

Tangipahoa Parish, Louisiana Feasibility Study



Appendix A: Authority & Guidance Documents

August 2024

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STUDY AUTHORITY

This study is authorized by Subtitle B, Section 201 (14) of the Water Resources Development Act (WRDA) of 2020. The study is authorized in accordance with the annual reports submitted to the Congress in 2019, pursuant to Section 7001 of the Water Resources Reform and Development Act (WRDDA) of 2014 (33 U.S.C. 2282d). The study was funded by the Disaster Relief Supplemental Appropriations Act of 2022 (P.L. 117-43), Division B, Subdivision 1, Title IV as a high-priority study of projects in States with a major disaster declared due to Hurricane Ida pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). The study was authorized for inclusion as a DRSA 2022 study in April 2022.

Notwithstanding Section 105(a) of the WRDA of 1986 (33 U.S.C. 2215(a)), which specifies the cost-sharing requirements generally applicable to feasibility studies, DRSA 2022 authorizes the Government to conduct the study at full Federal expense, to the extent that appropriations provided under the Investigations heading of the DRSA 2022 are available and used for such purpose. The Policy Guidance Memorandum on Implementation of Supplemental Appropriations of the DRSA of 2022 dated 25 April 2022, states that a new FCSA or an amendment to the existing FCSA is required to address use of DRSA 2022 Investigations funds at full Federal expense. Further, HQUSACE is authorized to develop and approve FCSAs, and amendments to existing FCSAs, and to delegate to the Division Commander authority to approve use of such FCSAs and amendments. In addition, authority to execute a FCSA or amendment, once approved, may be delegated to the District Commander. HQUSACE developed and approved a model FCSA as set forth in the MEMORANDUM FOR DISTRIBUTION, SUBJECT: Disaster Relief Supplemental Appropriations Act, 2022, Public Law 117-43 (DRSA 22) – Agreements for DRSA 22 Funded Studies.



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

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

SUBJECT: Policy Guidance on Implementation of Disaster Relief Supplemental Appropriations Act, 2022 (Public Law 117-43)

1. References:

- a. Disaster Relief Supplemental Appropriations Act, 2022, Division B, Title IV of Public Law 117-43 (DRSAA 22) (Enclosure 1).
- b. Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), as amended.
- c. Assistant Secretary of the Army (Civil Works) memorandum (Completion and Termination Guidance for U.S. Army Corps of Engineers Studies), 23 March 2020.
- d. Assistant Secretary of the Army (Civil Works) memorandum (Implementation of Environmental Justice and the Justice40 Initiative), 15 March 2022.
- e. Assistant Secretary of the Army (Civil Works) memorandum (POLICY DIRECTIVE – Comprehensive Documentation of Benefits in Decision Documents), 5 January 2021.

2. GENERAL.

- a. This document provides implementation guidance for supplemental Investigations, Construction, Mississippi River and Tributaries (MR&T), Operation and Maintenance (O&M), Flood Control and Coastal Emergencies (FCCE), and Expenses appropriations provided in DRSAA 22.
- b. These appropriations are designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.
- c. In accordance with DRSAA 22, the Office of the Assistant Secretary of the Army for Civil Works (OASA (CW)) will provide a monthly report directly to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of all funding provided by DRSAA 22. The U.S. Army Corps of Engineers (Corps) Finance Center (UFC) will generate this monthly report along with the monthly

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reports on other supplemental appropriations using data as of the end of each month, and furnish each monthly report to OASA (CW) for transmittal.

3. INVESTIGATIONS.

a. DRSAA 22 appropriates \$100,000,000 in Investigations funds (DRSAA 22 Investigations funds), to remain available until expended, for necessary expenses related to completion, or initiation and completion, of authorized studies of flood and storm damage reduction, including shore protection, at full Federal expense. It further provides that the funds are only for high-priority studies of projects in States with a major disaster declared due to Hurricane Ida in fiscal year (FY) 2021. The four States that meet this requirement are Louisiana, Pennsylvania, New Jersey, and New York (Ida States).

b. Studies must be Federally authorized in order to be eligible for DRSAA 22 Investigations funds. Eligible studies may include studies authorized after September 30, 2021, the date of enactment of DRSAA 22. DRSAA 22 itself does not provide authority for the Corps to undertake a study that is not otherwise authorized.

c. Feasibility studies that are predominantly for flood and storm damage reduction are eligible to be considered for DRSAA 22 Investigations funds. In addition, comprehensive and watershed studies that are predominantly for flood and storm damage reduction, even if there are other ancillary purposes, are eligible for consideration. Both structural and non-structural measures, including natural and nature based features, will be considered. Further, measures that explicitly address the needs of disadvantaged communities, in whole or part, will be fully explored consistent with the guidance outlined in reference 1d. A study of a project located partially in an Ida State and partially in a non-Ida State is eligible if the project will primarily benefit the Ida State.

d. Preconstruction engineering and design (PED), up to the first full set of Plans and Specifications, is eligible to be considered for DRSAA 22 Investigations funds. PED for a project located partially in an Ida State and partially in a non-Ida State is eligible if the project will primarily benefit the Ida State.

e. No studies of projects that have been deauthorized for construction will be undertaken using DRSAA 22 Investigations funds.

f. Types of studies are as follows:

(1) Study new starts, leading to preparation of a Chief's Report or a Director's Report, a watershed assessment or plan, or a comprehensive report. New study starts are studies that have never been funded in the Investigations appropriation, including former Continuing Authorities Program (CAP) projects migrating to the Investigations account for the first time.

