

CECW-I

Circular
No. 11-2-189

31 December 2005

EXPIRES 30 September 2006
Programs Management
EXECUTION OF THE ANNUAL CIVIL WORKS PROGRAM

1. Purpose. The Energy and Water Development Appropriations Act, 2006 (P.L. 109-103) includes new legal limitations that severely constrain many of the Corps existing processes and procedures used in the execution of the Civil Works program. This Circular provides Corps of Engineers (Corps) program and project management policies and practices to ensure that execution of the Fiscal Year (FY) 2006 annual appropriations is conducted in accordance with the statute, direction and intent of the Administration and Congress. This document provides guidance and is not to be construed as an official legal opinion regarding any particular item in the Act or accompanying Reports. It documents changes in Corps processes that must be incorporated into FY2006 execution plans and acquisition strategies to ensure that implementation of programs, projects, and activities (PPA) in FY2006 complies with the new legal restrictions and commitments made to the Congress. A PPA is an authorized water resources project, or an authorized environmental assistance program, or a water resources project study, or a project implemented pursuant to one of the Continuing Authorities, or work that has received an allocation or sub-allocation in any Act or has been directed to be performed in any Act, or work that has received an allocation or sub-allocation within tables in any Statement of Managers / Conference Report for any fiscal year, or work that has received an allocation or sub-allocation within tables in any House Report or Senate Report for any fiscal year if not superseded by the applicable Statement of Managers / Conference Report.

2. Applicability. This Circular applies to all HQUSACE elements, major subordinate commands and district commands having Civil Works responsibilities. It is applicable to all Corps of Engineers Civil Works programs, projects, and activities (PPA) in all Civil Works Appropriations upon publication of this Circular. This guidance is effective immediately, and supersedes all other reprogramming guidance including ER 11-2-201. District and Division offices shall inform CECW-I of any problems with the implementation of this guidance.

3. References.

- a. AR 5-1, Army Management Philosophy
- b. AR 11-2, Management Control
- c. FM 22-100, Army Leadership
- d. ER 5-1-11, Management, USACE Business Process
- e. ER 37-2-10.
- f. 31 U.S.C. §1301.
- g. 31 U.S.C. §1341.
- h. 31 U.S.C. §1513(a).
- i. 31 U.S.C. §1517(a).

- j. Rivers and Harbors Act of 1922, ch. 427, §10 42 Stat. 1043; Pub. L. 67-362 (codified at 33 U.S.C. §621).
- k. Water Resources Development Act of 1999, Pub. L. 106-53, §206, 113 Stat. 286 (codified at 33 U.S.C. §2331).
- l. Energy and Water Development Appropriations Act of 2006, Pub. L. 109-103, House Report (H.R. Rep. No. 109-86), Senate Report (S. Rep. No. 109-84), and Statement of Managers (H.R. Conf. Rep. No. 109-275).
- m. ER 1105-2-100

4. Objective. The objective for the execution of the FY2006 Civil Works Program is to maximize progress on Corps PPA consistent with P.L. 109-103 and the accompanying Statement of Managers and House and Senate Reports while achieving effective and efficient expenditure of available funds.

5. Program Management. To ensure adherence to the directions of Congress, the Corps must substantially change its Civil Works business processes. The Corps has modified its process for allocating funds from annual to quarterly for the Investigations (GI), Construction (CG), Mississippi River and Tributaries (MR&T), and Operation and Maintenance (O&M) accounts, based on actual schedules and project performance. The goal of the FY2006 program execution is to accurately schedule work, based on the funds identified by Congress for PPA, and then to execute the schedule. Measurement of program execution will no longer focus on expenditure of available funds. For FY2006, MSC performance will be tracked and evaluated based on the development of accurate schedules and then the execution of the programmed schedule, to include acceptance of programmed carryover. To implement the intent of this Circular, Program and Project Managers and their Project Development Teams (PDT's) at all levels within the Corps shall adhere to the following principles:

a. Execution – The Corps will execute the annual appropriations in accordance with the direction and intent of the Administration and Congress, responsibly advancing programs, projects, and activities (PPA) that comprise the Civil Works program. To the extent practical and within the scope of law, it is Corps policy to carry out the guidance involving project allocations expressed in the Statement of Managers accompanying the Conference Report, or the House Report or Senate Report, if not superseded by the Statement of Managers. In order to honor our commitments, new fiscal management practices adopted for FY2006 move away from past policies that focus on execution of available funding, to the development of accurate schedules based on the funds identified by Congress for PPA, and then executing those schedules. With the emphasis on executing the program in accordance with congressional intent, a higher level of carryover funds is anticipated in FY2006 until all execution and budget processes are aligned with the Corps' new financial management and acquisition strategies.

b. Reprogramming – The Corps will reprogram to or from a PPA in only accordance with the new legal restrictions and Corps policy. No reprogramming will create or initiate a new PPA, eliminate a PPA, increase funds or personnel for any PPA for which funds have been denied or restricted by P.L. 109-103, or use funds directed for a specific activity by the House or Senate Appropriations Committees for a different purpose. In addition, even if a proposed reprogramming would not violate one of the four prohibitions listed above, reprogrammings will not exceed the limits established by P.L. 109-103(a)(5) and (6) without prior notification of the House and Senate Committees on Appropriations.

c. Continuing Contracts – The Corps cannot plan to use continuing contracts (i.e., solicit using the true continuing contract clause), unless we first obtain the approval of the Secretary of the Army (Civil Works) (ASA(CW)). Moreover, acquisition strategies must focus primarily on the use of fully-funded contracts, or – alternatively – to incrementally fund contracts. When conditions warrant, the Corps will use continuing contracts carefully and judiciously to ensure that there is a studied, deliberate, and credible plan to limit the contractor to the amount appropriated for the PPA in FY2006, and to pay for the future year(s) continuing contract obligations.

6. Programmed Schedule. At the beginning of FY2006, obligation and expenditure schedules will be developed in the PRISM 2101 database LVL B in accordance with guidance contained in Appendix D. Work allowances for PPA in the GI, CG, MR&T, and O&M accounts will be issued quarterly based on the PRISM 2101 PPA obligation schedule. To ensure sufficient work allowances are issued each quarter, items that must be considered in development of PPA obligation schedules include:

a. Type of construction contract. For contracts without the continuing contract clause, the PRISM 2101 obligation schedule should include sufficient funding required at the time of the scheduled contract award to cover the awarded amount. When the Resource Manager cannot certify that sufficient funds are available at the time of solicitation, AFARS 5101.602-2(a)(ii) permits the Contracting Officer to solicit for the contract so long as there "is a high probability that the requirement will not be canceled." For contracts with the continuing contracts clause, the PRISM 2101 obligation schedule should include sufficient funding required to cover Government estimate for FY2006 provided that the amount does not exceed the sum of the amount provided for the PPA in FY2006, FY2005 carryover funds, and any approved reprogramming amounts. In support of the PRISM 2101 LVL B obligation and expenditure schedule, a listing of scheduled contract awards will be reported in PRISM.

b. Unscheduled Obligations and Expenditures. PRISM 2101 LVL B obligation and expenditure schedules are to be developed to accurately reflect and identify programmed carryover. It is the Corps' intention to not revoke programmed carryover scheduled in the PRISM 2101 database (described in paragraph 7) from a PPA, unless it is identified as "excess". Priority for use of excess funds will be determined by the Regional Business Center in coordination with the HQUSACE RIT and CECW-I; however, any reprogramming of any excess funds will adhere to the limitations detailed in paragraph 10 of this Circular.

7. Programmed Carryover. The emphasis in developing the FY2006 PRISM 2101 Schedules is to schedule accurately, and execute what has been scheduled. With the emphasis on executing the program in accordance with congressional intent, a higher level of carryover funds is anticipated in FY2006 until all execution and budget processes are modified to align with the Corps' new financial management and acquisition strategies.

a. Programmed carryover that is acceptable includes:

(1) Funds that are scheduled to be obligated but unexpended in FY2006. This type of programmed carryover includes funds obligated on fully funded contracts, real estate actions, etc. that are not scheduled to be completed until FY2007 or later.

