



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SOUTH ATLANTIC DIVISION
60 FORSYTH STREET SW, ROOM 10M15
ATLANTA, GA 30303-8801

CESAD-PDP

8 AUG 2017

MEMORANDUM FOR COMMANDER SAVANNAH DISTRICT (ATTN: Erik Blechinger)

SUBJECT: Implementation Guidance for Section 1319 of the Water Resources Development Act of 2016 (WRDA 2016), Savannah District Questions Submitted for Clarification

1. Reference undated document submitted by CESAS, subject as above.
2. CESAD is providing herewith coordinated responses to questions submitted by CESAS regarding the subject HQ-issued Implementation Guidance.
3. Please contact me at 404-562-5220 or by email, Eric.L.Bush@usace.army.mil if you have remaining questions or require further clarification.

A handwritten signature in black ink, appearing to read "Eric L. Bush".

ERIC L. BUSH
Chief, Planning and Policy Division

**HQUSACE Implementation Guidance (IG) for Section 1319
Water Resources Development Act of 2016 (WRDA 2016)
(Issued 25 May 2017)**

New Savannah Bluff Lock and Dam, Georgia and South Carolina

Savannah District Questions Submitted for Clarification

The post-construction O&M costs associated with each Alternative is interpreted as follows.

Alternative 1: The USACE would have a 100% Federal responsibility to budget for O&M costs associated with Navigation, Water Supply and Recreation as well as to budget for the O&M costs for the SHEP mitigation feature.

Alternative 2: The USACE would not have a Federal responsibility to budget future O&M costs for Water Supply and Recreation. The Federal cost would only be to budget for O&M to maintain the SHEP mitigation feature.

1. IG Paragraph 2. c. i.

Concern: The description for Alternative 1 uses the following wording: "maintain the pool for navigation, water supply, and recreational activities, as in existence on the date of enactment of this Act."

District Position on Federal purposes: NSBLD is de-authorized as a Federal navigation structure. Additionally, the structure has never had a Federal purpose for Water Supply or Recreation. If Alternative 1 is selected, the USACE would have a Federal responsibility/interest in Navigation, Water Supply and Recreation and would need to budget post-construction O&M costs against each of the three business lines (Navigation, Water Supply, and Recreation). USACE would need to ensure passage of fish over the structure and future O&M activities to maintain this purpose would be budgeted against the Savannah Harbor project in the navigation business line similar to the O&M cost associated with the Dissolved Oxygen system. The project (NSBLD) would be considered a multi-purpose project similar to other reservoirs in the basin, to include a requirement to negotiate water supply contracts and would most likely need to charge M&I users for withdrawal of water. If Alternative 2 is selected, the USACE would not have a Federal responsibility/interest in Navigation, Water Supply and Recreation and would not need to budget for future O&M costs for these purposes. Equivalent to Alternative 1, USACE would need to ensure passage of fish over Alternative 2 and future O&M activities to maintain this purpose would be budgeted against the Savannah Harbor project in the navigation business line similar to the O&M cost associated with the Dissolved Oxygen system.

District Questions under this Paragraph:

a. Defining "Navigation".

(1) Since "navigation pool" is the primary difference between Alternatives 1 and 2, what type of navigation does this refer to (i.e., commercial or recreational), and at what location (i.e., through the lock and dam structure, the upstream pool, or both)?

(2) Does the IG/Legislation require connection (uninterrupted navigation) for watercraft between the upstream pool and the downstream river?

District Position on Navigation Questions Above:

(1) Recreational navigation, i.e. the ability to float any watercraft (canoe, kayak, and recreational boats) must be maintained upstream of the lock and dam consistent with the present uses. Neither Alternative 1 nor Alternative 2 gives the authority to restore commercial or recreational navigation through the lock.

(2) Alternative 1 does not require a connection (uninterrupted navigation) for watercraft between the upstream pool and the downstream river.

SAD Position/Response(s):

SAD partially concurs with District Position on Federal Purposes. In accordance with the 25 May 2017 Implementation Guidance issued by HQUSACE (CECW-SAD), Alternative 1 includes a requirement for future Federal (100 percent cost-share) monitoring, adaptive management, and operation and maintenance of all of the features associated with that alternative. However, SAD does not concur that Alternative 1, if selected, would necessitate a requirement for water supply (storage) contracts and/or charging non-Federal interests for withdrawal of water. Alternative 2 includes a requirement for future Federal (100 percent cost-share) for monitoring, adaptive management, and operation and maintenance of the fish passage, and for non-Federal interests to pay 100 percent of future operation and maintenance for other purposes, including water supply and recreation.

