

Planning Tribal Partnership Program

Contents (Listed by chapter and page number)

Chapter 1

Program Overview, *page 1*

Chapter 2

General Program Principles, *page 13*

Chapter 3

Project Management Requirements for Tribal Partnership Program Activities,
page 28

Chapter 4

Feasibility Phase Leading to Congressional Authorization, *page 32*

Chapter 5

Programmatic Feasibility Phase, *page 36*

Chapter 6

Design and Construction Phase, *page 40*

Chapter 7

Watershed Studies, *page 46*

Chapter 8

Technical Assistance, Water-Related Planning Activities, and Feasibility-Like
Studies Without a Recommendation for Design and Construction, *page 61*

Chapter 9

Non-Traditional Water Resources Development Projects, *page 64*

Chapter 10

Other Provisions, *page 70*

Chapter 11

Real Estate, *page 73*

Appendixes

A. References, *page 76*

Table List

- Table 2–1: Tribal Partnership Program activities and approval authorities, *page 15*
Table 2–2: Final report package checklist for Tribal Partnership Program studies, *page 26*
Table 7–1: Decision-making authority for watershed milestones, *page 57*
Table 7–2: Key tasks associated with watershed study milestones, *page 57*
Table 7–3: Products required for Shared Vision Meeting, *page 59*

Figure List

- Figure 2–1: Flow chart: study types authorized by the Tribal Partnership Program, *page 14*
Figure 7–1: Watershed study milestones, *page 56*

DRAFT

Chapter 1 Program Overview

1-1. Purpose

This Engineering Pamphlet (EP) establishes an accountable strategy for conducting the Tribal Partnership Program (TPP) for the U.S. Army Corps of Engineers (USACE) under Section 203 of the Water Resources Development Act (WRDA) of 2000, as amended (33 United States Code (USC) 2269). The policy portion of this pamphlet applies to the planning, design, and construction of projects pursued under the legislative and administrative provisions of the TPP. The process portion of this pamphlet provides the procedures for the preparation and coordination of study, design, and construction of water resources development projects under this authority.

1-2. Distribution statement

Approved for public release; distribution is unlimited.

1-3. References

See Appendix A.

1-4. Records management (recordkeeping) requirements

The records management requirement for all record numbers, associated forms, and reports required by this regulation are addressed in the Army Records Retention Schedule – Army (RRS-A). Detailed information for all related record numbers is located in the Army Records Information Management System (ARIMS)/RRS-A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS-A, see Department of the Army (DA) Pamphlet 25-403, Guide to Recordkeeping in the Army, for guidance.

1-5. Applicability

This EP applies to all USACE Headquarters (HQUSACE) elements, Major Subordinate Commands (MSCs), districts, laboratories, centers of expertise (CXs), and field operating activities that have Civil Works planning, engineering, design, construction, and operations and maintenance (O&M) responsibilities.

1-6. Tribal Partnership Program authority

This pamphlet is based on law and policy found in Implementation Guidance for Section 1031 (a) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), and for Section 1121 of the Water Resources Development Act of 2016 (WRDA 2016), Tribal Partnership Program dated February 5, 2018, and paragraph 5 of Implementation Guidance for Section 1157 of the Water Resources Development Act of 2018, U.S. Army Corps of Engineers Continuing Authorities Program dated April 19, 2019.

a. Authorized TPP activities include projects for flood and coastal storm risk management (known in the past authorizations as hurricane and storm damage reduction) including erosion control, environmental restoration and protection (aquatic ecosystem restoration), navigation, and preservation of natural and cultural resources; watershed assessments and planning activities; technical assistance and other projects as the Assistant Secretary of the Army for Civil Works (ASA(CW)), in cooperation with Tribes and heads of other federal agencies, determines appropriate.

b. The recommendations under the 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 Nation outweigh the costs; the project is cost-effective; and the project is environmentally acceptable. USACE should consider the breadth of benefits provided including those identified by the Tribal partner. The federal objective for studies and projects under the TPP is to substantially benefit Indian Tribes.

c. The ASA(CW) is also directed to consult and coordinate with the Secretary of the Interior on any activity under the TPP to consider authorities and other programs of the Department of the Interior (DOI) and other federal agencies in making recommendations. To meet this requirement, districts, in collaboration with Tribal partners, must implement appropriate coordination with the DOI and other federal agencies (or agencies as required under 25 USC 5304 for Alaska Native Villages) during the study and document this coordination accordingly in the report (for example, copy of letter(s) submitted to DOI/Bureau of Indian Affairs (BIA) and other federal agencies).

d. This EP incorporates USACE planning fundamental strategies related to water resource development feasibility and watershed studies, technical services, planning, design, and construction of projects as they are related to the TPP.

e. Additional policy, processes, and guidance from specifically authorized programs for each project purpose (flood and coastal storm risk management, navigation, aquatic ecosystem restoration, etc.) may apply to TPP projects. Refer to mission-specific procedures in Engineer Regulation (ER) 1105-2-100, Planning Guidance Notebook and any successor engineering regulations, pamphlets, or guidance.

f. The annual Civil Works Program Development Engineering Circular and Program Execution Circular or their successors contain guidance on how current Fiscal Year (FY) funds will be used as well as metrics for measuring annual execution performance.

1-7. U.S. Army Corps of Engineers Tribal Policy Principles

a. USACE has a responsibility to Tribal Nations resulting from Federal Trust Doctrine, as well as from Treaties, statutes, regulations, Executive Orders (EO) and agreements between the Federal government and Tribal governments. EO 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249) signed by President William J. Clinton on November 6, 2000, compels USACE to engage in meaningful and timely consultation with federally recognized Tribes as a mechanism to meet the Federal trust responsibility.

b. The guiding principles of federal trust responsibility are the basis of the draft USACE Civil Works Tribal Consultation Policy, currently under consultation with Tribal governments, which includes six USACE Tribal Policy Principles. The six USACE Tribal Policy Principles include: Tribal sovereignty; trust responsibility; Government-to-Government relations; pre-decisional and honest consultation; self-reliance, capacity building, and growth; and preserving and protecting natural and cultural resources.

c. The TPP and other Civil Works programs are conducted in accordance with these policy principles to ensure effective and mutually beneficial relationships with Tribal partners. The TPP is a key program that at its foundation allows Tribes an essential role to protect and manage their own resources by developing projects that acknowledge Tribal sovereignty, allow Tribal governments to exercise self-determination, and foster and build Tribal capacity.

1–8. Tribal Partnership Program authorization history

a. WRDA 2000

(1) In Section 203 of WRDA 2000, USACE received authority from Congress to develop and implement the TPP. This is the most expansive and varied authority that USACE has for assisting federally recognized Tribes within the Civil Works program. This authority allows USACE, in cooperation with the Tribes and the heads of other federal agencies, to study and determine the feasibility of carrying out water resources development projects, such as flood and coastal storm risk management, ecosystem restoration, navigation, and preservation of cultural and natural resources. In addition, Congress included language that allows USACE to carry out “such other projects” as appropriate, in cooperation with Indian Tribes and the heads of other federal agencies.

(2) Congress was clear in its intent that projects to be studied will be located primarily within boundaries of reservations, within traditional communities, and otherwise substantially benefit Indian lands or resources, or preserve cultural values. Congress further clarified that traditional communities would include lands that are within the jurisdictional area of an Oklahoma Tribe and in proximity to Alaska Native Villages.

(3) Congress was also clear that USACE would consider Indigenous Knowledge (IK) when formulating project studies.

(4) The TPP has evolved with amendments to the original authority, changes in how USACE conducts planning studies in general, and the addition of cost share waivers. In the early years of the TPP, many districts across the nation with resident Tribes conducted first phase reconnaissance studies, which were 100% federally funded. Though many did not result in a cost-shared phase two feasibility study, many Tribes valued the information developed for the reconnaissance studies and used the reports for other purposes. For example, Tribes in the Pacific Northwest were able to use a reconnaissance report to leverage U.S. Department of Housing and Urban Development funds for their respective village relocation efforts.

b. WRDA 2007

(1) WRDA 2007 made several small modifications to the TPP, most notably expanding the authorized activities under the TPP to include water-related planning activities and watershed assessments.

(2) Congress amended TPP to include lands that are within the jurisdictional area of an Oklahoma Indian Tribe, as determined by the Secretary of the Interior, and are recognized by the Secretary of the Interior as eligible for trust land status under Part 151 of Title 25, Code of Federal Regulations (CFR).

(3) WRDA 2007 also extended the sunset of the TPP from 2006 to 2012.

c. Water Resources Reform and Development Act of 2014

(1) The Water Resources Reform and Development Act (WRRDA) of 2014 significantly changed the planning process from a two-phase study process – a reconnaissance study followed by a more detailed feasibility study – to a single-phase feasibility study process. The reconnaissance study was originally used to make a preliminary determination of whether there was a federal interest in further studying the problem. The feasibility study is a more detailed planning effort that may lead to a recommendation for federal investment. This was a paradigm shift, not just for USACE, but for our non-federal partners – in this case, federally recognized Tribes. The new single-phase feasibility study process was less appropriate for Tribes due to the immediacy and higher costs of the cost-share agreement.

(2) Since WRRDA 2014, the demand for TPP studies shifted to primarily watershed assessments, which had been authorized for the TPP in WRDA 2007, and which have a lower non-federal cost share of 25%, compared to most feasibility studies, where the non-federal cost share is 50%. These watershed assessments would not result in a recommendation for federal investment but would provide a developed strategy to improve watershed resources.

d. WRDA 2016

(1) The most sweeping changes to the TPP for federally recognized Tribes came in Section 1121 of WRDA 2016. The TPP went from a study-only authority to one that includes a programmatic design and construction process that does not require further Congressional authorization. The design and construction costs are shared between the Tribe and the Federal Government based on the project purpose, as set out in Sections 101 and 103 of WRDA 1986, as amended. The new programmatic authority allowed USACE to design and construct a project that did not have a federal cost of more than \$10,000,000. Since WRDA 2016, this total federal cost cap continues to be modified by Congress. The Ability to Pay provision under TPP (33 USC 2269) was also expanded to apply to design and construction as well as to studies, watershed assessments, and planning activities carried out under TPP.

(2) In addition, Section 1119 of WRDA 2016 amended Section 1156 of WRDA 1986 (33 USC 2310), whose purpose was the reduction of the non-federal share for projects constructed in certain locations (often referred to as the Cost Share Waiver), to include projects for federally recognized Tribes. Section 1119 applied the Cost Share Waiver to all TPP feasibility studies and watershed assessments, and again to projects in the construction phase. (Other water-related planning activities not leading to construction are now at full federal expense in accordance with Section 8111 of WRDA 2022.)

(3) If at any time during the feasibility phase the federal share of a cost-shared project is anticipated to exceed the programmatic limit, Congressional authorization will be required for the recommended project. A new Feasibility Cost Sharing Agreement (FCSA) is not required; however, notification through the appropriate HQUSACE Regional Integration Team (RIT) and the HQUSACE TPP program manager will be required if additional scope is required to complete final feasibility report and complete a Chief's Report. Once the final feasibility report is received by HQUSACE, a Chief's Report is developed and reviewed by applicable states and agencies, which is signed by the Chief of Engineers and provided to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure for consideration for specific authorization in a future WRDA.

e. WRDA 2018

(1) In WRDA 2018, Congress amended the TPP design and construction phase to include not just a project at the federal programmatic limit, but also separable elements of a project as defined by Section 103(f) of WRDA 1986. This means a project could potentially have elements that could be constructed and operated independently without the rest of the project and each separable element (as defined in paragraph 1-9.m.) could be funded to the federal programmatic limit. In WRDA 2018, Congress also increased the programmatic limit to a federal cost of \$12,500,000 for a project or separable element.

(2) Additionally, Congress further amended Section 1156 of WRDA 1986 to increase the Cost Share Waiver amount to account for inflation through 2018.

f. WRDA 2020. WRDA 2020 increased the programmatic limit to \$18,500,000 and further amended Section 1156 of WRDA 1986 to include an annual inflation adjustment for the Cost Share Waiver. An Economic Guidance Memorandum (EGM) is published in the first quarter of each new FY that shows the updated Cost Share Waiver amount. Refer to the most recent EGM for the amount to be used. The Cost Share Waiver is applied twice: once during the feasibility phase (to include Preconstruction Engineering and Design (PED)) and once during the construction phase.

g. WRDA 2022

(1) Section 8111 of WRDA 2022 made significant amendments to the TPP. The first \$200,000 of a feasibility study would be federally funded. The federal share of the cost of water-related planning activities (other than watershed assessments) was increased to 100 percent. In addition, the programmatic limit was increased to a federal cost of \$26,000,000 per project or separable element of a project. Figure 2-1 and Table 2-1 capture these changes in Chapter 2.

(2) Congress authorized technical assistance to an Indian Tribe to be 100% federally funded. Examples of the types of technical assistance include assistance for the planning to ameliorate flood hazards, to avoid repetitive flood impacts, to anticipate, prepare, and adapt to changing hydrological and climatic conditions and extreme weather events, and to withstand, respond to, and recover rapidly from disruption due to flood hazards, and the provision of, and integration into planning of, hydrologic, economic, and environmental data and analyses.

(3) Congress further amended the TPP in regard to project justification. The ASA(CW) may implement projects notwithstanding requirement for economic justification established under Section 209 of the Flood Control Act of 1970 (42 USC 1962–2), if the project will significantly reduce potential flood or hurricane and storm damage hazards (which may be limited to hazards that may be addressed by measures for erosion mitigation or bank stabilization); improve the quality of the environment; reduce risks to life safety associated with the hazards of flooding, hurricane and storm damage reduction, including erosion control; and improve the long-term viability of the community. This does not apply to projects for ecosystem restoration.

(4) WRDA 2022 also extended the sunset of the TPP authorization from 2015 to 2033.

(5) WRDA 2022 further amended the Cost Share Waiver (Section 1156 of WRDA 1986) to include watershed assessment under the term “studies” and only reduces the non-federal share of the study and project costs.

1–9. Definitions

a. Cultural and natural resources. The authorization for the TPP allows for water-related planning and activities related to the study, design, and construction of water resources development projects that may address “projects for ... preservation of cultural and natural resources” (33 USC 2269(a)(2)).

(1) Section 203 of WRDA 2000, as amended, does not provide any specific definitions for cultural or natural resources.

(2) Indigenous Knowledge (IK), as defined in Memorandum for Heads of Federal Departments and Agencies on Indigenous Knowledge dated November 30, 2022 (Office of Science and Technology Policy, Council on Environmental Quality [CEQ] 2022) and associated USACE guidance can help identify significant cultural and natural resources and should be explored with Tribal partners during scoping. IK is further defined in paragraph 1-9.f. below.

(3) Information on certain types of “cultural resources” related to Tribal Nations is not often recorded and can be extremely sensitive, which presents a challenge in formulating and evaluating alternative plans. Some small or even large reservations may be considered cultural resources in their entirety due to the significance to Tribal Nations. Cultural and natural resources may further be recognized through IK and may be considered as one and the same by an individual Tribe or by many Tribes as well.

(4) For the purpose of identifying activities under the TPP, cultural resources are those resources identified as culturally significant to the Tribal partner. This is significant because there is concern of too narrowly defining for Tribal governments what is a cultural or natural resource for inclusion in the TPP by using existing federal definitions, as the goal of the TPP is to preserve cultural and natural resources that substantially benefit or are otherwise important to the Tribes, such as for subsistence, ceremonial or communal events, or other purposes.

(5) Cultural resources include historic properties as defined by Title 36 CFR Section 800.16.I. Historic properties are a subset of cultural resources that have been evaluated and determined to be eligible for listing or are listed on the National Register of Historic Places (National Register). All resources identified as culturally important through the application of IK are eligible for consideration under the TPP. The cultural resources that qualify for authorized activities under the TPP are not required to be evaluated for their eligibility to the National Register or to have been listed on the National Register to be considered under the TPP. This should not be interpreted to mean that a Section 106 review under the National Historic Preservation Act (NHPA) is not required. Once a TPP study is underway, Section 106 compliance will still apply regarding alternatives, tentatively selected plans, etc. (See Chapter 10 paragraph 10-3).

(6) Natural resources refers to land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources. Similar to cultural resources, the definition of natural resources to be considered under this authority should be as broad as possible and should be identified by Tribal partners through IK. While natural resources can include threatened and endangered species, the natural resources under consideration for preservation do not need to be listed as threatened and endangered species. Natural resources can also be habitats and ecosystems, including areas specifically managed by Tribes as natural areas for use by the Tribe.

b. Decision document. For TPP feasibility studies, decision documents are the consolidated documentation of feasibility, technical, and policy analyses, findings, and conclusions upon which the District Commander bases the recommendation. For programmatic feasibility studies, this recommendation is made from the District Commander to the MSC Commander to approve the recommended project for construction. For feasibility studies requiring congressional authorization, the decision document recommends authorization through the completion of a Report of the Chief of Engineers (Chief's Report). A decision document will be used to support the Design Agreement (DA) and Project Partnership Agreement (PPA). Minimum decision document requirements are listed in specific chapters for each TPP effort.

c. Feasibility phase

(1) For feasibility studies leading to recommendations for construction of a project or separable element greater than \$26,000,000 (or as set by WRDA), the feasibility phase is the project formulation phase during which all planning activities are performed that are required to demonstrate that federal participation in a specific project is warranted, culminating in approval of the decision document, and a recommendation to Congress (Chapter 4).

(2) Programmatic feasibility studies. Studies conducted under the TPP resulting in a feasibility report recommending the construction of a water resources development project do not require additional project authorization from Congress. Programmatic feasibility studies are generally limited by a Congressionally authorized federal per project and per separable element limit at the time the FCSA is executed. At the time of this policy, the programmatic limit is \$26,000,000 (or as set by WRDA) for construction of a project or per separable element of a project.

(3) The feasibility phase includes PED, which includes project design up until the first set of construction plans and specifications. This phase is funded using TPP General Investigation funds.

d. Indian country. The term Indian country generally refers to all lands within a federal Indian reservation, all dependent Indian communities, and all Tribal member allotments, and is defined in 18 USC 1151 as:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

e. Indian Tribe. A Tribe may serve as a Tribal Partner under the TPP and is defined in 25 USC 5304 as any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 USC 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The Secretary of the Interior is required to publish a list annually in the Federal Register a list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their sovereign status (25 USC 5131). In addition to the Tribes on the Secretary of the Interior list, the definition also includes Alaska regional or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act.

f. Indigenous Knowledge. IK is the “body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment” (CEQ 2022).

(1) IK is applied phenomena across biological, physical, social, cultural, and spiritual systems. IK can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. IK is developed by Indigenous people, including, but not limited to Tribal Nations, Native Americans, Alaska Natives, and Native Hawaiians. Each Tribe or Indigenous community has its own place-based knowledge that may overlap with that of other Tribes.

(2) Use of IK for TPP efforts is further discussed in Chapter 2 paragraph 2-3.c.

g. Initial work allowance. Federal funds allocated to a specific TPP project for use in completing the Project Management Plan (PMP), Review Plan (RP), and executing a Feasibility Cost Share Agreement (FCSA).

h. Monitoring. Activities, including data collection and analysis, that are necessary to determine if predicted outputs of the project (aquatic ecosystem restoration only) are being achieved. Archaeological monitoring is used to identify, recover, protect, document and/or recover cultural resources at a known site or to ensure that a site is identified and treated appropriately, particularly in sensitive areas for the identification of resources, during project activities, such as construction.

i. Non-traditional water resources development project. Other such projects as the Secretary (ASA(CW)), in cooperation with Indian Tribes and the heads of other federal agencies, determines to be appropriate. The ASA(CW) has determined in the Memorandum Tribal Partnership Program – Non-Traditional Water Resources Development Projects dated November 30, 2022, to provide flexibility to include projects that are not typically considered a traditional USACE water resources development project if it is based on meeting the following criteria: 1) related to a water resource and 2) aligns with USACE capabilities and core competency. Additional guidance is provided in Chapter 9.

j. Public. The public refers to any entity outside USACE. The public includes Tribal and local government entities and officials; public and private organizations; individuals; institutions; study sponsor or partner representatives; community groups; and populations of interest in environmental justice or social vulnerability considerations (EP 1105-2-57).

k. Scale, scaled, or scalability. The amount of effort, resources, and time to be invested that should be commensurate with the magnitude, complexity, and cost of the project.

l. Separable Element. Section 103(f) of WRDA 1986 defines Separable Element as a portion of a project (1) which is physically separable from other portions of the project; and (2) which achieves hydrologic effects or produces physical or economic benefits, which are separably identifiable from those produced from other portions of the project.

m. Stakeholders. Stakeholders include any member of the public that might be able to affect, are affected by, or are interested in, the result of the USACE planning process. They are people or groups who see themselves as having rights and interests at stake, either directly or indirectly. Some people may not realize they are stakeholders, for example, that they are affected by a USACE study, such as those identified as socially vulnerable populations.

n. Tribal Lands. The term “Tribal Lands” is used generally throughout this pamphlet to have one comprehensive term that is generally applicable. Tribal Lands itself is not explicitly defined, but the following definitions include several types of Tribal Lands that may be encountered during the feasibility or construction phase.

(1) Reservation Indian land. Areas reserved for a Tribe, or multiple Tribes, as permanent homelands through treaties, Executive Orders, Acts of Congress, and administrative action. Not all Tribes have a reservation; however, Tribes without reservations could still have land held in trust or restricted fee. Trust, restricted fee, and fee lands may exist within a Tribe’s reservation boundaries. Tribes may also have trust, restricted fee, or fee lands outside of reservation boundaries.

(2) Trust lands. The U.S. Government holds legal title to trust land for the benefit of federally recognized Indian Tribes or individual Tribal members.

(3) Restricted fee lands. Restricted fee land refers to land to which a Tribe, or Tribal member, holds legal title subject to a restriction against alienation (sale or transfer) or encumbrance (liens, leases, rights-of-way, etc.) by operation of law. For some purposes, Congress has defined Tribal lands to include trust and restricted fee lands, such as for leasing agricultural lands (25 USC 3703) and rights-of-way (25 USC 323).

(4) Fee or Fee Simple lands. Fee or Fee Simple lands are owned by a person or entity who can freely alienate or encumber the land without federal approval, which may include a Tribe, individual Tribal members, or non-Indians.

(5) Allotted lands. Allotted lands, or allotments, can be held in trust or restricted fee status by individual Tribal members, sometimes referred to as allottees or landowners. Allotted lands do not include fee lands. Allotted lands stem from treaties and statutes, including the General Allotment Act (P.L. 49-105), that divided land communally held by Tribes and allotted parcels of it to individual Tribal members.

