



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

ATTACHMENT 1

JUL 5 2017

Mr. Rick Johnson  
Executive Director  
Sacramento Area Flood Control Agency  
1007 7<sup>th</sup> Street, 7<sup>th</sup> Floor  
Sacramento, California 95814

Dear Mr. Johnson:

Thank you for your letter dated June 8, 2017, requesting expedited implementation guidance for Section 1166 of the Water Resources Development Act (WRDA) of 2016. The U.S. Army Corps of Engineers, in coordination with my staff, have completed the implementation guidance for Section 1166 of WRDA 2016. A copy of the guidance is attached.

Thank you for your interest in the Army Civil Works program.

Sincerely,

A handwritten signature in black ink that reads "Douglas W. Lamont".

Douglas W. Lamont, P.E.  
Senior Official Performing the Duties of the  
Assistant Secretary of the Army  
(Civil Works)

Encl

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DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET, NW  
WASHINGTON, DC 20314-1000

CECW-P

JUN 27 2017

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1020 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) as amended by Section 1166 of the Water Resources Development Act (WRDA 2016), Transfer of Excess Credit

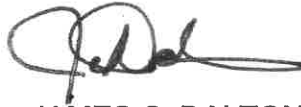
1. Reference is made to Implementation Guidance for Section 1020 of WRRDA 2014 dated 4 November 2015.
2. Section 1166 of WRDA 2016 amends Section 1020 of WRRDA 2014 to authorize the Secretary to transfer excess credit prior to completion of a water resources development study or project if the credit amount is verified by the Secretary. Section 1020 of WRRDA 2014, as amended by Section 1166 of WRDA 2016 (33 U.S.C. 2223), is enclosed.
3. The following guidance supplements guidance referenced in paragraph 1:
  - a. The comprehensive plan submitted by a non-federal sponsor must be explicit if transfer of excess credit prior to completion of specific studies or projects is requested. In such cases, the comprehensive plan will identify discrete segments of work, the sequence in which work will be completed, and the point at which credit for discrete segments of work will be in excess of the non-federal share for that study or project. A discrete segment of work for construction of a project is defined as a physical portion of the project that is environmentally acceptable, is complete, will not create a hazard, and functions independently so that the non-federal sponsor can operate and maintain it in advance of completion of the project. If the Secretary approves the comprehensive plan, including allowing for the transfer of excess credit prior to completion of specific studies or projects, approval of an Integral Determination for such study or projects, in accordance with ER 1165-2-208, is required prior to the transfer of any excess credit. The Integral Determination will document whether the work for which the non-federal sponsor is seeking credit is integral to the study or project, confirm the discrete segments of work, and include estimates of the credit for the discrete segments of work.
  - b. As discrete segments of work are completed, the non-federal sponsor may submit credit requests in accordance with ER 1165-2-208. Prior to affording credit for discrete segments of work, or transferring excess credit, the district engineer must confirm that the work was accomplished in a satisfactory manner and in accordance with applicable federal laws, regulations, and policies. The amount of credit afforded is

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subject to audit to determine the reasonableness, allocability, and allowability of such amounts.

c. Upon completion of the study or project, the district engineer will confirm the amount of credit and based on audit(s) make adjustments as appropriate. In the event that the non-federal sponsor fails to complete in a timely manner a study or project from which excess credit was transferred, the accounting for the receiving study or project will be adjusted to exclude the amount of credit transferred.



JAMES C. DALTON, P.E.  
Director of Civil Works

Encl

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**SEC. 1020 of WRRDA 2014, as amended by Section 1166 of WRDA 2016 (33 U.S.C. 2223).  
TRANSFER OF EXCESS CREDIT.**

**(a) Application of credit**

**(1) In general**

Subject to subsection (b), the Secretary may apply credit for in-kind contributions provided by a non-Federal interest that are in excess of the required non-Federal cost share for a water resources development study or project toward the required non-Federal cost share for a different water resources development study or project.

**(2) Application prior to completion of project**

On request of a non-Federal interest, the credit described in paragraph (1) may be applied prior to completion of a study or project, if the credit amount is verified by the Secretary.

**(b) Restrictions**

**(1) In general**

Except for subsection (a)(4)(D)(i) of that section, the requirements of section 1962d-5b of title 42 (as amended by section 1018(a)) shall apply to any credit under this section.

**(2) Conditions**

Credit in excess of the non-Federal share for a study or project may be approved under this section only if-

(A) the non-Federal interest submits a comprehensive plan to the Secretary that identifies-

(i) the studies and projects for which the non-Federal interest intends to provide in-kind contributions for credit that are in excess of the non-Federal cost share for the study or project; and

(ii) the authorized studies and projects to which that excess credit would be applied;

(B) the Secretary approves the comprehensive plan; and

(C) the total amount of credit does not exceed the total non-Federal share for the studies and projects in the approved comprehensive plan.

**(c) Additional criteria**

In evaluating a request to apply credit in excess of the non-Federal share for a study or project toward a different study or project, the Secretary shall consider whether applying that credit will-

(1) help to expedite the completion of a project or group of projects;

(2) reduce costs to the Federal Government; and

(3) aid the completion of a project that provides significant flood risk reduction or environmental benefits.

**(d) Termination of authority**

The authority provided in this section shall terminate 10 years after June 10, 2014.

**(e) Report**

**(1) Deadlines**

**(A) In general**

Not later than 2 years after June 10, 2014, and once every 2 years thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of

Representatives and make publicly available an interim report on the use of the authority under this section.

(B) Final report

Not later than 10 years after June 10, 2014, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a final report on the use of the authority under this section.

(2) Inclusions

The reports described in paragraph (1) shall include-

(A) a description of the use of the authority under this section during the reporting period;

(B) an assessment of the impact of the authority under this section on the time required to complete projects; and

(C) an assessment of the impact of the authority under this section on other water resources projects.