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(2) Continuing studies, leading to preparation of a Chief's Report or a Director's Report, a watershed assessment or plan, or a comprehensive report. Continuing studies are studies that have been previously funded in the Investigations appropriation.

g. If there are remaining DRSA 22 Investigations funds, a feasibility study that is funded with DRSA 22 Investigations funds may be considered to receive additional DRSA 22 funds for PED through the first full set of Plans and Specifications. Prior to entering into Feasibility Cost Share Agreement (FCSA) negotiations with a Non-Federal Sponsor, Deputy Assistant Secretary of the Army for Civil Works (Management and Budget) approval is required to fund with DRSA 22 Investigations funds for additional projects not listed on the initial Investigations Investment Plan. Deputy Assistant Secretary of the Army for Civil Works (Management and Budget) approval is required to use DRSA 22 Investigations funds to fund additional feasibility studies or PED or to allocate funds above the initial Investigations investment plan amounts. If available remaining DRSA 22 Investigations funds for such purpose are exhausted, then, except as provided in paragraph 3.g.(1), PED for the study will need to compete for funding from annual Investigations funding and will be subject to cost sharing.

h. DRSA 22 provides that a not yet authorized project that is studied using DRSA 22 Investigations funds is eligible for implementation using DRSA 22 Construction funds if the Secretary determines that the project is technically feasible, economically justified, and environmentally acceptable. The Chief's Report will be provided to the Assistant Secretary of the Army (Civil Works) (ASA (CW)) to support the required determination of technical feasibility, economic justification, and environmental acceptability.

(1) If the ASA (CW) makes the required determination, the project is eligible for consideration for selection for construction, including engineering and design, using remaining DRSA 22 Construction funds, subject to the availability of such funds. For instance, the addition of resiliency measures to a project could be evaluated using DRSA 22 Investigations funds and if the ASA (CW) makes the required determinations, the resiliency measures would be eligible to be implemented using DRSA 22 Construction funds. However, eligibility is separate from, and should not be considered, any commitment on funding the project for construction. Deputy Assistant Secretary of the Army (Management and Budget) (DASA (M&B)) approval is required to fund any additional projects using DRSA 22 Construction funds.

(2) Even if a project is selected for construction, and will be completed, using remaining DRSA 22 Construction funds, the Chief's Report still must be submitted to Congress for authorization to ensure that the project is eligible for repair and restoration under 33 U.S.C. 701n (commonly referred to as P.L. 84-99), and to authorize any periodic renourishment or continuing construction (e.g., levee lifts) that will be carried out using regular appropriations.

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i. Investigations funds previously provided for a study must be used to complete work for which such funds were provided, with that funding remaining subject to cost sharing. An interim accounting and cost share balancing will be undertaken to ensure that any regular funding, i.e., any funding other than DRSA 22 Investigations funds provided for the study, is appropriately cost shared.

j. Cost Sharing Agreement. For feasibility studies (including General Reevaluation Studies), a new Feasibility Cost Sharing Agreement (FCSA) or an amendment to the existing FCSA is required to address use of DRSA 22 Investigations funds at full Federal expense. For PED, a new design agreement, or an amendment to an existing design agreement, is required to address the use of DRSA 22 Investigations funds at full Federal expense. Prior to entering into FCSA negotiations with a Non-Federal Sponsor, DASA (M&B) approval is required to fund with DRSA 22 Investigations funds additional projects not listed on the initial Investigations Investment Plan.

(1) HQUSACE is authorized to develop and approve FCSAs and design agreements, and amendments to existing FCSAs and design agreements, and to delegate to the Division Commander authority to approve use of such agreements and amendments. In addition, authority to execute the agreement or amendment, once approved, may be delegated to the District Commander.

(2) To ensure feasibility studies and PED for projects are being expedited, the agreement, or amendment to the agreement, as applicable, should be executed as soon as possible. Any significant delay in agreement execution may result in the study or PED being de-selected for implementation using DRSA 22 Investigations funds.

k. Initial Funding. To enable expedited success, the Major Subordinate Command Civil Works Integration Division (CWID) Chief may approve the use of up to \$100,000 to establish the project delivery team, hold a scoping meeting, and negotiate the agreement or amendment. For continuing studies, the \$100,000 includes any regular funding currently unobligated on the study, with the remainder, if any, being DRSA 22 Investigations funds. All DRSA 22 Investigations funds used for a study or PED are included in the calculation of the total study cost or PED cost, respectively.

l. Applicable Policies and Guidance. Except as otherwise noted, studies will be undertaken in accordance with existing Civil Works policies and guidance, including the comprehensive evaluation of total benefits of potential plans and direct consideration of the needs of disadvantaged communities, as well as the incorporation of SMART Planning principles. Consistent with current procedures, divisions will coordinate with HQUSACE to identify, document, and pursue opportunities to expedite completion of these studies and associated review and approval procedures in compliance with, but not limited to, Section 1001 of the Water Resources and Reform Development Act of 2014 (WRRDA 2014), as amended, and Section 1002 of WRRDA 2014, as amended.

