



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

28 Aug 2012

CECW-LRD

MEMORANDUM THRU COMMANDER, GREAT LAKES AND OHIO RIVER DIVISION
(CELRD-PD, MR. ROMANO)

FOR COMMANDER, CHICAGO DISTRICT (CELRC-PM-PL, MS. DAVIS)

SUBJECT: Implementation Guidance for Section 1538 of the Moving Ahead for Progress in the 21st Century (MAP-21) Act, Public Law 112-141

1. Section 1538 of Public Law 112-141 of the Moving Ahead for Progress in the 21st Century (MAP-21) Act, directs the Secretary to expedite the completion of the report for the study authorized by Section 3061(d) of Water Resources Development Act (WRDA) 2007 and, if the Secretary determines a project is justified in the completed report, to proceed directly to project preconstruction engineering and design (PED). Further, Section 1538 directs the Secretary to complete the report no later than 18 months after the date of enactment of MAP-21 and to submit an interim report to the Committee on Appropriations of the House of Representatives and Senate, the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives no later than 90 days after the date of enactment of MAP-21. The 90-day report will identify interim milestones that will be met prior to the completion of the study and report and the funding necessary to complete them. This memorandum provides supplemental guidance to the references below for executing the study in light of the new authority, and guidance for developing the 90-day report to Congress required by Section 1538. A copy of Section 1538 is enclosed.

2. References.

- a. Section 3061(d) of the Water Resources Development Act (WRDA) 2007, P.L. 110-114.
- b. Section 1538 of the Moving Ahead for Progress in the 21st Century Act, or MAP-21 Act, Public Law 112-141.
- c. CECW-LRD memorandum thru LRD Commander to LRC Commander, dated 9 May 2012, Subject: Great Lakes and Mississippi River Basin Study (GLMRIS) – Project Guidance Memorandum (PGM).

3. GLMRIS Study Authority.

- a. Originally enacted in Section 3061(d) of WRDA 2007, the GLMRIS study authority requires the Secretary, in consultation with other entities, to fund at full federal expense a feasibility study

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of the range of options and technologies available to prevent aquatic nuisance species from spreading between the Great Lakes and the Mississippi River Basins. Section 3061(d) differs from a traditional Corps feasibility study authority in several ways. First it directs the study to be conducted at full federal expense, in contrast to cost sharing requirements generally mandated for Corps studies of water resources development projects by Section 105 of WRDA 1986. Second, Section 3061(d) does not require participation by a non-federal sponsor in the study, instead directing USACE to perform the study “in consultation with appropriate federal, state, local, and nongovernmental entities.” This also contrasts with the traditional feasibility study process of the Corps, which requires a binding agreement with a non-federal interest at the earliest stages of a study. Finally, Section 3061(d) uses a different description for the GLMRIS effort than that found in a traditional feasibility study authorization. Section 3061(d) requires a “feasibility study of the range of options and technologies available” to prevent aquatic nuisance species from spreading between the Mississippi River Basins and the Great Lakes, rather than targeting a Corps recommended solution to traditional water resources problem. These distinctive aspects of the GLMRIS authority require a different study from that normally undertaken by USACE, but still allow the agency considerable discretion in fulfilling the study’s mandate.

b. Section 1538 adds several requirements to GLMRIS, including a completion deadline and additional reporting and content requirements, but largely retains GLMRIS’s original scope as well as its lack of study cost sharing or any requirement of a non-federal study sponsor. Section 1538 also continues to leave to the Secretary’s discretion whether to identify a GLMRIS project for possible implementation, by stating that only if the Corps determines a project to be justified, will that project be required to proceed directly into PED. In short, Section 1538 does not direct specific changes to the GLMRIS study’s scope or process, focusing instead on directing the Corps to quickly complete the study and include if at all possible a determination of whether any GLMRIS project is justified. This has allowed and will continue to allow USACE, in complying with the GLMRIS authority’s requirements, to adopt a number of useful aspects of its traditional feasibility study process, including the goal of finding a non-federal interest to partner with USACE in implementing a project if authorized by Congress.