(2) The following unobligated funds:

(a) Funds earmarked for a PPA in Act language.

(b) Funds for a PPA that is not funded in the President's FY2007 budget because it was scheduled for completion in FY2006.

(c) Funds that are for a PPA not funded in the President's FY2007 budget because it is low budget priority or inconsistent with policy, and is needed to complete work on the PPA, except in the case of O&M work.

(d) Funds for a PPA for which work was rescheduled to FY2007 due to insufficient Federal or non-Federal funding during FY2006, except in the case of O&M work, that could be used in FY2007 in conjunction with FY2007 appropriated funds.

b. Funds that cannot be used in FY2006, and are not described in paragraph 7a, will be treated as "excess" and available for reprogramming.

8. Work Allowances.

a. General. Work allowances are issued to ensure that the funds appropriated by Congress are used for the purposes intended by Congress (31 U.S.C. 1301). Work allowances are the work authorization documents for the field that specify the amount of funds available for obligation and expenditure on each item of work. The actual funds distribution document is the Funds Authorization Document (FAD).

b. Work Allowances. Initial work allowances, tabulated by district, are provided to District Commander, MSC Commanders, and to the Directors of laboratories and field operating activities at the beginning of the fiscal year following apportionment by the Office of Management and Budget (OMB). These work allowances reflect the intent of Congress as expressed in the Act and/or in the accompanying House or Senate Reports, and Statement of Managers as modified by Administration policy where appropriate. Every effort shall be made to execute the program in accordance with these work allowances and instructions contained in this Circular. The amount available for scheduling each item of work is the sum of the unobligated funds carried over from FY2005, funds transferred to FCCE and "owed", and allocations or sub-allocations contained in P.L. 109-103 or the accompanying Statement of Managers, or House or Senate Reports.

c. Allocation of Work Allowances. Work allowances will be allocated by the Account Managers in CECW-I quarterly for the GI, CG, MR&T, and O&M accounts. For the remaining Accounts, work allowances (based on the amount contained in the Statement of Managers) will be allocated by the Account Manager at the beginning of FY2006. For the GI, CG, MR&T, and O&M accounts, the amount to be allocated at the beginning of each quarter will be based on the obligation schedules developed in the PRISM 2101 database. Initial work allowances for FY 06 will cover the first two quarters and will be issued based on the baseline obligation requirements. Thereafter, quarterly allocations may be adjusted quarterly for actual execution. If there is a need for advance work allowance during a quarter (i.e., due to a proposed contract award for more than government estimate, etc.), a request will be furnished through the MSC and HQUSACE RIT, and coordinated with the CECW-I Account Manager. The request shall include a justification defining the need for the additional work allowance amount, and an assessment of the impacts on the availability of funds for the rest of the fiscal year. If the request will result in exceeding the available annual work allowance, a source is to be provided for reprogramming needs. However, any proposed reprogramming action must be within the limitations defined in paragraph 10 of this Circular. These impacts on the execution schedule must be documented in the PRISM 2101 LVL C. While it is understood there will be variances in program execution throughout the year, variances caused by advancing project activities beyond the intent of Congress shall not be the basis for requesting advance issuance of work allowances, or for reprogramming. Even though work allowance amounts will be allocated quarterly for the GI, CG, MR&T, and O&M accounts, it does not mean there is a fund held at HQUSACE to be used to meet emergencies or unscheduled events. The work allowance amount available for each PPA will be issued, and should be scheduled.

d. Savings and Slippage. "Savings" is a term used by USACE to reflect funds budgeted or appropriated to a project that are eventually not required to complete the project. Reasons might be bids lower than scheduled amounts, value engineering savings, contractor proposals to reduce costs or others. Similarly, "slippage" has been used to reflect funds programmed for obligation or expenditure during a fiscal year that are not needed during that year because the project falls behind schedule. Reasons might be weather delay, unforeseen site conditions, sponsor considerations or others. It has been past practice to reprogram these "true" savings and slippages to other projects that incur unanticipated costs (e.g. bids higher than expected) or accelerations (e.g. contract progresses faster than scheduled.) Traditionally, the annual Energy and Water Development Appropriation act contained a reduction in one or more accounts for anticipated savings and slippage reflecting the understanding that all work will not be accomplished as planned. The total savings and slippage was pro-rated against all line items within an account, except for those amounts specifically set forth in Act language. For FY2006, the Statement of Managers eliminates an across-the-board reduction for anticipated savings and slippage.

9. Execution Metrics. Work allowances will be issued based on the baseline obligation schedule developed in the PRISM 2101 module (Guidance for development of 2101 schedules contained in Appendix D). The baseline schedule will be compared to actual execution each month as a measure of our ability to plan and execute work. With an increased focus on scheduling and executing work based on Administration direction and congressional intent, new criteria will be used to measure program execution performance. In FY2006, the Corps execution performance measures will move away from the traditional method of measuring execution against available funding. For FY2006, execution performance measurement will be based on development of accurate schedules, and the execution of both the account and work item scheduled. To determine whether we are meeting our commitments to our customers, stakeholders, and the Congress, the following metrics will be used by HQUSACE to monitor corporate execution:

a. Obligation Schedules. Accurate Obligation Schedules will be important to ensure quarterly distribution of work allowances (GI, CG, MR&T, and O&M accounts) to meet scheduled activities for the fiscal year. Schedules should be tied directly to activities defined in the Project Management Plan (PMP), such as construction contract advertising schedule, execution of cost sharing agreements, etc., to ensure sufficient work allowances are available for contract award. Accurate obligation schedules are essential and must be related to the development of project needs in FY2007 (budget and statement of capability). The corporate metric for obligation schedules will measure the baseline schedule (scheduled obligations versus actual obligations) for the GI, CG, MR&T, O&M, REG, GE, FUSRAP, and FCCE accounts. Successful program execution will be considered to be within a +/- five (5) percent variance of actual versus scheduled obligations at the account level, plus the number of projects/activities (defined by a separate work allowance) that exceed the variance. This metric should be measured monthly by the MSC, and will be reported quarterly to CECW-I, to include an explanation of the corrective actions that will be taken to bring the account within the successful program execution variance limits. Quarterly work allowances for the GI, CG, MR&T, and O&M accounts will be adjusted based on the accuracy of executing the baseline program. In developing obligation schedules during the development of the baseline schedule, the following information shall be documented in PRISM for use in verifying schedules:

(1) A listing of the FY2006 scheduled construction contract awards greater than \$100,000 in the CG, MR&T, and O&M accounts. Routine service contracts funded under the O&M account and O&M portion of the MR&T account are not included. The listing should be by PPA and include (1) the month for award, and (2) the type of contract (fully funded, base with options, incrementally funded, and whether the contract will have the continuing contract clause).

(2) A listing of the FY2006 scheduled Feasibility Cost Sharing Agreements (FCSA) for water resources project-related studies, Design Agreements, and Project Cooperation Agreements (PCA). The listing will be by PPA and include the month of execution for the agreement.

(3) For PPA with programmed carryover, the carryover should be identified in accordance with the types of carryover listed in paragraph 7. Carryover identified as excess (see paragraph 7.b.) may be considered for reprogramming within the limitations defined in paragraph 10 of this Circular. The process for documenting the type of programmed carryover is contained in Appendix D.

b. Expenditure Schedules. With the emphasis now being placed on accuracy of schedules, and not on expending available funds, the focus of measuring program expenditures will be used as an internal control to measure our ability to complete scheduled activities. The corporate metric for expenditure schedules will measure the baseline schedule (scheduled expenditures versus actual expenditures). Successful program execution will be considered to be within a +/- five (5) percent variance of actual versus scheduled at the account level, plus the number of PPA (defined by a separate work allowance) that exceed the variance. This metric will be reported quarterly, to include an explanation of the corrective actions that will be taken to bring the account within the successful program execution variance limits.

c. Milestones. Meeting our commitments to customers and stakeholders means executing our program as appropriated and scheduled. Developing schedules based on milestones, and then measuring completion of milestones will be a key indicator for determining if we are meeting our commitments. As such, the third program execution metric will be a measurement of the accuracy of milestone execution (construction contract awards, and execution of agreements). The metrics are defined as follows:

(1) Construction Contract Awards. This metric will evaluate new construction contract awards (greater than \$100,000) in the CG, MR&T, and O&M accounts developed as part of the requirements listed in paragraph 8.c. The goal will be to award 95 percent of the contracts scheduled by quarter. In developing schedules, the goal is to schedule 50 percent of contract awards by the end of the second quarter, and 80 percent of all contract awards by the end of the third quarter of FY2006. This metric will be tracked on a quarterly basis the schedule for award of new construction contracts (used in developing the baseline obligation schedule) versus actual construction contract awards.