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m. Studies must be appropriately scoped to ensure critical analysis required for the study is undertaken. If scoping results in an estimated Federal share of the study cost of more than \$3 million or more than three years to complete a feasibility study, then an exemption should be sought immediately. If a cost exemption is approved for a study, those additional costs will be funded from remaining DRSA 22 Investigations funds, subject to the availability of such funds and OASA (CW) approval.

4. CONSTRUCTION.

a. DRSA 22 provides \$3,000,000,000 in Construction funding, to remain available until expended, to construct flood and storm damage reduction projects, including shore protection projects, and of that amount, a minimum of \$1,500,000,000 shall be available for projects in States with a major disaster declared due to Hurricane Ida in FY 2021. The four States that meet this requirement are Louisiana, Pennsylvania, New Jersey, and New York (Ida States). The remaining \$1,500,000,000 is available for construction of projects in the Ida States as well as for construction of projects nationwide. The flood and storm damage reduction projects eligible for the funding include: 1) currently authorized projects; 2) projects that may be authorized in the future, once authorized; 3) projects that have signed Chief's Reports as of September 30, 2021, but have not yet been authorized; and 4) projects that are not yet authorized, but that are studied using DRSA 22 Investigations funds. For the last two categories of projects (not yet authorized projects), the ASA (CW) must also determine that the project is technically feasible, economically justified, and environmentally acceptable. To support the required determination, the Chief's Report will be submitted to the OASA (CW). Upon such a determination, the not yet authorized project may be considered for use of remaining available DRSA 22 Construction funds. Prior to entering into Project Partnership Agreement (PPA) negotiations with a Non-Federal Sponsor, DASA (M&B) approval is required to fund with DRSA 22 Construction funds, additional projects not listed on the initial Construction Investment Plan.

b. Only projects that are predominantly for flood and storm damage reduction are eligible for DRSA 22 Construction funds. To be considered as a project in an Ida State, the project may be partially located in an Ida State and partially located in another State if the project benefits primarily the Ida State.

c. A separable element of the project that is not for flood and storm damage reduction, e.g., ecosystem restoration, is not eligible for construction using DRSA 22 Construction funds. Further, separable recreation features of projects will not be undertaken using DRSA 22 Construction funds. Once physical construction of the flood and storm damage features of a project is completed, any monitoring or adaptive management will need to compete for funding from regular annual appropriations and will be subject to regular cost sharing requirements. In addition, any future construction, including periodic renourishment and levee lifts, will not be undertaken with DRSA 22

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Construction funds and will need to compete for funding from regular annual appropriations and will be subject to regular cost sharing requirements.

d. Regular Construction funds previously provided for the project, including funds carried into FY22, will be used for their intended purposes, as described in justification materials and Committee reports, and includes supervision and administration and engineering and design associated with that work, and remains subject to regular cost sharing requirements. Further, additional costs for such work, including claims, equitable adjustments, and contract modifications, will be funded with regular Construction funds, not DRSAA 22 Construction funds. The additional costs will be subject to regular cost sharing requirements and the Federal portion of those additional costs will need to compete for funding from annual Construction funding. The District will track the regular funded, cost shared amounts separately from DRSAA 22 Construction funds amounts.

e. A project that received Public Law 115-123 or Public Law 116-20 funding for construction of such project is not eligible for DRSAA 22 Construction funds.

f. The following costs remain the full responsibility of the non-Federal sponsor, which must pay such costs during construction of the project:

(1) 100 percent of the costs allocated by the Corps to beach improvements with exclusively private benefits;

(2) 100 percent of the costs allocated by the Corps to beach improvements for the prevention of losses of undeveloped private lands;

(3) 100 percent of the costs allocated by the Corps to improvements and other work located within the Coastal Barrier Resources System that the Corps has determined are ineligible for Federal financial participation; and

(4) 100 percent of the costs of a locally preferred plan and/or betterments that are in excess of the costs of the National Economic Development Plan or Federal Plan, as determined by the Corps.

g. The types of projects are as follows:

(1) New construction starts. New construction starts are projects that have never been funded in the Construction account appropriation. Documentation supporting a new start decision includes the Chief's Report, or Director's Report, as applicable, and the determination, if required, by the ASA (CW) that the project is technically feasible, economically justified, and environmentally acceptable.

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(2) “Ongoing construction projects”.

(a) “Ongoing construction projects” include authorized Corps projects that have received Construction account appropriations (an initial work allowance from a Statement of Managers, work plan, or supplemental appropriation) in any of the previous three fiscal years (FY 2019, 2020, or 2021). Funding provided through a reprogramming is not included in determining whether a project is considered an “ongoing construction project”.

(b) A shore protection project that has received funding for initial construction, or for a cycle of periodic renourishment, in FY 2019, 2020, or 2021 is eligible for funding to complete that initial construction, or that particular cycle of periodic renourishment, respectively, as an “ongoing construction project”. Funding provided to monitor the performance of renourishments is not included in determining whether a project is an “ongoing construction project”.