With respect to defining "navigation" for purposes of preparing the required post-authorization analysis, the District is directed to consider navigation to be whatever recreational navigation uses (in the pool and in the downstream river) were in existence as of 16 Dec 2016 (date of enactment of WRDA/WIIN 2016). Commercial navigation was not in existence on 16 Dec 2016; accordingly, alternative plans should not include repair or rehabilitation of commercial navigation features. The Implementation Guidance does not require providing for a connection or uninterrupted navigation between the upstream pool and the downstream river, since such a connection/condition did not exist on 16 Dec 2016.

b. Defining "Water Supply".

(1) Does Water Supply mean no adverse impacts to existing municipalities/industries that withdraw water from the pool?

(2) Does it mean having sufficient volume of water available for existing water intakes and/or include a possible modification of municipality/industry intake structures?

(3) Do riparian rights apply or are water supply storage contracts required to be in place with the users?

(4) If the recommended option induces damages (intakes, flood, etc.), does the project (SHEP) pay mitigation for those estimated damages?

District Position on Water Supply Questions Above:

(1) Alternatives 1 and 2 require the pool to continue to provide the water supply function as it exists today (the ability to withdraw water from the river for existing users). The Corps does not need to consider or make provisions for any future growth in water withdrawals.

(2) Alternatives 1 and 2 do not require the Corps to guarantee the pool has a sufficient volume of water for existing water intakes. The study report would identify any impacts to the intakes and would include the cost of any modifications to those intakes that would be needed if the pool is lower under the recommended plan.

(3) Alternative 2 does not require water supply storage contracts for the existing water withdrawals. Alternative 1 would require the Corps to put into place water supply storage contracts for the existing water withdrawals. State water withdrawal permits would continue to be required for both Alternatives.

(4) SAS believes that if an alternative induces damages (water intakes, flood, etc.), the project (SHEP) should include measures and costs to compensate for those impacts. FEMA "no rise" policies could limit the implementation of a design if it would increase the height of the FEMA 100-year flood.

SAD Position/Response(s):

(1) SAD concurs with the District's position regarding providing for future growth in water withdrawals. Such a provision is not a requirement of Section 1319 of WRDA 2016.

(2) SAD concurs with the District's position. Future availability of a certain ("sufficient") volume of water in the pool cannot be assured, since the volume of water in the pool will be affected by many external factors. Furthermore, it is possible that

alternatives may include lowering the normal pool elevation below the average elevation of the pool as of 16 Dec 2016. However, the selected alternative must maintain the ability to withdraw water from the pool for all water users depending on the pool as a water supply source as of 16 Dec 2016. To the extent this would require modification of intakes and appurtenant features in order to continue withdrawing water as was occurring as of 16 Dec 2016, those modifications (including costs) should be included in the alternatives.

(3) SAD partially concurs with the District's position. Under either alternative, the pool created is not a USACE reservoir; therefore, USACE has no authority to regulate storage or to require storage contracts for existing or future withdrawals from the pool. The existing pool is incidental to the existence of the existing lock and not a USACE reservoir. Whatever pool is provided in the future is incidental to whatever structure/feature that will exist that allows USACE to maintain the ability to provide recreational boating and withdrawal of water as was in existence on 16 Dec 2016. State actions allowing water withdrawals from the pool are not subject to USACE authority.

(4) SAD concurs with the District's position. If an alternative were to induce harmful flooding, the alternative must be screened from further consideration unless it can be modified to mitigate the harmful condition. Such modifications must be included in the alternative (including costs). See prior response to 1(b)(2) regarding water intakes.

c. Defining "Recreation".

(1) Does "recreational activities" mean no adverse impacts to present recreational users of the pool (i.e., speed boat races, Ironman competitions, and commercial/residential docks/marinas)?

(2) Does it include a requirement to remove an obstruction (i.e., training walls previously constructed in Augusta, GA, to facilitate navigation) that may pose an unsafe risk if the pool is lowered?

District Position on Recreation Questions Above:

(1) The EA would identify the impacts to recreation for both Alternatives. The District would attempt to minimize all adverse impacts. Remaining adverse impacts to commercial interests could be compensated. Remaining recreational impacts to the community at large (i.e., speed boat races, Ironman competitions) would not be compensated. Remaining recreational impacts to individual property owners would not be compensated.

