



**National Association of Flood & Stormwater Management Agencies**

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February 12, 2019

Hon. R.D. James  
Assistant Secretary of the Army (Civil Works)  
108 Army Pentagon  
Washington, DC 20310

Dear Secretary James:

The National Association of Flood and Stormwater Management Agencies (NAFSMA) is a local and regional public agency driven organization based in the nation's capital, with a focus on effective flood, floodplain and stormwater management in urban areas. The association's mission for 40 years has been to advocate for public policy and encourage technologies in watershed management that focus on flood protection, and stormwater and floodplain management.

Many of NAFSMA's members are partners on flood damage reduction and environmental restoration projects with the U.S. Army Corps of Engineers (USACE) and the association has signed a memorandum of agreement on green infrastructure with the U.S. Environmental Protection Agency (EPA) and a partnership memorandum of understanding with the U.S. Army Corps of Engineers.

NAFSMA members are on the front line, protecting their communities and regions from flood hazards that can result in loss of life and property. They are responsible for flood mitigation, stormwater management and emergency activities, as well as water quality protection.

As partners with a deep knowledge, understanding and expertise in working with the Corps to implement flood damage reduction and environmental restoration projects throughout the nation, NAFSMA has a strong interest in working with the Corps to develop the most workable and successful guidance to implement key provisions of the Water Resources Development Act of both 2018 (as authorized in the America's Water Infrastructure Act of 2018) and provisions enacted in 2016 and earlier as well.

NAFSMA members have strongly urged for a more transparent process be implemented for the development of Corps guidance to implement federal water resources laws. Congress heard this message and included language in WRDA 2018 to make that happen. As the Corps moves forward to develop its new guidance, NAFSMA urges Corps headquarters to inform and engage its partners in this process in the spirit outlined in Section 1105 of WRDA 2018.

Unfortunately, the first request for comments on guidance development fell far short of expectations. The request for comments was found when one of our leaders was looking for something else on the Corps

website in early January 2019, which gave the association a little more than a month to develop critical comments.

In the future, we urge USACE to reach out and notify its partner organizations when a solicitation for comments is released. Had that action been taken, NAFSMA and others would have had the full 60 days to prepare comments.

Below are NAFSMA's comments submitted on February 12, 2019, in response to the December 14, 2018, notice requesting input from stakeholders prior to the development of implementation guidance on a specific list of WRDA 2018 provisions. NAFSMA also provided comments on provisions not identified by USACE for comment as well.

NAFSMA looks forward to reviewing the draft implementation guidance and providing informal input and recommendations as provided in Section 1105(c)(2).

Sincerely,



Susan Gilson, Executive Director

## **WRDA 2018 Implementation Guidance**

### **NAFSMA Input and Recommendations**

In accordance with Section 1105(b), the USACE requested input and recommendations from stakeholders on December 14, 2018 prior to the development of implementation guidance on a specific list of sections as well as any sections not listed.

NAFSMA selected the sections listed in numerical order below from WRDA 2018 because they are related to flood risk management and are of most interest to the membership. Sections of the legislation which have not been identified by NAFSMA for recommendations are not listed below. *A brief summary of each section listed is provided in italics.*

Legend:

\*\* = Sections identified on USACE 12-14-2018 list for guidance.

\* = Sections not listed by the USACE but NAFSMA recommends written guidance be prepared.

^ = Sections with comments and recommendations to USACE to improve compliance and quality of the product.

**In accordance with Section 1105 (c)(2), NAFSMA requests the USACE provide the draft implementation guidance for informal review and comment by NAFSMA and non-federal sponsors for the sections marked with \*\* and \* below as well as the other sections on the USACE 12-14-2018 guidance list.**

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<sup>^</sup>Sec. 1102. Study of the future of the United States Army Corps of Engineers. – *National Academy of Sciences (NAS) study (≈ 2 years);*  
*Look at transfer functions to another or new agency.*

*Study effect of annual appropriations process; Corps leadership & geographic structure; frequency of rotations.*

*Consider national security; maintaining engineering capability & capacity; Emergency & natural disaster response; efficiency, coordination, transparency .*

*Secretary may not implement recommendations w/o Congressional authorization.*

Recommendation: NAFSMA and non-federal sponsors need to be a resource for NAS because they have direct experience with the Corps and have as much at stake as the Corps. Non-federal sponsors need to be included on the NAS study team.

<sup>^</sup>Sec. 1103. Study on economic and budgetary analyses. – *National Academy of Sciences study (≈ 2 years); Review current economic principles & analytical methods to form, evaluate, and budget for water projects and make recommendations.*

*Considerations:*

- *How Corps uses NED, RED, EQ, OSE accounts developed by IWR.*
- *Do they fully account for all potential benefits and costs, including societal costs, lost ecosystems services, full lifecycle costs.*
- *Analysis of setting and applying discount rates.*
- *Cumulative benefits of local Master Plans approved by Corps*
- *GAO study on benefit-cost analysis authorized in Section 1204.*

Recommendation: NAFSMA and non-federal sponsors need to be a resource for NAS because they work with the Corps on planning studies assessing and estimating costs and benefits, as well as experience with project evaluation and selection in their own jurisdictions. For example, the review needs to include evaluation of uncertainty and risk models, cost contingencies, and other cost estimating elements used at various stages of the study or project to produce reasonable costs estimates. Non-federal sponsors need to be included on NAS study team.