4. The 90-day report required by Section 1538 will be based on the following guidance:

a. As explained above, both Section 3061(d) and Section 1538 afford USACE considerable discretion in determining the elements of the study necessary to produce a report by the new legislative deadline. The 90-day report will explain how it will use elements of its original plan to produce a report by the new deadline for both Focus Area I and Focus Area II. Essentially, the 90-day report will set and describe priorities both in terms of tasks and alternatives to be considered (if those alternatives are known at this stage), describe what can be done within the current funding, and describe what additional work could be done to support a justification decision with additional funding. The 90-day report will have two separate scenarios:

(1) Existing Funding. The original plan anticipates releasing a report presenting the range of options and technologies available to prevent aquatic nuisance species from spreading between the Mississippi River Basins and the Great Lakes as an interim report of GLMRIS in

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December of 2013, primarily focused on Focus Area I but including information regarding Focus Area II. The study efforts will now focus on examination of alternatives to meet the intent of Section 1538 on the original schedule -- in December of 2013. Modifications will be proposed, if necessary, to the content of and milestones for the report to support a potential determination by the Secretary as to whether any project is justified. The 90-day report will present a plan for the report including interim milestones and necessary funding to efficiently manage the study. This proposal will be based only on currently available funds including funds provided in the FY13 President's Budget (\$3.0M). In developing its plan, the study team will consider focusing the study on only the most promising alternatives consistent with existing funding and congressional intent regarding specified watersheds. Tasks will include only those that would be absolutely necessary to both support a justification decision, if one can be made, and to move into PED if the Secretary has determined a project is justified. Those tasks may not include the type of detailed analysis that would normally support a Chief's Report and recommendation to Congress which is not something required by either authority and which cannot be accomplished in the time provided. Public engagement remains a priority for the study. The division and district will work closely with the vertical team to facilitate compliance with the Section 1538 deadline. HQUSACE expects that the report will be produced by December 2013 based on current funding, so the 90-day report should describe in detail what will be done based on those resources.

(2) Additional Funding. This scenario will focus on a potential plan for the study that could more likely result in a plan being determined to be justified by the Secretary if existing funding may be insufficient to produce this conclusion for alternatives under consideration. However, USACE cannot assume that such funding will be available. In an appendix to the 90-day report, USACE will identify additional analyses or other tasks to support both consideration by the Secretary as to whether a project is justified and the ability of USACE to proceed to PED. The appendix will set forth interim milestones to be met and funding needs for this second approach. As with the approach described above, the study team will focus only on key tasks necessary to support a justification decision and to proceed to PED if determined by the Secretary. Those tasks may not include the type of detailed analysis that would normally support a Chief's Report and recommendation to Congress which is not something required by either authority. Finally, the appendix will set forth the time necessary to perform these additional tasks from the date of receipt of funding.

b. USACE has determined that the GLMRIS study as currently planned by the district cannot be accomplished by the deadline imposed by the MAP-21 Act. That plan called for completion of the Focus Area I (CAWS) portion of the study in 2015 and completion of the Focus Area II (Other Pathways) portion of the study in 2018. Over the past two years, aggressive consideration of the plan has not resulted in effective ways to maintain all elements of the plan while accelerating the completion date. As described above, the 90-day report will explain what elements of the plan will be used for the report required by Section 1538. This explanation will include detail regarding how that will impact the ultimate product.