(6) Indian Lands. The term Indian Lands means lands of Indian Tribes or Indian individuals, which are either held in trust by the U.S. or subject to a restriction against alienation imposed by the U.S., except for any surface or subsurface interests in lands not owned or controlled by an Indian Tribe or an Indian individual (see 16 USC 470aa-mm).

o. Real property interests. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations, borrow, and dredged material placement areas.

1–10. Program eligibility

a. Requirements to serve as a Tribal partner. The Tribal partner for a TPP activity, study, or project is an Indian Tribe as defined in 25 USC 5304, which is the definition referenced in Section 203 of WRDA 2000, as amended: “any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 USC 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”

b. Location of TPP projects. Projects must be located primarily within Indian Country (as defined in 18 USC 1151 and including lands that are within the jurisdictional area of an Oklahoma Tribe, as determined by the Secretary of the Interior, and recognized by the Secretary of the Interior as eligible for trust land status under 25 CFR part 151) or in the proximity to an Alaska Native Village. Project siting confirmation should be one of the first actions to validate eligibility of the TPP prior to initiating a feasibility study. If the water resource problem and solution set are not located within Indian Country or within proximity to an Alaska Native Village, the district should work with the Tribal partner in identifying other applicable USACE authorities.

c. Non-federal funds. The non-federal cost share can be met in certain circumstances by the use of other federal appropriated funds. Other agency funds may be accepted and credited toward the non-federal contribution if the federal agency providing the funds determines that the funds are authorized to be used to carry out the study or project. More detailed information concerning cost share funding may be found in Chapter 2 paragraph 2-2.

d. Real property interests. Real property interests also known as Lands, Easements, Rights-of-Way, Relocations, and Disposal Areas (LERRDs). The Tribal partner is responsible for providing the real property interests required for the construction, operation, and maintenance of the project. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations, borrow, and dredged material placement areas. Full coordination between the district and the Tribal partner on the project real estate requirements must occur during early stages of plan formulation and continue, as appropriate, to the conclusion of the acquisition process. See Chapter 11 of this EP for more information.

1–11. Confidentiality

a. There is no exemption under the Freedom of Information Act (FOIA) that protects information and data specifically provided by Tribes to any federal agency including USACE, unless it meets one of the nine exemptions identified in the law. The District Commander, in consultation with the Tribe, should determine if there is an existing law or best practice/protocols that the agency will use to store, share and access sensitive documents, information, or data.

b. As part of the study initiation, the district and Tribal partner should discuss what, if any, information, requires confidentiality, what the district responsibility under FOIA entails and to determine what can be done to protect that information, including the use of Section 304 of NHPA as amended (16 USC 470-470b) and Section 9 of Archaeological Resources Protection Act (ARPA) of 1979 (16 USC 470aa-470mm). Where the NHPA and ARPA cannot be used, the plan should identify if and how USACE can protect Tribal information, as necessary. FOIA requires federal agencies to maintain and preserve its written record, which could be available to the public.

c. Strategies to protect sensitive information, if identified, could include the Tribal partner retaining written data on sensitive information. Any FOIA request to the district for the written records would then not include the sensitive information. Limiting the information retained by the district may limit access to this information by the public through FOIA requests.

d. Other recommendations to limit access to sensitive data should be discussed with district counsel and Tribal partners to determine if data sharing agreements and/or non-disclosure agreements can minimize the release of information through FOIA or other requirements.

e. Section 304 of NHPA gives federal agencies the ability to withhold or limit public access to information about historic properties, after consultation with the Secretary of the Interior (54 USC 307103). The information protected can be the “location, character, or ownership of a historic property or impede the use of a traditional religious site by practitioners.” If it is determined that information can be withheld, this would include both redactions from publicly reviewed reports and exemption from FOIA requests.

(1) To protect information on the location, character, or the previously listed information, the District Commander must consult with the Keeper of the National Register, to determine who may have access to this information. This process pertains only to listed historic properties or those with an existing determination of eligibility. If cultural resources have not been evaluated for their eligibility to the National Register or have been determined not to be eligible for the National Register, Section 304 of the NHPA may not be used.

(2) Consultation with the Keeper of the National Register starts with either a request from the public for this information under FOIA or if the district, in consultation with the Tribe, determines that information should be withheld.

(3) The district assembles a draft redacted version of the document(s) and prepares a rationale and/or justification for withholding the information. The district provides this information to the Keeper of the National Register. The Keeper of the National Register will review and agree or suggest additional information and make the final determination. This final determination will include a statement regarding who may have access to the protected information.

(4) This request must be submitted in writing. If information has been collected as part of a Section 106 review, the information should identify the threat and harm and identify project deadlines. If the submission does not have the necessary documentation, the Keeper of the National Register will return the documentation and the review will not occur until the required information is provided.

(5) If the information requiring protection has been developed as either a review under Sections 106 or 110 (54 USC 306107 and 306108 respectively), the Keeper of the National Register will consult with the Advisory Council on Historic Preservation (ACHP). The ACHP will review the information prepared and provide the Keeper of the National Register with comments, which may include making additional recommendations. The review by the ACHP is advisory to the Keeper of the National Register and may or may not be included in the Keeper of the National Register's response to the district.

f. Section 9 of ARPA (16 USC 470hh) provides for the protection of archaeological resources on public and Indian lands from disclosure to the public. Section 9 provides protection to archaeological resources only, which are defined as any material remains of human life or activities which are at least 100 years of age and which are of archaeological interest. Section 9 does not require sites to have been determined eligible for the National Register. Section 9 only pertains to archaeological resources which include, but are not limited to: pottery, bottles, weapons and projectiles, structures or portions of structures, pit houses, rock paintings and carvings, graves, and human skeletal remains (Section 3; 16 USC 470bb).

Chapter 2 General Program Principles

2-1. General principles

a. *General.* Section 203 of WRDA 2000, as amended, authorizes the ASA(CW), in cooperation with Indian Tribes and the heads of other federal agencies, to carry out water-related planning activities, and activities related to the study, design, and construction of water resources development projects, that substantially benefit Tribes and that are primarily within Indian Country (including lands within a jurisdictional area of an Oklahoma Tribe) or in the proximity to Alaska Native Villages.

b. *Applicability of the Water Resources Reform and Development Act of 2014 Section 1001 to the Tribal Partnership Program.* Section 1001 of WRRDA 2014 (33 USC 2282c), as amended, provides that, to the extent practicable, the maximum federal cost for a feasibility study is \$3,000,000. USACE policy continues to follow the “3x3x3 rule,” which limits the study duration to three years, the total study cost (the study costs shared by the USACE and the Tribal partner) to \$3,000,000 and requires three levels of USACE vertical team involvement (district, MSC, and HQUSACE).

(1) The study funding and time limits set forth by Section 1001 of WRRDA 2014 are applicable to feasibility reports (as defined in 33 USC 2282) that result in recommendations concerning a project or the operation of a project and that requires specific authorization by Congress in law. TPP feasibility reports that recommend the construction of a water resources development project under the programmatic limit or are otherwise not intended to lead to the recommendation of a specific water resources development project are not subject to Section 1001 WRRDA 2014 requirements. However, in rare instances a feasibility study is being conducted under TPP (Section 203) authority, but the study is specifically funded by Congress and will need a specific Congressional authorization, that study would have to comply with Section 1001.

(2) The Deputy Commanding General of Civil and Emergency Operations (DCG-CEO) has approved study cost increases up to \$3,000,000 federal without further approval from HQUSACE to account for the application of the Cost Share Waiver and the Ability to Pay provision. Feasibility studies with a cost in excess of \$3,000,000 federal, or any subsequent limit enacted by Congress, will require ASA(CW) approval (EP 1105-2-61). The executed copies of the FCSA and accompanying documents must be provided to the MSC TPP program manager, HQUSACE TPP program manager and the appropriate HQUSACE RIT.

c. *Principles.* A TPP project must meet the requirements of federal interest and USACE responsibility set forth in the authority, be complete in itself, and will not obligate the federal government to future work except in those cases in which maintenance by the federal government is specified in law or allowed by policy (such as navigation features or assumption of maintenance), and have a Tribal partner who is willing and capable of meeting required responsibilities. The federal objective for studies and projects conducted under TPP is to substantially benefit Indian tribes.

d. *Other USACE programs.* Participation in the TPP does not preclude a Tribal partner from participating in any other USACE program, such as the Continuing Authorities Program (CAP), Floodplain Management Services (FPMS), or Planning Assistance to States (PAS). Districts should consider the water resources needs of the Tribal partner and align with the appropriate USACE program prior to initiating requests for funding.

e. *Types of USACE missions and activities authorized under the Tribal Partnership Program.* Authorized mission areas and activities authorized under TPP include flood, hurricane and storm damage reduction including erosion control, ecosystem restoration and protection, navigation, and preservation of cultural and natural resources; watershed assessments and planning activities; technical assistance; and other projects as the ASA(CW), in cooperation with the heads of Indian Tribes and the heads of other federal agencies, determines to be appropriate. A flow chart indicating the types of studies and technical/planning activities authorized under the TPP is found in Figure 2-1. Table 2-1 includes the cost sharing and approval authorities associated with various activities under TPP.

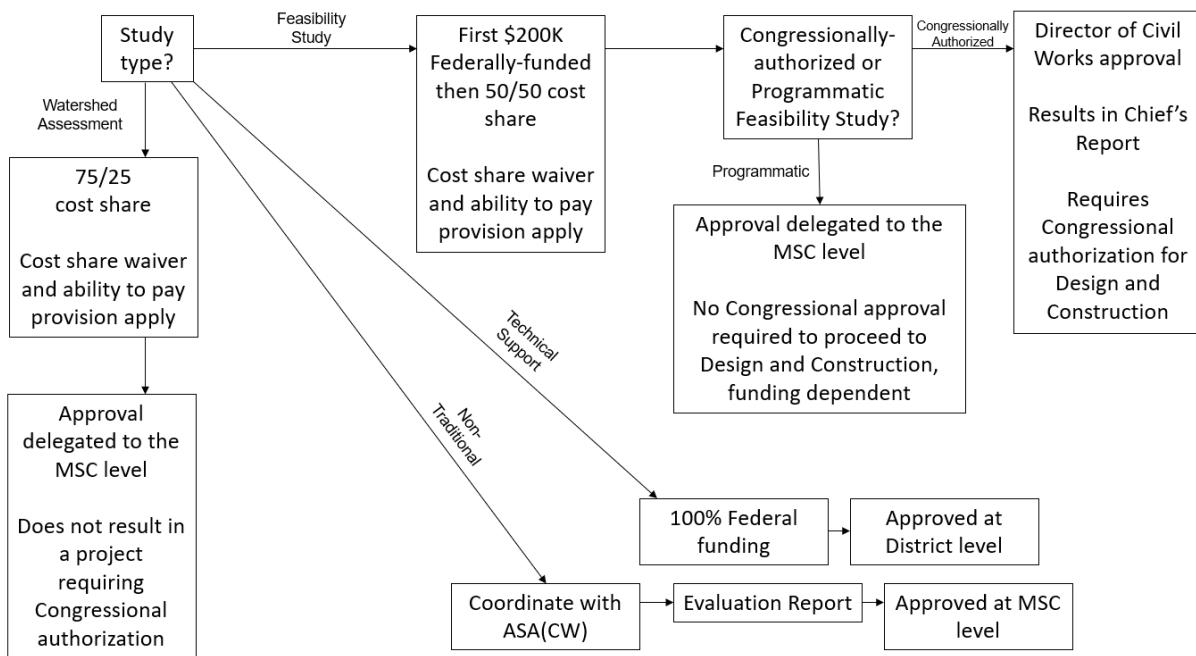


Figure 2-1. Flow chart: study types authorized by the Tribal Partnership Program

**Table 2-1
Tribal Partnership Program activities and approval authorities**

Study Type	Cost Share	Authorized Water Resources Activities	Approval Authority for Final Decision Document
Feasibility Study	<p>The first \$200,000 of the costs are at federal expense</p> <p>50% federal and 50% non-federal</p> <p>Section 1156, as amended, Cost Share Waiver applies</p> <p>Ability to Pay provision applies, if applicable</p>	<p>Flood and storm damage reduction, including erosion control</p> <p>Environmental restoration and protection (aquatic ecosystem restoration)</p> <p>Navigation</p> <p>Preservation of natural and cultural resources</p> <p>Non-traditional water resources project (above Congressionally authorized per-project limit)</p>	<p>HQUSACE</p> <p>Results in a final feasibility report and Chief's Report</p> <p>Requires Authorization and Appropriations by Congress for Construction</p>
Programmatic Feasibility Study (See Chapter 1 paragraph 1-9.c.(2))	<p>The first \$200,000 of the costs are at federal expense</p> <p>50% federal and 50% non-federal</p> <p>Section 1156, as amended, Cost Share Waiver applies</p> <p>Ability to Pay provision applies, if applicable</p>	<p>Flood, hurricane and storm damage reduction, including erosion control</p> <p>Environmental restoration and protection (aquatic ecosystem restoration)</p> <p>Navigation</p> <p>Preservation of natural and cultural resources</p> <p>Non-traditional water resources project (under Congressionally authorized per-project limit)</p>	<p>MSC</p> <p>Results in a final feasibility report</p> <p>No Congressional approval required to proceed to Design and Construction, funding dependent</p>
Watershed Assessments	<p>75% federal and 25% non-federal</p> <p>Section 1156, as amended, Cost Share Waiver applies</p>	<p>Watershed Plans in coordination with other federal, state, and local agencies</p>	<p>MSC</p> <p>Does not result in a project requiring Congressional authorization</p>

Study Type	Cost Share	Authorized Water Resources Activities	Approval Authority for Final Decision Document
	Ability to Pay provision applies, if applicable		
Technical Assistance	100% federal and 0% non-federal	Examples provided in Chapter 1 paragraph 1-8.g.(2) for the purposes of integrating into planning of hydrologic, economic, and environmental data and analyses	No approval required but signed by District Commander Does not result in a project requiring Congressional authorization
Water Related and Feasibility-Like Reports	The first \$200,000 of the costs are at Federal expense 50% Federal and 50% non-Federal Ability to Pay provision applies, if applicable	Future planning type documents, or coordination by a Tribe with the DOI or other federal agencies related to water resources planning	No approval required but signed by District Commander Does not result in a project requiring Congressional authorization

(1) Flood risk management includes both inland and coastal risk management and addresses assessment, management, and communication of current and future flood risk in a systematic and comprehensive manner to reduce the risk of life loss, reduce economic damages to the public and private sector, and improve the natural environment. Projects for streambank and shoreline damage reduction, including erosion control, are authorized activities under TPP.

(2) Environmental or ecosystem restoration restores and protects aquatic ecosystems. Ecosystem restoration projects assist in the recovery of ecosystems that have been degraded, damaged, or destroyed and focuses on establishing the ecological processes necessary to make aquatic ecosystems sustainable, resilient, and healthy under current and future conditions.

(3) The TPP preservation of cultural and natural resources authority includes feasibility studies for the construction of projects for the preservation of cultural and natural resources as a stand-alone objective as long as the project or study is located on Tribal lands, within the jurisdiction of an Oklahoma Tribe or in the proximity of an Alaska Native Village. These projects are not intended for the development of mitigation resources identified during the planning, design and/or construction of another construction project. Projects whose primary purpose is the preservation of cultural and natural resources will be considered policy compliant, producing high-priority outputs from a budgetary standpoint, and will be cost shared as flood risk management, coastal storm risk management, navigation, or ecosystem restoration, depending on the causal factors necessitating the project. See paragraph 2-3.g.(3) for further guidance on justification for these types of projects.

(4) Navigation includes the movement of vessels on both inland and coastal waters and addresses the movement of commercial goods along the nation's coasts and waterways. Benefits to subsistence fishing, hunting, and gathering are important components of this mission, as it supports the long-term stability of Tribal Nations and their associated cultures.

(5) Other projects as the ASA(CW), in cooperation with the heads of Indian Tribes and the heads of other federal agencies, determines to be appropriate that meet the intent of the TPP. Consistent with the principles inherent in the federal trust responsibility, the TPP will be implemented more broadly to provide the Army the flexibility to include projects that are not typically considered a traditional USACE water resources development project. These "non-traditional" activities under TPP must be related to a water resource and align with USACE capabilities and core competencies. Additional guidance on these types of non-traditional activities can be found in Chapter 9.

f. Types of studies. The following sections list the different types of studies that may be carried out under TPP, the cost share of each study type, and the approval authority. The federal objective for all TPP studies and projects is to substantially benefit Indian Tribes.

(1) Feasibility study that identifies water resources problems, formulates and evaluates solutions, resolves conflicting interests, and prepares recommendations for Congressional authorization for a specific Civil Works project. For additional guidance, see Chapter 4.

(2) A programmatic feasibility study that identifies water resources problems, formulates and evaluates solutions, resolves conflicting interests, and prepares a recommendation that consists of a single project at or below the federal TPP programmatic per project limit or a single project composed of separable elements that are each below the federal programmatic limit, for design and construction without further Congressional authorization. For additional guidance, see Chapter 5.

(3) A watershed assessment that addresses problems, needs, and opportunities within a watershed on a Tribal nation and provide a strategic overview that illustrates how the individual recommendations cohesively tie together to advance the shared vision and further achieve the desired end-state. For additional guidance, see Chapter 7.

(4) Technical assistance that may be of a more limited scope and is independent of watershed activities. For additional guidance, see Chapter 8.

(5) A report provided to a Tribe pursuant to a feasibility study that may, but is not required to, contain a recommendation on a specific water resources development project. Depending on the wishes of the Tribal partner, the feasibility-like study will be scoped at the outset for describing an array of alternatives that are determined to be technically feasible and economically and environmentally justified. For additional guidance, see Chapter 8.

(6) A non-traditional feasibility study that may or may not require formulation of a plan for programmatic construction and may be limited to the evaluation of federal interest for construction under TPP authority. These types of studies and projects must be 1) related to a water resource, and 2) aligned with USACE capabilities and core competencies. For additional guidance, see Chapter 9.

g. Project implementation process

(1) TPP Projects requiring Congressional authorization are implemented in three phases: the feasibility phase, the preconstruction engineering and design (PED) phase, and construction phase. PED phase work will be funded under separate non-TPP Investigations (I) funds. These studies will follow the standard feasibility study process and requirements in accordance with ER 1105-2-100 and any successor engineer regulations, pamphlets or guidance. Additional guidance is provided in Chapter 4 of this EP.

(2) Programmatic TPP projects will be implemented in two phases, the feasibility phase and the design and construction phase. Each phase is carried out under the provisions of a separate cost sharing agreement executed by the District Commander and the Tribal partner. USACE will consider an interim design phase with a design agreement if requested by a Tribal partner or if the total project cost or separable element cost is over \$10,000,000. Additional guidance for addressing these two phases is set forth in Chapters 5 and 6 of this EP.

h. Non-traditional water resources projects. The ASA(CW) may approve initiation of a non-traditional feasibility study. If the recommended project for Congressional authorization is anticipated to be above the programmatic limit established by Congress, the project will follow the three-phase process requiring Congressional authorization. Non-traditional water resources projects under the TPP per-project Congressional limit will follow the programmatic two-phase process for implementation.

2-2. Cost sharing

a. General program cost sharing. There is no minimum project size or cost for a project. Large or complex projects where the likely cost of the solution will be beyond the programmatic project and/or separable elements limit of TPP will require Congressional authorization. The federal share of the project is limited to the programmatic limit as established by WRDA. In estimating the federal share, districts must take into consideration any reductions in non-federal cost share requirements from cost share waivers or the ability to pay provision.

(1) Cost Sharing Waiver for Territories and Indian Tribes Section 1156 of WRDA 1986, as amended, applies to American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Puerto Rico, the Trust Territory of the Pacific Islands, and for any Tribe (as defined in 25 USC 5304). It provides a cost share waiver for the Territories and Tribes and is subject to an annual inflation adjustment. The cost share waiver applies to feasibility and watershed studies. The cost share waiver will be excluded from the non-federal share of the study cost and is funded with federal funds. The cost share waiver is applied once during the feasibility study, and once during the construction phase(s). An EGM is published annually in the first quarter of the new FY with the annual inflation adjustment.

(2) Cost sharing agreements for TPP activities are subject to the ability of a Tribe to pay. The Ability to Pay provision applies to studies, watershed assessments, and planning activities under TPP, as well as to the remaining financial contribution, if any, for design and construction after subtraction of the value of LERRDs. The tribal partner is responsible for the reduced cost share after the application of the Ability to Pay provision and the difference is funded with federal funds.

(a) The test for Tribal Ability to Pay is whether or not the estimated per capita income for the Tribal partner is less than the per capita income of two thirds of the counties in the United States. The non-federal financial share must be reduced to the amount resulting from the application of a factor of 25% to the non-federal share after application of the Section 1156 Cost Share Waiver, by excluding the authorized Cost Share Waiver amount from the shared study costs, multiplying the remaining amount by 50% cost share for feasibility costs, and applying the 25% factor to the result to obtain the non-federal share for the feasibility study.

(b) For a watershed assessment, the non-federal share must be reduced to 10% of the shared agreement costs.

(c) An annual EGM xx-04, Tribal Partnership Program Reduced Cost Share Eligibility Criteria (Ability to Pay), provides the general guideline for determining Tribal partners' ability to pay, a walkthrough of finding data for and determining a Tribal partner's ability to pay and procedures for figuring the reduced cost share amount. Please refer to the current EGM when determining Ability to Pay reduced cost share amount.

b. *Feasibility phase.* The first \$200,000 of the costs are at federal expense. TPP study costs will initially be shared with the Tribal partner equally (50% each) pursuant to the terms of the TPP FCSA. The Tribal partner cost share will be further adjusted as applicable by the Cost Share Waiver for Territories and Indian Tribes (Section 1156 of WRDA 1986, as amended) prior to execution of the agreement, and by the Ability to Pay requirements (Section 203(d)(1) of WRDA 2000, as amended) as applicable. The feasibility phase will result in a report detailing the requirements for each project.

c. *Design and construction phases.* All costs, except Operations, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R) beyond the feasibility phase are considered total project costs and will be cost shared as specified in the authorizing legislation for that purpose. The OMRR&R is solely the Tribal partner's responsibility. The PPA will include provisions to implement the project requirements as set out in the feasibility report.

d. *Non-traditional water resources development projects.* The TPP provides USACE the authority to carry out projects that address other such projects as the ASA(CW), in cooperation with Indian tribes and the heads of other federal agencies deem to be appropriate. Should these projects be related to a water resource and align with USACE capabilities and core competencies, the cost sharing should be assigned to the project purposes 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, the project purpose would most closely align with the agricultural water supply mission and be cost-shared at 65% federal and 35% Tribal partner.

e. *Other federal funds used as a part of Tribal partner share.* A Tribal partner may use, and the ASA(CW) may accept, funds provided by a federal agency under any other federal program, to satisfy, in whole or in part, the non-federal share of the cost of the study or project if the federal agency providing the funds determines that the funds are authorized to be used to carry out the study or project.