(2) Execution of Agreements. This metric will evaluate execution of Feasibility Cost Sharing Agreements, Design Agreements, and Project Cooperation Agreements in the GI, CG, and MR&T accounts developed as part of the requirements listed in paragraph 8.c. The goal will be to execute 100 percent of the agreements scheduled by quarter.

10. Reprogramming.

a. General. Section 101 of Title I, P.L. 109-103, and the accompanying Statement of Managers replace previous Congressional guidance with respect to the reprogramming of Civil Works funds. In particular, section 101 establishes legal limits restricting the Corps reprogramming ability. These new limitations apply to all appropriations in P.L. 109-103, and to all carryover funds remaining from previous Civil Works appropriations, and carried into FY2006. The intent of this Circular is to explain the legal restrictions on reprogramming of Civil Works funds, and to transmit the Corps policy for reprogramming funds deemed to be excess to PPA needs, as defined in paragraph 7 of this Circular. This guidance replaces the past practice of allowing temporary "cash flow" reprogrammings from PPAs that will require the funds some time later, and is effective for all reprogrammings that have been accomplished since enactment of P.L. 109-103 (19 November 2005). As the Corps strives to improve its financial and program management, the goal in program execution will be to develop accurate and achievable schedules that will provide the ability to identify any reprogramming needs early in the fiscal year. Through development of accurate schedules, Program and Project Managers should strive to limit the number of reprogramming actions on individual PPA to no more than one reprogramming action per year. This should be attainable through maintenance of a current Project Management Plan (PMP), and accurate development of the PRISM 2101 obligation and expenditure schedules. The focus is to execute funds on the PPA for which the funds were appropriated. In situations where there is uncertainty on application of the following reprogramming definitions, limits, or policies, involvement of the vertical team through the HQUSACE RIT and CECW-I Account Manager is essential to ensure consistent application of this guidance.

b. Definitions.

(1) A **program, project, or activity** is an authorized water resources project, or an authorized environmental assistance program, or a water resources project study, or a project implemented pursuant to one of the Continuing Authorities, or work that has received an allocation or sub-allocation in any Act or has been directed to be performed in any Act, or work that has received an allocation or sub-allocation within tables in any Statement of Managers / Conference Report for any fiscal year, or work that has received an allocation or sub-allocation within tables in any House Report or Senate Report for any fiscal year if not superseded by the applicable Statement of Managers / Conference Report.

(2) The **reprogramming baseline** for each PPA is the FY 05 unexpended carryover, plus any amount revoked from the project in FY2005 for transfer to the FCCE account and to be returned to the

project upon receipt of an Emergency Supplemental Appropriation, plus the amount provided by Congress for FY2006.

(3) **Reprogramming** is any reallocation of funds into or from a PPA. There are no distinctions made for prior year restorations or revocations. All are considered reprogramming actions.

(4) For determination of delegated reprogramming limits in paragraph 10.d(6)., the **cumulative amount** is the net value for each reprogramming action for a specific PPA. For example, on a specific project with a baseline of at least \$4 million, there are three reprogramming actions. The first increased the project amount \$1,500,000; the second decreased the project amount \$350,000; and the third increased the project amount \$1,000,000. The cumulative amount for would be \$2,150,000 (Sum = \$1,500,000 - \$350,000 + \$1,000,000). The third reprogramming action could not be accomplished until notification and coordination with the House and Senate Appropriations Committees by the Assistant Secretary of the Army (Civil Works) of the intent to reprogram funds in accordance with 101(a)(5) and (a)(6). In any reprogramming action, the cumulative amount must be calculated for both the receiving and source projects to determine if Congressional notification is required.

(5) An **emergency** is any event that could threaten public health, safety or the integrity of project features or could cause substantial adverse economic or environmental impacts.

c. **Reprogramming Limits.** Section 101 (a) and (b) of Pub. L 109-103 included legal provisions governing the Corps' ability to reprogram funds. It must be fully understood that provisions contained in subsections (a)(1) through (a)(4) are absolute prohibitions on reprogramming, and must be determined not to apply to the proposed reprogramming action prior to proceeding to the limits as described in subsections (a)(5) and (a)(6). The text of Section 101(a) is included below.

SEC. 101.(a) None of the funds provided in title I of this Act, or provided by previous appropriations Acts to the agencies or entities funded in title I of this Act that remain available for obligation or expenditure in fiscal year 2006, shall be available for obligation or expenditure through a reprogramming of funds that:

- (1) creates or initiates a new program, project or activity;*
- (2) eliminates a program, project or activity;*
- (3) increases funds or personnel for any program, project or activity for which funds have been denied or restricted by this Act;*
- (4) proposes to use funds directed for a specific activity by either the House or the Senate Committees on Appropriations for a different purpose;*
- (5) augments existing programs, projects or activities in excess of \$2,000,000 or 50 percent, whichever is less, unless prior approval is received from the House and Senate Committees on Appropriations;*
- (6) reduces existing programs, projects or activities in excess of \$2,000,000 or 50 percent, whichever is less, unless prior approval is received from the House and Senate Committees on Appropriations;*
- (7) creates, reorganizes, or restructures a branch, division, office, bureau, board, commission, agency, administration or department different from the budget justifications submitted to the Committees on Appropriations or the table accompanying the Statement of Managers accompanying this Act, whichever is more detailed, unless prior approval is received from the House and Senate Committees on Appropriations.*

(b) Subsection (a)(1) shall not apply to any project or activity authorized under section 205 of the Flood Control Act of 1948; section 14 of the Flood Control Act of 1946; section 208 of the Flood Control Act of 1954; section 107 of the River and Harbor Act of 1960; section 103 of the River and Harbor Act of 1962; section 111 of the River and Harbor Act of 1968; section 1135 of the Water Resources Development Act of 1986; section 206 of the Water Resources Development Act of 1996; sections 204 and 207 of the Water Resources Development Act of 1992 or section 933 of the Water Resources Development Act of 1986.

d. Implementation of Reprogramming Authorities. In light of these legal provisions, the Corps has changed its reprogramming policies for FY 2006. We are confident that these policies comply with the reprogramming provisions enacted in Section 101. Nonetheless, if a District believes exceptional facts exist that would permit a reprogramming that is not consistent with this Circular, but are consistent with the law, it should forward a request for waiver from this policy with an explanation of its position thru the MSC/RBC to CECW-I and the Office of the Chief Counsel for consideration.

(1) In accordance with this provision, reprogramming can not be used to fund a PPA that was not included in P.L. 109-103, the FY2006 President's Budget Request, House Report, Senate Report, or Statement of Managers that accompanies P.L. 109-103. This guidance applies to all accounts. A new project should be considered to be any project not performed on a routine basis. Thus, recurring maintenance activities funded in the O&M account and Maintenance portion of the MR&T account are not classified as a new or created PPA. Beach renourishments not funded in the House Report, Senate Report, or Statement of Managers are classified as new PPA.

(2) Where funds are reprogrammed from a PPA, a portion of the funds must be retained on the PPA. Funds reprogrammed from a PPA must be excess to FY2006 needs, will not create a commitment for a future "payback", and can not exceed the limits described in paragraph 10.d.(6) of this Circular without notification of the House and Senate Appropriations Committees.

(3) Reprogramming may not be used to increase the funds or personnel for any project, program, or activity for which funds have been denied or restricted in the Act. "Denied" refers to:

(a) any PPA where the funds are expressly denied in the Act, or in the narrative language of the Statement of Managers, or House and Senate Reports if not superseded by the Statement of Managers, such as "None of the funds available within this account are available to reimburse the Claims and Judgment Fund", or

(b) to any PPA that is listed in a table, with \$0 in the Statement of Managers.