(3) “Not ongoing construction projects” include projects that previously received Construction account funding for construction but did not not receive Federal funds in FY 2019, 2020, or 2021. For purposes of this guidance, they also include new construction starts.

h. The following criteria were used in selecting projects for the initial Construction Investment Plan:

(1) Project is Authorized for Flood and Storm Damage Reduction, including Shore Protection;

(2) Project is located in an Ida State to be eligible for the earmarked \$1.5B, with projects not in an Ida State (as well as projects in an Ida State) eligible for the remaining \$1.5B;

(3) Life Safety/BCR/Net Benefits;

(4) Date of current Economic Update;

(5) Sponsor Capability;

(6) Status of PED;

(7) Environmental Justice, Climate Resilience, Disadvantaged Communities Justice40 – Urban/Rural); and

(8) Status of Environmental Compliance.

A risk management and future investment reserve will be retained to both mitigate delivery risk and support subsequent allocations for implementation of additional projects. The Construction Investment Plan will be reviewed and updated over time. OASA (CW) approval is required to fund with DRSA 22 Construction funds, additional projects not listed on the initial Construction Investment Plan. In addition, DASA (M&B)

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approval is required to allocate additional DRSA 22 funds to projects above the initial Construction Investment Plan amounts.

i. Ongoing Construction Projects That Will Be Completed Using DRSA 22 Construction Funds. If an ongoing construction project will be completed using DRSA 22 Construction funds, such completion will be at full Federal expense. Note that the special cost sharing described in this paragraph does NOT apply if the DRSA 22 Supplemental Construction funds will complete only certain features or components of the project but not the entire project. Examples of projects NOT fully funded are Raritan Greenbrook Sub-Station, NJ; New Orleans to Venice, LA; and Southeast, Louisiana. Further, as noted in paragraph 4.d., DRSA 22 Construction funds will not be used for the costs of work for which regular funding has been provided.

(1) The non-Federal sponsor remains responsible for the provision of lands, easements, and rights-of-way, utility/facility relocations, and disposal area improvements (LERRD). Subject to the following conditions, for LERRD required for construction that will be completed at full Federal expense, the value of LER acquired and costs of relocations and disposal area improvements performed by the non-Federal sponsor will be eligible for reimbursement by the Corps using DRSA 22 Construction funds. For a project with an existing PPA, the Corps will reimburse the non-Federal sponsor for the value of lands, easements, and rights-of-way (LER) acquired from private owners after the date of execution of an amendment to the PPA providing for completion of construction at full Federal expense. For a project for which no PPA has been executed, the Corps will reimburse the non-Federal sponsor for the value of required LER acquired from private owners after the date of execution of the PPA. If applicable principles of just compensation require the provision of a functionally equivalent facility to address impacts to an existing utility or other eligible facility from work that will be completed at full Federal expense, the non-Federal sponsor will perform the work necessary to provide the functionally equivalent facility and seek reimbursement. Likewise, the non-Federal sponsors will also construct all improvements necessary to enable the disposal of dredged or excavated material required for the project and seek reimbursement. If the non-Federal sponsor requests the Corps to perform relocations or construct disposal area improvements, the Corps, at its sole discretion, may agree to perform the work. Federal funds will not be advanced to the non-Federal sponsor to perform relocations or construct disposal area improvements.

(2) As discussed in paragraph 4.i.(1), the non-Federal sponsors remain responsible for the provision of LER and performance of utility/facility relocations. If any acquisition assistance is requested by the non-Federal sponsor, the District will promptly notify HQUSACE (including the RIT, CECW-I and CEMP-CR) of the request. Acceptance of requests will be at the sole discretion of the Corps and reviewed and processed in accordance with the procedure outlined in ER 405-1-12, Chapter 12, paragraph 12-34. A non-Federal sponsor must formally request assistance in writing no

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later than 30 calendar days after the Corps provides the non-Federal sponsor with written descriptions of the real property interests required for a project. Under no circumstances will the Corps agree to acquire any real property interest on behalf of a non-Federal sponsor if the non-Federal sponsor has initiated negotiations with the owner of the real property interest.

(3) Among other requirements of Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), non-Federal sponsors must observe the land acquisition policies in 42 U.S.C. 4651 when acquiring real property interests. These policies include, but are not limited to, appraising real property interests before initiating negotiations with landowners, offering an amount no less than the appraised value as just compensation, not requiring landowners to surrender possession of real property interests before paying the agreed upon purchase price or depositing with the court an amount not less than the approved appraised value, not taking any coercive actions to compel an agreement on the price to be paid for real property interests, and instituting formal condemnation proceedings in the event real property interests are to be acquired by exercise of the power of eminent domain.

(4) Where a non-Federal sponsor is acquiring LER for work that will be performed at full Federal expense, the Corps will reimburse the non-Federal sponsor for its costs but will not advance Federal funds to cover the costs of acquisition. Incidental acquisition costs may be reimbursed on a rolling basis as the non-Federal sponsor incurs the costs and submits reimbursement requests.

j. “Ongoing Construction Projects” That Will Not Be Completed with DRSAA 22 Construction Funds and “Not Ongoing Construction Projects” (as defined in paragraph 4.g.).

