

WRDA 2016, SECTION 1155 MANAGEMENT OF RECREATION FACILITIES: CHALLENGE COST SHARING COOPERATIVE MANAGEMENT AGREEMENTS



Partnerships in NRM
PROSPECT Course



U.S. ARMY



US Army Corps
of Engineers®



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

CECW-P

APR 04 2018

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1155 of the Water Resources Development Act of 2016 (WRDA 2016), Management of Recreation Facilities

1. Section 1155 of WRDA 2016 was completed and signed on 30 March 2018. The implementation guidance is posted in the U.S. Army Corps of Engineers website: <http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/>.
2. Questions regarding this implementation guidance should be directed to Heather Burke, National Partnership Program Manager, at (503) 808-4313 or Heather.D.Burke@usace.army.mil.

JAMES C. DALTON, P.E.
Director of Civil Works

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DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
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WASHINGTON, DC 20310-0108

MAR 30 2018

MEMORANDUM FOR COMMANDING GENERAL U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Implementation Guidance for Section 1155, Management of Recreation Facilities, of the Water Resources Development Act (WRDA) of 2016, Public Law 114-322

1. Purpose. The purpose of this memorandum is to provide implementation guidance for Section 1155 of WRDA 2016 authorizing the Secretary to enter into agreements with non-Federal public entities under section 225 to collect and retain user fees for the use of developed recreation sites and facilities, whether developed or constructed by that entity or the Department of the Army, and reinvest collected fees at the site at which the fees are collected. Section 1155 further authorized participating public entities to use any visitor reservation service that the Secretary of the Army has provided for by contract or interagency agreement. Copies of WRDA 2016 Section 1155 and WRDA 1992 Section 225 are enclosed (Enclosure 1).
2. References.
 - a. Water Resources and Development Act of 2016, Section 1155, P.L. 114-322.
 - b. Water Resources Development Act of 1992, Section 225, P.L. 102-580, as amended (33 U.S.C. 2328).
3. The following policy update to the Partnership Program is effective immediately and will be incorporated as a new chapter in ER and EP 1130-2-500, "Project Operations - Partners and Support" when revised.
4. Applicability. This memorandum applies to all U.S. Army Corps of Engineer (Corps) commands having responsibilities for civil works functions.
5. Policy. It is the policy of the Corps that:
 - a. The Corps may share the cost of managing recreation facilities and natural resources at Corps water development projects by entering into an agreement with non-Federal public entities to provide for operation and management of recreation facilities and resources where such facilities are being maintained at complete federal expense.



Authority



Amends WRDA 1992 Section 225 (33 USC 2328) Challenge Cost-Sharing Program for the Management of Recreation Facilities (also known as Challenge Partnerships), by inserting:

- USER FEES:
 - **Collection of fees:** The Secretary may allow a **non-Federal public entity** that has entered into a challenge cost sharing agreement to collect user fees for the use of developed recreation sites and facilities, **whether developed or constructed by that entity or the Department of the Army.**
 - Use of visitor **reservation services****: The non-Federal public entity may use, to manage fee collections and reservations, any visitor reservation service that the Secretary has provided for by contract or interagency agreement.
 - Use of fees: The non-Federal public entity that collects the user fees **may retain up to 100 percent** of the fees collected, and shall use any retained amount for operation, maintenance, and management activities **at the recreation site** at which the fee is collected.



Eligibility



- Eligible non-Federal public entities for Cooperative Management:
 - State governments
 - County governments
 - Municipality or local governments
 - Public institutions of higher education
 - Indian Tribes
- Eligible areas:
 - Facilities and natural resources in Project Site Areas on Corps fee-title land (or any land on which the Corps fully operates and maintains PSAs, including Tribal lands)
 - PSAs that the Corps has historically fully operated and maintained (never outgranted)
 - Previously outgranted PSAs where the lease was terminated prior to 4 April 2018
 - PSAs that are outgranted or cooperatively managed where the lease or other agreement term ends or is otherwise terminated after 4 April 2018 must receive written approval from the ASA(CW) that the area is suitable for co-management and operation under Section 1155 before an agreement can be executed.