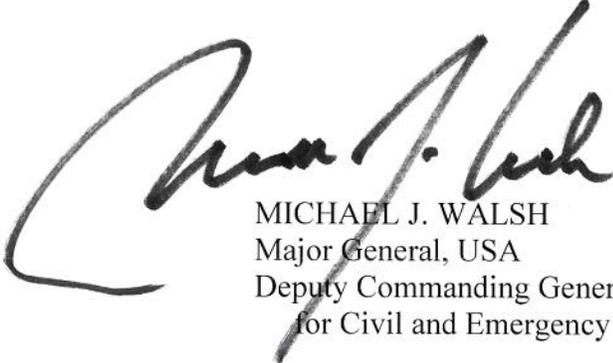
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5. The team will continue attempts to secure a non-federal sponsor for the purpose of the report. An implementable alternative may only be pursued with authority and appropriations. In the absence of a non-federal sponsor, the team will complete the report, unless directed otherwise, and include in the report a description of the actions completed to secure an appropriate non-federal sponsor.
6. The team will also continue to try to secure a non-federal sponsor for any of the other aquatic pathways identified in Focus Area II, outside of the CAWS. In the absence of a non-federal sponsor, the team will complete the Eagle Marsh ANS Controls report, but will not advance beyond an ANS Controls report without seeking HQUSACE guidance on future study tasks. Furthermore, the team shall continue to focus on those aquatic pathways that warrant further analysis by USACE. State agencies may assume responsibility for further study efforts on other pathways, reducing the need for future USACE work in those areas.
7. The report will focus on delineating alternatives specific to the CAWS. The report will also summarize the study progress in Focus Area II, regarding all other potential aquatic pathways between the Great Lakes and Mississippi River Basins.
8. CELRD will provide a draft 90-day report to CECW-LRD (LRD-RIT) no later than 31 Aug 2012 and a final draft NLT 13 Sep 2012, to allow vertical team coordination and submittal to Congress by 4 Oct 2012.
9. Please direct questions to Mr. Jay Warren, Planner, Regional Integration Division Team, Great Lakes and Ohio River Division, at (202) 761-4589.

FOR THE COMMANDER:

Encl



MICHAEL J. WALSH
Major General, USA
Deputy Commanding General
for Civil and Emergency Operations

SEC. 1538. ASIAN CARP.

(a) DEFINITIONS.—In this section:

(1) HYDROLOGICAL SEPARATION.—The term “hydrological separation” means a physical separation on the Chicago Area Waterway System that—

(A) would disconnect the Mississippi River watershed from the Lake Michigan watershed; and

(B) shall be designed to be adequate in scope to prevent the transfer of all aquatic species between each of those bodies of water.

(2) SECRETARY.—The term “Secretary” means the Secretary of the Army, acting through the Chief of Engineers.

(b) EXPEDITED STUDY AND REPORT.—

(1) IN GENERAL.—The Secretary shall—

(A) expedite completion of the report for the study authorized by section 3061(d) of the Water Resources Development Act of 2007 (Public Law 110–114; 121 Stat. 1121); and

(B) if the Secretary determines a project is justified in the completed report, proceed directly to project preconstruction engineering and design.

(2) FOCUS.—In expediting the completion of the study and report under paragraph (1), the Secretary shall focus on—

(A) the prevention of the spread of aquatic nuisance species between the Great Lakes and Mississippi River Basins, such as through the permanent hydrological separation of the Great Lakes and Mississippi River Basins; and

(B) the watersheds of the following rivers and tributaries associated with the Chicago Area Waterway System:

(i) The Illinois River, at and in the vicinity of Chicago, Illinois.

(ii) The Chicago River, Calumet River, North Shore Channel, Chicago Sanitary and Ship Canal, and Cal- Sag Channel in the State of Illinois.

(iii) The Grand Calumet River and Little Calumet River in the States of Illinois and Indiana.

(3) EFFICIENT USE OF FUNDS.—The Secretary shall ensure the efficient use of funds to maximize the timely completion of the study and report under paragraph (1).

(4) DEADLINE.—The Secretary shall complete the report under paragraph (1) by not later than 18 months after the date of enactment of this Act.

(5) INTERIM REPORT.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a report describing—

(A) interim milestones that will be met prior to final completion of the study and report under paragraph (1); and

(B) funding necessary for completion of the study and report under paragraph (1), including funding necessary for completion of each interim milestone identified under subparagraph (A).