(1) For ongoing construction projects for which DRSAA 22 Construction funds will not complete the project and for not ongoing construction projects, normal cost sharing requirements apply except that the non-Federal sponsor may, but is not required to, finance its cash contribution, including the 5 percent cash contribution for flood damage reduction projects, for up to 30 years after completion of the project, or separable element, in accordance with Section 103(k) of the Water Resources Development Act of 1986 (WRDA 1986). The ability to finance the non-Federal cash contribution will apply only to the work that is undertaken with DRSAA 22 Construction funds, and it will not apply to the costs of additional construction not funded with DRSAA 22 Construction funds, including periodic renourishment and future levee lifts, or to non-Federal costs identified in 4.f.

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(2) For such projects, the non-Federal sponsor remains responsible for the provision of LERRD. The value of the LER acquired by the non-Federal sponsor from private owners after the date of PPA execution and utility/facility relocations and disposal areas improvements provided by the non-Federal sponsor will be credited towards the non-Federal share of project costs in accordance with the terms of the PPA.

(3) As discussed in paragraph 4.j.(2), the non-Federal sponsors remain responsible for the provision of LER and performance of utility/facility relocations. If any acquisition assistance is requested by the non-Federal sponsor, the District will promptly notify HQUSACE (including the RIT, CECW-I and CEMP-CR) of the request. Acceptance of requests will be at the sole discretion of the Corps and reviewed and processed in accordance with the procedure outlined in ER 405-1-12, Chapter 12, paragraph 12-34. A non-Federal sponsor must formally request assistance in writing no later than 30 calendar days after the Corps provides the non-Federal sponsor with written descriptions of the real property interests required for a project. Under no circumstances will the Corps agree to acquire any real property interest on behalf of a non-Federal sponsor if the non-Federal sponsor has initiated negotiations with the owner of the real property interest.

(4) Among other requirements of Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), non-Federal sponsors must observe the land acquisition policies in 42 U.S.C. 4651 when acquiring real property interests. These policies include, but are not limited to, appraising real property interests before initiating negotiations with landowners, offering an amount no less than the appraised value as just compensation, not requiring landowners to surrender possession of real property interests before paying the agreed upon purchase price or depositing with the court an amount not less than the approved appraised value, not taking any coercive actions to compel an agreement on the price to be paid for real property interests, and instituting formal condemnation proceedings in the event real property interests are to be acquired by exercise of the power of eminent domain.

k. In accordance with longstanding Administration policy, the non-Federal sponsor is required to provide a clean site for construction of the project, and the Corps is prohibited from undertaking any remediation or clean up of hazardous, toxic, and radioactive wastes (HTRW) work on behalf of the non-Federal sponsor. As allowed by existing policy and because it is in the interest of the Corps and the non-Federal sponsor to avoid sites containing regulated HTRW whenever practicable, the Corps may share in the costs for investigations to identify the existence and extent of any hazardous substances that exist in, on, or under any of the real property interests required for construction, operation, maintenance, repair, replacement, and rehabilitation of a project. In the event of a discovery of HTRW, the non-Federal sponsor is responsible for the performance and all costs of cleanup and response, including the costs of studies and investigations to determine an appropriate response to the

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contamination, without reimbursement or credit. When there is a known contamination issue, the Corps will not undertake construction on the contaminated lands until the non-Federal sponsor has completed cleanup and response actions, including removal, on the impacted lands.

l. As specified in DRSAA 22, non-Federal sponsors remain responsible for all costs for operation, maintenance, repair, replacement, and rehabilitation (OMRR&R).

m. The provisions of section 902 of WRDA 1986 do not apply to construction of a project, including initial construction or periodic nourishment, that will be COMPLETED using DRSAA 22 Construction funds. In that situation, DRSAA 22 Construction funds and any non-Federal cost share, including LERRDs or any cash contribution associated with DRSAA-funded construction, are not included in calculating the total project cost to be compared to the section 902 limit for a project. However, this exception from Section 902 limitations does NOT apply if the project will not be completed with DRSAA 22 Construction funds.

n. If a project has not had a certified cost estimate completed within the last two years, an updated certified cost estimate (fully funded) must be completed prior to execution of the PPA. Undertaking the certified cost update may be funded with DRSAA 22 Construction funds, with any non-Federal share of such costs, recovered under the PPA.

o. Proposed changes to the scope of a project, including removing or adding features that would affect the magnitude or type of benefits being afforded by the project, require approval by HQUSACE as being within the Chief's discretionary authority. Any re-scoping, or other modifications, of a project funded with DRSAA 22 Construction funds must ensure that the benefits of the project as authorized by the Congress are provided. Re-scoping may not be used to de-scope the project or eliminate work simply to fit within the current working estimate for the project. The re-scoped project must be within the Chief's discretionary authority to implement without the need for additional authorization. In general, re-scoping of a project will not require a general reevaluation and reformulation of the project plan.