Example of Notice of Availability: SAM – Carters Lake

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Hello Members of the Press:

The U.S. Army Corps of Engineers Mobile District, commanded by Col. Sebastien P. Joly, seeks to partner with non-federal public entities — which are state, county, municipal or local governments; public institutions of higher education; and Native American tribes — sharing management functions and potentially expanding recreation programs at Carters Lake Project through the new Challenge Cost Sharing Cooperative Management (CCSCM) Program.

Please access the link below for a full news release:

<https://go.usa.gov/xVJqz>

Best regards,

Lance D. Davis
Deputy Chief, Public Affairs & Media Relations
Mobile District, US Army Corps of Engineers
Office: 1-251-690-2506
Lance.D.Davis@usace.army.mil



Competition Requirement



- Notice to eligible non-Federal public entities:
 - Criteria and evaluation method for the notice to be developed by Operations Project Manager (OPM) with input and review by District Operations Chief and District Commander
- Notice distributed by District Commander
 - Can be unlimited distribution, or
 - Limited to at least 2 eligible entities when specialized expertise is required
 - Avenues for distribution may include, but are not limited to district/project websites and social media pages, press releases through local/regional news media outlets, newsletters, PSA bulletin boards, etc.
 - Notices must be posted for a minimum of 10 calendar days
- Multiple public entities may submit a joint proposal to co-manage and operate one or more PSAs



Selection of Cooperating Partner Entity



- Evaluation of proposals
 - Applicant must have management capability and adequate financial and technical resources to execute the program
 - Must have satisfactory record of executing recreation/natural resource programs
 - Past experience with the applicant should be a consideration factor
- Selection
 - OPM will review proposals and make recommendations to the District Operations Chief and District Commander based on selection criteria provided in the notice
 - District Commander has the final partner selection approval and signature authority for the Challenge Cost Sharing Cooperative Management Agreement (CCSCMA)



Challenge Cost Sharing Cooperative Management Agreement (CCSCMA)



- Required document to establish the terms, conditions, administration, and responsibilities of the Corps and the partner(s)
- Must use model agreement template
 - Model specifies areas where the Corps and partner have discretion to determine their respective operation and management responsibilities and contributions via negotiation
 - Any substantive deviations from all other provision of the model must be approved by the ASA(CW)
- Signed by District Commander (cannot be further delegated)
- Term:
 - Limited to an initial term of 5 years, with additional 5 option years without need for further competition
 - Option years must be executed within 30 days of initial term expiration
 - Beyond 10 years, partner must re-compete for opportunity



**CHALLENGE COST-SHARING COOPERATIVE MANAGEMENT AGREEMENT
(CCSCM)
FOR RECREATION FACILITY
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
(ENTER NON-FEDERAL PUBLIC ENTITY HERE)**

THIS AGREEMENT, entered into this day of ____, 20__, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, U.S. Army Engineer District ____, and ____, (hereinafter the "Partner"), represented by _____.

WITNESSETH, THAT:

WHEREAS, the Partner is a non-Federal public entity that desires to assist the Government in the operation and management of *[insert Project Site Area(s)]* at *[Insert Corps project name]* (hereinafter referred to as the "Project Site Area") by providing goods and services specified herein at no cost to the Government;

WHEREAS, Section 225 of the Water Resources Development Act (WRDA) of 1992, P.L. 102-580, as amended, authorizes the Government to enter into agreements with non-Federal public entities to provide for the operation and management of recreation facilities and natural resources at civil works projects where such facilities are being maintained at complete Federal expense and permit the non-Federal public entities to collect and utilize user fees for the operation, maintenance, and management activities at such sites, and,

WHEREAS, the Government and the Partner have the full authority and capability to perform as hereinafter set forth and intend to cooperate in accordance with the terms of this Agreement;

NOW THEREFORE, the Government and the Partner agree as follows:

ARTICLE I – SCOPE



CCSCMA Required Template



Partner Operations Plan



- Required document developed by the OPM and partner (no national template) that outlines the respective operations, management, and development activities to be undertaken by the Corps and the partner(s) over a specified period of time
 - Detailed description of activities
 - Detailed scope of work and construction drawings
 - Detailed description of equipment acquisitions
- May span the entire duration of agreement or a shorter period of time agreed upon by parties
- May be modified at any time by mutual written agreement approval by the OPM and partner representative
- Annual budget: Partner must submit a proposed annual budget to OPM for review and approval
 - Cost estimates for partner activities
 - Partner personnel and overhead costs
- Partner is limited to activities and funding limits set forth in the Partner Operations Plan and Annual Budget.