(2) If lowering the pool from its present range results in a safety hazard (exposing an obstruction in the river), the project would identify a measure to reduce that hazard to an acceptable level. That could consist of marking the structure (buoys) or removing it.

SAD Position/Response(s):

(1) SAD partially concurs with the District's position. The District should identify and characterize all recreational uses in the pool and in the river downstream of NSBL&D as of 16 Dec 2016, and evaluate effects of each alternative on those recreational uses. However, if the District determines there may be "adverse" impacts to recreational activities associated with the recommended alternative, those must be identified and elevated to SAD for a determination as to whether compensation is appropriate prior to finalizing the draft Environmental Assessment.

(2) SAD concurs with the District's position. The cost of such measures must be included in the alternatives associated with the identified hazards.

d. Defining "as in existence on the date of enactment of this Act".

(1) Does this mean the study analysis must maintain the pool at the elevation that occurred on the date the legislation was signed into law or does it mean the functionality of the pool on that date?

SAS Position on Question Above:

(1) The legislation does not require maintaining the pool at the same elevation/depth that it was on the date of enactment of WIIN 2016. The legislation means to maintain, to the maximum extent possible, the functionality of the pool for those purposes. This functionality could be met with "water" or a mitigation strategy. In example, if the selected alternative lowered the pool to an elevation that adversely impacted a current water intake, this could be mitigated by altering the intake structure as opposed to raising the pool. The Study would not need to consider any types of uses that the pool wasn't serving on that date, but could at some time in the future.

SAD Position/Response(s):

SAD Response: The District should identify in the analysis the average elevation of the pool as of 16 Dec 2016. If the District has historical records/analysis of the variability of pool elevation, that information must also be included in the analysis. Any measures or strategies (other than modifying water intakes; see response to (1)(b)(2)) proposed to mitigate for lowering the pool elevation must be discussed with SAD prior to

incorporating those measures into an alternative. That said, SAD agrees the intent is to maintain the functionality of the pool and not a specific elevation.

e. The NSBLD Lock Wall. The IG and legislation describe repair of the “lock wall”.

(1) How is the repair of the lock wall intended to maintain the pool for navigation, water supply, and recreational activities?

(2) Does this mean that watercraft can navigate through the lock structure and that the lock is operational?

Note: The condition of lock wall has been documented as a dam safety issue in USACE inspections as well as reported in the local media based on its condition and closure since May 2014 due to safety concerns.

SAS Position on the Lock Wall Questions Above: The wording does not mean that Alternative 1 must allow watercraft to navigate through the lock structure or that the lock be operational. Repair of the lock wall is determined to mean a repair to an extent necessary to address dam safety conditions associated only with the lock wall.

SAD Response(s):

SAD Response: Neither commercial navigation nor a connection between the pool and the river downstream were in existence as of 16 Dec 2016. Repair of the “lock wall”, including repairs to maintain structural stability, associated with Alternative 1 would be for purposes of providing the fish passage and for maintaining recreation and water supply as those existed as of 16 Dec 2016 only.

2. IG Paragraph 3.

Concern. The proposal of a Locally Preferred Plan (LPP). Stakeholders (municipalities as well as environmental organizations and interested land owners) in the Augusta, GA, and North Augusta, SC, area have submitted support for various alternative solution(s) as part of the Public Scoping Notice process. These proposals may result in a LPP. The Legislation and Implementation Guidance specify the evaluation of Alternatives 1 and 2 only and does not include evaluation of a LPP that would fall outside of those two Alternatives.

District Questions under this Paragraph:

a. Locally Preferred Plan (LPP).

(1) In the event the sponsors or other entities request an LPP, how would the Corps proceed?

SAS Position on LPP Questions Above:

(1) The legislation and the Implementation Guidance describe two alternatives. An LPP that is not a variation of one of the two alternatives identified in Section 1319, and therefore not policy compliant, would require ASA (CW) approval and a new Congressional authorization, including the previously approved design in the GRR.

SAD Position/Response(s):

SAD concurs with the District's position regarding the authority to approve a LPP. If the District determines that a LPP is a "variation" of one of the two alternatives identified in Section 1319, the District should discuss the proposed LPP with SAD as soon as possible and prior to incorporating into a draft report.

b. Conveyance of the Recreational Park to Augusta-Richmond County, GA, adjacent to the NSBLD, without consideration.

Concern. Some Alternatives being examined include using lands inside the recreational park that would reduce the park acreage conveyed after construction.