Omission of a PPA from a table should not be considered a denial unless the PPA is also expressly denied funding Act or in the narrative language. "Restricted" refers to any PPA where funds are expressly limited in the Act, or in the narrative language contained in the Statement of Managers, or House and Senate Reports if not superseded by the Statement of Managers, that stipulates a limit, such as "Within the funds provided, the conferees direct that not more than \$xxx shall be provided...", or "Within the funds provided, the Corps is directed to use up to \$xxx to study...." In these cases the funds are deemed restricted and the amount may not be increased through a reprogramming action. However, if the language stipulates simply, "Within the funds provided \$xxx is provided to...", or "The conference agreement includes \$xxx, of which \$yyy is to ...", these phrases are not to be read as "restrictions" and funds may be reprogrammed into or from the PPA in accordance with other guidance in this Circular.

(4) Reprogramming may not enable the use of funds for a different purpose from that directed for a specific activity by either the House or Senate Committee on Appropriations. This means that if a PPA received an allocation for FY 2006, and if the narrative language in the House Report or the Senate Report directed how the funds allocated to the PPA are to be used, or how any portion of such funds is to be used, the funds, or the affected portion thereof, may not be reprogrammed to another PPA. This restriction applies even when funds are excess to FY2006 needs for a specific activity. An example of this limitation on reprogramming includes any Environmental Infrastructure Program that is listed as funded in the Statement of Managers, and for which either the House Report or Senate Report identified a specific amount. Districts should not consider funds to be directed for a specific purpose when the PPA is included in an account table without an accompanying specific direction to fund the PPA in narrative language of the Reports.

(5) Reprogrammings to or from a project, program, or activity for which the allocation is specified in the Act are prohibited.

(6) Reprogrammings that are not prohibited subparagraphs (1) through (5) above, that increase or that reduce a PPA a cumulative amount of more than \$2,000,000 or 50 percent of the baseline, whichever is less, will not be undertaken until after notification by the Assistant Secretary of the Army (Civil Works), and the House and Senate Committees on Appropriations. Subject to the other limitations in this EC, reprogrammings that increase or that reduce a project, program, or activity a cumulative amount of no more than \$2,000,000 or 50 percent of the baseline, whichever is less, may be undertaken without prior notification with the Appropriations Committees or ASA(CW). Examples for demonstrating the process for calculating the notification limit is contained in Appendix E.

(7) Reprogramming may not be used to create, reorganize, or restructure a branch, Division office, bureau, board, commission, agency, administration, or department different from the budget justifications submitted to the Committees on Appropriations or the table accompanying the Statement of Managers, whichever is more detailed, until the House and Senate Committees on Appropriations are notified.

(8) Reprogramming may be used to initiate a new project or activity under the Continuing Authorities Program so long as that project is named in an Energy and Water Development Appropriation (E&WD) Act or a Statement of Managers accompanying an E&WD Act from FY2001 thru FY 2006; however, reprogramming into and out of the –Continuing Authorities Program is not allowed since the funding amounts were established in Act language.

e. Source of Funds for Reprogramming. Section 101 of P.L. 109-103 drastically limits the sources of funds legally available for Civil Works reprogramming actions. For FY2006, the goal is for each reprogramming to be treated as a one time transaction with no commitment or expectation to return funds to the source PPA. To accomplish this, it would mean the only source for reprogramming would be those funds defined as excess programmed carryover in paragraph 7b of this Circular. However, as the Corps strives to improve its financial and program management procedures during FY2006 there will still be instances where this may not be possible. In identifying source funds for a proposed reprogramming, the following priorities should be followed:

(1) Excess programmed carryover (as defined in paragraph 7b of this Circular) that is not required for a PPA in any fiscal year.

(2) Excess programmed carryover (as defined in paragraph 7b of this Circular) from a budgeted PPA that is not required in FY2006, subject to the reprogramming limitation in 10.d.4 above.

(3) Programmed carryover (as defined in paragraph 7a of this Circular) from a lower priority PPA.

The use of these funds described in paragraph 10e(3) must be coordinated with, and concurred in, by the vertical team including the RIT and the CECW-I account manager prior to reprogramming. The reprogramming policies defined in paragraph 10 apply to the source PPA as well as the gaining PPA (see Appendix E for examples). If a special condition arises regarding a potential reprogramming action, involvement of the vertical team through the HQUSACE RIT and CECW-I Account Manager is essential to ensure consistent understanding of the new reprogramming guidance.

f. Documentation of field reprogrammings must be loaded into the Field Transfer Module in the PRISM database documenting the reprogramming action. Accurate descriptions explaining the use of the funds on the gaining PPA, and the reason the funds are excess to the source PPA must be included in the PRISM Field Reprogramming option within the Work Allowance Module.

g. Reprogramming that result in cumulative amounts exceeding \$2,000,000 or 50 percent of a PPA baseline (as defined in paragraph 10c(6) above) must be submitted through the MSC to the HQUSACE RIT for action. The goal is to process only one reprogramming action that requires House and Senate Appropriations Committee notification per year for a PPA. This should be accomplished through development of accurate schedules at the beginning of the fiscal year. The reprogramming

request should include a draft memorandum for congressional notification. The reprogramming request should document an explanation for the need of additional funds, an explanation as to why the funds are excess to source PPA(s) needs, and reprogramming actions accomplished to date. The notification letter will be submitted by the ASA(CW) to the House and Senate Appropriations Committees. A sample letter is included in Appendix A. A minimum of 5 working days should be provided for the HQUSACE coordination. An additional 5 working days should be provided for ASA(CW) review and coordination. The House and Senate Appropriations Committees will be asked to provide their views within a 10 working day period. The time frame for notification runs only when Congress is in session. If no concerns are received from Congress during the notification period, HQUSACE will execute the reprogramming action. It is emphasized that Congressional concerns or other business could extend the response time. Districts are encouraged to plan and process reprogramming requests as early as possible.

h. Reprogramming for Emergencies. The reprogramming limits defined in paragraph 10.c. apply for all reprogramming actions including emergencies. If an emergency exists that requires a reprogramming action and the reprogramming action is permissible under this Circular, but would be in excess of the \$2,000,000 or 50 percent of the PPA baseline, the procedures in paragraph 10.g. will be followed. However, HQUSACE and ASA(CW) reviews will be expedited, and the House and Senate Appropriations Committees will be asked to provide their views within two working days. It is emphasized that we can ask, but it is a Congressional prerogative to take the time they need and we should process these actions to them as soon as we understand the need.

i. Flood Control and Coastal Emergencies. In accordance with longstanding practice, the ASA(CW) will provide the Appropriations Subcommittees with prior notification of intent for any proposed transfer of funds to the FCCE account pursuant to Public Law 84-99. The revocation of funds from a PPA for transfer to the FCCE account is not a reprogramming. When FCCE funds are next appropriated, any amount appropriated to repay the amounts transferred will be paid back to the PPA from which the funds were revoked for the transfers.

j. Reprogramming to Unbudgeted PPA. There is long-standing Army policy against using reprogramming to accelerate PPAs that are not supported by the Administration for funding. Reprogramming to unbudgeted PPA is prohibited except to meet a reprogramming commitment in accordance with paragraph 10k.(1) of this Circular.

k. Reprogramming Commitments.

(1) Prior Year Reprogramming Actions. The Act and accompanying reports generally discourage the reprogramming from one project to another. Accordingly, Districts will not initiate a reprogramming for the sole purpose of restoring funds previously programmed out of a project. There must be a sound business case and project need for each reprogramming.

(2) Fiscal Year 2006 Reprogramming Actions. Any new reprogramming action in FY2006 shall be treated as a one time transaction with no commitment or expectation to return funds to the source PPA. Non-Federal sponsors and stakeholders must fully understand that a reprogramming action will not affect execution of PPAs for that fiscal year, since the funds used to source the action should be excess to PPA needs for FY2006 and not included in programmed carryover.

l. Data and Reports.

