



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

JAN 9 2009

REPLY TO
ATTENTION OF:

CECW-HS

MEMORANDUM FOR Commanders, Major Subordinate Commands and Districts

SUBJECT: Temporary extension of P.L. 84-99 Rehabilitation Eligibility for Non-Federal Sponsors Implementing System-wide Improvements

1. References

a. ER 500-1-1, Emergency Employment of Army and Other Resources – Civil Emergency Management Program, 30 Sep 2001.

b. Memorandum, HQ USACE (CECW-HS), 18 Jan 2007, subject: Supplemental Policy Guidance for the USACE 26 September 2006 Policy Guidance for Prioritization of FY07 Inspection of Completed Works (ICW), Operations and Maintenance (O&M), General (O&M), Mississippi River and Tributaries (MR&T), and Flood Control & Coastal Emergencies (FCCE) Inspection Accounts.

c. Memorandum, HQ USACE (CECW-HS), 12 Jun 2007, subject: Interim Vegetation Guidance for Control of Vegetation on Levees.

d. Memorandum, HQ USACE (CECW-HS), 16 Nov 2007, subject: Levee Safety Program Implementation.

e. Draft Engineering Technical Letter (ETL) 1110-2-571, Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures, 3 Apr 2008, or as revised into final issuance.

2. The purpose of this memorandum is to provide guidance for requesting a temporary extension of eligibility to allow flood damage reduction systems that have received an unacceptable inspection rating to remain eligible for rehabilitation assistance while non-federal sponsors are undertaking system-wide corrections of deficiencies and/or implementing system-wide improvements. The intent of this memorandum is to optimize flood risk reduction between operation and maintenance work and system-wide improvements, for the benefit of the public exposed to flood risks.

3. Public Law (P.L.) 84-99 authorizes rehabilitation assistance to repair eligible flood damage reduction systems that are damaged by flood. Rehabilitation assistance is available to those systems that are being properly operated and maintained by non-federal sponsors. As a matter of policy, outlined in ER 500-1-1, flood damage reduction systems that receive an unacceptable inspection rating are not eligible for future rehabilitation assistance until the unacceptable maintenance deficiencies have been corrected. However, application of this policy does not take into consideration cases where the non-federal sponsor is undertaking system-wide corrections of deficiencies and/or implementing system-wide improvements intended to address structural and

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other deficiencies that could pose a greater risk to public safety than a maintenance deficiency identified during a system inspection. In these cases, it may be appropriate to correct the maintenance deficiencies as part of a more comprehensive system-wide improvement effort being implemented by the non-federal sponsor.

4. An extension of eligibility for future rehabilitation assistance while correcting maintenance deficiencies as part of the system-wide improvement effort must be requested by the non-federal sponsor. The following criteria will be used to evaluate the request:

a. The request must identify the system-wide deficiencies or improvements being addressed by the sponsor's system-wide improvement plan and demonstrate that implementation of the system-wide improvements provide significantly greater risk reduction as compared to simply correcting unacceptable maintenance deficiencies.

b. The request must summarize the activities being taken that demonstrate the sponsor is proceeding with the system-wide improvements. Examples of these activities are summarized below. Activities 1 through 3 are required activities for consideration of an eligibility extension.

(1) Sponsor has developed and is implementing a system-wide improvement plan.

(2) Significant non-federal resources have been committed for the improvement plan.

(3) Planning, design or construction activities have commenced.

(4) An emergency has been declared by the State during the non-flood season that has established the system improvements as a priority.

(5) State or local legislation has been enacted that significantly improve risk management efforts and resources.

c. The request must identify any unique conditions not within the control of the sponsor or maintaining agency that prevents them from meeting acceptable maintenance standards in a timely manner, such as:

(1) Endangered Species Act consultation is ongoing and resource agencies concur with the sponsor's proposed system-wide improvement plan.

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(2) The system was constructed without the use of engineered design standards or techniques and has structural deficiencies that the system-wide improvements are intended to correct.

5. As a condition of approving the request for an eligibility extension the non-federal sponsor's system-wide improvement plan must identify the following actions:

a. Plans for correction of maintenance deficiencies will be implemented in accordance with existing US Army Corps of Engineers (USACE) standards as part of the system-wide improvements.

b. Interim maintenance standards that will be implemented during the time that system-wide improvements are being implemented and, the eligibility extension is in effect.

c. Milestones that will be used to measure progress in implementing the system-wide improvements and determine continued eligibility for rehabilitation assistance during the eligibility extension period.

d. Interim flood risk reduction measures including a risk communication plan for those who are or will be receiving protection from the system-wide improvements.

e. For those levee systems shown as accredited on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) and are part of the system-wide improvement plan, it shall be demonstrated that FEMA has been informed that these levee systems are deficiently maintained for purposes of the PL84-99 program and are being improved.

6. Approval authority for eligibility extensions will be the USACE Director of Civil Works (DCW). District Commanders shall evaluate the sponsors request for an extension based on the criteria outlined in paragraphs 4 and 5 above and provide a recommendation through the Major Subordinate Commander to the DCW. The District and MSC Commanders shall coordinate these requests with their Levee Safety Officers for technical input.

7. Approved eligibility extensions will be provided for a one year period. The sponsor's progress in implementing their system-wide improvement plan will be reviewed annually and renewal of the extension, if required, will be determined based on the sponsor's progress in implementing their system-wide improvement plan. Renewal of extensions shall not exceed four years (initial one year approval plus three consecutively approved annual extensions). Requests for renewals must follow the same process as the initial request, in addition to providing documentation of the sponsor's progress of items in paragraph 5 during the previous year.

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8. During implementation of the system-wide improvement plan, systems that have been given an eligibility extension will continue to be inspected by USACE and will be rated and the results communicated in accordance with existing inspection standards. Deficiencies identified from these inspections should be incorporated into the system-wide corrective actions and improvements as appropriate.

9. The non-federal sponsor's system-wide improvement plan may include flood damage reduction projects that are being evaluated for design deficiencies or other project improvements being undertaken by the USACE under specific project/program authority. However, any improvements implemented must be in accordance with existing USACE standards. A basis for the extension may not be related to delays associated with Congressional authorizations and appropriations for USACE actions and decisions.

10. The point of contact for this action is Ms. Germaine Hofbauer (202) 761-4970.



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