(1) Does the IG/Legislation require the USACE to convey the entire park and recreational area that existed on the date of the enactment of the Act, or can some of the park lands be used for a modified structure if recommended?

SAS Position on Conveyance of Park Lands Question Above:

(1) The legislation does not require the USACE to convey the entire park that existed on the date of enactment of the WIIN. SAS intends to design alternatives in a manner that maximizes the services they provide while minimizing their cost. Using lands that the Federal Government already owns is one way of reducing construction costs. After the construction is complete, USACE would turn over lands that are no longer needed to Augusta-Richmond County, as specified in the legislation. There is a legal difference between excess lands and lands no longer needed. Not sure which one this would be.

SAD Response(s): SAD concurs with the District's response regarding conveyance of park lands. Alternatives should be developed that reasonably minimize the footprints of proposed features on lands already owned by the Federal Government. The amount (area) of land required to construct the alternatives should be included in the District's analysis. Upon completion of construction of the approved alternative, the remainder of the park land would be conveyed "without consideration" to Augusta – Richmond County as specified in the legislation and implementation guidance received from HQUSACE (Implementation Guidance for Section 1319 of the Water Resources Act of 2016 (WRDA 2016), New Savannah Bluff Lock and Dam, Georgia and South Carolina) dated 25 May 2017.

3. IG Paragraph 4. Cost Sharing

District Questions under this Paragraph:

(1) Study Costs. Are costs to evaluate the Section 1319 alternatives, prepare the District Commander's Report, and reach a selected plan to be included in the Study Report cost estimate?

(2) Construction Costs. To implement the intent of the first sentence of paragraph 4, the District will maintain a policy compliant up to date cost estimate of the cost of the approved GRR design around the lock and dam. Any costs to construct the recommended alternative exceeding that estimate are assumed to be borne 100% by the non-federal sponsors. Concur?

(3) O&M Costs. Is the District correct in interpreting that the sponsor pays no O&M costs if Alternative 1 is selected, even if it includes separable costs for navigation, water supply, and/or recreation? If so, than this would likely result in the USACE being 100% responsible to maintain operable dam gates that would significantly increase the SHEP overall O&M costs (thereby reducing future O&M dollars that would have been programmed for harbor dredging activities).

(4) Sponsor Costs if LPP is proposed. If a derivative of Option A is proposed as a LPP, how does this affect the cost share?

SAS Position on Cost Questions Above:

(1) Study costs are to be shared with the sponsors as part of the present SHEP PED costs as contained in the PPA. They are not to be included in the cost of studying the Section 1319 alternatives.

(2) For construction costs, SAS intends to update the estimate cost of the approved GRR design around the lock and dam, including repairs that have subsequently been identified and approved by HQUSACE as being needed.

(3) The Federal Government would be responsible for all O&M costs with Alternative 1. For Alternative 2, the sponsor must provide any estimated O&M expenses for purposes other than fish passage each year that such costs are expected. The amended PPA would describe a process where USACE would perform the O&M activities and the sponsor would pay the costs of those required by purposes other than fish passage.

(4) SAS intends to evaluate only one design that would fulfill the goals of Alternative 1. If the sponsor proposes a variation of that alternative, additional analyses would be needed and USACE would be able to identify the incremental costs over the USACE design. Those incremental costs would be borne by the sponsor.

SAD Position/Response(s):

(1) The cost of preparing the report, including evaluating alternatives, preparing a NEPA document and updating consultations, required by Section 1319 of WRDA 2016 is to be cost-shared as part of the Savannah Harbor Expansion Project (SHEP) in accordance with current cost-share agreements.

(2) Once approved, future cost updates for the SHEP would include the selected alternative, including cost of repairs to existing features, if required.

(3) SAD concurs with the District's position.

(4) If local interests and the non-federal sponsor for the SHEP wish to pursue a design that varies significantly from the description of Alternative 1 in Section 1319 of WRDA 2016 and the Implementation Guidance, the District should discuss the proposed variation with SAD as soon as possible prior to approaching the non-federal

sponsor about paying the additional cost of developing and evaluating the locally-preferred alternative.

4. Paragraph 5. Conveyance/Disposal:

Concern. The Georgia State Historic Preservation Office (SHPO) views all aspects of this legislation as a single action (modification/removal of the lock and dam and conveyance). Some environmental activities are required just because the property will be conveyed to a non-federal interest. Those activities need to be performed during the development of the post-authorization document.

District Questions under this Paragraph:

(1) How should the conveyance-dependent costs be handled with Augusta-Richmond County?

