respect to not more than 3 studies in each fiscal year, first determine the Federal interest in carrying out the study and the projects that may be proposed in the study.

(ii) **COVERED COMMUNITIES.** In this subparagraph, the term 'covered community' means a community that

(I) is not an economically disadvantaged community; and

(II) the Secretary finds has a compelling need for the Secretary to make a determination under clause (i).

(2) COST SHARE. The costs of a determination under paragraph (1)

(A) shall be at Federal expense; and

(B) shall not exceed \$200,000.

(3) DEADLINE. A determination under paragraph (1) shall be completed by not later than 120 days after the date on which funds are made available to the Secretary to carry out the determination.

(4) TREATMENT.

(A) **TIMING.** The period during which a determination is being completed under paragraph (1) for a study shall not be included for purposes of the deadline to complete a final feasibility report under section 1001(a)(1) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282c(a)(1)).

(B) **COST.** The cost of a determination under paragraph (1) shall not be included for purposes of the maximum Federal cost under section 1001(a)(2) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282c(a)(2)).

(5) REPORT TO NON-FEDERAL INTEREST. If, based on a determination under paragraph (1), the Secretary determines that a study or project is not in the Federal interest because the project will not result, or is unlikely to result, in a recommended plan that will produce national economic development benefits greater than cost, but

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

may result in a technically sound and environmentally acceptable plan that is otherwise consistent with section 904 of the Water Resources Development Act of 1986 (33 U.S.C. 2281), the Secretary shall issue a report to the non-Federal interest with recommendations on how the non-Federal interest might modify the proposal such that the project could be in the Federal interest and feasible.

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

SECTION 905 WRDA1986 (33 U.S.C. 2282), AS AMENDED

(a) PREPARATION OF REPORTS.

(1) **IN GENERAL.** In the case of any water resources project-related study authorized to be undertaken by the Secretary that results in recommendations concerning a project or the operation of a project and that requires specific authorization by Congress in law or otherwise, the Secretary shall prepare a feasibility report, subject to section 2215 of this title.

(2) **CONTENTS OF FEASIBILITY REPORTS.** A feasibility report shall describe, with reasonable certainty, the economic, environmental, and social benefits and detriments of the recommended plan and alternative plans considered by the Secretary and the engineering features (including hydrologic and geologic information), the public acceptability, and the purposes, scope, and scale of the recommended plan. A feasibility report shall also include the views of other Federal agencies and non-Federal agencies with regard to the recommended plan, a description of a nonstructural alternative to the recommended plan when such plan does not have significant nonstructural features, and a description of the Federal and non-Federal participation in such plan, and shall demonstrate that States, other non-Federal interests, and Federal agencies have been consulted in the development of the recommended plan. A feasibility report shall include a preliminary analysis of the Federal interest and the costs, benefits, and environmental impacts of the project.

(3) **APPLICABILITY.** This subsection shall not apply to

- (A) any study with respect to which a report has been submitted to Congress before November 17, 1986;
- (B) any study for a project, which project is authorized for construction by this Act and is not subject to section 903(b);
- (C) any study for a project which does not require specific authorization by Congress in law or otherwise; and
- (D) general studies not intended to lead to recommendation of a specific water resources project.

(4) **FEASIBILITY REPORT DEFINED.** In this subsection, the term "feasibility report" means each feasibility report, and any associated environmental impact statement and mitigation plan, prepared by the Corps of Engineers for a water resources project. The term includes a project implementation report prepared under title VI of the Water Resources Development Act of 2000 (114 Stat. 2680–2694), a general reevaluation report, and a limited reevaluation report.

(b) FEDERAL INTEREST DETERMINATION.

(1) **IN GENERAL.**

(A) **ECONOMICALLY DISADVANTAGED COMMUNITIES.** In preparing a feasibility report under subsection (a) for a study that will benefit an economically disadvantaged community, upon request by the non-Federal interest for the study,

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

the Secretary shall first determine the Federal interest in carrying out the study and the projects that may be proposed in the study.

(B) OTHER COMMUNITIES.

(i) Authorization. In preparing a feasibility report under subsection (a) for a study that will benefit a covered community, upon request by the non-Federal interest for the study, the Secretary may, with respect to not more than 3 studies in each fiscal year, first determine the Federal interest in carrying out the study and the projects that may be proposed in the study.

(ii) Covered Communities. In this subparagraph, the term 'covered community' means a community that

(I) is not an economically disadvantaged community; and

(II) the Secretary finds has a compelling need for the Secretary to make a determination under clause (i).

(2) COST SHARE. The costs of a determination under paragraph (1)—

(A) shall be at Federal expense; and

(B) shall not exceed \$200,000.