(1) A letter must be provided by the federal granting agency stating that it has determined that the funds are authorized to be used to carry out the TPP study or project. The name of the federal agency and the date of the letter should be shown in the agreement checklist provided with the draft agreement package.

(2) An exception to this requirement is for federal funds being administered by the Tribal partner under the Indian Self-Determination and Education Assistance Act of 1975 (25 USC 46), as amended. These funds do not require further federal approval to be used to satisfy the non-federal cost share. Any cost sharing agreement for a study is subject to the Ability to Pay Provision as authorized under TPP. Reference EGM xx-04, Tribal Partnership Program Reduced Cost Share Eligibility Criteria (Ability to Pay), or the most recent published guidance.

f. In-kind credit. Credits will be afforded toward the required Tribal partner share of costs and may include the cost of services, studies, supplies, or other in-kind contributions provided by the Tribe, which may include IK. Non-federal feasibility work and non-federal design and construction work is planning, design, or construction activities performed by the Tribal partner in lieu of the federal government during the feasibility phase or design and construction phase, respectively. Such work is often referred to as “work-in-kind” (see ER 1165-2-208).

(1) Credit afforded for in-kind work reduces or eliminates the non-federal cash contribution, except in the case of the 5 percent cash contribution for flood risk management projects, and in the case of the additional 10 percent payment for navigation projects. (These may be reduced by the ability to pay adjustment, however, if applicable.) Creditable in-kind work includes any initial investigations performed by the Tribal partner to identify the existence and extent of any hazardous, toxic, and radioactive wastes (HTRW) that may exist in, on, or under real property interests required for the project, but does not include expenses for HTRW cleanup and response which are always the responsibility of the non-federal partner. Creditable in-kind work should be distinguished from the costs of participation in a Design Coordination Team or a Project Coordination Team established to discuss significant issues or actions as part of design or construction of the project. These expenses are not shared costs and are not creditable.

(2) Many Tribal partners are as capable or more capable as any other partner for a USACE Civil Works project, and in many areas can equal the USACE capabilities. After a tentatively selected plan decision point in the feasibility study process, a Tribal partner may propose to provide or perform all or a portion of the design for a specifically authorized project as an in-kind contribution and enter into an In-Kind Memorandum of Understanding (MOU) with USACE to perform such work in anticipation of a design agreement or PPA. If a Tribal partner proposes to undertake any construction prior to the execution of a PPA for a specifically authorized project, a similar In-Kind MOU process would be followed. These MOUs stipulate that the work will be at the risk of the non-federal party, so should be entered into advisedly.

(3) After completion of the feasibility study for a project that will be carried out under the TPP programmatic limit, a Tribal partner may propose to provide or perform all or a portion of the design or construction as an in-kind contribution, execution of an In-Kind MOU with USACE to perform such work is not necessary. However, the Tribal partner should work with the USACE district to develop an agreed upon scope of work in order minimize the risk that such work would not be integral or would not be creditable.

(4) Non-federal feasibility work and non-federal design and construction work for credit may only be provided by the Tribal partner and can be accomplished by the hired labor of the Tribal partner or by contract administered by the Tribal partner. Vertical team discussions should occur when the Tribal partner is a member of a compacted agency in Alaska for crediting purposes.

(5) The value of the non-federal feasibility or programmatic design and construction work will be estimated prior to the initiation of the effort. For the purposes of estimating total study costs or total project costs and projecting the Tribal partner's cash requirement, USACE and the Tribal partner will agree upon a value for such work at the beginning of the study or programmatic design and construction, as applicable. The actual amount of credit to be afforded for non-federal feasibility or programmatic design and construction work will be subject to an audit to determine reasonableness, allowability, and allocability of the costs and will not exceed the actual costs incurred or the amount of the Federal Government estimate of such work if the work had been performed by the Federal Government, whichever is less. USACE must apply applicable federal regulations, including Office of Management and Budget (OMB) Circular A-87 or Circular A-122 (for non-profit sponsors). The Tribal partner must comply with applicable federal and state laws and regulations, including the requirement to secure competitive bids for all work to be performed by contract.

(6) The Tribal partner may not receive credit for supervision and administration of work performed by the Federal Government or the Federal Government's contractors. This includes Tribal partners acting as monitors paid by USACE who observe contractor actions to ensure that cultural or natural resources are not harmed or damaged. Many of the tasks included in the Supervision and Administration account during the programmatic design and construction phase, including most of the contract management related activities, are inherent Federal Government functions which may not be contracted out or assigned to others to perform (see Federal Acquisition Regulation subpart 7.5). The Tribal partner will receive credit for supervision and administration of any contracts that it awards subject to an audit to determine reasonableness, allowability, and allocability of the costs.

g. Contributed funds. Contributed funds are those funds above any statutorily required non-federal cost share provided voluntarily by Tribal partners, with no credit or repayment authorized for such funds for authorized work that is being undertaken by USACE. For the TPP, once federal funds have been provided to initiate the study, contributed funds may be accepted for further study, design, construction, and, in the case of navigation, O&M of the project. Congressional notification is required prior to the acceptance of such funds consistent with the process described in the contributed funds implementation guidance. Contributed funds guidance may be found in Director's Policy Memorandum 2020-01, Acceptance of Contributed Funds, Advanced Funds, and Accelerated Funds, December 19, 2019.

h. Cost sharing for preservation of cultural and natural resources projects. The feasibility phase for the preservation of cultural and natural resources will be cost shared as shown in Table 2-1. The design and construction of projects for the preservation of cultural or natural resources will be shared in accordance with the cost sharing for flood risk management, coastal storm risk management, or ecosystem restoration, depending on the causal factors necessitating the project.

(1) Bank stabilization to manage streambank and riverine erosion will be considered a flood risk management activity, so these streambank erosion type projects will be implemented using the same cost sharing requirements as structural flood risk management projects implemented under specific congressional authorization.

(2) The non-federal share of a minimum of 35% up to a maximum of 50% of construction costs applies during the programmatic design and construction period as follows.

(a) The Tribal partner must also pay a minimum 5% of the total project cost in cash and provide all LERRDs required for the project, although the 5% cash contribution, as well as any remaining cash contribution, is reduced by the Section 1156 Cost Share Waiver amount (33 USC 2310) and by the TPP Ability to Pay adjustment, if applicable.

(b) The remaining minimum 5% cash requirement after the application of the Cost Share Waiver and Ability to Pay, however, cannot be further reduced by in-kind work by the Tribe. (However, if there is a cash contribution required after payment of the remaining minimum 5%, the additional cash contribution may be reduced by in-kind work.)

2-3. General planning principles for the Tribal Partnership Program

a. General requirements. The recommendations under TPP must specifically address the determination that the project is feasible and includes appropriate cost sharing. The determination of feasibility includes that the project is technically feasible; the economic, environmental, and social benefits to the Tribal Nation outweigh the costs; the project is cost-effective; and the project is environmentally acceptable. USACE 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.

(1) District staff, in coordination with MSC staff, will determine the appropriate level of detail for analyses required to produce a quality project in a reasonable time and at a reasonable cost. Simplified evaluation procedures may be adopted for low risk/low-cost projects and when the consequences of failure are minimal and do not pose a threat to human life or safety.

(2) However, District and MSC Commanders cannot deviate from legislative requirements, or from policy without prior written approval from HQUSACE or ASA(CW), environmental compliance, or regulatory requirements of HQUSACE, the Department of the Army, the Department of Defense (DoD), or other federal agencies. Requests for exceptions from policy should be coordinated through the appropriate HQUSACE RIT to confirm the decision authority and process for approval.

b. Plan formulation and evaluation. Alternative plans will be developed following planning principles and methodologies. Overall, alternatives will be developed using the level of detail necessary to make an informed decision on the practicability, acceptability, and implementability of the plan that is consistent with federal law and policy, and to the extent that law and policy permit, consistent with the goals of the Tribal partner.

(1) Analyses of comprehensive benefits and cost, risk and uncertainty, cost effectiveness, and incremental cost will be undertaken using procedures appropriate for the scope of the complexity of the project. Further, as required by the National Environmental Policy Act (NEPA) and other applicable statutes, when formulating measures and plans that will result in the recommendation for a project, the project delivery team must consider opportunities to reasonably avoid or minimize adverse environmental impacts and mitigation requirements.

(2) All plan formulation must be completed during the feasibility phase, including technical analyses, policy compliance determinations, federal and environmental compliance determinations, and activities required for the approval of the decision document. If it is expected that sufficient information needed for permitting or environmental compliance will not be available to make a final decision until PED, then documentation of coordination with the cooperating and any participating agencies regarding the NEPA analysis must be provided in the final report.

c. Indigenous Knowledge. In accordance with the CEQ and Administration guidance, project delivery teams should consider, where available, IK throughout the planning process. The identification of IK is accomplished through Tribal consultation and collaboration with all appropriate tribal and project delivery team offices and experts. It is recommended that as part of early Tribal consultation, there is an initial discussion regarding the availability of Tribal information and knowledge that would be relevant. As the study progresses, continued consultation and collaboration should identify and consider tribal knowledge to improve study decision-making. Tribal knowledge may inform all aspects of a study, including, but not limited to, species and habitats, cultural resources, traditional cultural places, water resources, hydrology, etc.

(1) Project delivery teams and tribal partners should discuss what information should be kept confidential (not available to the public) and where necessary, determine in advance how this information might be shared and considered.

(2) Where IK is to be used, the project delivery team should ensure it has Tribal consent to capture that information in a report and that the information provided is accurately represented.

(3) Project delivery teams should provide to their Tribal partners how IK, if provided, was considered in the selection of a final plan.

d. Selection of a plan. 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 Nation outweigh the costs; the project is cost-effective; and the project is environmentally acceptable. Additional guidance is provided in paragraph 2-3.f. on demonstrating project benefits and selection of a plan.

e. Project justification. Notwithstanding any requirements for economic justification established under Section 209 of the Flood Control Act of 1970 (42 USC 1962-2), the Secretary may implement a project (other than a project for ecosystem restoration) using any of the following criteria.

(1) The project will significantly reduce potential flood or hurricane and storm damage hazards (which may be limited to hazards that may be addressed by measures for erosion mitigation or bank stabilization).

(2) The project will improve the quality of the environment.

(3) The project will reduce risks to life safety associated with the hazards described in paragraph 2-3.e.(1).

(4) The project will improve the long-term viability of the community.

f. Benefits to Tribal Nations. The primary driver in federal interest is if the project will substantially benefit Indian Tribes. As many aspects of Tribal values are not easily quantified or monetized, the benefits of any alternative(s) must include adequate quantitative and/or qualitative analyses to discuss the full range of benefits to the Tribal Nation. Project delivery teams (PDT) must identify and analyze benefits in total and across a full array of benefit categories to determine which alternatives provide substantial benefit to the Tribe(s); benefit categories to be considered must encompass economic (national and regional), environmental (national and regional), and social considerations. Economic, social, and environmental benefits, impacts and costs are to be identified and measured.

(1) When a project is to be justified based on benefits including, but not solely, net National Economic Development (NED) benefit, then great care should be taken to examine the true benefit of the project to the Tribal Nation. This can be accomplished using various techniques and methods, but the techniques and methods used in the underlying analyses should in all cases be scientifically sound and defensible.

(a) These analyses can look individually at general indicators of public well-being, such as: income, employment, access to traditional resources, ecosystem vitality, life safety, cultural health, and social stability. These analyses can also be measurements of a single metric that speaks broadly to some or all of these indicators.

(b) When choosing to use some of these indicators for which there is not a broadly accepted value equating to willingness to pay, PDTs are encouraged to include scientific backing for claimed benefits, including those in peer-reviewed scientific journals or other scientifically and/or academically rigorous materials that directly support the claims being made.

(c) In all cases, a clear case should be made for the benefits expected to accrue as a result of the project, why those benefits are significant to the Tribal Nation, and why those benefits are cost effective to realize.

(2) TPP studies to preserve cultural or natural resources do not require project justification using NED or net National Ecosystem Restoration (NER) benefits in addition to the justification categories listed in paragraph 2-3.e., and do not require a policy exception from the ASA(CW) to recommend a plan other than the NED or NER plan.

(3) Decision documents will continue to present the NED analysis for all viable alternatives and identify the NED Plan when one or more alternatives produce net positive NED benefits. If there is no NED Plan and/or the selection of a plan other than the NED Plan is based in part or whole on non-NED benefits, then the selection will be supported by a cost effectiveness/incremental cost analysis (CE/ICA) consistent with ecosystem restoration evaluation procedures (see Appendix E, Section V, ER 1105-2-100, or successor guidance when available). When it is known that initial or final array of plans will require a CE/ICA analysis and justification through another account, vertical team alignment on project justification and a pathway to define metrics and criteria for the CE/ICA should be documented in memorandum for record as early as the Alternatives Milestone Meeting or at subsequent in-progress reviews.

(a) For feasibility studies recommending a project requiring specific authorization by Congress, an exception request to select a plan other than the NED or NER plan must be submitted to the ASA(CW) through the appropriate HQUSACE RIT prior to the tentatively selected plan (TSP) milestone meeting and must be approved prior to the release of the draft feasibility report. The approved policy exception must be included in the final report package to demonstrate policy compliance of the final report.

(b) For feasibility studies recommending a project for construction under the programmatic limit as set forth by WRDA, an exception to the NED or NER plan does not need to be approved by the ASA(CW). As early as possible, but no later than the TSP Milestone, USACE will notify the ASA(CW) through the appropriate HQUSACE RIT if the recommended project is likely to be justified by net benefits to the Tribe other than NED or NER, and the Office of the ASA(CW) will be invited to the TSP milestone meeting.

(4) The decision document will present the tradeoffs of impacts in the economic, environmental and social accounts for the plans in the final array and describe the compelling justification for any plan that is not the NED or NER plan. Special care should be given to the benefit units used in this analysis, particularly when they are not generally accepted and easily quantifiable (such as acres of land, habitat units, etc.). All nonstandard metrics must be coordinated and approved by the vertical team.

2-4. Letter reports

Letter reports are used to succinctly conclude a study and may be the most appropriate tool to document the information required to support a project for budgetary consideration or to document the completion of the feasibility phase under the TPP. Letter reports may include a few key facts such as study authority, non-federal sponsor, work completed to date, reasons for concluding the study, and a summary of expenditures to date (non-federal and federal costs). In coordination with the MSC, District Commanders can approve the final letter report and transmit to the MSC for endorsement to Headquarters. Letter reports are not reviewed by HQUSACE but are provided for informational purposes only and will be sent to the ASA(CW) with a memorandum notifying the ASA(CW) of the conclusion of USACE participation in the study. It would be appropriate to develop a letter report for the following situations.

a. *Study conclusion.* If a TPP feasibility, watershed, or other study effort must conclude before the final recommendation is developed due to a lapse in funding appropriations or lack of Tribal partner support, a letter report should be developed.

b. *Watershed planning activities.* Short of a completed final watershed plan, USACE may conduct watershed planning activities. Such investigations would be summarized in a letter report. This is further detailed in Chapter 7 paragraph 7-13.

c. *Feasibility-like, technical assistance, or stand-alone water related studies.* These types of studies or activities may conclude without specific recommendations for design or construction. Additional information is provided in Chapter 8 for these types of letter reports.

d. *Non-traditional water resources development project recommendations.* Studies and projects that the ASA(CW) deems to be appropriate in cooperation with Indian tribes and the heads of other federal agencies may also end in a letter report. Additional information is provided in Chapter 9 for these types of letter reports.

2-5. Final report submittal package checklist

At the conclusion of the feasibility phase, the final report will be provided to the respective MSC and HQUSACE for further review and approval. Table 2-2 below shows the required documents for transmittal to the MSC.

Table 2-2
Final report package checklist for Tribal Partnership Program studies

	Feasibility Report for Congressional Authorization	Feasibility Report for Programmatic Implementation*	Watershed Assessments	Technical Assistance, Water-Related Planning Activities, or Feasibility-Like Reports
District Transmittal Memo with Recommendation and Request for MSC Approval	X	X	X	

	Feasibility Report for Congressional Authorization	Feasibility Report for Programmatic Implementation*	Watershed Assessments	Technical Assistance, Water-Related Planning Activities, or Feasibility-Like Reports
District Transmittal Memo to MSC with Recommendation				X
Decision Document Submittal Package Checklist	X	X	X	
Final Report	X	X	X	
Project Guidance Memorandum	X	X	X	
Proposed Chief's Report	X			
Proposed responses to IEPR (if applicable)	X	X		
Report Summary	X	X	X	
Project Fact Sheet or Placemat	X	X	X	X
Certification of District Legal Review	X	X	X	
Review Summary (District Quality Control, Agency Technical Review, and if applicable, Independent External Peer Review)	X	X	X	
Cost Certification and Total Project Cost Summary	X	X		
Finding of No Significant Impact or Record of Decision**	X	X		
Project Briefing Slide Deck	X	X	X	
Tribal Partner Letter of Intent	X	X		
Tribal Partner Self-Certification of Financial Capability	X	X		

	Feasibility Report for Congressional Authorization	Feasibility Report for Programmatic Implementation*	Watershed Assessments	Technical Assistance, Water-Related Planning Activities, or Feasibility-Like Reports
Tribal Partner Self-Certification of Real Estate Acquisition Capability	X	X		

Notes:

* Includes Non-Traditional Water Resources Development Projects

** For reports recommending a project for Congressional authorization, the Finding of No Significant Impact or Record of Decision must be transmitted as draft and unsigned until conclusion of ASA(CW)'s Administration review.

Chapter 3

Project Management Requirements for Tribal Partnership Program Activities

3-1. Roles and responsibilities

a. Management of TPP activities for most actions and decisions has been delegated to the MSC Commander. MSCs establish the TPP priorities across the districts in the MSC and provides priority list to MSC TPP program managers (PMs). The HQUSACE TPP program manager is responsible for funding projects based on availability of funds and ranking all proposed TPP projects.

b. HQUSACE TPP PMs are responsible for implementation of the TPP; development of the draft President's budget; allocation of funds; monitoring of policy and procedural compliance; and program-wide financial and physical performance measures.

c. MSC management is responsible for providing regional leadership of the Program, policy compliance, coordinating review to include MSC real estate staff and the MSC Tribal Liaison, and approval of TPP decision documents. For feasibility studies recommending a project requiring further authorization by Congress, the MSC will support the development of a Chief's Report.

(1) The MSC is responsible for the quality control of project-level data contained with the USACE information systems, including P2 and the TPP database.

(2) Decision and approval authority will follow EP 1105-2-61, Feasibility and Post-Authorization Study Procedures and Report Processing Requirements, for product and milestone approvals. The MSC will coordinate actions requiring HQUSACE involvement with the appropriate HQUSACE RIT.

(3) The MSC will identify policy exceptions and coordinate requests to the appropriate HQUSACE RIT and TPP PMs (Policy and Budget) for review and approval of exceptions or other submittals requiring HQUSACE or ASA(CW) approval, as determined to be appropriate by the vertical team.

d. District management is responsible for execution of all TPP projects.

(1) Successful execution of TPP projects include: assignment of a project manager and team members; early involvement of real estate and a district Tribal Liaison to plan, design, and construct TPP projects; coordination with Tribal partners; development and submittal of TPP decision documents for approval; and maintenance of project records (the appropriate HQUSACE RIT will coordinate with HQUSACE TPP PMs and maintain TPP project data).

(2) The district Tribal Liaison is defined as the person acting to fulfill the requirements of Section 8112 of WRDA 2022, as amended. Tribal Liaisons are typically responsible for tasks including, but not limited to: removing barriers and improving access to USACE programs for Tribes; improving outreach and engagement with Tribes; identifying and engaging with Tribes suffering from water resources challenges; improving, expanding, and facilitating government-to-government consultation with Tribes; and coordinating and implementing all relevant Tribal-related activities.

e. The Tribal partner is the project sponsor and will be included in every aspect of development, including:

(1) Helping to define the water resources problem(s) and opportunities, study scope, task, cost estimates, and schedules;

(2) Participating in study decisions, including determining the type and mix of study objectives, contributing to the development and evaluation of alternatives (plan formulation), and selection of an alternative plan;

(3) Contributing data and resources, such as IK, tribal member involvement, or other activities that may be counted toward in-kind work or contracting services to support the study and/or project scope;

(4) Communicating with the Tribal community about the project and assisting with communications about the project;

(5) Contributing to the project design, including environmental and aesthetic features, and ensuring that other factors affecting the community are addressed during the planning phase; and

(6) Providing the LERRDs and performing the facility/utility relocations required for the construction and OMRR&R of the project.

3-2. Project Management Plan

A PMP will be prepared within 90 days after execution of the FCSA for every study and implementation activity, including a Review Plan (or Review Strategy for technical assistance activities, Chapter 8 paragraph 8-2.d.) to outline specific review requirements for planning and engineering products.

a. All PMPs should follow a common standard of quality as outlined in ER 5-1-11 and modified as appropriate for the effort undertaken in TPP. A PMP is a roadmap for quality project delivery and its development is an essential task during the early stages of the feasibility phase. The PMP will identify all actions, review requirements, processes, costs, and schedules as integrated features of the overall project execution and will be coordinated with the Tribal partner.

b. The PMP is signed by the Tribal partner and USACE representatives and serves as a road map for the conduct of a study, and, potentially, for the related design and construction of a project.

c. The PMP is continually updated throughout the study to reflect changed circumstances based on new information. The district will collaborate with the Tribal partner on all updates to the PMP.

