

MEMORANDUM FOR ALL MAJOR SUBORDINATE COMMAND AND DISTRICT
COMMAND COUNSELS

SUBJECT: Escrow Agreements in Support of Agreements Other than Project Cooperation Agreements

1. References:

a. ER 1165-2-30: Water Resources Policies and Authorities ACCEPTANCE AND RETURN OF REQUIRED, CONTRIBUTED OR ADVANCE FUNDS FOR CONSTRUCTION OR OPERATION, dated 15 September 1988;

b. ER 1165-2-131: Water Resources Policies and Authorities LOCAL COOPERATION AGREEMENTS FOR NEW START CONSTRUCTION PROJECTS, dated 15 April 1989;

c. CECC-ZA Memorandum to All Major Subordinate Command and District Command Counsels, SUBJECT: Escrow Agreements and Local Cooperation Agreements

d. ER 37-2-10, Change 78, Accounting and Reporting Civil Works Activities, dated 30 September 1993.

2. In references 1.a. and 1.b. model escrow agreements were issued for use in contributed funds agreements, advanced funds agreements and local cooperation agreements (now known as Project Cooperation Agreements). The models that appear in both ERs are identical and refer to the existence of an underlying "local cooperation agreement." Reference 1.a. stated that "Approval from HQUSACE (CECC-J) is required only when escrow agreements differ from the model escrow agreement." However, Reference 1.b. stated that, "Approval from HQUSACE (CECC-J) must be received prior to the establishment of an escrow account."

3. In Reference 1.c., in referring to the model escrow agreement issued in Reference 1.b., I delegated authority to approve escrow agreements that follow the model to Division Counsels. For those escrow agreements that deviated from the model referenced in ER 1165-2-131, approval was still required from CECC-J, with the draft escrow agreement to be accompanied by a memorandum identifying those deviations.

4. Finally, Reference 1.d., in referring to the model agreements found in References 1.a. and 1.b. stated that "Approval from HQUSACE (CECC-J) is required only when escrow agreements differ from the model escrow agreement."

5. It has recently been brought to my attention that some non-Federal interests who are participating in cost sharing agreements other than contributed funds agreements, advanced funds

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agreements and Project Cooperation Agreements may also seek to make their contributions by means of an escrow account. These agreements include, but may not necessarily be limited to, Feasibility Cost Sharing Agreements (FCSA) and Pre-Construction Engineering and Design (PED) Agreements. The question has arisen whether changes to the model escrow agreements found in both References 1.a. and 1.b. require approval from Headquarters (CECC-J) in order for escrow agreements to be used for other types of cost sharing agreements such as identified above. This would include language changes necessary to refer to a FCSA or PED Agreement in lieu of a "local cooperation agreement."

6. Since Reference 1.a. refers not only to voluntary contributions of contributed and advanced funds under several statutory authorities, but also to required non-Federal contributions under various water resource development acts, it may be fairly construed that the model escrow agreement approved by that ER may also be used for FCSA and PED Agreements since both are authorized under provisions of Section 105 of the Water Resources Development Act of 1986, as amended. Accordingly, I do not view revisions needed to adapt the model escrow agreement to FCSA, PED Agreements and other similar agreements which are developed from time to time as "deviations" requiring HQUSACE (CECC-J) approval. District Counsels are free to work with project managers to conform the model escrow agreement to the appropriate type of cost sharing agreement.

7. In keeping with my belief in powering down authority, I hereby authorize Division Counsels to re-delegate approval of escrow agreements that conform to the model escrow agreements to District Counsels. This includes escrow agreements that relate to Project Cooperation Agreements as well as all other agreements. District Counsels should familiarize themselves with the requirements for qualifying escrow institutions set forth in Reference 1.d. Deviations from the approved model escrow agreements still must be approved by HQUSACE (CECC-J) and must be accompanied by a memorandum clearly explaining any requested deviations.

8. My POC for this action is Howard Goldman at 703-428-6466. Please contact him if you have any questions.

FOR THE COMMANDER

/signed/
LESTER EDELMAN
Chief Counsel