(1) A brief report should be prepared containing the District's analysis and rationale for the re-scoped plan, including legal analysis on whether the re-scoped plan, including modifications, is within the Chief's discretionary authority to implement and whether the re-scoped plan will complete and provide the benefits of the authorized project. In addition, the District should confirm in the report whether the non-Federal sponsor agrees that the re-scoped project will complete the project. The District should submit the report, with the District Commander's recommendations, to the MSC for review and then submittal, with the Division Commander's recommendation, to the appropriate HQUSACE Regional Integration Team for action.

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(2) It is preferable that any re-scoping be undertaken prior to execution of the PPA or PPA amendment. This re-scoping may be funded with DRSAA 22 Construction funds, with any non-Federal share of such costs recovered under the design agreement or PPA.

p. Cost Sharing Agreements.

(1) All costs funded with DRSAA 22 Construction funds will be included in total project costs and cost shared and / or financed in accordance with the terms of the applicable cost sharing agreement. For a project without an existing design agreement, a design agreement must be executed and will be used to document the project scope, design documents, and other assumptions necessary to allow for an updated certified total project cost estimate (fully funded) with a low risk level. The PPA, or PPA amendment if applicable, must be executed prior to solicitation of the first construction contract using DRSAA 22 Construction funds.

(2) HQUSACE is authorized to develop and approve design agreements, PPAs, design agreement amendments, and PPA amendments for projects funded with DRSAA 22 Construction funds. In addition, HQUSACE may delegate to the Division Commander authority to approve the agreement or amendment developed by HQUSACE. In addition, authority to execute the agreement or amendment, once approved, may be delegated to the District Commander.

(3) For a project or separable element with an existing PPA, an interim accounting and cost share balancing will be undertaken to ensure that any regular funding, i.e., any funding other than DRSAA 22 Construction funding provided for the project, is appropriately cost shared. Additional guidance on performance of the interim accounting is provided in Enclosure 2.

q. Continuing Authorities Program (CAP) Projects. Up to \$65,000,000 of the \$3,000,000,000 in Construction funds is available for Continuing Authorities Program (CAP) projects for flood and storm damage reduction. DASA (M&B) approval is required to fund any CAP projects with DRSAA 22 Construction funds.

(1) In general, an individual CAP project will be considered and funded for completion as an “ongoing construction project” at full Federal expense if the project received funding in FY 2019, 2020, or 2021 for the Design and Implementation (D&I) phase. For CAP projects in the Feasibility phase and CAP projects in the D&I phase that are “not ongoing construction projects”, the non-Federal cash contribution may be financed in accordance with section 103(k) of WRDA 1986.

(2) DRSAA 22 funding is included in calculating the Federal per-project limit for a project. DRSAA 22 117-43 did not modify or waive the Federal per-project limits. D&I

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agreements will include the normal requirement that the non-Federal sponsor is responsible for any costs over the Federal per-project limit.

5. MISSISSIPPI RIVER AND TRIBUTARIES.

a. DRSA 22 provided \$868,000,000 in Mississippi River and Tributaries funding (DRSA 22 MR&T funds) to address emergency situations at Corps of Engineers projects, and to construct projects and to rehabilitate and repair damages to Corps of Engineers projects caused by natural disasters.

b. Of the \$868,000,000, \$500,000,000 must be used for the construction of flood and storm damage reduction projects in Louisiana, the only State covered by the MR&T appropriation. The remaining \$368,000,000 is available for emergency response and for damage repairs including emergency dredging of shoaled material resulting from floods and storms for MR&T projects as well as for construction of MR&T projects, including, but not limited to, projects in Louisiana. Funding will be distributed for the highest priority dredging and repairs based on risks and consequences. Dredging and repairs to damages not caused by natural events are not eligible for this funding.

c. Only to the extent that the DRSA 22 MR&T funds are used for construction of a project that had received MR&T funds in any of FY 2019, 2020, or 2021, such construction shall be at full Federal expense. Thereafter, regular cost sharing will apply. Section 902 of WRDA 1986 continues to apply to these projects unless construction of the project will be completed using the DRSA 22 MR&T funds.

d. HQUSACE is authorized to develop and approve PPAs and PPA amendments for projects funded with DRSA 22 MR&T funds. In addition, HQUSACE may delegate to the Division Commander authority to approve the agreement or amendment developed by HQUSACE. Further, authority to execute the agreement or amendment, once approved, may be delegated to the District Commander.

6. OPERATION AND MAINTENANCE (O&M).

a. DRSA 22 provided \$887,000,000, to remain available until expended, in O&M funding to dredge Federal navigation projects in response to, and to repair damages to Corps Federal projects caused by, natural disasters. Dredging and repairs to damages not caused by natural events are not eligible for this funding. Funding will be distributed for the highest priority dredging and repairs based on risks and consequences.

b. This appropriation provides that such sums as are necessary to cover the Federal share of eligible Operation and Maintenance costs for coastal harbors and channels, or for inland harbors shall not be derived from the Harbor Maintenance Trust Fund (HMTF).