\*Sec. 1105. Non-federal engagement and review. – *Process to seek input and recommendations from non-Federal stakeholders for any revised or new WRDA implementation guidance. Includes both formal and informal input.*

Recommendation: It is critical that USACE reach out to NAFSMA and other non-federal sponsor organizations as early as possible to ensure that this guidance is workable and provides the Corps with the best insights possible when developing WRDA implementation guidance. This is a very positive step and is a high priority for implementation guidance since it will affect development of all other guidance.

\*Sec. 1107. Access to real estate data. – *Post all publically available real estate data online.*

Recommendation: NAFSMA supports this new provision; however, need instructions for USACE Districts to coordinate with state and local agencies.

\*Sec. 1113. Operation and maintenance of existing infrastructure. – *Improve reliability, O&M, and resistance to cyber-related threats.*

Recommendation: NAFSMA supports this broad provision; however, USACE Districts and non-federal sponsors need instructions and direction.

\*\*Sec. 1115. Property acquisition. - *Consider minimum interest to reduce costs, implementation time, or conflicts with property owner. Consider using State's procedures.*

Recommendation: It is critical that the non-Federal Sponsor be involved in the property interest decision, therefore, include the non-Federal Sponsor in the evaluation and decision. Also, besides considering using the State's procedures and method for determination of interest, also include using the non-Federal Sponsor's, as

well, since they will be the entity acquiring the real estate interest for most projects.

\*Sec. 1118. Geomatic data. – *Develop guidance to accept and use geomatic data from non-Federal Sponsors.*

Recommendation: USACE Districts and non-federal sponsors need direction for consistent execution.

\*Sec. 1123. Certain levee improvements. – *At the request of a local government, Corps can provide technical services to assess why federally constructed levee cannot be accredited by FEMA. (Reimbursable basis is unclear.)*

Recommendation: It is critical that USACE provides non-federal sponsors and other levee owners and operators the opportunity for informal and formal input on this guidance. NAFSMA supports this amendment, but reimbursement basis needs clarification.

\*\*Sec. 1137. Non-Federal implementation pilot program. – *Increased number of pilot projects and extends the Section 1043 local lead program to June 2023.*

Recommendation: A viable local lead authority established by Congress in WRDA 2014 and supported by ASA(CW). Implement the intended program extension from June 2019 to June 2023 and prepare workable implementation guidance modeled after WRDA 1996 Section 211(f) guidance. Consider projects specified in an annual or supplemental appropriations work plan as eligible to be a “pilot” project.

^Sec. 1144. Levee safety initiative reauthorization. – *Reauthorizes National Levee Safety Program from 2019 to 2023.*

Recommendation: NAFSMA supports this extension and it is critical that NAFSMA and non-federal sponsors be involved in development of levee safety guidelines.

\*\*Sec. 1149. Inclusion of alternative measures for aquatic ecosystem restoration. – *Title misleading, applies to flood risk management, also; clarifies and requires consideration of natural and nature-based features and natural infrastructure.*

Recommendation: NAFSMA supports this requirement, suggests examples of natural and nature-based features and natural infrastructure.

\*\*Sec. 1152. Study of water resources development projects by non-Federal interests. – *Amendments to Section 203, Non-Federal Sponsor led studies directing ASA(CW) to furnish reviews and recommendations directly to Congress and specifics concerning non-Federal Sponsor contributed funds for Corps reviews, oversight, technical assistance, etc.*

Recommendation: NAFSMA supports these amendments as written.

\*\*Sec. 1153. Construction of water resources development projects by non-Federal interests. – *Amendments to Section 204, Non-Federal Sponsor Led Projects –*

*1) Rescinds prior requirement that non-federal sponsors obtain federal permits or approvals provided compliance with federal requirements is achieved the same as if Corps in the lead.*

*2) Corps to share all relevant data and documentation with non-Federal Sponsor.*

*3) Funds provided to the Corps for technical assistance, reviews, oversight, etc. non-federal sponsor are not eligible for credit or reimbursement.*

*4) Funds accepted by the Corps from a non-federal sponsor will not affect Corps decision-making either substantively or procedurally.*

Recommendation: NAFSMA supports these amendments as written.

\*Sec. 1154. Corps budgeting; project deauthorizations; comprehensive backlog report. – *Amendments to Section 1001, WRDA 86 –*

1) *Biennial construction backlog and O&M report required.*

2) *Beginning with FY2020, the President is required to use Corp plan formulation BCR and share criteria and metrics used to select or budget for projects.*

3) *For project budget development and major modifications, Districts shall collaborate with non-federal sponsors in development and decision-making, and to share decisions with stakeholders and the public.*

Recommendation: NAFSMA supports these amendments and including the non-federal sponsor in the development and decision making of project budgets. USACE staff and non-federal sponsors need directions for consistent execution.