3–3. Schedule

A schedule will be developed for every TPP study and activity. TPP projects are expected to be completed in a timely and efficient manner that meets the Tribal partner's needs and expectations and in consideration of the Tribal partner's own internal processes, which may include, but is not limited to tribal governance requirements, internal public engagement, cultural activities that take precedent over study progress and completion, subsistence activities, etc. As a general matter, studies will be completed in the timelines listed below. TPP projects are typically small, non-complex, and used to provide solutions for specific water resource issues. The basic expectations for time required to complete the various phases/steps of a TPP project are as follows (subject to the availability of federal funding and Tribal partner processes).

a. *Feasibility report recommending projects for specific Congressional authorization.* These feasibility efforts are expected to be complete two to three years from execution of the FCSA. The requirements from Sections 1001 and 1002 of WRRDA 2014 apply to these study efforts. TPP feasibility study timelines may be extended consistent with Section 1001 of WRRDA 2014 and/or due to external Tribal engagements and should be elevated to the vertical team as early as possible in the study process.

b. *Feasibility report recommending programmatic project design and construction.* These feasibility efforts are expected to complete one to two years (up to three years) from executing the FCSA. Since these projects do not require additional Congressional authorization, like the CAP projects Sections 1001 and 1002 of WRRDA 2014 do not apply to these study efforts.

c. *Programmatic design and construction.* Execute the PPA within three to six months of receipt of funds after approval of the decision document, and initiate development of the plans and specifications.

3–4. Review policy for the Tribal Partnership Program

The district will develop and submit a Review Plan to the MSC consistent with ER 1165-2-217 Civil Works Review Policy. The Review Plan is a component of the district's Quality Management Plan (QMP) in the PMP. The Review Plan will describe all appropriate levels of required review including District Quality Control (DQC), Agency Technical Review (ATR), Independent External Peer Review (IEPR), and policy and legal compliance review (P&LCR).

a. In its quality assurance (QA) role, the MSC should ensure that the PDT and review teams are appropriately staffed and facilitate the identification of regional and/or national experts if needed. The appropriate Planning Center of Expertise (PCX) will serve as the review management organization (RMO) and endorse the Review Plan for MSC approval. Shortly after the initiation of a feasibility study, a P&LCR team should be assigned for the study duration and participate in the milestone meetings.

b. In identifying the PDT and review teams, appropriate expertise in TPP study delivery and policy should be considered (for example, inclusion of district Tribal Liaison and subject matter experts within Counsel, Real Estate, and HQUSACE-level policy reviewers). P&LCR team rosters should be coordinated between the MSC Planning Chief and the appropriate functional lead at HQUSACE. The P&LCR Manager will be coordinated between the MSC Planning Chief and the Chief of the Headquarters Office of Water Project Review (OWPR). The P&LCR team may include the HQUSACE TPP program manager and a senior policy advisor as determined to be appropriate. The review team will be supplemented with an OWPR advisor if there are no OWPR staff serving on the review team.

c. The following apply to TPP products:

(1) All TPP deliverables will undergo DQC review.

(2) IEPR is generally not applicable to TPP products except those projects that include an Environmental Impact Statement (EIS) or meet the mandatory triggers for IEPR (Chief of Engineers has determined the project is controversial; Governor has requested the IEPR; or if the cost of the project is more than \$200 million).

(3) If deemed appropriate in cases where mandatory triggers are present, IEPR exclusions may be approved on a case-by-case basis by the MSC Commander, founded on a risk-informed decision process and may not be delegated.

(4) Review Plans are required for all TPP projects. MSCs are strongly urged to adopt a programmatic approach to the review of TPP projects, such as use of programmatic or model Review Plans. TPP programmatic or model Review Plans will be approved by the MSC Commander. Approval of project-specific Review Plans not requiring an IEPR or Safety Assurance Review (SAR) may be delegated for approval by the District Commander. Project-specific Review Plans requiring IEPR or a SAR are approved by the MSC Commander or their delegate.

(5) The RMO for ATR for TPP projects that require specific Congressional authorization will be the appropriate PCX. The RMO for ATR of TPP programmatic feasibility studies may be the home MSC in lieu of the PCX. The PCXs will continue to serve in their roles of providing advice and may serve as the RMO under appropriate agreements with an MSC. The ATR lead is to be outside of the home MSC unless the TPP Review Plan justifies an exception and is explicitly approved by the MSC Commander.

(6) For TPP projects, ATR of the cost estimate will be conducted by pre-certified district cost personnel within the region or by the Cost Engineering ATR and Mandatory Center of Expertise (MCX) located in the Walla Walla District. A pre-certified list of cost personnel has been established and is maintained by the Cost Engineering MCX. The ATR team member responsible for reviewing the cost estimate will coordinate with the Cost Engineering MCX for execution of cost review and cost certification. The Cost Engineering MCX will be responsible for final cost certification and may be delegated at the discretion of the Cost Engineering MCX.

(7) Review by the USACE Risk Management Center (RMC) is only required for dam and levee safety projects. However, the MSC Commander will ensure that all decision documents involving life safety and flood and coastal related risk reduction measures are fully and appropriately reviewed.

(8) All issues related to risk and uncertainty are to be resolved at a consistent and appropriate level and communicated within the study documents.

(9) Approval of planning models for all TPP feasibility studies is required and should be coordinated with the appropriate RMO. MSC Commanders remain responsible for assuring the quality of the analyses used in these projects. The ATR certification package will include an explicit statement that says that the models and analyses are used appropriately and in a manner that is compliant with USACE policy, and they are theoretically sound, computationally accurate, and transparent. The ATR certification package will address any limitations of the model or its use documented in study reports.

3–5. Feasibility Cost Sharing Agreement

a. Authority to approve a FCSA, including any deviations, and to execute FCSA will be consistent with FCSA guidance and with the Annual Budget Execution Engineer Circular. Non-substantive deviations from the model FCSA may be approved by the MSC Commander; substantive deviations will require approval by HQUSACE. Subsequent to execution of the FCSA, no work beyond the initial \$200,000 in federal funds may be initiated until the Tribal partner's appropriate proportional share of costs has been made available either in cash or through an agreement on a schedule for the estimated value of non-federal feasibility work that will be required for the feasibility phase.

b. Non-traditional TPP activities that are not related to a water resource or align with USACE capabilities and core competencies must be elevated as soon as practicable, preferably prior to signing a FCSA, for a decision by the ASA(CW), in cooperation with Indian Tribes and the heads of other federal agencies.

c. The Tribal partner will sign the Tribal partner's Self Certification of Financial Capability for Agreements to certify its financial capability to meet its obligations under the FCSA, if a FCSA is required. The executed copies of the FCSA and accompanying documents must be provided to the MSC TPP program manager and the appropriate HQUSACE RIT.

Chapter 4

Feasibility Phase Leading to Congressional Authorization

4–1. Purpose

The feasibility phase encompasses the entire range of planning activities required to demonstrate that federal participation in a project is warranted and justified. The feasibility phase is cost shared 50/50 between the Federal Government and the Tribal partner, which may be further reduced by the Section 1156 Cost Share Waiver and if applicable, the Ability to Pay provision. The feasibility phase begins when a FCSA is executed by the Tribal partner and the District Commander. Section 1001 of WRRDA 2014 provides that, to the extent practicable, the maximum federal cost for a feasibility study is \$3,000,000 and is applicable to feasibility studies leading to the recommendation of a project for Congressional authorization. Section 1002 of WRRDA 2014 requires an annual report of milestone schedules to Congress and notification of missed milestones to Tribal partners.

4-2. Initial work allowance to negotiate and execute study agreement

Upon receipt of a letter of intent from the Tribe, the district must update the TPP database with the letter of intent date and submit a request for funds, not to exceed \$50,000, to pay the federal costs of preparing a PMP, Review Plan, and negotiating the FCSA with the Tribal cost sharing partner. These costs are 100% federally funded and are considered the initial allotment of the first \$200,000 in full federal funds.

4-3. Project Management Plan

Refer to Chapter 3 paragraph 3-2.

4-4. Review Plan

Refer to Chapter 3 paragraph 3-4.

4-5. Feasibility Cost Sharing Agreement

Refer to Chapter 3 paragraph 3-5.

4-6. Required planning milestones

a. Planning milestone purpose. The purpose of the required planning milestones listed below is to ensure that continuing work on the feasibility phase is consistent with the policies, principles, priorities, procedures, and constraints of USACE feasibility studies, thus preventing excessive expenditures on questionable projects. The requirements that support the determinations at these milestones will be scalable to the size and complexity of the proposed study. Additional information on these milestones and decision-making authority is provided in EP 1105-2-61, and ER 1105-2-100 and any successor engineering regulations, pamphlets, and guidance. The requirement to consult and coordinate with the Secretary of the Interior on any activity under the TPP as described in Chapter 1 paragraph 1-6.c. should be discussed at each milestone with the vertical team to verify proper coordination and documentation requirements.

b. Alternatives milestone meeting

(1) The Alternatives Milestone meeting marks the decision maker's acknowledgement and acceptance of identified study and implementation risks and the strategies to manage those risks. The decision maker affirms the PDT's preliminary analysis of the federal interest, identifying the water resource problem(s), planning opportunities, objectives, and constraints, identifying the preliminary future without project conditions, current conditions for the development of the alternatives, and the projected scope, schedule, and budget for the study. The MSC Planning Chief is the Alternatives Milestone meeting decision maker.

(2) The PDT must include team members with the appropriate expertise in TPP studies, especially within Real Estate and Office of Counsel. The Alternatives Milestone meeting will be held after the PDT has completed at least one full iteration of the risk informed six-step planning process and has a clear path forward (scope, schedule, budget) to the TSP milestone documented in a Vertical Team Alignment Memorandum, as outlined in EP 1105-2-61 Feasibility and Post-Authorization Study Procedures and Report Processing Requirements. The PMP and draft Review Plan have been developed.

c. *Tentatively selected plan milestone.* The TSP Milestone marks the PDT's selection of, and the decision-maker's endorsement of, a TSP, and that the PDT is prepared to release the draft feasibility report and draft NEPA and NHPA documentation for concurrent public, technical, legal, and policy review and IEPR (if applicable).

(1) Prior to the TSP Milestone, the PDT will have completed enough full iterations of the risk informed planning process to reduce uncertainties and identify a TSP. The PDT has completed the evaluation and comparison of a focused array of distinctly different strategies for achieving the water resources objectives in the study area, identified a TSP to carry forward, and prepared a scope to develop sufficient cost and design information including mitigation features for the final feasibility-level analysis and feasibility report.

(2) The draft feasibility report and NEPA/NHPA documentation will be largely complete by the milestone meeting and will be ready to release for concurrent review within 60 days of the successful TSP milestone. The PMP and Review Plan have been updated; the PDT has a projected scope, schedule, and budget for completion of the feasibility study. The MSC Planning Chief is the decision maker for studies for which the decision making has been retained at the MSC. If the decision making has been rescinded due to the need for exceptions to policy or a mutual decision based on study complexity and risks, the HQUSACE Chief of OWPR is the decision maker.

d. *Release of the draft feasibility report.* The draft feasibility report should be released within 60 days of the TSP Milestone meeting. If the decision maker supports moving ahead with the study, the PDT will finalize the draft integrated feasibility report and NEPA/NHPA documentation and prepare to release for concurrent public, technical, legal and policy review and IEPR (if applicable). Section 1002 of WRRDA 2014 requires the District Commander to notify Congress and the Tribal partner if the draft report release date is delayed.

e. *Agency decision milestone.* The Agency Decision Milestone (ADM) marks the corporate endorsement of the recommended plan and proposed way forward to complete feasibility-level design and the feasibility study report package. The ADM occurs after completion of the concurrent public, technical, legal and policy review, and IEPR of the draft feasibility report and NEPA/NHPA document.

(1) Upon completing an assessment of all comments, the PDT will work to address outstanding issues raised during the concurrent review that can be addressed without additional technical analyses or design; issues requiring additional technical analyses or design may be discussed at the ADM meeting with decisions made on how to proceed with resolving these issues to finish the final feasibility report. The PMP and Review Plan have been updated; the PDT has a projected scope, schedule, and budget for completion of the feasibility study.

(2) The MSC Programs Directorate Chief is the decision maker for studies for which the decision making has been delegated to the MSC. If the decision making has been rescinded to HQUSACE due to exceptions to policy or a mutual decision by the vertical team regarding study complexity or risk, the HQUSACE Chief of Planning and Policy is the decision maker.

(3) Any policy exceptions required for the study must be transmitted through the appropriate HQUSACE RIT to the ASA(CW) for approval (including 3x3x3 exceptions, NED exceptions, LPP waivers, etc.).

f. District transmittal of final report package for final policy review. Following current guidance in EP 1105-2-61, ER 1105-2-100, and ER 1165-2-217, the District Commander provides the signed feasibility report and required components of the final report package for final policy review. Section 1002 of WRRDA 2014 requires the District Commander to notify Congress and the Tribal partner if the final report transmittal date is delayed.

4–7. Decision document requirements and approval

EP 1105-2-62, Planning Studies, Reports and Programs and the Feasibility Report Format and Content Guide Version 1.0 (October 2021) should help guide technical and policy decision document requirements.

a. Decision document requirements. The decision document and supporting documentation requirements will be scalable to the size and complexity of the proposed project and at a minimum contain the following:

- (1) A clear description of the recommended plan; demonstration of the project justification based on standard USACE or otherwise approved non-standard project justification criteria for the particular project purpose consistent with the general guidance applicable to the project purpose(s);
- (2) Documentation of the results of any request for a policy exception;
- (3) Documentation of compliance with appropriate federal, state, and local environmental and regulatory requirements, such as NEPA, normally included in a feasibility study specifically authorized by the Congress;
- (4) A completed Real Estate Plan consistent with the requirements of Chapter 12, ER 405-1-12;
- (5) The Tribal partner's Self-Certification of Financial Capability for Decision Documents and Letter of Intent;
- (6) District Real Estate certification that the Tribal partner has the capability to acquire and provide the required real estate interests;
- (7) A detailed description of the Tribal partner's local cooperation requirements;
- (8) Identification of the anticipated OMRR&R activities, including estimated costs;
- (9) The feasibility level ATR certification; and
- (10) The District Counsel statement of legal sufficiency for the decision documentation and NEPA/NHPA process.

b. Exceptions from policy during feasibility phase

(1) The MSC Commander must seek an exception for any deviation from policy and obtain a response coordinated through HQUSACE and ASA(CW) staff before approving a decision document containing a deviation from policy. Exceptions will be discussed with the vertical team as early as possible, and discussions should include the appropriate HQUSACE senior policy advisor(s).

(2) Exceptions are required for any proposed deviation from general policy including but not limited to policies regarding plan formulation and cost sharing, recommendation of a Locally Preferred Plan (LPP), limits on recreation costs, and limits on cost shared monitoring. The MSC Commander must submit the exception request to the appropriate HQUSACE RIT together with a full explanation of the circumstances for the exception. The HQUSACE RIT will prepare a letter responding to the MSC request, which will be coordinated through HQUSACE and the ASA(CW).

(3) In no event will the decision document be approved until all deviations from policy have been addressed through exception requests and the written response from the HQUSACE RIT has been received by the MSC.

c. *Non-standard estates.* Any non-standard estates must be submitted by the Real Estate District Chief through the MSC to HQUSACE CEMP-CR for review and approval, consistent with ER 405-1-12, Chapter 12 paragraphs 12-9 and 12-10.

d. *Decision document approval.* Approval of the decision document will be by letter from the MSC Commander to the District Commander, with a copy furnished to the appropriate HQUSACE RIT. This authority may not be further delegated to the District Commander. The approval letter will certify that the requirements specified for approving the decision document have been satisfied (outlined in Table 2-2); summarize the findings, conclusions, and rationale for approving the decision document; and certify that the project addressed in the decision document is justified and is policy compliant or has received the necessary policy exceptions.

e. *Completion of the feasibility phase.* The feasibility phase is completed when all policy and legal compliance issues have been resolved and the final decision document has been transmitted to HQUSACE and a Report of the Chief of Engineers is transmitted to Congress for authorization. Refer to EP 1105-2-61, Feasibility and Post-Authorization Study Procedures and Report Processing Requirements and PB 2018-01 for actions that occur after transmittal of the final decision document package to HQUSACE, including State and Agency Review, final policy and legal compliance review, and preparation of the Documentation of Review Findings, final NEPA/NHPA review, preparation of the final Agency Response to IEPR (if applicable) and the signing of the Report of the Chief of Engineers or Director of Civil Works.

f. *Termination of the feasibility phase.* Following coordination with affected Tribal partners, the feasibility phase should be terminated if analyses indicate a lack of federal interest, a lack of public support or if a satisfactory letter of intent is not received from a potential non-federal sponsor within a reasonable length of time, usually not longer than one year (as determined by the MSC Commander in consultation with the District Commander). The phase is officially terminated when the District Commander so advises the MSC Commander and the appropriate HQUSACE RIT in writing of termination of the study. The District Commander will also notify Tribal partners when the study has been officially terminated.

Chapter 5

Programmatic Feasibility Phase

5-1. Purpose

a. The feasibility phase encompasses the entire range of planning activities required to demonstrate that federal participation in a project is warranted and justified. The feasibility phase is initially cost shared 50% with the Federal Government and 50% with the Tribal partner and is further adjusted by the applicability of the Ability to Pay and Cost Share Waiver. The feasibility phase begins after a FCSA is executed by the Tribal partner and the District Commander. It is anticipated that programmatic feasibility studies will be limited in size, scope, and complexity in comparison to the feasibility studies described in Chapter 4. Programmatic feasibility studies result in recommended

projects or separable element of a project where the total federal share of costs for the design and construction is anticipated not to exceed the Congressional authorized limit for a TPP project or separable element.

b. The decision on whether to continue as a programmatic feasibility study, for studies where the total cost of anticipated project or separable elements will exceed the Congressionally authorized programmatic limit, should be coordinated with the vertical team and the Tribal partner to determine whether to continue as a programmatic feasibility study with a modified alternative or move to a specifically authorized feasibility study. Projects should not be divided into smaller components specifically to fit within the programmatic limits, though flexibility for the Tribe in implementing projects should be maintained.

c. Non-traditional water resources development studies and projects will generally follow the following guidelines related to programmatic feasibility studies. Specific guidance is provided in Chapter 9 for initiation and completion of these types of TPP efforts.

5-2. Initial work allowance to negotiate and execute study agreement

Upon receipt of a letter of intent from the Tribe, the district must update the TPP database with the letter of intent date and submit a request for funds, not to exceed \$50,000, to pay the federal costs of completing a Federal Interest Determination (FID). These costs are 100% federally funded and are considered the initial allotment of the first \$200,000 in full federal funds.

5-3. Project Management Plan

Refer to Chapter 3 paragraph 3-2.

5-4. Review Plan

Refer to Chapter 3 paragraph 3-4.

5-5. Feasibility Cost Sharing Agreement

Refer to Chapter 3 paragraph 3-5.

5-6. Required planning milestones

a. *Planning milestone purpose.* The purpose of the required planning milestones listed below is to ensure that continuing work on the feasibility phase is consistent with the policies, principles, priorities, procedures, and constraints of USACE feasibility studies, thus preventing excessive expenditures on questionable projects.

(1) The requirements that support the determinations at these milestones will be scalable to the size and complexity of the proposed study. Additional information on these milestones is provided in EP 1105-2-58. It is important to remember that programmatic feasibility studies are mostly of limited size, scope, and complexity, and that the level of effort for these milestones should be scoped to what is appropriate for the study. The proper level of effort should be coordinated with the MSC.

(2) While the cost and duration of programmatic feasibility studies are not required by law to meet requirements in Section 1001 and 1002 of WRRDA 2014, these studies should, with very few exceptions that are previously coordinated with the vertical team, meet these cost and duration marks, due to their limited size, scope, and complexity.

(3) The requirement to consult and coordinate with the Secretary of the Interior on any activity under the TPP as described in Chapter 1 paragraph 1-6.c. and other federal agencies (or agencies as required under 25 USC 5304 for Alaska Native villages) should be discussed at each milestone with the vertical team to verify proper coordination and documentation requirements.

b. Federal interest determination. The first milestone is the determination that study efforts are likely to lead to project implementation that substantially benefits the Tribal partner.

(1) Based on mostly existing information, the federal interest determination (FID) will identify problems and opportunities, identify potential solutions, define preliminary future without project conditions, indicate whether expected relative costs compared to relative benefits to the Tribal Nation are likely to be reasonable, and identify potential environmental impacts of potential action(s). This analysis of federal interest will go through DQC review and will be scalable to the size and complexity of the proposed project and result in a policy-consistent project with a scope appropriate for a programmatic TPP project with a willing Tribal partner.

(2) The FID will be accomplished within the initial \$50,000 and early enough in the federally funded portion of the feasibility phase to ensure that there are no impediments to proceeding with the project. If federal interest is determined, an additional \$50,000 must be requested by the district to prepare, negotiate, and execute the FCSA package to continue the feasibility study.

c. Tentatively selected plan meeting. The second milestone is a TSP which takes place after the alternative plans have been formulated and prior to the release of the draft decision document for concurrent review. The purpose of the TSP is to ensure that plans have been properly formulated, legal and policy issues have been identified and a consensus on resolution has been reached, and the MSC concurs with the TSP that will likely proceed into the design and construction phase. USACE will notify the ASA(CW) through the appropriate HQUSACE RIT if the recommended project is likely to be justified by net benefits to the Tribe other than NED or NER prior to the TSP. The process and procedure for completing this milestone is at the discretion of each MSC.

5–7. Decision document requirements and approval

The guidance in EP 1105-2-62 and the Feasibility Report Format and Content Guide Version 1.0 (October 2021) covering feasibility report content should help guide technical and policy decision document requirements. The decision document and supporting documentation requirements will be scalable to the size and complexity of the proposed project.

a. Decision document requirements. The decision document and supporting documentation requirements will be scalable to the size and complexity of the proposed project and at a minimum contain the following:

(1) A clear description of the recommended plan;

(2) Demonstration of the project justification based on standard USACE project justification criteria for the particular project purpose consistent with the general guidance applicable to the project purpose(s), or as deemed acceptable by the vertical team (to include ASA(CW) staff) for non-standard project justification as discussed in Chapter 2 paragraph 2-3.f.;

(3) Documentation of the results of any request for a policy exception;

(4) Documentation of compliance with appropriate federal, state, and local environmental and regulatory requirements, such as NEPA/NHPA, normally included in a feasibility study specifically authorized by the Congress;

(5) A completed Real Estate Plan consistent with the requirements of Chapter 12, ER 405-1-12;

(6) The non-federal sponsor's Self-Certification of Financial Capability for Decision Documents and letter of intent;

(7) District Real Estate certification that the non-federal sponsor has the capability to acquire and provide the required real estate interests;

(8) A detailed description of the non-federal sponsor's local cooperation requirements;

(9) Identification of the anticipated operation, maintenance, repair, replacement, and rehabilitation activities, including estimated costs; the feasibility level ATR certification; and

(10) The District Counsel statement of legal sufficiency for the decision documentation and NEPA/NHPA process.

b. Exceptions from policy identified during feasibility phase

(1) The MSC Commander must seek an exception for any deviation from policy and obtain a response coordinated through HQUSACE from the ASA(CW) before he or she can approve a decision document containing a deviation from policy.