(1) PRISM 2101 Obligation and Expenditure Schedules. Development of PRISM 2101 obligation and expenditures schedules shall be accomplished in accordance with the guidance contained in Appendix D.

(2) PRISM Field Reprogramming option within the Work Allowance Module. In accordance with congressional direction, the Corps will provide quarterly reports to the House and Senate Appropriations Committee documenting all reprogramming actions. To ensure the reports are accurate, all reprogramming actions for all accounts (GI, CG, MR&T, and O&M) are to be recorded in the PRISM

Field Transfer module. Actual transfer of funds in CEFMS cannot be done prior to receipt of the Field Transfer Confirmation Report issued by CECW-I.

11. Continuing Contracts.

a. General. Two provisions of P.L. 109-103 drastically limit the Corps discretion to use its continuing contract authority, and these changes require substantial changes to the execution of our program. Historically, the Corps has routinely employed continuing contracts to reduce the total cost of construction and minimize carryover. Section 106 and 108 of P.L. 109-103, in conjunction with the reprogramming limitations in Section 101(a), require the Corps to change its historical approach, and consider acquisition alternatives such as full funding and incremental funding to implement the program. These legal restraints reflect a new congressional intent that continuing contracts should be a procurement vehicle of last resort for Civil Works construction, rather than a commonly used contracting approach as was done in the past. A general overview of the new provisions associated with use of continuing contracts follows:

(1) Section 106 of P.L. 109-103 amends the Corps continuing contract authority in Section 206 of the Water Resources Development Act of 1999 (P.L. 106-53), which required the use of continuing contracts for water resources projects funded by the CG, O&M, and MR&T accounts to apply only to the O&M account and the Maintenance portion of the MR&T account. As applied to the O&M account and the Maintenance portion of the MR&T account, a "project" is construed to be synonymous with a contract; consequently, a continuing contract is required only when sufficient funds are not available to fully fund the contract. For the CG account and the MR&T CG sub-account, a continuing contract should be used only as a last resort, and may only be used in accordance with this Circular. Any continuing contract awarded under section 106 must not commit an amount in excess of the amount appropriated for that PPA in FY2006 as described in the following paragraph. Therefore, to ensure that funds reserved on the continuing contract will last until the end of FY2006, it may be necessary to delay award of a contract until later in FY2006.

(2) Section 108 of P.L. 109-103 limits the Corps' ability to enter into a continuing contract or make modifications to an existing continuing contract that commits the Government to an amount for a project in excess of the amount appropriated for a PPA pursuant to the Act, except as may be reprogrammed within the limits outlined in paragraph 10 of this Circular, or through the use of unobligated balances from FY2005 retained for the PPA. In other words, the Corps can not award a new continuing contract, or reserve an additional amount in an existing continuing contract in excess of the amount appropriated for the project in P.L. 109-103, plus any permitted reprogramming, or unobligated carryover. This restriction on the use of the continuing contract applies to both new awards and existing continuing contracts. Since the current continuing contract clause (EFARS 52.232-5001) permits the contractor to work beyond the amount reserved for the contract, the Corps cannot solicit or award a new contract containing that clause without first notifying the Appropriations Committees of the need for additional reprogramming under Section 101(a)(5) or (a)(6). When a contract cannot be fully funded, before considering a continuing contract, the Contracting Officer should consider using the incremental funding clause in the Defense Federal Acquisition Regulation Supplement (DFARS) Part 252.232-7007.

b. Development of Acquisition Strategies. In developing FY2006 acquisition strategies, the focus must be to first scope project activities in such a way that scheduled FY2006 activities can be accomplished within available funding. For fully funded contracts, funds are to be available for the entire contract amount, and can be awarded without HQUSACE and ASA(CW) approval. For incremental funding, the amount reserved to the contract must not exceed the amount appropriated, plus any FY2005 carryover, and any amounts that will be reprogrammed to the project prior to award, in accordance with the procedures and limits outlined in paragraph 9 of this Circular. For continuing contracts, funds must be available to cover anticipated FY2006 estimated contractor activities, and require ASA(CW) approval. Care must be taken in development of the contract scope and the government estimate, and the timing of the contract award to ensure uncertainties (i.e., escalating energy and material costs, etc.) are adequately included in the government estimate for the contract and FY2006 funds are available to covered scheduled activities for this year, since the reprogramming limits may impact the ability to resolve a high

bid in a timely fashion. Therefore, it is strongly encouraged that the development of contract scopes should incorporate the processes and lessons learned in the Military Program, (i.e., developing contracts scope within 80-90 percent of funds available) to ensure an awardable contract.

c. **Actions on Existing Continuing Contracts.** With respect to existing continuing contracts, the Corps has a bilateral agreement with contractors based on the true continuing contract clause. The Corps, therefore, cannot unilaterally modify existing contracts to require the contractor to work within funds reserved in compliance with the new limitations contained in P.L. 109-103. HQUSACE will develop a standard memorandum for use by Contracting Officers to notify all contractors working under an existing continuing contract that they cannot rely on reprogramming to add funds to their contract, and if funds are exhausted, the Corps may have to consider terminating their contract. The memorandum will also administratively modify the continuing contract to require the contractor notify the Contracting Officer no later than 120 days before the estimated time of the exhaustion of funds. This memorandum must be transmitted to the contractor by the contracting officer. If there is a possibility that the contractor may prosecute work in excess of available FY2006 funding (to include actions such as award of an option or a change order, etc.), the following steps must be taken (in the order provided below) to ensure existing continuing contracts are in compliance with provisions of P.L. 109-103:

(1) Negotiate with the contractor and reach agreement to modify the contract to limit the Government's liability to funds currently available in FY2006. This action could require the contractor to develop and prosecute a schedule based on funding levels that are less than optimum. This option could include items such as the contractor agreeing to not charging the Government for any suspension or demobilization/mobilization costs. Realize that limiting the Government's liability increases the contractor's risk and, therefore, is likely to increase the cost of the contract.

(2) Seek approval to reprogram and add additional funds to the project, if and when the contractor notifies the Corps that it expects to exhaust available funding. Reprogramming of funds into the project will be limited by Section 101 of P.L. 109-103 as described in paragraph 10 of this Circular.

(3) Terminate the contract, and reprocure as a fully funded contract. Since funds are required to terminate the contract and to reprocure as a fully funded contract, the termination and reprocurement may need to occur in different fiscal years.

All of the options listed above could have significant cost implications from a contractual perspective. The actual impacts will depend on factors unique to each contract and project. For all existing continuing contracts, the District assessment and recommendation of which option should be invoked is to be provided to the HQUSACE RIT by 15 January 2006. If it is determined to seek approval to reprogram additional funds into the PPA, the reprogramming must comply with section 101 of P.L. 109-103. This recommendation must be fully coordinated with vertical team to include Contracting and Counsel at all levels of the Corps.

d. **Approval for Award of a New Continuing Contract.** The Corps may not award a continuing contract using the true continuing contract clause (EFARS 52.232.5001) without first obtaining approval to reprogram for any work the contract performs beyond the amount reserved. The ASA(CW) is responsible for approving the use of all continuing contracts. Requests for approval must be submitted before solicitation. The format for requesting the use of a continuing contract is found in Appendix B. In developing the justification for use of a continuing contract, the District must submit an analysis that includes a full review all contracting options (i.e., one fully funded contract, a fully funded contract with options, accomplishing the work with multiple fully funded contracts over multiple years, use of an incrementally funded contract, etc.) to determine the best method for project implementation. The focus of this analysis should relate to the intent of Congress that continuing contracts be used only as a last resort, and not simply recommend the use of a continuing contract based solely on cost savings or efficiencies. In some cases, the best alternative may be to delay the contract award until FY2007 when sufficient funds will be available to fully fund scheduled activities. The recommendation to use a continuing contract should be based on the condition that there is no other means available to the Corps to proceed with the project. Requests for approval to award a continuing contract are to be forwarded via

email to the HQUSACE MSC RIT for coordination with CECW-I and ASA(CW) prior to advertising. All contracts awarded must require the contractor to notify the Contracting Officer no later than 120 days prior to the estimated time of the exhaustion of funds. The schedule for the contract must allow a minimum of 5 working days for HQUSACE coordination, and 10 working days for ASA(CW) review and approval. If the ASA(CW) does not approve award of a continuing contract, the MSC/District must revise the acquisition strategy to award a fully funded contract that can be accomplished within available funding, or to award an incrementally funded contract using the DFARS clause at 252.232-7007. As long as funding for the out years is supported by language in an appropriations act or Statement of Managers, Districts may award incrementally funded contracts without prior approval of CECW-I or ASA(CW).