\*\*Sec. 1160. Emergency response to natural disasters. – *Allows repairs to pre-storm level or design level, whichever provides greater protection.*

Recommendation: NAFSMA supports this amendment allowing repairs to pre-storm level or design level, whichever provides greater protection, but recommend the Corps involve the non-Federal Sponsor in the evaluation and decision.

\*\*Sec. 1161. Cost and benefit feasibility assessment. – *Applies to emergency repairs or restoration by the Corps and the BCR calculation; allows the non-federal sponsor to pay more of the costs so BCR will equal 1.0.*

Recommendation: NAFSMA supports giving the non-federal sponsor an opportunity to contribute funding to make sure the emergency repair or restoration happens.

\*\*Sec. 1164. Local government water management plans. – *With the consent of the non-federal sponsor for a feasibility study, the Corps may allow a local government with a local or regional plan in the watershed to participate in the feasibility study to improve the local or regional plan.*

Recommendation: NAFSMA supports this amendment and non-federal sponsors need to be involved in the development of the guidance.

^Sec. 1165. Structures and facilities constructed by Secretary. – *Clarifies scope of Section 408 permissions; the term ‘work’ shall not include unimproved real estate owned or operated by the Corps, provided that a modification of the real estate does not affect the function or usefulness of the project.*

Comment: NAFSMA appreciates the clarification for this specific concern but looks forward to further clarification as warranted.

\*\*Sec. 1166. Advanced funds for water resources development studies and projects. – *When a non-federal sponsor provides, advances, or contributes funding to a Corps lead or a non-federal sponsor leads project (like Section 203 or 204, etc.), the Secretary shall ensure the timeline or budgeting processes for other projects that do not use such authorities are not adversely affected.*

Recommendation: NAFSMA supports this amendment, but the guidance needs to ensure that the Corps not adversely impact the timeline or budgeting of reimbursements or credits for non-Federal Sponsor lead projects.

^Sec. 1204. GAO study on benefit-cost analysis reforms. – *Conduct study of what’s included and not included in benefit-cost calculations, including local and regional economic benefits. Make recommendations to improve the analysis.*

Recommendation: NAFSMA and non-federal sponsors need to be a resource for GAO because they work with the Corps on planning studies assessing and estimating costs and benefits, and they can provide information about local and regional benefits and other factors not currently considered. For example, the

review needs to include evaluation of uncertainty and risk models, cost contingencies, and other cost estimating elements used at various stages of the study or project to produce reasonable costs estimates.

<sup>^</sup>Sec. 1208. Innovative materials and advanced technologies report. – *Recommend Corps tap into expertise and experience of non-federal sponsors.*

Recommendation: It is critical that NAFSMA and non-federal sponsors who are willing to share their experience and knowledge from both federal and non-federal projects be involved in development of this report.

<sup>^</sup>Sec. 1211. Corps flood policy within urban areas. – *Report on flooding within urban floodplains, policy constraints on the Corps' to address urban flooding, and relevance of 800 cfs limit.*

Recommendation: NAFSMA and individual members who are very familiar with urban flooding are available and need to be engaged with the Corps on this study and report. Most of the expertise and responsibility for urban drainage systems is at the local level.

<sup>^</sup>Sec. 1212. Feasibility studies for mitigation of damage. – *Report on incomplete studies in prior 8 years where Federal disaster declared and risk of future floods. Identify impediments to complete the studies.*

Recommendation: It is important to involve NAFSMA and non-federal sponsors who are willing to share their experience and perspectives with current and prior federal feasibility studies.

<sup>^</sup>Sec. 1214. Community engagement. – *Report on any potential disproportionate and adverse health or environmental effects of programs, policies, and activities of the Corps related to water resources development projects on minority communities, low-income communities, rural communities, and Indian tribes; and to make recommendations to address such effects. Corps shall conduct public and private meetings with the communities in different geographical regions of US.*

Recommendation: It is important to include the local the non-federal sponsor(s) in the meetings with the communities and government agencies. NAFSMA and non-Federal Sponsors strongly believe in focusing on these communities and are willing to work closely with the Corps to provide input and contribute to final report.

<sup>\*</sup>Sec. 1329. Expedited initiation. – *Clarifies a GRR may also be expedited.*

Recommendation: NAFSMA supports this amendment, however, clarification needed for “submitted for approval”.

<sup>\*</sup>Sec. 4201. WIFIA reauthorization and innovative financing for State loan funds. – *Reauthorizes the WIFIA program and includes amendments to allow the Corps and other federal agencies with federal credit instruments to enter into an agreement with the EPA to service loans for their programs, and other improvements.*

Recommendation: NAFSMA supports WIFIA, these amendments, and urges USACE to involve NAFSMA in the development of the guidance.