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7. FLOOD CONTROL AND COASTAL EMERGENCIES (FCCE). DRSAA 22 provided \$826,000,000, to remain available until expended, in FCCE funding. DRSAA 22 further directs that authorized shore protection projects, that are funded with DRSAA 22 FCCE funds, be restored to the full project profile at full Federal expense. Rehabilitation of eligible shore protection projects, using DRSAA 22 FCCE funds, will be restored to the full project profile at full Federal expense. Full project profile is defined as the authorized beach profile of the project in a fully renourished state. If a shore protection project is restored to full project profile using these funds, there would be no current need for DRSAA 22 funds for periodic nourishment of the project.

8. EXPENSES. \$30,000,000 is provided to administer and oversee the obligation and expenditure of amounts provided in DRSAA 22 for the Corps of Engineers. HQUSACE will distribute the funding based on DRSAA 22 workload.

9. FUNDING OF STUDIES AND PROJECTS.

a. Funding will be provided to approved studies and projects in increments based on need. This will help to avoid reprogramming difficulties in the event of cost savings, changes in non-Federal participation, or termination of studies found no longer justified.

b. Repair and emergency dredging work funded in the Operation and Maintenance, and MR&T-O&M appropriations will be funded based upon the approved published work plans.

10. Questions regarding this guidance should be directed to Ms. Stacey E. Brown, Deputy Assistant Secretary of the Army (Management and Budget) at stacey.e.brown.civ@army.mil, or (703) 695-1376.

Encl

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

SACW

SUBJECT: Policy Guidance on Implementation of Disaster Relief Supplemental Appropriations Act, 2022 (Public Law 117-43)

ENCLOSURE 1

Disaster Relief Supplemental Appropriations Act, 2022
Public Law 117-43 Extract

TITLE IV CORPS OF ENGINEERS—CIVIL

DEPARTMENT OF THE ARMY

INVESTIGATIONS

For an additional amount for “Investigations” for necessary expenses related to the completion, or initiation and completion, of flood and storm damage reduction, including shore protection, studies that are currently authorized or that are authorized after the date of enactment of this Act, to reduce risk from future floods and hurricanes, at full Federal expense, \$100,000,000, to remain available until expended: *Provided*, That funds made available under this heading in this Act shall be for high-priority studies of projects in States with a major disaster declared due to Hurricane Ida pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in fiscal year 2021: *Provided further*, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report directly to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of these funds, including new studies selected to be initiated using funds provided under this heading in this Act, beginning not later than 60 days after the date of enactment of this Act.

CONSTRUCTION

For an additional amount for “Construction” for necessary expenses, \$3,000,000,000, to remain available until expended, to construct flood and storm damage reduction, including shore protection, projects that are currently authorized or that are authorized after the date of enactment of this Act, and flood and storm damage reduction, including shore protection, projects that have signed Chief’s Reports as of the date of enactment of this Act or that are studied using funds provided under the heading “Investigations” if the Secretary determines such projects to be technically feasible, economically justified, and environmentally acceptable: *Provided*, That of such amount, \$1,500,000,000 shall be available for such projects in States with a major disaster declared due to Hurricane Ida pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in fiscal year 2021: *Provided further*, That the provisions of section 902 of the Water Resources Development Act of 1986 shall not apply to the construction of projects, including initial construction or periodic nourishment, completed using funding under this heading in this Act: *Provided further*, That the completion of ongoing construction projects receiving funding provided under this heading in this Act shall be at full

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Federal expense with respect to such funds: *Provided further*, That for any projects using funding provided under this heading in this Act, the non-Federal cash contribution for projects other than ongoing construction projects shall be financed in accordance with the provisions of section 103(k) of Public Law 99–662 over a period of 30 years from the date of completion of the project or separable element: *Provided further*, That up to \$65,000,000 of the amounts made available under this heading in this Act shall be used for continuing authorities projects to reduce the risk of flooding and storm damage: *Provided further*, That any projects using funding appropriated under this heading in this Act shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary requiring, where applicable, the non-Federal interests to pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation costs of the project and to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors: *Provided further*, That of the amounts made available under this heading in this Act, such sums as are necessary to cover the Federal share of construction costs for facilities under the Dredged Material Disposal Facilities Program shall be derived from the general fund of the Treasury: *Provided further*, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report directly to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of these funds, beginning not later than 60 days after the date of enactment of this Act.

MISSISSIPPI RIVER AND TRIBUTARIES

For an additional amount for “Mississippi River and Tributaries” for necessary expenses to address emergency situations at Corps of Engineers projects, and to construct, and rehabilitate and repair damages to Corps of Engineers projects, caused by natural disasters, \$868,000,000, to remain available until expended: *Provided*, That of the amounts made available under this heading in this Act, such sums as are necessary to cover the Federal share of eligible operation and maintenance costs for coastal harbors and channels, and for inland harbors shall be derived from the general fund of the Treasury: *Provided further*, That of the amounts made available under this heading in this Act, \$500,000,000 shall be available to construct flood and storm damage reduction projects that are currently authorized or that are authorized after the date of enactment of this Act in States with a major disaster declared due to Hurricane Ida pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in fiscal year 2021: *Provided further*, That the provisions of section 902 of the Water Resources Development Act of 1986 shall not apply to the construction of projects, including initial construction or periodic nourishment, completed using funding under this heading in this Act: *Provided further*, That to the extent that ongoing construction projects are constructed using funding provided under this heading in this Act, such construction shall be at full Federal expense: *Provided further*, That for any projects using funding provided under this heading in this Act, the non-Federal cash contribution for projects other than ongoing construction projects shall be financed in accordance with the provisions of section 103(k) of Public Law 99–662 over a period of 30 years from the date of completion of the project or separable element: *Provided further*, That any projects using funding appropriated under this heading in this Act shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary requiring, where applicable, the non-Federal interests to pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation costs of the project and to hold and save the

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United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors: *Provided further*, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report directly to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of these funds, beginning not later than 60 days after the date of enactment of this Act.