12. Continuing Authorities Programs (CAP). Guidance and direction contained in the Statement of Managers supporting the FY2006 E&WD Appropriations Act requests that the Corps focus on reducing the backlog of projects in all Continuing Authorities Programs (CAP). In development of the FY2006 management plan, the focus will be to prioritize funding to complete the current phase of each project. In order to assist the Corps in reducing the backlog, the appropriated amounts for the Continuing Authorities Program were increased and included in Act language, which prohibits reprogramming funds into or out of any of the identified Continuing Authority Programs. The appropriation levels included in Act Language for the Continuing Authority Program are:

Section 107	\$12,000,000
Section 103	\$ 7,000,000
Section 205	\$40,000,000
Section 14	\$15,000,000
Section 1135	\$30,000,000
Section 206	\$30,000,000
Sections 204, 207, 933	\$ 5,000,000
Section 208	\$ 300,000
Section 111	\$ 500,000

a. General Guidance. The following guidance is to be used in development of the FY2006 management plans for the various Continuing Authorities Programs:

(1) New or re-start projects may be initiated in any Continuing Authorities Program if they are Named Projects in FY2001 through FY2006.

(2) Work may continue on any phase of any project as funding and priority allows, but no project shall advance to the next phase unless it is Named in the FY2006 Statement of Managers. The exceptions are that funds for design may be provided to those projects with completed feasibility studies, if sufficient funds are available to complete the design in FY2006. Phases are defined in Appendix F of EC 1105-2-100.

(3) The reprogramming limits and delegated limits described in paragraph 10 apply to CAP projects, except that, in accordance with section 101(b), reprogramming may be used to create or initiate a new CAP project. If initiation of a new CAP project is proposed, Committee notification procedures in paragraph 10 will be followed.

(4) No new PCAs or FCSAs are to be executed in FY2006.

(5) Continuing construction contracts will not be used for the Continuing Authorities Program.

(6) Since the appropriations levels were placed in Act language, the Corps is prohibited from reprogramming funds into or out of the various Continuing Authorities Programs identified in P.L. 109-103. This does not preclude the Corps from moving funds between projects within a Section in accordance with policies for reprogramming documented in this Circular. However, an FY2006 Named Project cannot be a source for the funds without prior coordination and approval by CECW-I. For example, if a Section 1135 project needs an additional \$500,000 to complete construction, the funds may

be reprogrammed from another Section 1135 FY2006 unnamed project. The reprogramming limits and delegated authorities defined in paragraph 10c apply to the Continuing Authorities Program. For all CAP reprogramming actions, a PRISM Field Transfer module within the Work Allowance Module will be prepared to document each reprogramming action.

b. Priorities. The Statement of Managers provides priorities for use by the Corps in distributing available funding to reduce the backlog of projects. Funds appropriated for FY2006 will be applied to projects based on the following priorities:

(1) PRIORITY NO. 1: FY2006 Named Projects. Work allowances will be issued based on the amounts listed in the Statement of Managers.

(2) PRIORITY NO.2: Projects (prior year Named or un-Named) with executed PCAs as of the date of enactment of P.L. 109-103. Within priority No. 2, priority will be given to projects with continuing construction from FY2005. Work allowances may be based on the amount required to complete scheduled FY2006 construction activities (i.e., new contracts must be scoped in such a way to allow for completion of construction activities within FY2006 available funds).

(3) PRIORITY NO. 3: Projects (prior year Named or un-Named) with executed FCSAs as of the date of enactment of P.L. 109-103. Within priority No. 3, priority will be given to continuing feasibility studies with work underway in FY2005. Work allowances may be based on the amount to complete the feasibility study. If funds are available and design can be completed in FY2006, work allowances will be provided to advance into the design phase.

(4) PRIORITY NO. 4: other projects specifically named in FY2001 through FY2005. Work allowances may be based on the amount required to complete a phase in FY2006, or to fully fund a construction activity.

A backlog of projects in certain sections of the Continuing Authorities Program may result in a variation to the above priorities. These cases must be coordinated with the vertical team.

c. Scheduling Execution. In accordance with guidance in paragraph 8c., work allowances for all CAP projects will be issued quarterly.

13. Transition from Continuing Resolution. During the period of the Continuing Resolution (CR) (P.L. 109-77), Districts were allowed to prosecute all PPA continuing from the preceding fiscal year by whatever means, including continuing or new contracts, so long as proceeding under conditions set forth in applicable appropriations acts, obligating within amounts allotted, and complying with applicable CR guidance. Reprogramming during the Continuing Resolution was permitted, providing all other provisions of the CR and associated guidance were met. MSCs were cautioned that FY2006 funds allocated to a PPA during the CR would be subtracted from that PPA when initial work allowances are issued following enactment of the 2006 E&WD Appropriations Act. With enactment of P.L. 109-103, work allowances for the first and second quarters of FY2006 will be issued in mid-December. To determine the amount of the initial work allowances, any reprogramming actions accomplished during the CR must be documented. In accordance with the provisions of section 101 of P.L. 109-103, the new reprogramming limits apply to funds provided in FY2006 or from previous appropriation acts. Reprogrammings performed subsequent to enactment of P.L. 109-103 (dated 19 November 2005) within the delegated limits defined in paragraph 10.d. must be documented in the PRISM Field Reprogramming option within the Work Allowance Module. Reprogramming actions that exceed the delegated Corps reprogramming limits defined in paragraph 10.d.(6) will require notification to the Appropriation Committees. Draft reprogramming notification letters relating to the CR are to be submitted to the HQUSACE RIT by 10 January 2006 to ensure sufficient time for coordination at HQUSACE, ASA(CW), and the Appropriation Subcommittees to allow final reprogramming of funds prior to the end of January 2006. Reprogrammings of carried in funds or of FY 2006 funds during the CR that are NOT permissible under paragraph 10.d. must be rectified. CECW-I will be notified at once of each instance. Funds will be revoked or restored from available sources within the Regional Business Center, as appropriate, to bring the reprogrammings within the limits of paragraph 9.c.

14. Reporting Requirements. The Statement of Managers Report (H.R. 109-275) requires the Corps to submit a number of reports to the Congress. Appendix C lists the reports, schedules, and responsible office for preparation of the various reports.

15. Relationship of Program (Budget) Year Minus 1 (PY-1) Execution to Development of PY Budget. As seen by the direction of the Congress in the FY 06 E&WD Appropriations Act and Statement of Managers, the identification of the Corps capabilities for each project is paramount. It is a critical factor in the development of the annual E&WD appropriations acts. The capabilities for FY2007 developed during FY2006 execution become the foundation for Congress' deliberations on the FY2007 program. CECW-I will provide separate schedule guidance so that project schedules are loaded for FY2006 in time to ensure that estimates of contract requirements and capabilities in FY2007 are estimated accurately for the FY2007 budget and for the Five-Year Development Plan for FY2007 through FY2011. A project's capability should represent in dollars the amount of work that can efficiently be accomplished by an optimum schedule in a given year. The capabilities provided must be realistic, true, accurate, and must be updated based on current fiscal year activities. To that end, the PRISM Capability module will be opened quarterly to allow updating of FY2007 capabilities so they are current and accurate. Keeping the PRISM Capability module updated will eliminate data calls through the year.

16. Implementation. This guidance is effective immediately. District and Divisions shall inform CECW-I of any problems with the implementation of this guidance.