(3) DEADLINE. A determination under paragraph (1) shall be completed by not later than 120 days after the date on which funds are made available to the Secretary to carry out the determination.

(4) TREATMENT.

(A) TIMING. The period during which a determination is being completed under paragraph (1) for a study shall not be included for purposes of the deadline to complete a final feasibility report under section 1001(a)(1) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282c(a)(1)).

(B) COST. The cost of a determination under paragraph (1) shall not be included for purposes of the maximum Federal cost under section 1001(a)(2) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282c(a)(2)).

(5) REPORT TO NON-FEDERAL INTEREST. If, based on a determination under paragraph (1), the Secretary determines that a study or project is not in the Federal interest because the project will not result, or is unlikely to result, in a recommended plan that will produce national economic development benefits greater than cost, but may result in a technically sound and environmentally acceptable plan that is otherwise consistent with section 904 of the Water Resources Development Act of 1986 (33 U.S.C. 2281), the Secretary shall issue a report to the non-Federal interest with recommendations on how the non-Federal interest might modify the proposal such that the project could be in the Federal interest and feasible.

(c) PROJECTS NOT SPECIFICALLY AUTHORIZED BY CONGRESS. In the case of any water resources project-related study authorized to be undertaken by the Secretary without specific authorization by Congress in law or otherwise, the Secretary shall prepare a detailed project report.

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

(d) INDIAN TRIBES. For purposes of studies undertaken pursuant to this section, the Secretary is authorized to consider benefits which may accrue to Indian tribes as a result of a project resulting from such a study.

(e) STANDARD AND UNIFORM PROCEDURES AND PRACTICES. The Secretary shall undertake such measures as are necessary to ensure that standard and uniform procedures and practices are followed by each district office (and each division office for any area in which there is no district office) of the United States Army Corps of Engineers in the preparation of feasibility reports on water resources projects.

(f) ENHANCED PUBLIC PARTICIPATION.

(1) IN GENERAL. The Secretary shall establish procedures to enhance public participation in the development of each feasibility study under subsection (a), including, if appropriate, establishment of a stakeholder advisory group to assist the Secretary with the development of the study.

(2) MEMBERSHIP. If the Secretary provides for the establishment of a stakeholder advisory group under this subsection, the membership of the advisory group shall include balanced representation of social, economic, and environmental interest groups, and such members shall serve on a voluntary, uncompensated basis.

(3) LIMITATION. Procedures established under this subsection shall not delay development of any feasibility study under subsection (a).

(g) Detailed project schedule.

(1) IN GENERAL. Not later than 180 days after June 10, 2014, the Secretary shall determine a set of milestones needed for the completion of a feasibility study under this subsection, including all major actions, report submissions and responses, reviews, and comment periods.

(2) DETAILED PROJECT SCHEDULE MILESTONES. Each District Engineer shall, to the maximum extent practicable, establish a detailed project schedule, based on full funding capability, that lists all deadlines for milestones relating to feasibility studies in the District developed by the Secretary under paragraph (1).

(3) NON-FEDERAL INTEREST NOTIFICATION. Each District Engineer shall submit by certified mail the detailed project schedule under paragraph (2) to each relevant non-Federal interest

(A) for projects that have received funding from the General Investigations Account of the Corps of Engineers in the period beginning on October 1, 2009, and ending on June 10, 2014, not later than 180 days after the establishment of milestones under paragraph (1); and

(B) for projects for which a feasibility cost-sharing agreement is executed after the establishment of milestones under paragraph (1), not later than 90 days after the date on which the agreement is executed.

SUBJECT: Implementation Guidance for Section 117 of the Water Resources Development of 2020, Federal Interest Determination

(4) CONGRESSIONAL AND PUBLIC NOTIFICATION. Beginning in the first full fiscal year after June 10, 2014, the Secretary shall

- (A) submit an annual report that lists all detailed project schedules under paragraph (2) and an explanation of any missed deadlines 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) make publicly available, including on the Internet, a copy of the annual report described in subparagraph (A) not later than 14 days after date [2] on which a report is submitted to Congress.

(5) FAILURE TO ACT. If a District Engineer fails to meet any of the deadlines in the project schedule under paragraph (2), the District Engineer shall

- (A) not later than 30 days after each missed deadline, submit to the non-Federal interest a report detailing
 - (i) why the District Engineer failed to meet the deadline; and
 - (ii) a revised project schedule reflecting amended deadlines for the feasibility study; and
- (B) not later than 30 days after each missed deadline, make publicly available, including on the Internet, a copy of the amended project schedule described in subparagraph (A)(ii).