Fee Collection and Fiscal Management



- Partner may collect Recreation Use Fees and Special Use Permit Fees (as defined by ER 1130-2-550 Chapter 9)
- Partner may retain up to 100 percent of the fees for Operation, Maintenance, Management activities at the PSA at which the fees were collected
- Sites/facilities where fees are collected can be developed by the partner or the Corps
- May only charge fees according to Chapter 9 guidance, utilizing Corps fee schedule
- May only charge fees if a user charge is permitted by the Corps (campsites, swimming beaches, shelters, boat launch ramps, recreation equipment/services, special use permits)
- Partner must accept ATB and Corps Annual Day Use passes and discounts
- Partner may sell ATB/Corps passes but must remit all ATB revenues to the project office for deposit in the appropriate special account in the US Treasury, per ER 1130-2-550 Chapter 9



Fee Collection and Fiscal Management



- Partner may charge fees for outdoor recreation equipment and services provided for visitor use (i.e firewood, ice, laundry, shower, dump station, rent-a-tent, kayaks)
- With the exception of ATB pass sales, fees collected by the partner are retained onsite and not deposited into the Treasury.
- All monies received must be used by the partner in accordance with the Partner Operations Plan and approved annual budget
- Partners may use fees to fund contractors and partner staff (term, temporary, seasonal or permanent)
- Partner must provide annual statement of receipts and expenditures to District Commander (via the OPM and District Operations Chief)



Construction and Equipment



- Partner may construct facilities and acquire equipment to operate/maintain the PSA, as approved in the Partner Operations Plan
- All partner constructed facilities and equipment funded from user fees will become property of the Corps
- The Corps may provide/loan equipment, materials, and supplies to the partner to operate and maintain the PSA
- Partner staff may operate Government-owned vehicles, vessels, and equipment with proper training/licensing according to Corps standards
- Partner may procure and manage contracts for services as required under the CCSCMA and the Partner Operations Plan



Other Key Points



- **Use of R1S reservation service: Need to get new legislative authority to handle the fee collection and disbursement to the partner.** In the meantime, partner can use their own reservation system (with information and link/phone number on Rec.gov website) or collect fees on first come-first served/no-reservation basis.
- **CCSCMAs do not** require a partner to receive an outgrant or other form of real estate interest
 - The Corps reserves the right to grant real estate interests within the co-managed PSA and it is the Corps' sole responsibility to administer requests, make awards, and manage grants for real estate interests within the co-managed area.
 - If the partner desires to receive a real estate interest from the Corps to perform activities beyond the scope of the CCSCMA (such as a concessionaire lease), districts and project offices will handle those requests in accordance with existing real estate regulations. The partner will not receive preference or an advantage as a result of a CCSCMA.
- No fixed rate of cost share. Percentages are determined by mutual agreement between the Corps and the partner(s). The roles of each entity are flexible. At the very minimum, the Corps must continue to provide visitor assistance ranger patrols.



Other Key Points



- CCSCMAs may involve multiple public partners
- Although WRDA 1992 Sec 225 uses the term 'cooperative agreement', CCSCMAs are NOT cooperative agreements as that term is used under the Federal Grant and Cooperative Agreement Act of 1977
 - Not subject to Department of Defense Grant and Agreement Regulations
 - Not executed by a certified grants officer
 - Does not transfer a thing of value from the Corps to a non-Federal entity
- CCSCMAs do not involve a contract. The required paperwork includes the CCSCMA and Partner Operations Plan, which are developed by the OPM/District Operations Chief, and coordinated with Office of Counsel for review, and signature by the District Commander



Differences between CCSCM Agreements and the revoked Cooperative Joint Management (CJM) Agreements