FOR THE COMMANDER:



DON T. RILEY
Major General U.S. Army
Director of Civil Works

5 Appendices
APP A – Format for requesting
Subcommittee Approval for
Reprogramming Actions
APP B – Format for approval to award
continuing contracts
APP C – Congressional Reporting
APP D – Obligation and Expenditure 2101
Schedule Development Guidance
APP E - Example of Reprogramming Limit
Calculation

Appendix A

APPROPRIATIONS COMMITTEE NOTIFICATION LETTER FORMAT

Honorable David L. Hobson
Chairman, Subcommittee on Energy
and Water Development, and Related Agencies
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515-6020

Dear Mr. Chairman:

This letter is to notify you that the Department of the Army plans to reprogram \$X,XXX,000 in Fiscal Year (FY) 2006 [Name of Account] funds [to / from] the [Full Name of PPA].

[Use sentence if this is not the first reprogramming in FY 2006: With this reprogramming, the cumulative reprogramming [to / from] the [Abbreviated Name of PPA] will be \$X,XXX,000.] The baseline amount for reprogramming to or from the [Abbreviated Name of PPA] is \$X,XXX,000 [, including unexpended funds carried into FY 2006 [, funds transferred before FY 2006 pursuant to Public Law 84-99 and to be restored,] and funds provided by Congress for FY 2006]. [This reprogramming / With this reprogramming, the cumulative reprogramming [to / from] the [Abbreviated Name of PPA]] will exceed [\$2,000,000 / 50 percent of the baseline amount,] which is the applicable threshold for notification identified in the Public Law 109-103, the Energy and Water Development Appropriations Act, 2006.

The purpose of the [Abbreviated Name of PPA] is to [describe the purpose].
Choose One:

[1 – Reprogramming from PPA: All [previously reprogrammed funds and the] funds planned for reprogramming are surplus to the needs of the [Abbreviated Name of PPA] [in FY 2006 [and FY 2007]] and needed for reprogramming because [discuss reasons]. The Army Corps of Engineers has informed the affected Members of Congress. The recipient programs, projects, and activities are listed in the following table.

PROGRAM / PROJECT / ACTIVITY	<u>\$\$ REPROG</u>
PPA 1	\$ X,XXX,000
PPA 2	\$ X,XXX,000
PPA 3	\$ X,XXX,000
TOTAL	\$XX,XXX,000]

[2 – Reprogramming to PPA: The funds to be reprogrammed will be used to [provide a detailed description of what the additional funds will be used for]. The programs, projects, and activities that are the sources of [previously reprogrammed funds and] the funds planned for reprogramming are listed in the following table. All funds are surplus to the needs of the source programs, projects, and activities for the reasons noted. The Army Corps of Engineers has informed the affected Members of Congress.

<u>PROGRAM / PROJECT / ACTIVITY</u>	<u>\$\$ REPROG</u>	<u>REASON FOR AVAILABILITY OF FUNDS</u>
PPA 1	\$ X,XXX,000	
PPA 2	\$ X,XXX,000	
PPA 3	\$ X,XXX,000	
TOTAL	\$XX,XXX,000]

I am providing a copy of this letter to Ranking member Peter J. Visclosky, and I am sending an identical letter to the Honorable Pete V. Domenici, Chairman, Subcommittee on Energy and Water Development, Committee on Appropriations, United States Senate.

Very truly yours,

John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)

Appendix B

Format for approval to award continuing contracts

Requests for approval to award continuing contracts shall be consistent with the format in the following example.

BUSINESS CASE FOR USE OF CONTINUING CONTRACT

1. Description of the contract. PROVIDE AN OVERALL DESCRIPTION OF THE PROJECT TO INCLUDE SCHEDULE FOR AWARD, CONTRACT DURATION, AND ESTIMATED COST. INCLUDE A DESCRIPTION OF THE BENEFITS THAT WOULD BE ACHIEVED THROUGH AWARDED THE CONSTRUCTION CONTRACT.

2. Contract Earnings and Expected Funding Stream.

- PROVIDE INFORMATION ON THE FUNDING STREAM BY FISCAL YEAR FOR THE CONTRACT
- DESCRIBE FUNDING SOURCES (I.E., INCLUDED IN PY APPROPRIATIONS, PRESIDENT'S BUDGET REQUEST FOR PY+1, ETC.
- DESCRIBE LIKELIHOOD OF FOLLOW-ON FUNDING.

3. Evaluation of contract alternatives. THE FOLLOWING INFORMATION MUST BE DISCUSSED IN THE EVALUATION OF CONTRACT ALTERNATIVES TO DETERMINE IF A CONTINUING CONTRACT MAY BE USED. IF THE ANSWER IS "YES" TO ALL THREE QUESTIONS, A CONTINUING CONTRACT MAY BE RECOMMENDED.

A. IS THE AMOUNT AVAILABLE IN FY2006 SUFFICIENT TO FULLY FUND THE CONTRACT?

B. IF THE AMOUNT AVAILABLE IN FY2006 IS NOT SUFFICIENT TO FULLY FUND THE CONTRACT, ARE THE SCOPE AND ACHEDULE OF THE CONTRACT APPROPRIATE FOR THE FEATURES OF THE PROJECT TO CONSTRUCT? PROVIDE ANALYSIS OF VARIOUS CONTRACTING OPTIONS. ANALYSIS SHOULD PROVIDE PROS AND CONS FOR EACH OPTION INVESTIGATED. NOTE: EFFICIENCIES AND COST SAVINGS ARE NOT SUFFICIENT TO SUPPORT USE OF A CONTINUING CONTRACT. USE OF CONTINUING CONTRACT MUST E BASED ON THE FACT THE WORK CAN NOT BE ACCOMPLISHED THROUGH ANOTHER CONTRACTING VEHICLE, AND IS IN THE BEST INTEREST OF THE GOVERNMENT. CONTRACTING VEHICLES TO BE INVESTIGATED SHOULD INCLUDE, BUT NOT BE LIMITED TO:

- a. Fully Funded Contract -
- b. Multiple Fully Funded Contracts Awarded Sequentially -
- c. Delaying Contract Award Until Sufficient Funding was available.
- d. Fully Funded Contract with Base Bid, and Option(s)
- e. Continuing Contract –

C. IF THE ASSESSMENT OF ALL RELEVANT CONTRACTING OPTIONS ARE IMPRACTICAL, IT IS DETERMINED THAT DELAY OF THE CONTRACT TO FY2007 OR LATER WOULD RESULT IN UNACCEPTABLE CONSEQUENCES (i.e., THREAT OF LIFE, etc.), AND THERE ARE NO FUNDS IDENTIFIED FOR REPROGRAMMING TO THE PPA, A CONTINUING CONTRACT MAY BE RECOMMENDED.

4. Recommendation. PROVIDE OVERVIEW OF RECOMMENDATION. RECOMMEND INCLUDING A PROJECT FUNDING TABLE HIGHLIGHTING OUT-YEAR PROJECT FUNDING/BUDGET REQUESTS TO SHOW FUNDS ARE AVAILBLE FOR CONTINUING CONTRACT.

APPENDIX C

FY2006 ENERGY & WATER DEVELOPMENT APPROPRIATIONS REPORT SCHEDULE

PAGE / SECTION	TITLE DESCRIPTION	Due to Congress	Action Office	Intermediate suspenses
<u>SECTION</u>				
Sec 101(c) – Page 7 & 44	Reprogramming Baseline Report in 60 days	18-Jan-06	CECW-IP	6 Dec Account Mgr draft for PID/RIT review
Sec 107 – Page 9	All Ch of Engineers Reports to Congress in 75 days	as required	CECW-P	TBD
Sec 109 – Page 9	All ASA report to Congress in 90 days	as required	CECW-P	TBD
Sec 128 (f) - Page 14	American River Bridge report in 90 days	17-Feb-06	CEMP-SPD	1 Feb – draft
<u>PAGE</u>				
2 and 42	GI - Hurricane Report in 6 months + additional reports later	19-May-06	CECW-MVD	
21 and 134	Bureau \$500K to Corps for CALFED Levee - Report 180 days	18-May-06	CEMP-SPD	
80	CAP Prioritization and Management Report 60 days	18-Jan-06	CECW-IP	21 Dec - 1st Draft
81	CAP Un-named and Un-funded Projects Report 60 days	18-Jan-06	CECW-IP	21 Dec - 1st Draft
108	Emergency Maintenance Definition Report 30 days	19-Dec-05	CECW-CO	7 Dec - draft
108	Miami River Analysis Report 30 days	19-Dec-05	CECW-E	7 Dec - draft
111	Report on Audit Costs and Scope 60 days	18-Jan-06	CERM-ZA	
111	Submit Report on Fed Dredge Fleet Needs 30 days	19-Dec-05	CECW-O	7 Dec - draft
114	Existing Continuing contracts Report 60 days	18-Jan-06	CECW-B	21 Dec - 1st Draft
43	Contract w/NAPA for Budget Metric Factors Report		CECW-ID	
43	FYDP reporting	7-Feb-06	CECW-IF	20 Jan - draft
43	Justification Material reporting	7-Feb-06	CECW-ID	
44	Quarterly Funding Allocation reporting	28-Feb-06	CECW-IN	21 Feb - draft
131	Spending plan for \$7.5M Middle Rio Grande mgt			