(2) Does the District need County funds upfront?

(3) What is the difference between the County responsible for "administrative expenses" and "conveyance without consideration"?

(4) How should the costs for disposal of the property be accounted for in comparing the study alternatives to the SHEP GRR approved design? Do we add these costs (Environmental Baseline Study/Section 106) to the GRR cost update effort?

SAS Position on Conveyance/Disposal:

(1) SAS will prepare a separate document (part of the disposal documentation) that describes the separable work activities required prior to transferring the property to Augusta-Richmond County, as well as their estimated costs. It would provide that document to the County along with an MOU. The County would need to provide SAS the estimated funding prior to performing the work. A final accounting would be provided at the time of the conveyance.

(2) The County would need to provide the administrative expenses for the conveyance prior to the District performing those activities.

(3) The legislation stating that USACE would convey the park and recreation area "without consideration" means USACE would not charge a fee for the property. USACE policy for implementing Title 10 of the U.S. Code allows charging "administrative expenses" that it would incur to transfer the property to Augusta-Richmond County.

(4) The costs for the conveyance (administrative expenses) are not to be included in the costs to implement the Section 1319 alternatives. Similar costs were not included to implement the design in the GRR.

SAD Position/Response(s):

(1) SAD concurs with the District's position.

(2) SAD concurs with the District's position.

(3) The legislation stating that USACE would convey the park and recreation area "without consideration" means USACE would not charge a fee or fair market value for the property. USACE policy for implementing Title 10 of the U.S. Code (U.S.C 2695) allows charging "administrative expenses" to include a disposal report, disposal package, environmental review, legal review, and any other fees incurred in the preparation and recording of such documents required to transfer the property to Augusta-Richmond County.

(4) SAD concurs with the District's position.

5. Paragraph 6. De-Authorization.

Concern. The legislation states the lock and dam is de-authorized but does not address de-authorization costs associated with the NSBLD project. The NSBLD de-authorization process includes significant cultural resources requirements such as the production of a Historic American Engineering Record (HAER) report.

District Questions under this Paragraph:

(1) Will the District be required to complete a separate de-authorization study (from the WIIN Analysis) whereby the costs of the lock and dam de-authorization are funded and captured under the NSBLD project or is the SHEP required to assume these costs? Note: The cultural resource studies and HAER process could cost in excess of \$200k or more to complete and the current annual O&M budget only funds caretaker status items.

(2) The first sentence of this paragraph uses the following wording to “maintain the current pool, as required by the legislation”. Does wording have any effect on other sections of the Implementation Guidance?

SAS Position on De-Authorization:

(1) A separate de-authorization study is not needed. The District would prepare a separate document (part of the disposal documentation) that describes the separable work activities required prior to transferring the property to Augusta-Richmond County, as well as their estimated costs. The District would provide that document to the County along with an MOU. The County would need to provide SAS with the estimated funding prior to its performing the work. A final accounting would be provided at the time of the conveyance. Activities that are specifically required by the conveyance (such as an Environmental Baseline Survey), would be identified for funding by the County. Activities that are required to obtain environmental approval of the recommended plan (such as Section 106) would be borne by SHEP.

(2) The wording in paragraph 6 does not have any effect on other portions of the Implementation Guidance.

SAD Position/Response(s):

(1) SAD concurs with District’s position. Congress has already de-authorized the NSBL&D project. The District is not required to prepare a separate de-authorization study. Effects on cultural resources and mitigation, if any, should be included in the analysis of alternatives. Regarding the Historic American Engineering Record (HAER) report normally prepared for proposed de-authorizations, summary information addressing this requirement should be included in the District’s report; however, the level of effort required is expected to be minimal, as there is nothing unique about the design or construction of NSBL&D. Since the analysis and report (including remaining environmental approvals) are tied to replacement of or alterations to NSBL&D to provide for a fish passage (while maintaining water supply and recreation), the work required to prepare the analysis and report is a SHEP expense and cost-shared accordingly.

(2) Acknowledging that Congress de-authorized the NSBL&D project, the District is nonetheless required to “maintain the current pool” as it existed 16 Dec 2016. SAD’s position is that maintaining the pool includes natural variability of the top of pool elevation. Maintaining the pool would not include dewatering or operational changes without approval from SAD. If dewatering or operational changes are required to construct an alternative, the District should include the effects of those actions in the analysis. This paragraph does not alter or modify other requirements of the Implementation Guidance.