(2) Exceptions will be discussed with the vertical team, including the TPP program manager, as early as possible. Exceptions are required for any proposed deviation from general policy including but not limited to policies regarding plan formulation and cost sharing, recommendation of a LPP, limits on recreation costs, and limits on cost shared monitoring. The MSC Commander must submit the exception request to the appropriate HQUSACE RIT together with a full explanation of the circumstances for the exception. The appropriate HQUSACE RIT will prepare a letter responding to the MSC request, which will be coordinated through HQUSACE staff, which conveys ASA(CW) direction for the policy exception.

(3) In no event will the decision document be approved until all deviations from policy have been addressed through exception requests and the written response from the ASA(CW) through the HQUSACE RIT has been received by the MSC.

(4) For feasibility studies recommending a project for construction under the TPP programmatic limit, an exception to recommend a plan other than the NED or NER plan does not need to be approved by the ASA(CW). As early as possible, but no later than the TSP Milestone, USACE will notify the ASA(CW) through the appropriate HQUSACE RIT if the recommended project is likely to be justified by net benefits to the Tribe other than NED or NER, and the ASA(CW) staff will be invited to the TSP Milestone.

c. *Non-standard estates.* Any non-standard estates must be submitted by the Real Estate District Chief through the MSC to HQUSACE CEMP-CR for review and approval, consistent with ER 405-1-12, Chapter 12 paragraphs 12-9 and 12-10.

d. *Completion of the feasibility phase.* The feasibility phase is completed when all policy and legal compliance issues have been resolved and the final decision document has been approved by the MSC Commander. The District Engineer will transmit the final report package as required in Table 2-2 for approval by the MSC Commander.

e. *Programmatic feasibility report approval.* Approval of the decision document will be by letter from the MSC Commander to the District Commander, with a copy furnished to the appropriate HQUSACE RIT and the Headquarters TPP program manager. This authority may not be further delegated to the District Commander. The approval letter will certify that the requirements specified in this guidance for approving the decision document have been satisfied; summarize the findings, conclusions, and rationale for approving the decision document; and certify that the project addressed in the decision document is justified and is policy compliant or has received the necessary policy exceptions.

f. *Termination of the feasibility phase.* Following coordination with the affected Tribal partner, the feasibility phase should be terminated if analyses indicate a lack of federal interest, or the Tribal partner requests the termination of the programmatic feasibility study. The phase is officially terminated when the District Commander so advises the MSC Commander, the appropriate HQUSACE RIT and TPP program manager of termination of the study in writing. The District Commander will also notify the Tribal partner when the study has been officially terminated.

Chapter 6

Design and Construction Phase

6-1. General

Programmatic TPP projects will be implemented in two phases: the feasibility phase and the design and construction phase. Each phase is carried out under the provisions of a separate cost sharing agreement executed by the District Commander and the Tribal partner. The guidance in this chapter follows the completion of the programmatic feasibility phase and includes all the activities that would normally be included in the PED and construction phases of specifically authorized projects.

a. Section 203 of WRDA 2000, as amended, authorizes the design and construction of projects or separable elements whose federal design and construction cost is not more than a set programmatic limit established by Congress. All costs incurred for this phase will be shared with the Tribal partner following Sections 101 and 103 of WRDA 1986, as amended (33 USC 2211 and 2213), depending on the purpose of the project (or in the case of stream bank protection, the purpose of the project causing the erosion). This also includes non-traditional water resource development projects, in which the cost sharing should be assigned to the project purpose for which the proposed activity most closely aligns. Additional information related to non-traditional project implementation and examples can be found in Chapter 9.

b. USACE will consider an interim design phase with a design agreement if requested by a Tribal partner or if the total project cost is over \$10,000,000 (or per separable element). Additional coordination through the MSC to HQUSACE TPP program manager and RIT will assess the risks of exceeding the programmatic project cost limit set by Congress with the Office of the ASA(CW) on a case-by-case basis prior to the release of the draft report for the approval of the use of a design and construct PPA in lieu of a design agreement.

c. 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 flood risk management, coastal storm risk management, or ecosystem restoration, depending on the causal factors necessitating the project.

d. The Section 1156 of WRDA 1986 Cost Share Waiver, as amended, will be applied during the construction phase of the project, and if applicable, the Ability to Pay provision.

6–2. Initiation of programmatic design and construction phase

This phase begins upon receipt of initial work allowance for design and construction phase following the MSC Commander approval of the decision document that recommends proceeding into the design and construction phase. The first action of the design and construction phase is negotiation and execution of a PPA and the update of the PMP.

6–3. Procedures to obtain federal funding for the programmatic design and construction phase

a. *Initial work allowance to negotiate a project partnership agreement.* Upon approval of the decision document by the MSC Commander completing the feasibility phase, the district must update the TPP database with approval date, mark the feasibility phase completed, and submit a request for funds, not to exceed \$25,000, to pay the federal costs of negotiating the PPA with the Tribal cost sharing partner and initiating PED. These costs are initially 100% federally funded using Investigation funds to negotiate the PPA and initiate design will be included in total project costs and shared with the Tribal partner per the terms of the PPA. No additional funds in excess of the \$25,000 will be allotted to a project until the PPA is executed. Also, prior to execution of the PPA, the Tribal partner will sign and submit the non-federal sponsor's Self Certification of Financial Capability for Agreements to self-certify their financial capability to meet their obligations under the PPA.

b. *Remainder of design and construction phase.* After execution of the PPA, the district must update the TPP Database to show capability by FY to implement the project, and to show the actual PPA execution date. The district must keep the TPP Database current, as well as the project schedule in P2.

6–4. Required schedule milestones for design and construction phase

At a minimum, the following milestones will be required for design and construction phase. More milestones may be required by the annual execution EC.

a. PPA Execution. The PPA Execution milestone reflects the date that the PPA is signed by the appropriate Department of the Army approval authority.

- b. Complete Plans and Specification.
- c. Biddability, Constructability, Operability, Environmental, and Sustainability (BCOES) Reviews.
- d. Contract Ready to Advertise.
- e. Construction Contract Award.
- f. Physical Completion.
- g. Fiscal Completion.

6–5. Project partnership agreement

The design and construction phases will be conducted under the provisions of the Design Agreement and PPA executed by the District Commander and the Tribal partner. The appropriate model PPA will be used, when available. Authority to approve the PPA, including any deviations, and to execute the PPA must be consistent with the implementation memo for the appropriate model PPA. Where approved model agreements exist, the latest version of the appropriate model agreement must be used. Model agreements and further guidance are available at this location: https://www.usace.army.mil/Missions/Civil-Works/Projet-Partnership-Agreements/model_other/. For each FY, the TPP program manager will determine which projects are authorized to execute a PPA during the FY.

a. *Preconstruction engineering and design.* For projects or separable elements up to \$10,000,000 federal, a design agreement is not required. PED will be funded in the TPP-Investigations program and will stop with the completion of the first set of plans and specifications for the project. Compliance with all applicable environmental laws and regulations during the feasibility phase including, but not limited to, NEPA, NHPA and regulatory requirements must be verified and documented during the PED.

b. *Construction.* Work under the PPA will be funded in the TPP-Construction account once the first set of plans and specifications have been completed. No Government or Tribal partner construction work will be initiated prior to compliance with all applicable environmental laws and regulations.

(1) The district will provide the Tribal partner with general written descriptions, including maps as appropriate, of the real property interests that the Government determined the Tribal partner must provide and perform for the construction and OMRR&R of the project. The description must include the specific estate, acreage, location, and schedule requirements in detail sufficient to enable the Tribal partner to fulfill its obligations as contained in the PPA.

(2) After the Tribal partner completes its acquisition effort, an informed, authorized official of the Tribal partner must execute and provide a written Authorization for Entry to all real property interests for the project.

c. *No approved model agreements available.* In cases where there is not an approved model agreement, the MSC should contact the HQUSACE TPP program manager for additional coordination with the Office of ASA(CW) for development and approval of a project-specific PPA.

6–6. Modification of design and construction phases

a. *General.* USACE design and construction standards can be modified to reduce project cost for programmatic projects under TPP provided that the modifications do not result in adverse impacts or effects extending beyond the TPP project area. The basis for modification of standards is a comparison of the risk of failure or improper functioning with the consequences of failure or improper functioning. However, modification of mandatory standards requires a policy exception consistent with ER 1110-2-1150.

b. *Coordination with Tribal partners.* Modification of standards must be discussed with the Tribal partner so they recognize and understand the risk that they may be assuming as part of their responsibilities under the PPA, including any potential effect on their OMRR&R responsibilities. In addition, the Tribal partner will hold and save the United States free from all damages arising from the construction, OMRR&R of the project and any betterments, except for damages due to fault or negligence of the United States or its contractors.

6–7. Solicitation for contracts

a. Solicitations for contracts will not be issued prior to execution of the PPA.

b. Further, solicitations for construction contracts will not be issued until the Chief of Real Estate or Real Estate Contracting Officer has certified in writing that sufficient real property interests are available to support construction under such contracts. However, in exceptional circumstances the District Contracting Officer may proceed and issue a solicitation contrary to this general policy after full assessment of the risks and benefits of proceeding.

c. In those cases where solicitations are issued without sufficient real property interests, as allowed above, the solicitation documents will advise potential bidders of such facts.

6–8. Contract bid opening

a. No contract bids will be opened prior to execution of the PPA and prior to receipt of the Tribal partner's required cash contribution (flood risk management or coastal storm risk management project). In no event will this policy be waived.

b. If the District Contracting Officer issued a solicitation for a construction contract without sufficient real property interests to support a construction contract as described in this EP, sufficient real property interests must be available to support implementation under that contract before submitted bids may be opened and considered. The MSC Commander may approve opening bids prior to sufficient real property interests being available after receipt and review of a District Commander's written request that includes adequate justification and full risk and benefit analysis. Due to concerns regarding liability and fairness to potential bidders, approval of such requests is discouraged and will be granted only in exceptional circumstances.

6–9. Award of construction contracts

Construction contracts will not be awarded until the District Chief of Real Estate or Real Estate Contracting Officer has certified in writing that sufficient real property interests are available to support implementation of that contract. HQUSACE will consider limited

exceptions to this policy only after submission of a written request by the District Commander, through and with the concurrence of the MSC Commander, to the appropriate HQUSACE RIT and Headquarters TPP program manager that contains clear and persuasive evidence that the outstanding real property interests will be obtained in a timely manner, that proceeding to award poses no significant liability or risk to the Government, and that approval is otherwise appropriate considering all relevant facts and circumstances.

6–10. Additional programmatic design and construction costs

Following the award of construction contracts, additional funds may be requested for supervision and administration (S&A) of those contracts as well as funds for cost shared monitoring and adaptive management. The TPP database will be used to show the capability for these types of activities under the Programmatic Design and Construction Phase.

6–11. Physical completion of the programmatic design and construction phase

When the entire project or a functional portion of the project is physically complete, the District Commander will notify the Tribal partner in writing that construction of the project or a functional portion of the project is complete and will provide the Tribal partner with an O&M Manual. Upon receipt of the notice of completion of construction of the project or a functional portion of the project, the Tribal partner will conduct OMRR&R on the project in a manner consistent with the O&M Manual. Cost shared monitoring and adaptive management may be performed after construction is physically complete for ecosystem restoration projects as long as the federal per-project limit is not exceeded.

6–12. Fiscal completion

After project completion, including any cost shared monitoring and adaptive management to be performed after physical construction is complete, and the final audit has been completed, the project should be fiscally closed out within 30 days of the final audit.

6–13. Project completion report

The District Commander will transmit a project completion report to the MSC and Headquarters TPP program manager. The report will contain a short description of the project, the final federal and non-federal feasibility and design and construction costs by phase, and the date that the Tribal partner was provide notice of physical completion consistent with the terms of the PPA.

6–14. Termination

In accordance with statute, a PPA is required to set out the responsibilities and obligations of USACE and the Tribal partner with respect to the construction, operation, and maintenance of the project. Once project construction has been initiated, agreements are generally not terminated, although suspension or termination of the PPA may occur if the if the Tribal partner fails to fulfill its obligations under the PPA, unless the ASA(CW) determines that continuation of the project is in the interest of the United States or is necessary in order to satisfy agreements with other non-federal interests. In the alternative, the ASA(CW) may terminate or adjust the rights and

privileges of the Tribal partner interest to project outputs under the terms of the agreement.

6–15. Post-construction federal and Tribal partner responsibilities

Once any TPP project, or separable element under the TPP, has been completed, the project will be treated in the same manner as a completed project that was specifically authorized by the Congress. This includes ensuring Tribal partner compliance with PPA responsibilities and the routine and/or periodic inspection of projects.

6–16. After action review and completion report

As part of the HQUSACE responsibility to monitor policy and procedural compliance in this Program, HQUSACE and MSC TPP program managers will meet to conduct policy and procedural after action reviews of projects with PPAs executed in the last year. The procedural reviews will be based on HQUSACE and existing MSC documentation requirements for decision-making. In addition to monitoring policy and procedural compliance, these reviews will serve as a forum for identification of management and procedural problems, general policy issues, and successes which will in turn form the basis for any needed corrective action and continued evolution of program operating principles. To continue to identify the value to the nation of TPP, once the project has been constructed, a success story with a brief narrative about the project benefits including before and after photos, and a Completion Report will be posted to the TPP SharePoint Site.

6–17. Real estate

Refer to Chapter 11 for guidance related to Real Estate Plan and other lands required for TPP projects.

6–18. Value engineering

Value engineering will be performed during the programmatic design and construction phase at or before 35% design. More information may be found in ER 11-1-321 Army Program: Value Engineering or contact your District value engineering officer.

6–19. Floodplain management plans

a. Applicability. This requirement applies to all TPP projects with a structural flood and coastal storm risk management purpose, see Chapter 3 paragraph 3-3.b.(1)(b) in ER 1105-2-100. Guidance for the preparation of a floodplain management plan by Tribal partners may be found in Policy Guidance Letter (PGL) 52 dated 8 December 1997.

b. Preparation and implementation of a floodplain management plan. Tribal partners are required to prepare a floodplain management plan within one year of signing a PPA and to implement the plan no later than one year after completion of construction of the project.

c. Preparation of a floodplain management plan by Tribal partners during the feasibility phase. Information for the floodplain management plan that is developed as a part of the feasibility phase will be cost shared 50/50 (subject to the Section 1156 Cost Share Waiver and, if applicable, Ability to Pay provision) as a part of the feasibility study and must be described in the PMP.

d. *Preparation of floodplain management plan by Tribal partners during design and construction phase.* The Tribal partner may elect to pursue development of a floodplain management plan while the feasibility study is ongoing. However, any assistance provided by USACE after the feasibility study is completed will be 100% non-federal cost.

Chapter 7

Watershed Studies

7-1. Background

a. This chapter incorporates USACE guiding principles related to watershed studies (ER 1105-2-102) as they pertain to the TPP (33 USC 2269). The goal of the TPP is to substantially benefit Tribes located primarily within Indian country. A watershed approach to analysis and decision making facilitates evaluation of a more complete range of potential alternatives and is more likely to identify the best means to achieve multiple goals over the entire watershed. The approach enables the design of alternatives that consider the benefits of water resources for a wide range of stakeholders within and around the watershed.

b. Watershed planning addresses problems, needs and opportunities within a watershed or regional context; strives to achieve integrated water resource management; and results in general, non-project specific, holistic plans or strategies to address watershed needs. Watershed plans may recommend programs and the initiation of site-specific project implementation studies. USACE is authorized to conduct “watershed assessments” and “watershed planning activities” under this authority. Both study tracks will be outlined in this document.

7-2. Integrated water resources management

Integrated water resource management is an overarching strategy that provides a holistic focus on water resource challenges and opportunities through coordinated development and management of water and related resources and its principles are integral parts of watershed planning. Integrated water resource management involves multi-sector collaboration and adaptive management rather than single sector management and planning of land and water resources, and considers economic benefits, ecosystem quality, health, and public safety. The principles include focusing on multiple objectives and tradeoffs, accounting for uncertainty, accommodating the concepts of adaptive management, stakeholder collaboration, and systems analysis for watershed-scale planning and evaluation. Integrated water resource management should be reflected in USACE participation, decision making, and documentation.

7-3. Systems approach

a. Within watersheds, there are many competing demands for available water resources that may or may not interact with one another. In utilizing a systems approach within a watershed, the planning effort should identify and characterize the systems of interest to the current and future needs of the watershed. This approach shifts away from limiting the scale of a study using jurisdictional or political boundaries to an integrated and resilient water resource management approach that works across boundaries.

b. Systems that may be considered in watershed planning include, but are not limited to, river and drainage systems, geomorphic and subterranean resources, weather (including climate preparedness), water supply and wastewater systems, economic systems, institutional systems and legal frameworks (for example, governance), regulatory frameworks, floodplain management, ecosystems, water management systems, navigation systems, and any other characterized system pertinent to the needs of the watershed effort.

c. The systems approach within watersheds shifts the emphasis of making decisions from identifying individual projects to long-term solutions that consider a broader range of impacts and the entire lifecycle of any actions. This approach recognizes that water resources problems and opportunities exist in systems and requires use of systems analysis methods and tools to understand and assess the interconnected nature of watersheds and the economic and ecologic systems they support. The systems approach should include considerations for water resilience throughout the range of conditions that may occur within the watershed, including periods of extended drought and can be scaled to the complexity and level of detail necessary for a specific watershed or watershed planning task. Planners and decision makers can deal with the complexities of a system and evaluate holistic inputs and outputs using this approach.

d. Particular attention should be paid to the interrelationships among land resources, water bodies, and the upstream-to-downstream linkages, which may be available through Indigenous Knowledge (see Chapter 2 paragraph 2-3.c.). The cumulative effects of any action that may occur among these systems and along these links must also be considered during the planning process. The interrelationships across systems, agencies, and programs should be identified, and solutions should be interdependent, long-term, and holistic, regardless of the entity(ies) that might ultimately implement the proposed actions.

7-4. Study area and agency coordination

Watershed planning shifts away from limiting the scale of a project using cultural or political boundaries and, by definition, focuses on a geographic area that is defined by a drainage basin or a region of the United States. Most frequently, this geographic area is described using hydrologic cataloging units and should address an area large enough to examine and address the problems, opportunities, and candidate solutions. In some cases, aspects other than hydrologic interaction may contribute to defining the planning area. Watershed planning under the TPP will focus on Tribal lands in the watershed context, ensuring the proper identification of water resources problems, opportunities, causes and effects.

a. Each watershed assessment under TPP will vary, depending on the location of the Tribal lands and whether there are other landowners within the watershed. Some watershed assessments may be wholly within Tribal lands and limited in focus, size, and scale, while other watershed assessments may include Tribal and adjacent Tribal, federal, state, local, and/or private landowners.

(1) The scale at which the study is conducted should be based on the nature of the problems so that problems can be accurately identified, and effective solutions proposed. Even those small in scale will benefit from coordination with other federal agencies to identify opportunities to address the Tribe's concerns.

(2) The TPP specifically requires appropriate coordination with the DOI and other agencies during the study and document accordingly in the report. This early involvement will increase communication, forge partnerships, and provide for a shared responsibility for watershed management. Note that Tribal sponsored watershed studies may contain confidential and proprietary information, including locations of sacred sites, sacred plants, burials, or traditional cultural landscapes. This information should be kept confidential to the extent allowable, and care should be taken to keep this information out of the public sphere.

b. In recognition of the unique role of the Secretary of the Interior concerning federal trust responsibilities with Tribes, and in recognition of mutual trust responsibilities, USACE should consult with the BIA while conducting watershed studies under the TPP. The goal of this consultation is to integrate USACE Civil Works activities with activities of other federal agencies to avoid conflicts, duplications of effort, or unanticipated adverse effects on Tribes and consider other federal authorities and programs. Teams should always document any consultation that occurs with DOI as part of any study.

c. Watershed planning provides a framework for a unified watershed vision and supporting goals. This framework should guide investments in the watershed and empower local resource managers to implement watershed solutions at the local level. Watershed planning should include strategies for implementation (Tribal, federal, and non-federal) to allow programs to work together over time. Coordination with other government entities enables USACE to leverage the expertise, authorities, and resources of those entities in support of the Tribe.

d. Relevant federal, state, Tribal, and local government missions, goals, objectives, funding requirements, and timeframes should be fully understood so that efforts can be accomplished by various entities in an integrated way consistent with a collaboratively developed plan. The objective is to consider and apply the various capabilities, programs, resources, and authorities of the different collaborators to develop and implement effective watershed strategies or plans using innovative arrangements for shared responsibility in watershed management. While honoring Tribal sovereignty, data sharing and collaborating can maximize limited resources for a more integrated solution to achieve a greater sum than if the agencies and Tribal members pursued action independently.

7-5. Public involvement and public review

The "public" identified for public review may vary from study to study, but at a minimum it should include the members of the Tribe, Tribal agencies, and any partnering government agencies or members of the public who may be affected, as appropriate. The public involvement and collaborative partnership strategy must be developed and included in the PMP. This will include a description of the public review strategy for the draft documents, as defined by USACE and the Tribe.

7-6. Watershed planning process

a. Risk-informed planning principles are integral to watershed studies and are a standard USACE business process. PDTs are required to incorporate critical thinking, risk-informed decision making, and early and frequent vertical team engagement throughout the study process. While there are no set restrictions for cost and schedule for watershed studies, they are not intended to be open-ended studies and TPP appropriations are limited. Budget and schedule should be determined based on the size and complexity of the watershed and clearly scoped in the PMP.

b. Data and studies developed by the Tribe should be used to the maximum extent practicable, but only those studies USACE would have otherwise conducted are incorporated into the calculation of in-kind services. Producing redundant studies is costly and should be avoided where possible.

c. Alignment with the vertical team on the study approach at the study initiation phase is required. The agreed upon objectives and scope of watershed assessments will be outlined in a negotiated agreement (the PMP). Watershed documents may be watershed management plans, but if not, the documents must provide information that would feed into subsequent watershed management planning efforts. The plan should identify actions to be undertaken by the Tribe and pertinent partners and stakeholders, if any, to achieve the study objectives. The planning document may or may not recommend further USACE studies or projects. Budgetary priority for watershed assessments will not be based upon the potential for future USACE projects.