- CCSCMAs can only be done with **non-Federal public entities**. The new WRDA 2016 authority does NOT extend to nonprofit cooperating associations or other private entities.
- CCSCMAs do not involve a Real Estate lease or other instrument
- CCSCMAs require a competitive process to select the eligible cooperative entity
- CCSCMA partners may collect and retain user fees on Corps or partner constructed facilities



Potential Benefits of CCSCM Agreements



To the Corps:

- Cost savings: Partner takes over some of the O&M costs
- Less contracts: Partner can potentially take over some/all contracts within the PSA
- Better services/longer seasons: Diminished budgets = diminished services/park closures. This may be a way to keep areas open that are at risk of closure or shorter seasons.
- Visitation: In contrast to a full outgrant, the Corps gets to count their visitation at a co-managed PSA
- Fee retention: Partner collected fees get reinvested into the PSA for operations and upgrades

To the Partner:

- Fee collection/retention: Can use to pay for more staff, increase operational capacity of their organizations
- Partners that might not be able to afford O&M of a full outgrant, might be able to co-manage a PSA with the Corps
- Similar mission: Desire to provide quality recreation opportunities for the public beyond what they already own, operate and maintain
- Hands on experience: If a public university partners to co-manage, provides recreation students real life experience and funds their salaries.

To the Public:

- Park improvements
- Longer seasons, better services, open parks



What's Next?



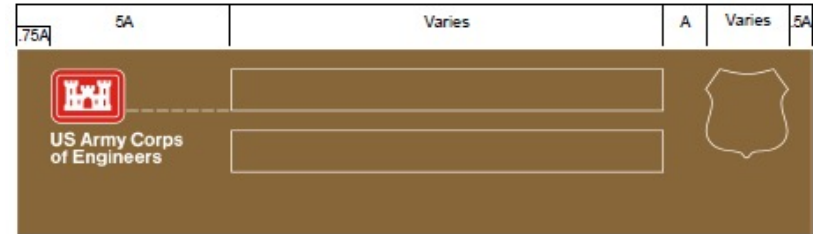
- Seek new legislation to allow full use of reservation system by the partner, expansion to nonprofits and ability to enter into agreements for multiple PSAs
- Update procedures in ER 1130-2-550, Chapter 9 Recreation Use Fees related to fee collection and retention by entities cooperatively managing Corps parks
- Create new ER chapter for CCSCMA program
- Submitted legal language to Congress for inclusion into WRDA 2020 to amend Section 225 of WRDA 1992 and Section 1155 of WRDA 2016 by inserting the words “or private” to the eligible entities. (Language was removed in committee. Will try again in WRDA 2022.)



EP 310-1-6A Sign Manual Guidance for Co-Managed PSAs



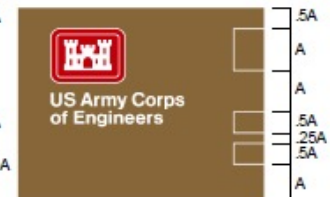
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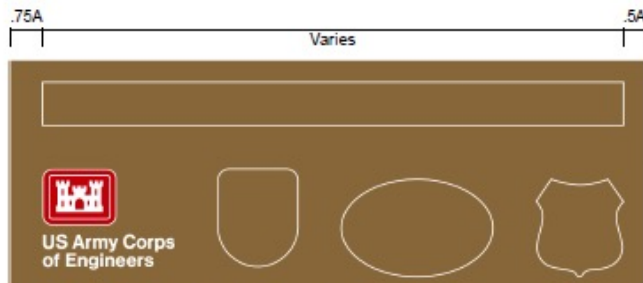
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Recap Questions

Which of the following entities can you NOT enter into a Challenge Cost Sharing Cooperative Management Agreement with?

- a. State agency
- b. Tribal entity
- c. Nonprofit organization
- d. Public university



Recap Questions

Who can sign a Challenge Cost Sharing Cooperative Management Agreement?

District Commander



Recap Questions

Which is a required document to set up a Challenge Cost Sharing Cooperative Management Agreement?

- a. Real estate lease
- b. Contract
- c. Partner operations plan
- d. Both a and c



Questions?

