

MEMORANDUM TO: SEE DISTRIBUTION

SUBJECT: Guidance Letter No. 9, New Start Construction Projects--Responsibility for Relocation and Removal of Structures and Facilities on Navigation Projects

1. References:

- a. CECW-RN Guidance Letter No. 8, New Start Construction Projects--Responsibility for Utility Relocations on navigation Projects.
- b. EC 1165-2-141, 15 March 1987.

2. The referenced letter discussed current policy on the responsibility for carrying out utility relocations on navigation projects as a result of provisions contained in the Water Resources Development Act of 1986 (P.L. 99-662). The referenced EC discusses generic policy and procedures on cost sharing and requirements for construction of Harbors and Inland Waterways. The removal of items left on parcels of lands acquired for the project or which lie within the Navigational Servitude, is not specifically covered under the category of LERR's. Therefore, the following is to provide additional guidance on the relocation and removal of structures and facilities on navigation projects.

3. Relocations (Other Than Utilities) on Navigation Projects.

For navigation projects, Section 101(a)(3) of P.L. 99-662 requires that the non-Federal interests "shall provide the lands, easements, rights-of-way, relocations (other than utility relocations...), and dredged material disposal areas necessary for the project." It must be understood by all involved in the project that it is the basic responsibility of the local sponsor to assure that relocations (i.e., the moving and re-establishment of existing items, or the replacing of such items with identical items) of structures, facilities, and all improvements, are to be performed at non-Federal expense. This does not affect any ability of the sponsor to arrange with the structure or facility owner to perform the work, and absorb the costs, of such work. The local sponsor may be entitled to credit for any relocations not involving utilities against the 10 percent repayment required under Section 101(a)(2), even if the sponsor has not actually paid for the relocations itself or reimbursed the owner for the work. Credit eligibility will be based on responsibility for the relocation. If the sponsor is actually responsible for the location, credit will be given even though the owner volunteers to relocate the facility at no cost to the sponsor. If however, the sponsor has legal authority to require the relocation, at no cost to itself, no credit would be allowed.

The District may provide, as a service, the Engineering and Design, Supervision and Inspection necessary to accomplish the relocations, and may administer the contract for

the relocations, when such activities are paid for in advance, and promoted for reasons of efficiency or expediency.

4. Removals on Navigation Projects. The cost of removal of facilities and utilities (i.e., those not being relocated) are considered to be a part of the cost of general navigation features (GNF), and are to be cost shared based on project depth when such facilities are located on fast-lands. But the cost of acquiring such facilities, leading to their eventual removal, are the responsibility of the non-Federal sponsor and should be considered as part of lands, easements, and rights-of-way. The cost of removal of facilities and utilities located within the Navigational Servitude are an owner(s) responsibility, and the owner(s) should be informed by the local sponsor or, if necessary, by the Government, that they are to remove such items prior to the commencement of construction. If utilities or facilities exist which are partially located on fast-lands and partially within the Navigational Servitude, a reasonable allocation of the cost of removal should be made between that which is owner responsibility and that which is part of GNF. Debris, as well as items for which no owner can be found, is a dredging cost to be cost shared as a part of the cost of GNF.

5. Use of Federal Authority to Accomplish Relocations, Acquisitions or Removals. In those cases where the local sponsor has, despite every reasonable effort failed to reach agreement with affected owners regarding relocations or removals, and further, lacks the authority to force such actions, the Federal Government may elect to exercise Federal authorities to compel the relocation or removal. Such exercise of Federal power shall not relieve the local sponsor of its statutory responsibility to assure the relocations or the acquisition of lands and items to be removed, at no expense to the Federal Government. Consequently, any Federal expenses incurred in compelling the relocation or acquisition will be borne entirely by the local sponsor including administrative and litigation expenses. Federal funds will not be made available to conduct the actual relocation or acquisition. Moreover, any Federal action shall in no way determine the ultimate apportionment of the relocation or acquisition costs between the owner(s) and the local sponsor. The question of how relocation or acquisition costs are shared, is to be resolved between the local sponsor and the owners of the facilities in question. Continued construction on a navigation project should not be compromised by the refusal of the owner(s) of items or facilities located within the Navigational Servitude to remove or pay the cost of removal of such items. As a last resort, the forced removal of any item within the bounds of Navigational Servitude may proceed using funds made available jointly by the Federal Government and the local sponsor, in proportion to the cost sharing appropriate for the project. The District Counsel should explore and develop all available means for recouping any such expenditures for removals from the appropriate owners, including any necessary coordination with the local United States Attorney. Such costs would include all necessary administrative and litigation expenses. Upon recovery of these costs, the Local Sponsor shall be reimbursed for its share.

6. If you have any further questions please contact either Doug Lamont or Peter Luisa, CECW-RN at 202-272-0464.

FOR THE COMMANDER:

BORY STEINBERG

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