7-7. Watershed assessment studies

More traditional watershed assessments will follow the six-step watershed planning process, as described in ER 1105-2-102. Depending on the needs of the Tribe, however, all six steps may not be completed for a given watershed study. In some cases, the first few steps may be the most beneficial to inform current decision making and planning efforts of the Tribe. Considering information developed by USACE, a Tribe may deliberate internally and make their own recommendations.

a. For all studies, terminology should remain flexible. For example, a Tribe may request a set of “options” or “best management practices” rather than measures or strategies. This is acceptable as long as the underlying scientific or engineering analyses meet USACE standards.

b. The District Planning Chief is responsible for ensuring PDT adherence to planning principles, the USACE six-step process or other agreed-upon strategies.

c. Identify problems and opportunities. Determine problems, needs, and opportunities in the watershed by involving study partners, water and related land resources agencies, and the public (if any members of the public are impacted by the study). Federal agency partnerships are key to collecting a broad view of the problems, needs, and opportunities, and to help identify projects and programs available to the Tribe for future implementation. Problems may include institutional barriers, where the associated opportunity is a full partnership by all relevant agencies to examine existing policies and procedures. Planning is an iterative process, and the problems, opportunities, objectives, and constraints should be reassessed after key decision point milestones.

d. Inventory and forecasting.

(1) This information is used to further define and characterize the problems and opportunities. A quantitative and qualitative description of these resources is made, for both current and future conditions, and is used to define existing and future without-project conditions. Existing conditions are those at the time the study is conducted. The forecast of the future without-project condition reflects the conditions expected during the period of analysis. The future without-project condition provides the basis from which alternative plans are formulated and impacts are assessed. Since impact assessment is the basis for plan evaluation, comparison and selection, clear definition and full documentation of the without-project condition are essential. Gathering information about historic and existing conditions requires an inventory. Gathering information about potential future conditions requires forecasts, which should be made for selected years over the period of analysis to indicate how changes in economic and other conditions are likely to have an impact on problems and opportunities.

(2) Prepare a collaborative inventory of relevant water and related land resources, consistent with the needs of the study, such as land use, multiple agency programs and capabilities, jurisdictional boundaries, demands and needs within the watershed, existing models, existing mapping and data, water supply and treatment systems, water rights, transportation systems, or any inventory consistent with the needs of the study. Some inventory and forecast activities may not be directly related to a specific geographic location, but rather would identify gaps in authorities needed to address specific problems. The forecast period of analysis will be 20-50 years in concert with state, regional and Tribal planning efforts.

(3) Reasonable efforts must be made to obtain and analyze relevant data, even where available data may be limited at the outset. Inventory is not limited to those areas used to develop analyses directly related to site-specific project planning. Include an examination of anticipated future actions, activities, and outcomes that reflect reasonable risk-informed assessments, consistent with the needs of the study, with clearly described assumptions and uncertainties that allow for consideration of the likely effects of a range of activities, decisions, or other courses of action.

e. Identity and screen measures. Develop management measures that address one or more of the planning objectives. Measures can be combined or used alone to make strategies that can be considered for recommendations. Measures may be based on a feature or activity at a site and some measures may go beyond that which can be constructed or built to include activities such as outreach, proposed regulatory actions, or a programmatic approach to existing requirements. Measures will be screened initially by using constraints, expert judgment, metrics, and specific screening criteria to focus on those that will contribute toward meeting the planning objectives.

f. Formulate initial array of strategies. Using the list of measures, provide a clear description of alternative approaches to address identified problems and needs, emphasizing alignment of actions of federal, Tribal, state, interstate, and local government entities, with an explanation of expected outcomes resulting from combinations of measures and actions considered. Strategies should be developed in the context of options or choices and their projected outcomes and should be developed based on reputable and readily available science and technical analyses.

g. Refine initial array and evaluate focused array of strategies. Evaluate the alternative strategies, in consultation with study partners, to assess how effectively the strategies address the identified problems, while focusing on the collective values, missions, and the shared vision. There may be several ways to address the needs within a watershed; structured assessment of the pros and cons of each strategy can be used to inform a tradeoff analysis. The four formulation and evaluation criteria (completeness, effectiveness, efficiency, and acceptability) provide a solid and flexible framework for comparing strategies from a variety of perspectives. Cultural and natural resources, the value of which will be determined independently by the Tribe as sacred, traditional and/or unique to their origin story, may also factor into the evaluation.

h. Strategy comparison and selection.

(1) Compare the strategies against one another, noting tradeoffs between the strategies, and select the best suited strategy for meeting the watershed study goals and objectives. The strategies must clearly describe the overall benefits toward advancing the shared vision and a general assessment of cost effectiveness, sequencing and priority of actionable items, and associated needs. As the strategies are described in the watershed study, the primary responsible federal and non-federal partner(s) and their associated missions, authorities, programs, and sources for potential future appropriations should also be identified to inform a strategic roadmap that guides implementation and provides measurable value to the Tribal Nation.

(2) Throughout the collaborative study process, an attempt should be made to achieve alignment of partner and Tribal agencies for the recommended actions whenever possible. For actions that are controversial, the watershed study should frame the recommended actions as those that would be most effective in solving the identified problems, regardless of whether the implementing agency chooses to take action.

(3) Where USACE has authority, recommendations can include activities under FPMS, PAS, TPP, CAP, or other applicable authorities. A separate FCSA, PMP, and Review Plan are required for a recommended project-specific study. Alternatively, the watershed plan may identify limited or no further USACE involvement.

(4) Regardless of whether there are future actions for USACE, the watershed study should provide a strategic overview that illustrates how the individual recommendations cohesively tie together to advance the shared vision and further achieve the desired end-state. Where USACE actions are recommended, it should also describe how those actions integrate with work being done by others in the watershed.

7–8. Initiating a Tribal Partnership Program watershed study

Watershed studies may be initiated under the TPP and do not require new start determinations.

a. Watershed study agreement.

(1) The Model Agreement for Cost-shared Watershed and River Basin Assessments posted on the USACE Civil Works Agreements website should be used. Review and approval of an agreement that does not deviate from the approved model is delegated to the MSC Commander and may be further delegated to the District Commander.

(2) Once a new start TPP watershed study has been approved, an initial \$25,000 will be provided to scope the PMP and draft and negotiate the Feasibility Cost Share Agreement. These funds will eventually be cost-shared under the cost share agreement. Once the cost share agreement is signed, the full watershed study funds can be allocated according to annual capability, as long as there are sufficient appropriations. Once the PMP is developed, the non-federal sponsor must provide its funding or in-kind contributions consistent with federal funding and cost-sharing provisions of the study authority.

b. Watershed studies are cost shared 75% federal and 25% non-federal (Tribal). Tribal partners may contribute their share of the costs of the study as in-kind contributions. "In-kind contributions" means those planning activities (including data collection and other services) that are integral to the watershed study and would otherwise have been undertaken by USACE for the study and that are identified in the PMP and performed or provided by the non-federal sponsor after the effective date of the watershed study agreement and consistent with the PMP.

c. The Ability to Pay provision applies to design and construction as well as to studies, watershed assessments, and planning activities carried out under the TPP. If the Indian Tribe has a per capita income less than the per capita income of two thirds of the counties in the United States, the non-federal share will be reduced as follows: for a watershed assessment, non-feasibility planning activity or letter report, the non-federal share will be reduced to 10% of shared agreement costs. For additional Ability to Pay procedures, refer to the latest EGM.

7–9. Project Management Plan

The overall scope and scale of the study, as documented in the PMP developed in collaboration with the Tribe, will be approved by the District Planning Chief within the first six months of the study. The PMP is to be scaled to the level of USACE involvement and overall planning strategy.

a. A Vertical Team Alignment Memorandum is required within six months of starting a TPP watershed study. The Vertical Team Alignment Memorandum will include the District Planning Chief endorsement and a copy of the PMP that includes a scope, schedule, and future funding stream requirements through completion. The Vertical Team Alignment Memorandum will be copy furnished and coordinated through the vertical team, which will include coordination with the Chief, Office of Water Project Review (OWPR), the RIT Planner, the District and MSC Policy and Planning Chiefs, and the Senior Tribal Liaison at Headquarters. The results of this coordination will be documented in electronic correspondence.

b. When preparing the scope and scale of the study for the PMP, the following considerations will be taken into account:

(1) Benefit evaluation for watershed plans may be qualitative in nature, with a range of benefits for comparison, or assessments based on qualitative rankings (such as high, medium, or low). Watershed planning may involve benefit analysis and evaluation including identification of economic and environmental benefits, cost-effectiveness and incremental cost analyses, and tradeoffs at a survey level. Watershed planning may involve a wide variety of proven economic methodologies appropriate to the study effort, including monetary and non-monetary assessments based on yielding the highest value or utility for an alternative's combined objectives and identified needs.

(2) USACE economic principles and expertise should be applied in watershed planning and scaled appropriately to meet the needs of the study. Economic evaluations may include NED assessments, impacts on the local and regional economy including employment and income (Regional Economic Development), life and safety impacts and other social effects, ecosystem goods and services, environmental quality, including cultural and natural resources, and/or financial analyses. Use of methodologies adopted by other federal agencies for benefit evaluation, including Indigenous Knowledge, may also be appropriate.

(3) In all cases, the uncertainties, assumptions, specifications, and planning objectives need to be identified early in the study, be clearly documented and communicated, and must demonstrate their adequacy through review processes.

c. Concept screening cost estimates can assist decision makers in assessing efficient allocation of limited resources. In watershed planning, costs for measures and strategies are pre-budget development and may be Class 5 estimates as defined in ER 1110-2-1302. Costs may also be categorized qualitatively by high, medium, and low to generate a non-quantitative ranking or least cost options and outcomes.

d. Engineering evaluations tailored to the watershed planning effort based upon the identified needs are appropriate. USACE engineering principles and expertise including hydrologic and hydraulic (H&H) modeling may be applied in watershed planning to meet the needs of the assessment. Use of H&H models and expertise outside USACE is also appropriate if it meets the needs of the assessment.

e. Because of significant enduring stakeholder engagements and working relationships, explicit coordination with USACE Civil Works Operations Division is appropriate in all cases where USACE infrastructure operates in the affected watershed(s). Operations professionals offer a unique window into the watershed setting through routine working-level professional relationships within the systems being studied. USACE Civil Works biologists and natural resource professionals in the field may not be used as a substitute for vigorous non-federal collaboration. However, their understanding of the context and ability to interpret input from involved stakeholders should be leveraged.

f. Because a watershed study will not generate a specific proposal for a major federal action that could adversely affect the human environment as defined by NEPA, the preparation of a NEPA document or compliance with Section 106 of the NHPA is not required as part of a watershed study.

(1) Tribes may wish to include and/or emphasize the presence and importance of cultural and natural resource present that may affect future courses of action, but this does not require the completion of NEPA or NHPA compliance documentation.

(2) The watershed study should note that compliance has not been completed and would be required in advance of any future decision to pursue a course of action. However, when a watershed study recommends the initiation of a site-specific feasibility study that may result in a specific proposal, this subsequent study will require a specific NEPA document and the completion of NHPA and other environmental compliance.

g. Detailed real estate information is not required, but real estate information should be tailored to a level of detail consistent with the watershed planning effort and consideration of potential real estate requirements should be acknowledged where appropriate. A real estate representative from any participating agency may participate in the watershed planning effort where appropriate.

h. In conducting watershed plans, and in overall watershed planning efforts, it is recognized that many agencies and stakeholders have developed numerous models and data. Use of existing models and data in watershed planning, whether it is from USACE, the Tribe, other federal agencies, or local entities is encouraged through collaborative processes. While formal model approval is not required, the quality and validity of these models and data must be evaluated and the ATR documented by the appropriate PCX.

i. Consideration of climate preparedness, including assessments of climate adaptation and resilience, is required for watershed plans. The climate preparedness assessment should consist of a qualitative analysis of historical climate trends, as well as assessment of future projections. The qualitative analysis should be used to support the assessment of climate change risk to the watershed. The initial scoping phase of the qualitative assessment should be completed early in the watershed planning process, prior to the Shared Vision Milestone. The vulnerability assessment and risk assessment phases are scalable based on the complexity of the recommendations in the watershed study.

j. In watershed planning, a basin-wide watershed approach to floodplain management that considers the interdependencies of natural systems should be applied, recognizing that watersheds and floodplains are interconnected systems. If project implementation actions are pursued by others during a watershed study, modifications to the floodplain need to fully consider the system impacts that may occur.

7–10. Review processes

The approach to product review for each USACE-led watershed effort must be specified in a Review Plan as described in ER 1165-2-217, Review Policy for Civil Works. Each Review Plan will be coordinated, approved, and posted as directed in the existing guidance on independent review processes. IEPR as described in ER 1165-2-217 is not required for watershed plans. In addition, formal model review and approval is not required for watershed plans. The MSC will document quality assurance requirements and serve as the review management organization.

7-11. Vertical team alignment, annual in-progress reviews and study milestones

a. *Accountability.* The PDT will be held accountable for the scope, schedule, and budget as presented in the PMP and at each milestone. Throughout a watershed study, the PDT should engage with the vertical team, especially when there is a need to deviate from previously agreed-upon scope, schedule, or budget, or when there are significant policy issues that need resolution. It is essential for the PDT and vertical team to meet regularly and align expectations.

b. *Annual in-progress reviews.* At least annually, the PDT is expected to participate in vertical team In-Progress Review meetings and/or milestones, along with the ATR team lead, PCX representatives (if applicable), MSC QA and policy reviewers, and the RIT and OWPR policy review team members. The Tribe (non-federal sponsor) must be invited to participate. These In-Progress Reviews will offer an opportunity to discuss the study status to date, obtain vertical team alignment on decisions, and any draft recommendations that would require additional USACE action, better understand Tribal concerns and priorities, and reaffirm the overall course and direction of the study. The decision maker for In-Progress Reviews is the District Planning Chief (see Table 7-1).

c. *Study milestones.* There are three milestones in single-phase watershed planning: the Shared Vision, Recommendations, and Final Report (Figure 7-1). Decision-making authority for watershed study milestones is outlined in Table 7-1. Key tasks associated with each milestone are listed in Table 7-2.

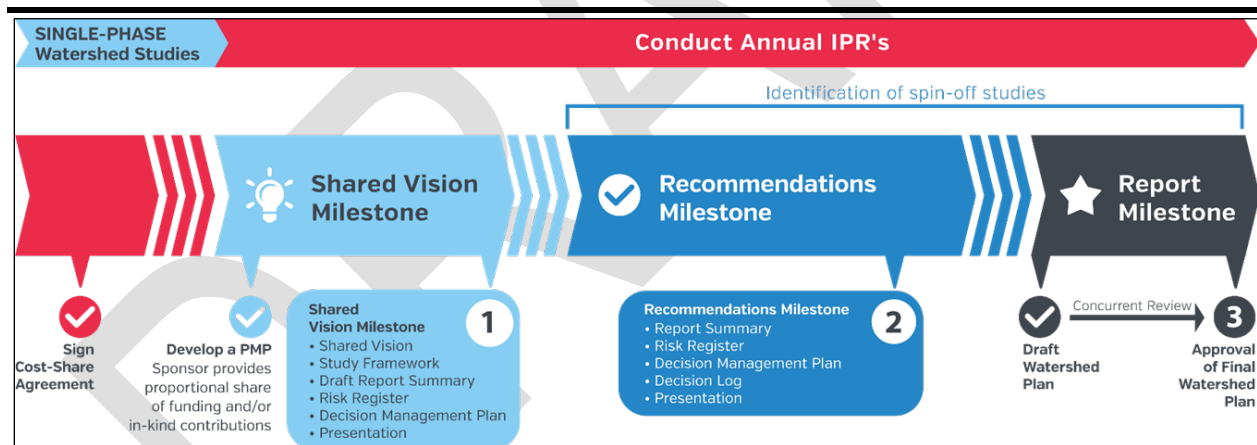


Figure 7-1. Watershed study milestones

**Table 7-1
Decision-making authority for watershed milestones**

Ongoing	Watershed Study Milestone	Decision-Making Delegation
Vertical Team Engagement	Annual In-Progress Reviews	District Planning Chief
	Shared Vision Milestone	MSC Planning & Policy Chief
	Recommendations Milestone	MSC Planning & Policy Chief
	Final Report Milestone (Watershed Management Plan)	MSC Commander

**Table 7-2
Key tasks associated with watershed study milestones**

Milestone	Typical Activities
To be completed before the Shared Vision milestone	<ul style="list-style-type: none"> Assemble a PDT that includes participation with relevant partners. Define the study area with the Tribe to capture impacts and influences of broadly identified problems and opportunities. Work with the Tribe and relevant partners, if any, to develop a concise Shared Vision Statement. Develop broad study goals and objectives that capture the breadth of interests to be served. Coordinate with BIA to avoid conflicts, duplications of effort, or unanticipated adverse effects on Indian Tribes and consider the authorities and programs of all federal agencies in any potential recommendations. Document this coordination as part of the Shared Vision Milestone, even if the agencies decline to participate. Develop a Study Framework identifying the roles and responsibilities of USACE, the Tribe and any relevant partners, with associated tasks that will advance the shared vision. In the Study Framework, describe how these tasks incrementally contribute to the shared vision. Consider how various agency authorities may be combined to align and prioritize future water resources actions within the watershed.
To be completed before the Recommendations milestone	<ul style="list-style-type: none"> Identify the hydrologic unit study area as defined by the United States Geological Survey Hydrologic Units Codes. Investigate the problems, needs, and opportunities of a watershed, which may include flood and coastal storm risk reduction, ecosystem restoration, navigation and protection, and preservation of cultural and natural resources. Research historic and current conditions and uses of the watershed. Develop a qualitative assessment of the cumulative effects of various activities in the watershed. Determine the likely future conditions and potential future changes/initiatives in the watershed based upon proposed activities and development, including the identification of resource uses, needs, and conflicts. Evaluate alternative uses of the resources including the positive and negative effects on economic development, the environment, and

Milestone	Typical Activities
	<p>social well-being based upon factual scientific, social, and economic information.</p> <ul style="list-style-type: none"> • Prioritize water and land-related resource problems and opportunities. • Identify and evaluate conflicting uses with monetary and non-monetary tradeoffs. • Work with the Tribe and relevant partners to collectively develop possible project measures for recommended future activities. • Complete a qualitative assessment of the cumulative effects of various activities in the watershed. • Work closely with the Tribe to determine actions to recommend in a watershed study/watershed plan. • Complete a qualitative assessment of alternative/strategy costs, benefits, and potential environmental impacts of any recommended activities. • Use a decision framework, as agreed upon by USACE and the Tribe, to justify recommendations and to explain how recommended activities would systematically improve integrity of the watershed and advance the shared vision, including consideration of risks and uncertainties. • Develop the strategic roadmap, identifying which agencies are best suited for accomplishing each of the recommended actions, including agency programs and funding sources. This information will help the Tribe develop an implementation strategy that leverages federal and non-federal programs. • Report the findings of these analyses through preparation of a watershed study/watershed plan. • Pursue any studies, projects, or programs for which USACE has authority under normal budget development process (subject to specific authorities, analysis, or decision-making processes). • Complete DQC on milestone materials and supporting analyses. • Complete ATR on technical products, models, or analyses that are particularly complex and would benefit from a technical review prior to other reviews (public, policy, etc.).
<p>To be completed before the draft watershed study is released</p>	<ul style="list-style-type: none"> • Provide a strategic roadmap, acknowledging risk and uncertainty that identifies recommended phases of implementation for greatest success to inform future investment decisions by the Tribe and relevant partner agencies. • Describe why this study warrants future federal engagement. How can federal agencies help overcome institutional barriers and solve technical problems? • Describe how problems can be solved across multiple agencies. • Complete legal sufficiency review of draft watershed plan. • Complete DQC of draft watershed plan. • Complete ATR of draft watershed plan and supporting technical analyses.

Milestone	Typical Activities
To be completed before the final watershed study is approved	<ul style="list-style-type: none"> • Complete Public / Agency Review of draft watershed plan. • Complete Legal and Policy Compliance Review of draft watershed plan. • Compile and assess review comments, identify actions to resolve comments and document in a review summary. • Complete DQC of final watershed plan. • Complete legal sufficiency review of final watershed plan. • Complete documentation and certification of DQC and ATR.

(1) *Shared Vision Milestone*. The purpose of the Shared Vision Milestone is to define the overall shared vision for the watershed, water, and related resources as developed by the Tribe and any partners involved in the watershed study, and to present the coordinated Study Framework and associated activities that clearly support the shared vision. It is an opportunity for the vertical team to weigh in on the purpose of the study and the established scope, schedule, and budget as informed by the shared vision process.

(a) A Shared Vision Milestone meeting will be held with the vertical team once the typical activities and key products (listed below) have been completed. The PDT should reach the Shared Vision Milestone within nine to twelve months from execution of the cost sharing agreement. The Shared Vision Milestone will replace the annual IPR in the year it is conducted. Two read-ahead products unique to watershed plans are the Shared Vision Statement and Study Framework and are shown in Table 7-3.

Table 7-3
Products required for Shared Vision Meeting

Read Ahead Product	Description
Shared Vision Statement	The Shared Vision Statement will be developed through close coordination with the Tribe and any relevant partners. This statement will be broad enough to encompass the goals and objectives of the watershed study with a sufficiently detailed description to allow for subsequent development of specific planning objectives and associated metrics. The Shared Vision Statement will be the basis for establishing the Study Framework.
Study Framework	The Study Framework will identify the roles and responsibilities of each partner in the watershed study, designating which entity will perform certain tasks and how the tasks will move the study closer to achieving the shared vision. Execution of the tasks identified in the framework will inform the watershed study. The framework will be used as a reference point for any changes to the agreed-upon path as the study continues.

(b) Any amendments to the PMP and/or cost sharing agreement will be discussed at the Shared Vision Milestone meeting to validate vertical team alignment with the PDT and the Tribe on the remaining scope of investigations, specifically time and funding necessary to complete the study. The MSC Planning and Policy Chief will confirm the level of continued USACE involvement beyond the Shared Vision Milestone.

(c) A Memorandum for Record (MFR) will be prepared by the District Planning Chief to memorialize the decisions made in the Shared Vision Milestone meeting. The MFR will be signed by the MSC Planning and Policy Chief and transmitted to the RIT for information. The MFR will include a study schedule and funding stream to complete the draft and final watershed plans.

(2) *Recommendations Milestone.* Following successful completion of the Shared Vision Milestone, the PDT will complete the tasks identified in the study framework that inform the watershed study.

(a) When sufficient analysis has been conducted to develop recommendations, a Recommendations Milestone will be held. The purpose of the Recommendations Milestone is to ensure vertical team concurrence on recommended strategies that meet the study goals and objectives and shared vision. The Recommendations Milestone will replace the annual IPR in the year it is conducted.