APPENDIX D

GUIDANCE FOR DEVELOPMENT OF THE CIVIL WORKS FY2006

SCHEDULES OF OBLIGATIONS AND EXPENDITURES –

THE 2101 REPORT

APPENDIX E

CALCULATION OF CORPS CUMULATIVE REPROGRAMMING LIMITS EXAMPLES

Reprogramming Example No. 1:

a. Project A needs \$800,000 to fully fund award of a fully funded contract. Funds, in the amount of \$350,000, have been reprogrammed to the project earlier in FY2006.

- FY2006 Appropriations: \$1,500,000
 - FY2005 Unexpended: \$ 300,000
 - FY2006 Baseline: \$1,800,000
 - Reprogramming Limit (lesser of \$2,000,000 or 50% of Baseline): \$900,000
- Cumulative Reprogramming Amount = \$350,000 + \$800,000 = \$1,150,000 > 50%

Committee Notification Required

b. Source Projects: Funds are excess on the following projects:

<u>PROJECT</u>	<u>EXCESS FUNDS</u>	<u>PREVIOUS REPROGRAM</u>	<u>TOTAL REPROGRAM</u>	<u>BASELINE</u>	<u>CONG NOT. REQUIRED?</u>
Project B	\$200,000	\$ 0	\$200,000	\$600,000	NO
Project C	\$100,000	\$250,000	\$350,000	\$450,000	YES
Project D	\$500,000	0	\$500,000	\$900,000	YES

c. Actions: House and Senate Appropriations Committees must be notified of the intent to reprogram for Project A, C, and D.

Reprogramming Example No. 2:

a. Project A needs \$1,500,000 to fully fund award of a fully funded contract. Funds, in the amount of \$400,000, have been reprogrammed to the project earlier in FY2006.

- FY2006 Appropriations: \$6,000,000
 - FY2005 Unexpended: \$ 300,000
 - FY2006 Baseline: \$6,300,000
 - Reprogramming Limit (lesser of \$2,000,000 or 50% of Baseline): \$2,000,000
- Cumulative Reprogramming Amount = \$400,000 + \$1,500,000 = \$1,900,000 < 50%

Committee Notification NOT Required

b. Source Projects: Funds are excess on the following projects:

<u>PROJECT</u>	<u>EXCESS FUNDS</u>	<u>PREVIOUS REPROGRAM</u>	<u>TOTAL REPROGRAM</u>	<u>BASELINE</u>	<u>CONG NOT. REQUIRED?</u>
Project B	\$500,000	\$ 0	\$ 500,000	\$ 900,000	YES
Project C	\$500,000	\$ 250,000	\$ 750,000	\$ 950,000	YES
Project D	\$500,000	\$1,600,00	\$2,100,000	\$2,000,000	YES

c. Actions: House and Senate Appropriations Committees must be notified of the intent to reprogram for Project B, C, and D.

Reprogramming Example No. 3:

a. Project A needs a third reprogramming action for \$900,000 to fully fund award of a fully funded contract. Previous reprogrammings include:

#1	+	\$1,300,000	
#2	-	\$ 300,000	
- FY2006 Appropriations:			\$6,000,000
- FY2005 Unexpended:		<u>\$ 300,000</u>	
- FY2006 Baseline:			\$6,300,000
- Reprogramming Limit (lesser of \$2,000,000 or 50% of Baseline):			\$2,000,000
Cumulative Reprogramming Amount			
= \$1,300,000 - \$300,000 + \$ 900,000 = \$1,900,000 < 50%			

Committee Notification NOT Required

b. Source Projects: Funds are excess on the following projects:

<u>PROJECT</u>	<u>EXCESS FUNDS</u>	<u>PREVIOUS REPROGRAM</u>	<u>TOTAL REPROGRAM</u>	<u>BASELINE</u>	<u>CONG NOT. REQUIRED?</u>
Project B	\$500,000	\$ 0	\$ 500,000	\$1,500,000	NO
Project C	\$200,000	\$ 0	\$ 200,000	\$ 950,000	NO
Project D	\$200,000	\$ 700,000	\$ 900,000	\$2,000,000	NO

c. Actions: Reprogramming is within delegated authority to MSC/District. No Committee notification is required.



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

CECW-I

FEB 13 2006

MEMORANDUM FOR USACE Commanders

SUBJECT: Existing Continuing Contracts Notification Letter

1. References:

a. Energy and Water Development Appropriations Act of 2006, Public Law (P.L.) 109-103 and Statement of Managers (H.R. Conf. Rep. No. 109-275) signed 19 November 2005.

b. EC 11-2-189, Execution Of The Annual Civil Works Program, dated 31 December 2005.

2. This memorandum transmits a standard letter for use by Contracting Officers to notify all contractors working under an existing continuing contract that they cannot rely on reprogramming to add funds to their contract, and if funds are exhausted, the Corps may have to consider terminating their contract. The letter invites the contractor, or representative, to meet with the contracting officer to discuss changes mandated in the referenced legislation and ways to incorporate them in the existing contract.

3. The standard letter has been developed in collaboration with Office of the Chief Counsel, Principal Assistant Responsible for Contracting (PARC) and Chief, Engineering and Construction. A letter, prepared in strict accordance with the standard model, must be transmitted to respective contractors by the contracting officer. Follow-up guidance to Contracting Officers on this issue is also being prepared by the Office of the Chief Counsel and will be provided as soon as it is completed. Discussions should be conducted in accordance with paragraph 11c of the referenced EC.

FOR THE COMMANDER:

Enclosure :
Standard Letter

A handwritten signature in black ink, appearing to read "G.A. Loew".

Gary A. Loew
Chief, Programs Integration Division
Directorate of Civil Works

ILLUSTRATION
Standard Letter for Continuing Contracts

Dear _____:

Reference your contract Number _____, **[CONTRACT NAME]**. The Energy and Water Development Appropriations Act, 2006 (E&WDA), Public Law (P.L. 109-103), includes changes that may affect the funding and implementation of this contract. As a result, we would appreciate the opportunity to sit down with representatives of your company and discuss how we can best incorporate these mandates into your contract. The E&WDA includes the following provision:

“None of the funds made available in title I of this Act may be used to award any continuing contract or to make modifications to any existing continuing contract that commits an amount for a project in excess of the amount appropriated for such project pursuant to this Act: *Provided*, that the amounts appropriated in this Act may be modified pursuant to the authorities provided in section 101 of this Act or through the application of unobligated balances for such project.”

The E&WDA restricts the Corps' authority to reprogram funds to meet contract earnings in excess of funding and also restricts the ability to permit a contractor to work beyond the funding identified in the contract for execution in this fiscal year. As a result, we are in the process of discussing with our contractors how to modify the "Continuing Contracts" clause in paragraph _____ so that the contractor's earnings in FY06 will not exceed the amount reserved to this contract in this fiscal year. Should the parties be unable to reach a mutual agreement, the Corps may have to consider terminating contracts that cannot be modified to meet the new legal requirements.

Please contact my office at your earliest convenience to discuss what we can do to ensure the viability of this contract.

Sincerely,

Contracting Officer