OPERATION AND MAINTENANCE

For an additional amount for “Operation and Maintenance” for necessary expenses to dredge Federal navigation projects in response to, and repair damages to Corps of Engineers Federal projects caused by, natural disasters, \$887,000,000, to remain available until expended, of which such sums as are necessary to cover the Federal share of eligible operation and maintenance costs for coastal harbors and channels, and for inland harbors shall be derived from the general fund of the Treasury: *Provided*, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report directly to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of these funds, beginning not later than 60 days after the date of enactment of this Act.

FLOOD CONTROL AND COASTAL EMERGENCIES

For an additional amount for “Flood Control and Coastal Emergencies”, as authorized by section 5 of the Act of August 18, 1941 (33 U.S.C. 701n), for necessary expenses to prepare for flood, hurricane and other natural disasters and support emergency operations, repairs, and other activities in response to such disasters, as authorized by law, \$826,000,000, to remain available until expended: *Provided*, That funding utilized for authorized shore protection projects shall restore such projects to the full project profile at full Federal expense: *Provided further*, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report directly to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of these funds, beginning not later than 60 days after the date of enactment of this Act.

EXPENSES

For an additional amount for “Expenses” for necessary expenses to administer and oversee the obligation and expenditure of amounts provided in this Act for the Corps of Engineers, \$30,000,000, to remain available until expended: *Provided*, That the Assistant Secretary of the Army for Civil Works shall provide a monthly report directly to the Committees on Appropriations of the House of Representatives and the Senate detailing the allocation and obligation of these funds, beginning not later than 60 days after the date of enactment of this Act.



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

CECW-MVD

12-Mar-24

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY CIVIL WORKS
(ASA(CW))

SUBJECT: Vertical Team Alignment Memorandum Request for Additional Resources,
Tangipahoa Parish Feasibility Study, Louisiana

1. Purpose and Background. To provide the subject feasibility study request for additional resources and to seek approval for an additional eight months and \$280 000 to complete the study. The Tangipahoa Parish Flood Risk Management Feasibility Study is evaluating alternatives over an 823 square mile study area to reduce risk of flood damages from Lakes Maurepas and Pontchartrain to the Mississippi state line in southeast Louisiana. The feasibility study is 100% federally funded under the Disaster Relief Supplemental Appropriations Act of 2022. The feasibility cost sharing agreement was signed 4 November 2022, and if approved, the total study cost will be \$3.48 million and total duration will be 44 months. Note, this total cost includes \$200,000 of federal funding already allocated for Independent External Peer Review.

2. Authority. Per Section 1001 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), the U.S. Army Corps of Engineers final feasibility reports are, to the extent practicable, to be completed in three years and have a maximum federal cost of \$3 million. Section 1001 provides further that the ASA(CW) may extend the timeline and/or approve federal costs greater than \$3 million, subject to notification of the non-federal sponsor, the Senate Committee on Environment and Public Works, and the House of Representatives Committee on Transportation and Infrastructure.

3. Discussion. Several study risks were identified during scoping and serve as the genesis of this request. These risks include uncertainty surrounding hydraulic and hydrology modeling of riverine and coastal damage mechanisms; the need for deliberate Environmental Justice (EJ) outreach; vertical team coordination on analyses supporting comprehensive benefits; alignment on real property non-standard estate language; and coordination supporting certification of a habitat suitability index model for pine savannah and woodland habitats.

The primary WRRDA 2014 factor in considering this request is the type, size, location, scope, and overall cost of the project. The Tangipahoa study area is parish-wide, which increases the scope of total analysis when compared to smaller study areas whose discrete problems are more confined. Exceptions for time and/or funding on studies of comparable scale in Louisiana have been the norm. Further, the disproportionate percentage of underserved communities in the study area warrants greater other social

CECW-MVD

SUBJECT: Vertical Team Alignment Memorandum Request for Additional Resources,
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effects analysis, especially in terms of EJ outreach. Finally, the complexity of modeling, accounting for, and attributing flood damages to varying mechanisms is a unique problem resulting in increased scope of work for this study.

4. Recommendation. I concur with the findings of the vertical team and recommend approval of additional resources in the amounts of eight months and \$280,000. I also recommend granting exception to the NEPA time limit such that it coincides with completion of a Chief's Report in July 2026.



WILLIAM H. GRAHAM, JR.
Major General, USA
Deputy Commanding General
for Civil and Emergency Operations

6 Encls

1. VTAM
2. PMP
3. Risk Register
4. Briefing Slides
5. Draft House Notification Letter
6. Draft Senate Notification Letter