(b) At the Recommendations Milestone meeting, the MSC Planning and Policy Chief will make the determination whether or not to endorse the recommendations and the proposed way forward to complete the final watershed study. This vertical team engagement prior to the release of the draft watershed plan for review will ensure alignment with USACE policies and inform USACE communications with external agencies.

(3) *Draft watershed plan.*

(a) Following a successful Recommendations Milestone, a report documenting the findings of the analyses will be developed and released. In most cases, a draft watershed plan will describe the problems, opportunities, objectives, constraints, watershed goals, and how the recommended alternatives and/or strategies advance the shared vision. A description of the data, models, or other information that were used to support the inventory and forecast should be provided, along with evaluation and comparison of alternatives.

(b) Watershed plans should identify actions to be undertaken by the Tribe and relevant partners to meet the objectives of the study. The planning document may or may not recommend further USACE studies, projects, or programs. Budgetary priority for watershed plans will not be based upon the potential for future USACE projects.

(c) The draft watershed plan report will provide information that assists the Tribe in the understanding of the relationships between potential next steps and water resources priorities for the watershed. The information is intended to provide the Tribe and relevant partners with a risk-informed understanding of actions that could be taken, accounting for study risks, implementation risks and potential outcome risks associated with the performance of any future projects, to the extent this information is known.

(d) The draft and final watershed plans will include the following disclaimer, "The information presented in this report is to provide a strategic framework of potential options to address problems within the [insert name of Tribe] Tribe of the [insert name of watershed] watershed. Options identified will follow normal authorization and budgetary processes of the appropriate agencies. Any costs presented are rough order magnitude estimates used for screening purposes only."

(e) DQC will be conducted on technical products during their development, and ATR will be conducted after their development, to ensure the quality and credibility of the scientific information. Situations may arise where complex technical analyses or novel scientific methods would benefit from a review by external experts including other partnering agencies. Such external peer review is not considered Type I IEPR.

d. Report milestones

(1) *Draft watershed plan.* When the draft watershed plan is complete, it will be released for a 30-day (minimum) concurrent public (if needed), ATR, policy and legal compliance review period, including review by any relevant federal and non-federal partners. The policy review team, identified through the collaboration of the MSC Chief of Planning and Policy and the HQUSACE Chief of OWPR, and documented in the Review Plan, will draw from HQUSACE, the MSC, the PCX, and other review resources as needed. The purpose of the policy review is to ascertain that appropriate considerations have been made and that study conclusions are consistent with overall USACE policy.

(2) *Final watershed plan.* Once the watershed study has been updated to reflect comments received and addressed after the concurrent review period, the District Commander will submit the final watershed plan to the MSC Planning and Policy Chief to request approval from the MSC Commander, and send an informational copy to the appropriate RIT.

(a) The review manager will complete the policy review process with a Documentation of Review Findings, which will accompany the final watershed study package for approval by the MSC Commander.

(b) Once the final watershed study is approved by the MSC Commander, the MSC will transmit the package to the RIT. At that time, the RIT will draft a transmittal memorandum with a summary of the key findings from the Director of Civil Works to the ASA(CW) for information, route the transmittal memo and required enclosures through the DCW to the ASA(CW) for transmittal to Congress for information in response to the study authority and to the OMB if required for budgetary consideration. Note: The PMP will include a provision for this coordination with ASA(CW) staff, similar to the processing of a Director's Report.

7–12. Considerations for additional study recommendations

Section 203 of WRDA 2000 provides authority for TPP feasibility studies. If one of the recommendations in the watershed study is a follow-on feasibility study, this feasibility study will compete as a new start study under the TPP.

7–13. Letter reports for watershed planning activities

a. Short of a completed final watershed plan, USACE may conduct watershed planning activities. Such investigations would be summarized in a letter report. These studies might include:

- (1) Alternative strategies evaluation short of a recommendation;
- (2) Best management practices;
- (3) Hydrology, hydraulics, geomorphology, and/or sediment transport studies;
- (4) Climate resilience and/or drought resilience plans;
- (5) Information on the preservation of natural and/or cultural resources; and

(6) Other studies as deemed appropriate.

b. Reporting procedures.

(1) *Headquarters transmittal*. The report and supporting documents will be transmitted to the RIT for final processing. The final report is not reviewed by HQUSACE but is provided for informational purposes only and will be sent to the ASA(CW) with the memorandum notifying the ASA(CW) of the completion of USACE participation in the watershed study. The transmittal package must include an endorsement from the MSC of the final report conclusions, along with the final report.

(2) *ASA(CW) notification*. The RIT will prepare a memorandum for the Director of Civil Works to transmit the final report to the ASA(CW).

c. Project closeout.

(1) Within 10 days of completion, the District Commander will initiate development of an estimate of the current cost-sharing balance, along with a study specific plan to accomplish fiscal closeout for approval. The District PDT will coordinate with the District Programs office to perform final accounting to ensure final balance of the cost share consistent with the cost-sharing agreement with the sponsor. The MSC office will facilitate revocation of existing funds, adjustments in budget requests, and/or possible study reclassification. The District PDT will coordinate with the District Programs Office to perform final accounting to ensure final balance of the cost share consistent with the cost-sharing agreement with the sponsor. After final accounting is completed, all remaining funds will be returned to HQUSACE.

(2) Each RIT will provide, by 5 August of each year, the status of all its watershed plans to the USACE Civil Works, Planning and Policy Division (CECW-P), as required by Section 905 of WRDA 1986, as amended. CECW-P will compile and provide a comprehensive status list, including plans recommending no further federal action, to the ASA(CW) by 30 August each year for submittal to the Committee on Environment and Public Works of the Senate and Committee on Transportation and Infrastructure of the House of Representatives.

Chapter 8

Technical Assistance, Water-Related Planning Activities, and Feasibility-Like Studies Without a Recommendation for Design and Construction

8-1. Applicability

a. The ASA(CW) is authorized to carry out study-only water-related planning activities and technical assistance that substantially benefit federally recognized Indian Tribes under the TPP. Rather than a grant, USACE can provide a service in partnership with federally recognized Tribes on a cost-shared basis. These activities may include:

(1) *Stand-alone water-related planning activities independent of watershed assessments*. Examples would be Letter Reports containing real estate analyses of lands required for authorized USACE mitigation activities on behalf of federally recognized Tribes, or assessments of water-related hazardous and toxic waste sites.

(2) *Feasibility-like studies without a recommendation for design and construction.* Section 1121 of WRDA 2016 added paragraph (b)(3)(B), specifying that a report provided to a Tribe pursuant to a feasibility study may, but is not required to, contain a recommendation on a specific water resources development project. Depending on the wishes of the Tribal partner, the study will be scoped at the outset to either result in a report recommending a project plan for design or construction, or in a more limited letter report describing an array of alternatives that are determined to be technically feasible and economically and environmentally justifiable. Such a report may be useful to a Tribe for future planning, or for coordination by the Tribe with the DOI or other federal agencies, in lieu of design and construction with USACE.

(3) *Technical assistance.* Section 1118 of WRDA 2022 added paragraph (b)(2)(C), to allow for the USACE to perform technical assistance to the Tribe for the assistance for planning to ameliorate flood hazards, to avoid repetitive flood impacts, to anticipate, prepare and adapt to changing hydrological and climatic conditions and extreme weather events, and to withstand, respond to, and recover rapidly from disruption due to flood hazards and also the provision of and the integration into planning of hydrologic, economic, and environmental data and analysis. These activities are 100% federally funded. Technical assistance may not include the preparation of site-specific designs or construction.

b. Technical Assistance, water-related planning, and feasibility-like activities under TPP will not be used to supplement effort under other ongoing or pending USACE programs, such as feasibility studies.

c. If a water-related planning, a feasibility-like study, or technical assistance study identify a potential construction project with federal interest, the study should be immediately transferred to a feasibility study within the TPP or transferred to the appropriate USACE study program (for example, CAP or General Investigations).

d. Water-related planning activities and feasibility-like studies may not be used to offset any required state contributions to federal grant programs.

8–2. Technical assistance, water-related planning activities, feasibility-like study phase initiation

a. *General guidance.* The technical assistance, water-related planning, and feasibility-like study phase under TPP encompasses a large range of planning activities that meet the water resource needs of Tribes.

b. *Initiation of the water-related planning and feasibility-like studies phase.* Feasibility is started once HQUSACE issues the initial work allowance. Technical assistance, water-related planning activities and feasibility-like TPP studies will not require new start determinations, are conducted at 100% federal cost, and do not require the execution of a Feasibility Cost Share Agreement.

c. *Project Management Plan.* A traditional PMP is not required for technical assistance, water-related planning activities and feasibility-like studies under TPP. The scope of work should be coordinated with the MSC prior to initiating work. The level of detail for the scoping document should be commensurate to with the level of work required for the technical assistance. Because some work items may require several years of effort or because limited funding may force division of work among two or more FYs, performing districts and sponsors may write multiyear/multiphase agreements. However, each phase should be accomplished within 1 year of the date the agreement for that phase was signed.

d. *Review Plan.* A traditional Review Plan is not required for technical assistance, water-related technical assistance effort under the TPP. Districts are required to provide DQC for all technical assistance studies. Appropriate additional level of review should be ascertained through the risk-informed decision-making process as outlined in ER 1165-2-217 Civil Works Review and documented, including the need for a more extensive peer review (ATR). The scope of the quality and technical reviews should be scalable and customized for each effort, commensurate with the level of complexity of the study. The documentation of the Review Strategy should be approved by the MSC.

8-3. Vertical team engagement

The purpose of engaging the vertical team is to ensure that continuing work on the water-related planning and feasibility-like study phase is consistent with the policies, principles, priorities, procedures, and constraints of the TPP, leading to meaningful progress and the completion of these study efforts. The requirements that support the vertical team engagements will be scalable to the size and complexity of the analysis. While these studies are intended to be focused and expeditious in nature, at least one IPR is required per year as the study progresses to identify potential issues or determine if federal interest in a project is warranted. The review strategy described in paragraph 8-2.d. should outline the timing and scope of these vertical team engagements.

8-4. Documentation requirements and approval

a. *General.* The documentation of technical assistance, water-related planning activities, and feasibility-like analyses may take many forms and is intended to culminate in a useful product for the Tribal partner. As these products do not result in a recommendation for construction, these documents do not need to be provided to the public, but a summary of the investigation will be documented in a Letter Report for the purposes of vertical team engagement and study closeout. Subject to the requirements in paragraph 8-4.c., the MSC Commander will establish report requirements and formats.

b. *Reports provided to Tribal partners.* Analyses performed for Tribes should be documented in a report that is useful to the Tribal partner. Feasibility-like analyses describing an array of alternatives regarding a water resources problem may support further coordination with DOI or other federal agencies for action outside of USACE. Appropriate review must be conducted of these products to include DQC and as applicable, ATR, as outlined in paragraph 8-2.d. above.

c. *Letter Report requirements.* The Letter Report and any supporting documentation requirements will be scalable to the size and complexity of the proposed project and at a minimum include subject, purpose, study authority, summary of purpose or need of the study, study location, documentation of coordination with DOI or other federal agencies, and recommended next steps for the Tribal partner.

d. *Letter Report approvals.* Approval of the Letter Report will be the District Commander. For Termination Letter Reports, please see paragraph 8-6 below.

8–5. Completion of the technical assistance, water-related planning or feasibility-like phase

The technical assistance, water-related planning or feasibility-like study phase is completed when the Letter Report has been approved by the District Commander. The District Engineer will notify the MSC Commander at the conclusion of the feasibility phase and will transmit the final report package as required in Table 2-2. The MSC will notify the appropriate HQUSACE RIT and Headquarters TPP program manager of the completion of these activities. The actual date of the Letter Report approval must be entered in the TPP Database as well as in P2.

8–6. Termination of water-related planning or feasibility-like phase

Following coordination with the Tribal partner, the water-related planning or feasibility-like study phase should be terminated if there is lack of support from the Tribal partner. The phase is officially terminated when the District Commander advises the MSC Commander and the appropriate RIT and TPP PM of the termination of the study in writing. The TPP database must be updated to show study status as terminated, with the date and the reason why, and the future capability amounts will be reduced to zero. The District Commander will also provide a Termination Letter Report documenting similar requirements, as well as the study allocation summary and a summary of expenditures.

Chapter 9

Non-Traditional Water Resources Development Projects

9–1. Applicability

The TPP creates opportunities for USACE to work closely with and support Tribal Nations through the use of USACE capabilities and resources to advance the interests of Tribal communities. Specifically, the TPP authorizes such other projects as the ASA(CW), in cooperation with Indian Tribes and the heads of other federal agencies, determines to be appropriate.

9–2. General

a. Consistent with the principles inherent in the federal trust responsibility, the TPP provides the Army and USACE the flexibility to include projects that are not typically considered a traditional USACE water resources development project or to include parts of a traditional water resources development project that are typically considered to be a non-federal responsibility such as local service facilities (navigation), interior drainage (flood risk management), demolition of structures that are not structurally sound enough to be relocated or elevated and related construction of replacement facilities (flood risk management).

b. These “non-traditional” feasibility studies may be determined to be appropriate by the ASA(CW) based on the following criteria, and do not require approval to initiate a feasibility study:

(1) Projects are related to a water resource. The TPP specifically provides that the non-federal costs of design and construction of a water resources development project will be assigned to the appropriate project purposes for which the proposed activity most closely aligns, as described in Sections 101 and 103 of WRDA 1986 (33 USC 2211 or 33 USC 2213, respectively).

(2) Aligns with USACE capabilities and core competencies. As the Nation’s Engineers, USACE draws expertise ranging from engineering and construction to environmental compliance and is not explicitly limited by the abilities within the Civil Works mission. Many of the USACE Centers of Expertise can be utilized to support projects that substantially benefit Tribal partners. USACE project delivery teams are encouraged to consult and incorporate these specialized areas of expertise with Tribal partners in development of water resources projects.

(3) The non-traditional water resources project can be implemented within the authorized federal programmatic limit for TPP established by Congress.

c. USACE should consider the breadth of benefits provided including those identified by the Tribal partner. The primary driver in the implementation consideration is whether the project will substantially benefit Indian tribes. The recommendations under TPP must specifically address the determination that the recommended 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 Nation outweigh the costs; the project is cost-effective; and the project is environmentally acceptable.

9–3. Types of non-traditional efforts and considerations under the Tribal Partnership Program

The intent of the broad criteria provided in paragraph 9-2.b. is to substantially benefit Indian tribes for the many water-related needs of their Tribal communities.

a. Non-traditional water resources development efforts may be those tangentially related to established Corps missions within the discretion of the Secretary. These efforts are expected to vary in size, scope, and complexity. For instance, one project may require full-feasibility analysis of a water-related problem, future without project condition, and alternatives development, evaluation, comparison, and selection. Another project may have concepts developed to a certain degree with another federal agency and only require USACE to evaluate the feasibility of the project and demonstrate federal participation in the project is warranted with appropriate cost share requirements.

b. Other non-traditional efforts may include executing a traditional Corps effort but including non-traditional elements. These kinds of efforts may recommend cost sharing of project elements that are not typically included in the federal project such as local service facilities in navigation projects; interior drainage (flood discharges with flows less than 800 cubic feet per second at the 0.1 annual exceedance probability (AEP) event, 1800 cubic feet per second at the 0.01 AEP event, or in drainages with an area of less than 1.5 square miles); ecosystem restoration projects where the percentage of costs attributable to LERRDs exceeds those traditionally allowed; or other such deviations from traditional USACE feature-based cost-sharing limitations. These efforts will follow the normal process for traditional efforts under the processes discussed in Chapters 8 or 9 (as applicable).

c. When these non-traditional elements are recommended for cost sharing, the recommended plan will first be chosen, then alternative plans for these non-traditional elements will be formulated for inclusion in the recommended plan. A plan will be chosen based on the results of a cost effectiveness/incremental cost analysis (CE/ICA) with sufficient documentation of the decision-making process to support these elements' inclusion. The CE/ICA must include both the no additional action (no inclusion of non-traditional elements) and the least cost action alternatives plan (lowest plan that reasonably achieves the broader study/project objectives) in addition to any other alternative plans.

d. In cases where a non-structural solution is preferable to reduce flood or erosion risk to a structure, and the structure is not structurally sound enough to reasonably accommodate such a treatment (such as relocation or elevation), or the structure is in a state of disrepair that it no longer meets basic standards for health and safety, the option of demolishing the existing structure and constructing a replacement structure will be considered.

(1) In considering structure replacement, designs must meet all minimum existing Army or Tribal regulations (whichever are more stringent) for safety, comfort, and efficiency for dwellings in place at the time of the effort. Designs of replacement structures will be aesthetically pleasing (compliment the natural environment), culturally sensitive (designed for the way of life of those that will inhabit it), and incorporate symbolic cultural elements, at reasonable cost, if requested, in writing, by the Tribe.

(2) Design of replacement structures must utilize the least cost method of meeting these all of these requirements. The replacement structure must be in-kind (for example single family residence for replacement of a single family residence or apartment building for replacement of an apartment building) unless there is a compelling cultural, cost, or environmental reason to adjust the structure type. These changes will be expressly supported, in writing, by the Tribe when they are recommended.

9-4. Non-traditional water resources development efforts requiring Assistant Secretary of the Army (Civil Works) approval

USACE is encouraged to use maximum flexibility when considering if a non-traditional project meets the intent of the criteria in paragraph 9-2.b. when initiating a request to start a new TPP feasibility study. USACE will elevate those non-traditional water resources efforts that do not meet the criteria as soon as practicable (for example, prior to signing a FCSA) to the ASA(CW) in cooperation with Indian tribes and the heads of other federal agencies.

a. An issue paper outlining the Tribe's request may be helpful in facilitating vertical alignment of the effort within the MSC or HQUSACE. The issue paper should contain a description of the proposed project, evaluation of the criteria in paragraph 9-2.b. with explanation of how the proposal fits within TPP authorities (including project purpose and cost share), and documentation of the involvement or coordination with other federal agencies.

b. If the Headquarters TPP program manager in coordination with the Headquarters Chief of Planning and Policy Division recommend the elevation of the decision to initiate a non-traditional water resources project, the issue paper should be provided to the ASA(CW) through the appropriate HQUSACE RIT for coordination and decision. The approval of the feasibility study initiation will confirm the appropriate project purpose(s) and cost sharing requirements.

c. USACE will elevate those non-traditional water resources projects that meet the intent in paragraph 9-2.b. but exceed the current authorized federal programmatic limit for TPP provided by Congress in WRDA for decision by the ASA(CW) as to how to proceed.

9-5. Non-traditional water resources development feasibility phase

The feasibility phase encompasses the entire range of planning activities required to demonstrate that federal participation in a project is warranted and justified. The feasibility phase is cost shared 50% with the Federal Government and 50% with the Tribal partner (and is further adjusted by the applicability of the Ability to Pay and Cost Share Waiver) and begins after a FCSA is executed by the Tribal partner and the District Commander. The initial costs of \$200,000 will be provided at federal expense.

a. *Non-traditional water resources development feasibility phase initiation.* Upon receipt of a letter of intent from the Tribe, the district must update the TPP database with the letter of intent date and submit a request for funds, not to exceed \$50,000, to pay the federal costs of preparing a PMP, review plan, and negotiating the FCSA with the Tribal cost sharing partner. These costs would be 100% federally funded prior to the FCSA. No additional funds in excess of the \$50,000 will be allotted to a project until the FCSA is executed.

b. *Project Management Plan.* For non-traditional feasibility study efforts, the formulation, evaluation, and selection of a recommended plan, refer to Chapter 3 paragraph 3-2. The vertical team may consider the scope of the non-traditional feasibility study and deem that the Review Strategy identified for technical assistance in Chapter 8 paragraph 8-2.d. is appropriate.

c. *Review Plan.* For non-traditional feasibility study efforts, the formulation, evaluation, and selection of a recommended plan, refer to Chapter 3 paragraph 3-4. The vertical team may consider the scope of the non-traditional feasibility study and deem that the Review Strategy identified for technical assistance in Chapter 8 paragraph 8-2.d. is appropriate.

d. *Feasibility Cost Sharing Agreement.* Refer to Chapter 3 paragraph 3-5.

e. *Decision document requirements for non-traditional water resources development feasibility studies that require plan formulation, evaluation, and selection.* Refer to Chapter 5 paragraph 5-6.

f. *Decision document requirements for non-traditional water resources development feasibility studies evaluating federal interest for construction.* The decision document and supporting documentation requirements for a project recommendation that has been developed in cooperation with another federal agency can be written as a Letter Report and are not subject to the thorough analyses from ER 1105-2-100, or subsequent guidance. This Letter Report should evaluate how the project meets the intent of the TPP and at a minimum include the following information:

(1) Description of the proposed project including project purpose, location, identification of the Tribal partner, and any pertinent background.

(2) Study authority including a summary of how the project meets the criteria for non-traditional water resources development projects in paragraph 9-2.b. Indicate if approval was required from the ASA(CW) to initiate the project and the project purpose.

(3) Summary of coordination with other federal agencies. In some cases, other federal agencies may have already approved a project or may have real estate interests in the area of the proposed project.

(4) Evaluation scope to include engineering feasibility of the proposed design, economic benefits analysis to the Tribal Nation (refer to Chapter 2 paragraph 2-3), cost-effectiveness analysis, environmental acceptability analysis (summary of compliance activities), environmental justice, and summary of public involvement. ATR of the cost estimate will be conducted by pre-certified district cost personnel within the region or by the Cost Engineering ATR and MCX located in the Walla Walla District. The ATR team member responsible for reviewing the cost estimate will coordinate with the Cost Engineering MCX for execution of cost review and cost certification. Any cost estimates developed by a contractor or other agency must be input into the appropriate cost model and the Cost Engineering MCX will be responsible for final cost certification. Final cost certification may be delegated at the discretion of the Cost Engineering MCX.

(5) The description of the recommended plan includes any recommended changes to the design or cost estimate as a result of engineering analyses, real estate requirements, summary of the OMRR&R requirements, mitigation requirements (if applicable), a summary of risk and uncertainty for the project, summary of Tribal partner requirements.

(6) The proposed project design and construction including construction schedule and project cost sharing includes the confirmation of the project purpose (flood risk management, ecosystem restoration, water supply, etc.) and application of any cost share reductions for construction.

g. Required planning milestones

(1) The purpose of the required planning milestones listed below is to ensure that continuing work on the feasibility phase for non-traditional water resources development studies are consistent with the policies, principles, priorities, procedures, and constraints of USACE feasibility studies, thus preventing excessive expenditures on questionable projects or verification of cost sharing requirements. Vertical Team Alignment will be required to include the ASA(CW) to ensure that the intent of the Program is met and to confirm policy or legal concerns at the earliest available opportunity. The requirements that support the determinations at these milestones will be scalable to the size and complexity of the proposed study. Additional information on these milestones is provided in EP 1105-2-58 Continuing Authorities Program. The proper level of effort should be coordinated with the MSC.

(2) The federal interest determination (FID) milestone generally follows the requirements in Chapter 5 paragraph 5-6.b. For feasibility studies evaluating the federal interest in constructing a non-traditional water resources project, this milestone should follow a scalable scoping meeting to include the vertical team. This will ensure alignment on the scope of analysis, schedule, and confirmation of review requirements to determining federal interest.

(3) The TSP meeting is the second milestone, which takes place prior to the release of the draft decision document for concurrent review. The TSP milestone can occur after the alternative plans have been formulated if formulation is required, or when the evaluation of federal analysis is substantively complete. The purpose of the TSP is to ensure that plans have been properly formulated, legal and policy issues have been identified and a consensus on resolution has been reached, and the MSC concurs with the TSP that will likely proceed into the design and construction phase. The process and procedure for completing this milestone is at the discretion of each MSC.

h. Non-standard estates. Any non-standard estates must be submitted by the Real Estate District Chief through the MSC to HQUSACE CEMP-CR for review and approval, consistent with ER 405-1-12, Chapter 12 paragraphs 12-9 and 12-10.

i. Non-traditional feasibility report review and approval. Refer to Chapter 5 paragraphs 5-7.d. and 5-7.e. The District Engineer will transmit the final report package as required in Table 2-2 for approval by the MSC Commander.

j. Termination of the non-traditional feasibility phase. Refer to Chapter 5 paragraph 5-7.f.

9-6. Non-traditional water resources development design and construction phase

Refer to Chapter 6.

Chapter 10

Other Provisions

10–1. Multipurpose projects

a. General. To promote comprehensive collaborative planning, the formulation of multi-purpose projects may be accomplished under the TPP. The term “multipurpose project” often is used to describe three different types of strategies, each involving different formulation. In the first strategy, a project is formulated as either an NED plan with incidental NER benefits or a NER plan with incidental NED benefits and costs are shared according to one cost sharing formula. In the second strategy, often referred to as “combined plans,” an NED plan and an NER plan are formulated together and have interdependent features, using a trade-off analysis. Combined plans require complex evaluation and trade-off analyses that may affect the scope of study and construction for TPP studies and projects. Each of these two approaches is appropriate for consideration under TPP. The third type of strategy involves the use of maximizing comprehensive benefits categories using a trade-off or other types of analysis like the second strategy mentioned above. The use of the comprehensive benefits for multipurpose project formation should be coordinated with the vertical team.

b. Cost allocation between purposes for combined plans. Formulation and evaluation of combined plans will follow the procedures in Section IX of Appendix E of ER 1105-2-100, Planning Guidance Notebook. However, in no case will the cost for a purpose included in the combined plan exceed the statutory federal per-project or separable element limit under the TPP authority for programmatic projects. If the costs for the purpose exceed the statutory federal per-project or separable element limit under the TPP authority, then Congressional authorization is necessary. The cost for each purpose will include the separable costs, plus the joint costs allocated to that individual purpose cost allocation will be performed using the separable cost remaining benefits method as described in ER 1105-2-100 Appendix E. The costs for each purpose will be shared according to the cost sharing formula for the project purpose. For accounting purposes, it is critical to keep track of the costs assigned to each purpose. Consultation with HQUSACE is required prior to proceeding with the combined plan approach.

10–2. Design deficiency corrections for completed project

In the case of design deficiencies, districts should follow the requirements identified in ER 1165-2-119, Modifications to Completed Projects.

10–3. National Historic Preservation Act, Section 106

TPP projects are required to comply with the environmental and historic preservation laws, including Section 106 of the NHPA for the consideration of effects of the proposed action(s) on historic properties. As a first step, districts should determine whether the TPP constitutes an undertaking as defined in 36 CFR 800.16(y) and, if so, whether the activity has the potential to cause effects on historic properties in accordance with 36 CFR 800.3(a)(1).

a. Identification of the Appropriate State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO).

(1) Where a Tribe has established a historic preservation office and program in partnership with the National Park Service (NPS) to assume the roles of the SHPO on Tribal lands, consultation for undertakings occurring on Tribal land or effects on Tribal land is with the THPO in lieu of the SHPO [(36 CFR 800.2(c)(2)(i)(A) and 36 CFR 800.3(c)(1); Advisory Council on Historic Preservation November 2013].

(2) Where a Tribe has not assumed the responsibilities of the SHPO on Tribal lands, consultation with Tribes regarding undertakings occurring on Tribal lands will be in addition to consultation with the SHPO [36 CFR 800.2(c)(2)(i) and 36 CFR 800.3(d)]. The district should consult the THPO Program of the NPS to determine how consultation will proceed with a designated THPO and, if applicable, SHPO (<https://www.nps.gov/subjects/historicpreservationfund/tribal-historic-preservation-office-program.htm>).

(3) If a Tribe has assumed the functions of the SHPO in the Section 106 process for undertakings on Tribal lands, the SHPO may participate in accordance with 36 CFR 800.2(c)(1)(ii). The district, in consultation with the Tribe, should determine if there are any other consulting parties that should be included [36 CFR 800.2(c)]. Other consulting parties may be either within or adjacent to the study area.

b. Identification of historic properties.

(1) In consultation with the THPO/SHPO, the district will identify the Area of Potential Effect, review existing information regarding the identification of historic properties within the Area of Potential Effect and gather information, in consultation with the THPO and other Tribal representatives. Tribes may be reluctant to divulge specific information regarding the location, nature, and activities associated with sites of religious and/or cultural significance. The district should work with the THPO to determine the level of detail that can be provided on historic properties and cultural resources, including traditional cultural places as well as how to best keep location and other information confidential, if necessary (see Chapter 1 paragraph 1-11).

(2) The district must work with the THPO/SHPO and the Tribe regarding the need to conduct archaeological excavations and other surveys on Tribal lands to identify historic and cultural properties. Any archaeological or other investigations on Tribal lands should meet any standards or requirements identified by the THPO/SHPO. The district will work with the Tribe to develop a strategy to identify historic properties. It may be determined that the cultural resource(s) that is being considered for preservation under the TPP may be determined to be eligible for the National Register as part of the Section 106 review for the project, however, such a determination is not required for participation in the TPP.

c. Participation of Tribal monitors and/or archaeologists. The district, in consultation with the Tribe, may utilize Tribal monitors and/or Tribal archaeologists as part of surveys, investigations, and assessments to identify historic properties, assess adverse effects and resolve adverse effects, if identified, as in-kind services. If, however, a document or study is prepared by a non-federal party, the district should ensure the content meets applicable standards and guidelines, including those put in place by a THPO/SHPO.

d. Ownership of collections.

(1) If in consultation with the Tribe, a collection is made on Indian lands as part of archaeological surveys and investigations, the subsequent archaeological collection, including associated documentation, is the property of the Tribal partner and should be returned to the Tribe at the completion of the study [36 CFR Part 79.1(a)]. Collections made on Indian lands are the property and responsibility of the Tribe, regardless of if there is or is not a Tribal historic preservation program or THPO/SHPO. Tribes are not required to maintain archaeological collections made on their land in accordance with 36 CFR Part 79. While the district is using any archaeological collection as part of a study or project, the district should care for the collection until it is turned over to the Tribe. The district would not have responsibility for continued maintenance once the project was completed.

(2) The district should work with the THPO/SHPO to determine the level of effort for analysis, ability to remove collections from Tribal lands for analysis, etc., and provide custody tracking if collections are removed or analysis by the district or its contractor. During analysis by the district and its contractors, the collection should be maintained in accordance with 36 CFR Part 79. The district will maintain a record of the work completed, copies of deliverables, and documentation of Section 106 compliance.

e. Assessment and resolution of adverse effects.

(1) The assessment and resolution of adverse effects should proceed in accordance with 36 CFR Part 800.5 and 800.6. The ACHP should be notified by the district of findings of adverse effect and be invited to participate in the consultation to resolve those effects. In accordance with 36 CFR Part 800.6(a)(1)(iii), the ACHP has 15 days to advise the district of its participation in the consultation. Execution of any agreement document would require signature by the district designated official, usually the District Commander, the THPO, where the THPO has assumed the role of the SHPO on Tribal lands, and the ACHP, if they are participating.

(2) The SHPO would only be a signatory for the execution of the agreement if the THPO had not assumed the role. If the proposed undertaking had an adverse effect to historic properties on and off Tribal lands, both the THPO and SHPO signatures would be required to execute the agreement. If the Tribe has not assumed the role of SHPO, the SHPO would sign the agreement for adverse effects on and off Tribal lands and Tribal representatives could sign the agreement as an invited signatory.

f. Public review requirements.

(1) The NHPA Section 106 review process includes public participation. Agencies must include documentation (36 CFR 800.11) and give the public an opportunity to comment on the proposed undertaking. The ACHP and the Council on Environmental Quality have drafted a process that connects Section 106 and the NEPA process, particularly its elements of public participation and review.

(2) The public involvement requirements of Section 106 can be satisfied by utilizing the NEPA process public review opportunities. This would include, but not be limited to, providing information for scoping meetings and review periods and meetings when a report is released to the public.

(3) As part of the study initiation, the district and Tribal partner should discuss what, if any, information requires confidentiality, and determine what can be done to protect that information, including use of Section 304 of NHPA, and Section 9 of ARPA. Where the NHPA and ARPA cannot be used, the plan should identify if and how the study can protect Tribal information, as necessary. FOIA requires federal agencies to maintain and preserve its written record, which could be available to the public.

(4) Strategies to protect sensitive information, if identified, could include the Tribal partner retaining the written data on sensitive information. Any FOIA request for the written records would not include the sensitive information. Limiting the information retained by the district may limit access to the public through FOIA requests.

(5) Other recommendations to limit access to sensitive data should be discussed with district counsel and Tribal partners to determine if data sharing agreements and/or non-disclosure agreements can minimize the release of information through FOIA or other requirements.

g. Archaeological Resources Protection Act. The Archaeological Resources Protection Act (ARPA) is applicable to federal and Tribal lands. ARPA requires a permit, issued by the federal or Tribal land manager, to excavate or remove archaeological resources located on federal and Indian lands. The issuance of a permit in accordance with ARPA is not required by employees or contractors working on behalf of the government or tribe for activities conducted on federal or Tribal lands for the purpose of compliance with Section 106 of the NHPA. However, sites damaged, defaced, or removed during construction or other study or project related activities necessary for the development of a project or study, other than those associated with Section 106 compliance, would constitute a violation under ARPA (Section 6(a); 16 USC 470ee). Any contracts or other documents identifying field activities should include language regarding the process should post-review and/or unanticipated discoveries be made.

h. Native American Graves Repatriation and Protection Act (25 USC 3001 et seq.). Should human remains or other items be encountered on federal lands or Tribal lands, Section 3 of the Native American Graves Repatriation and Protection Act (NAGPRA) applies (25 USC 3002). Any contracts or other documents identifying field activities should include language regarding the process should post-review and/or unanticipated discoveries be made. Any process should reflect any requirements identified by the THPO.

Chapter 11 Real Estate

11-1. Real Estate plan requirements

The analysis of the nature and extent of Real Estate requirements must be conducted according to Chapter 12 of ER 405-1-12, including consideration and identification of the specific interests, estates, and acreage required for the project. All TPP decision documents must contain a Real Estate Plan prepared consistently with ER 405-1-12. The level of detail required for each element required to be discussed in the Real Estate Plan will vary depending on the scope and complexity of the project and will generally match the level of detail contained in the balance of the project decision document.

11–2. Feasibility

Lands within Indian country consist of a variety of ownerships, see definitions contained in Chapter 1 paragraphs 1-9.d. and 1-9.e. Ownership identification may be obtained from the sponsor's Tribal Land Records Office, the Regional BIA Land Department, or the geographic County assessor records. It is critical for the PDT to partner closely with the Tribal partner to identify and define parcel ownerships early in the feasibility phase. Land ownerships within Indian country or Alaska Native Villages must be carefully analyzed but should not be considered a constraint in selecting the tentatively selected plan.

a. District Realty Specialists must coordinate with the district Tribal Liaison in arranging discussions or engagements with the Tribal partner. Additional coordination with the Tribal Liaison should occur when engaging the BIA. The District Real Estate element must include an estimated value of the LERRDs anticipated to be required for the project within the feasibility report. Values of Tribal land holdings or other land designations are not readily measured or estimated by market valuations.

b. During feasibility, District Real Estate will work with the Tribal partner, BIA (or Indian Self-Determination and Education Assistance Act compacting agency for Alaska Native Villages), and the USACE District Tribal Liaison to determine any special value considerations and sufficient contingency values. The PPA template approved for the TPP presupposes that, except for possible relocations of public facilities and utilities, all necessary real property interests to be provided are already owned by the Tribal partner. Where this is not the case, a description of the required real estate interests and their conceptual plan of acquisition should be forwarded to the MSC for review and transmitted to the HQUSACE RIT for further vertical team coordination. This required coordination should occur during feasibility to ensure the conceptual plan of acquisition is implementable in accordance with approved policies and standards.

c. If Allotted Lands are proposed for incorporation into the project, the submitted plan of acquisition should include a conceptual strategy to utilize a BIA right-of-way grant that must be coordinated with CEMP-CR for concurrence. The language contained in the BIA right-of-way grant must meet the TPP objectives and project requirements, safeguard the project benefits, and protect the federal investment and minimize impacts to allottee beneficiaries.

d. If an Alaska Native Claims Settlement Act (ANCSA) corporation is a Tribal partner for a project under TPP but is not the land holding entity with surface rights, the district should explore with the ANCSA corporation the possibility of the land holder being a co-sponsor. Joint and several liability option language must be added to the Agreement at issue. This circumstance should be identified as soon as practicable and discussed with the MSC and the HQUSACE RIT for further vertical team coordination. This coordination should occur during the feasibility study and be discussed at the Agency Decision Milestone prior to finalizing the final feasibility report.

11–3. Construction

Upon execution of the PPA, the District Real Estate Contracting Officer provides the Tribal partner with general written descriptions, including maps as appropriate, of the real property requirements that the Tribal partner must provide for the project.

a. The Tribal partner must obtain, for each real property interest, an appraisal of the value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal must conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

b. After the Tribal partner completes its acquisition effort and prior to issuance of the solicitation for each construction contract, the Tribal partner must provide documents evidencing ownership of the requisite real property interests. An informed, authorized, and accountable official of the Tribal partner must execute and provide the district a written Authorization for Entry to all real property requirements that the Government determined the Tribal partner must provide for that contract; and the Tribal partner must provide a resolution from the Tribal governing body and an executed Attorney's Certificate of Authority that recites that the official signing the Authorization for Entry has the authority to furnish such right to the Government.

11-4. Nature of title to Indian Allotment Lands

As defined in Chapter 1 paragraph 1-9.e., allotted lands, or allotments, can be held in trust or restricted fee status by the United States for the benefit of an individual Indian or multiple Indian owners. For Indian Allotment Lands with an individual Indian owner, the Tribal partner must notify the individual Indian owner and obtain written consent. The Tribal partner must then submit a right-of-way application to the BIA. For Indian Allotment Lands with multiple Indian owners with fractionated title, the Tribal partner must notify the Indian owners, submit a right-of-way application to the BIA, and secure written record of consent from the owners of the majority interest in each tract.

11-5. Tribal partner capacity assessment

As part of coordination with the Tribal partner, the district must assess the acquisition needs of the project and the anticipated level of effort required by the Tribal partner. There may be circumstances where the Government acquires the LERRDs on behalf of the Tribal partner. All written requests for acquisition support must be coordinated with HQUSACE.

11-6. Credit

Credit for the value of LERRDs provided must be afforded in accordance with the PPA.

Appendix A References

Section I

Required Publications

Unless otherwise indicated, all U.S. Army Corps of Engineers publications are available on the USACE website at <https://publications.usace.army.mil>.

36 CFR Part 800

Protection of Historic Properties (Available at www.ecfr.gov)

48 CFR Part 7 Subpart 7.5

Federal Acquisition Regulation (Available at www.ecfr.gov)

Director's Policy Memorandum 2020-01

Acceptance of Contributed Funds, Advanced Funds, and Accelerated Funds, December 19, 2019 (Available at <https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (Principles and Guidelines)

10 March 1983 (Available at <https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

EGM xx-01

Cost Sharing Waiver for Territories and Tribal Nations (Available at <https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

EGM xx-04

Tribal Partnership Program Reduced Cost Share Eligibility Criteria (Ability to Pay) (Available at <https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

EO 13175

Consultation and Coordination with Indian Tribal Governments (Available at www.ecfr.gov)

EP 1105-2-57

Stakeholder Engagement, Collaboration, and Coordination

EP 1105-2-58

Continuing Authorities Program

EP 1105-2-61

Feasibility and Post-Authorization Study Procedures and Report Processing Requirements

EP 1105-2-62

Planning Studies, Reports and Programs

ER 1105-2-100

Planning Guidance Notebook

ER 1105-2-102

Watershed Studies

ER 1110-2-1150

Engineering and Design for Civil Works Projects

ER 1110-2-1302

Civil Works Cost Engineering

ER 11-1-321

Army Programs Value Engineering

ER 1165-2-1

Digest of Water Resources Policies and Authorities

ER 1165-2-119

Modifications to Completed Projects

ER 1165-2-208

In-Kind Contribution Credit Provisions of Section 221(a)(4) of the Flood Control Act of 1970, As Amended

ER 1165-2-217

Civil Works Review Policy

ER 405-1-12

Real Estate Regulations (restricted file – contact the USACE Publications point of contact)

ER 5-1-11

USACE Business Process

Feasibility Report Format and Content Guide

Version 1.0, October 2021 (Available at <https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

Memorandum for CG, USACE

Implementation Guidance for Section 1031 (a) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), and for Section 1121 of the Water Resources Development Act of 2016 (WRDA 2016), Tribal Partnership Program, 5 February 2018 (Available at <https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

Memorandum for CG, USACE

Implementation Guidance for Section 1157 of the Water Resources Development Act of 2018 (WRDA 2018), U.S. Army Corps of Engineers Continuing Authorities Program, 19 April 2019 (Available at <https://planning.ercd.dren.mil/toolbox/library.cfm?Option=Start>)

Memorandum for CG, USACE

Tribal Partnership Program – Non-Traditional Water Resources Development Projects, 30 November 2022 (Available at <https://planning.ercd.dren.mil/toolbox/library.cfm?Option=Start>)

Memorandum for MSCs, USACE

Maximum Federal Cost for Tribal Partnership Program Studies, 15 June 2023 (Available at <https://planning.ercd.dren.mil/toolbox/library.cfm?Option=Start>)

Memorandum to the Heads of Federal Departments and Agencies

Guidance for Federal Departments and Agencies on Indigenous Knowledge, Office of Science and Technology and the Council on Environmental Quality, 30 November 2022 (Available at <https://planning.ercd.dren.mil/toolbox/library.cfm?Option=Start>)

Office of Management and Budget (OMB) Circular A-87

Cost Principles for State, Local, and Indian Tribal Governments (Available at <https://obamawhitehouse.archives.gov/omb>)

OMB Circular A-122

Cost Principles for Non-Profit Organizations (Available at <https://georgewbush-whitehouse.archives.gov/omb/>)

PB 2018-01(S)

Feasibility Study Milestones Supplemental Guidance (Available at <https://planning.ercd.dren.mil/toolbox/library.cfm?Option=Start>)

Planning Bulletin (PB) 2018-01

Feasibility Study Milestones (Available at <https://planning.ercd.dren.mil/toolbox/library.cfm?Option=Start>)

Policy Guidance Letter No. 52

Flood Plain Management Plans, 8 December 1997 (Available at <https://planning.ercd.dren.mil/toolbox/library.cfm?Option=Start>)

Role of the Tribal Historic Preservation Officer in the Section 106 Process

Advisory Council on Historic Preservation, November 2013 (Available at www.achp.gov/)

Senate Report 106-362

Water Resources Development Act of 2000, Report of the Committee on Environment and Public Works, July 27, 2000 (Available at www.congress.gov)

USACE Civil Works Agreements website

Available at www.usace.army.mil/Missions/Civil-Works/

USACE Tribal Policy Principles

Available at <https://www.usace.army.mil/Missions/Civil-Works/Tribal-Nations/>

16 USC 470aa-mm

Archaeological Resources and Protection Act (Available at www.govinfo.gov)

18 USC 1151

Indian Country Defined (Available at www.govinfo.gov)

25 USC 323

Rights-of-way for All Purposes Across Any Indian Lands (Available at www.govinfo.gov)

25 USC 3001 et seq.

Native American Graves Repatriation and Protection Act (NAGPRA), Definitions (Available at www.govinfo.gov)

25 USC 3703

American Indian Agricultural Resource Management, Definitions (Available at www.govinfo.gov)

25 USC 5304

Indian Self-Determination and Education Assistance, Definitions (Available at www.govinfo.gov)

33 USC 1341

Certification (Section 401 of the Federal Water Pollution Control Act (Clean Water Act), as amended) (Available at www.govinfo.gov)

33 USC 2211

Harbors (Section 101 of WRDA 1986, as amended) (Available at www.govinfo.gov)

33 USC 2213

Flood Control and Other Purposes (Section 103 of WRDA 1986, as amended) (Available at www.govinfo.gov)

33 USC 2269

Tribal Partnership Program (Section 203 of WRDA 2000, as amended) (Available at www.govinfo.gov)

33 USC 2282

Feasibility Reports (Section 1002 of WRRDA 2014) (Available at www.govinfo.gov)

33 USC 2282(c)

Vertical Integration and Acceleration of Studies (Section 1001 of WRRDA 2014) (Available at www.govinfo.gov)

33 USC 2310

Cost Sharing for Territories and Indian Tribes (Section 1156 of WRDA 1986) (Available at www.govinfo.gov)

42 USC 1962d-5b

Written Agreement Requirement for Water Resources Projects (Section 7007(c) of WRDA 2007) (Available at www.govinfo.gov)

42 USC 4321

National Environmental Policy Act of 1969 (Available at www.govinfo.gov)

43 USC 1601 et seq.

Congressional Findings and Declaration of Policy (Available at www.govinfo.gov)

54 USC 300101 et seq.

National Historic Preservation Act (Available at www.govinfo.gov)

54 USC 306108

National Historic Preservation Act, Section 106 (Available at www.govinfo.gov)

Section II

Prescribed Forms

This section contains no entries.