

18 APR 2000

CECW-BE

MEMORANDUM FOR Commander, Great Lakes and Ohio Division  
Attn: CELRD-PM-P

SUBJECT: Implementation Guidance for Section 573 of the Water Resources Development Act of 1999, Public Law 106-53 (Onondaga Lake, New York)

1. Section 573 supersedes and repeals Title IV of the Great Lakes Critical Programs Act of 1990 and Section 411 of the Water Resources Development Act (WRDA) of 1990. It replaces the Onondaga Lake Management Conference (OLMC) with a partnership, authorizes revisions to the Onondaga Lake Management Plan (OLMP) developed by the OLMC, and directs the Secretary to manage the planning, design and construction of elements and make grants for activities to restore, conserve, and manage Onondaga Lake.

2. Section 573 reads as follows:

"SEC. 573. ONONDAGA LAKE, NEW YORK.

"(a) IN GENERAL- The Secretary shall--

"(1) plan, design, and construct projects that are consistent with the Onondaga Lake Management Plan and comply with the amended consent judgment and the project labor agreement for the environmental restoration, conservation, and management of Onondaga Lake, New York; and

"(2) provide, in coordination with the Administrator of the Environmental Protection Agency, financial assistance, including grants to the State of New York and political subdivisions of the State, for the development and implementation of projects to restore, conserve, and manage the lake.

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"(b) PARTNERSHIP-

"(1) IN GENERAL- In carrying out this Section, the Secretary shall establish and lead a partnership with appropriate Federal agencies (including the Environmental Protection Agency) and the State of New York and political subdivisions of the State for the purpose of development and implementation of the projects.

"(2) COORDINATION WITH ACTIONS UNDER OTHER LAW-

"(A) IN GENERAL- The partnership shall coordinate the actions taken under this Section with actions to restore and conserve Onondaga Lake taken under other provisions of Federal or State law.

"(B) NO EFFECT ON OTHER LAW- Except as provided in subsection (g), this Section does not alter, modify, or affect any other provision of Federal or State law.

"(3) TERMINATION- Unless the Secretary and the Governor of the State of New York agree otherwise, the partnership established under this subsection shall terminate not later than the date that is 15 years after the date of enactment of this Act.

"(c) REVISIONS TO THE ONONDAGA LAKE MANAGEMENT PLAN-

"(1) IN GENERAL- In consultation with the partnership established under subsection (b) and after providing for public review and comment, the Secretary and the Administrator of the Environmental Protection Agency shall approve revisions to the Onondaga Lake Management Plan if the Governor of the State of New York concurs in the approval.

"(2) NO EFFECT ON MODIFICATION OF AMENDED CONSENT JUDGMENT- Paragraph (1) has no effect on the conditions under which the amended consent judgment referred to in subsection (a)(1) may be modified.

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"(d) COST SHARING-

"(1) NON-FEDERAL SHARE- The non-Federal share of the cost of a project constructed under subsection (a) shall be not less than 30 percent of the total cost of the project and may be provided through the provision of in-kind services.

"(2) ADMINISTRATION AND MANAGEMENT- The Secretary's administration and management of the project shall be at full Federal expense.

"(e) NO EFFECT ON LIABILITY- The provision of financial assistance under this Section shall not relieve from liability any person that would otherwise be liable under Federal or State law for damages, response costs, natural resource damages, restitution, equitable relief, or any other relief.

"(f) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out this Section \$10,000,000.

"(g) REPEAL- Title IV of the Great Lakes Critical Programs Act of 1990 (104 Stat. 3010) and Section 411 of the Water Resources Development Act of 1990 (104 Stat. 4648) are repealed effective on the date that is 1 year after the date of enactment of this Act.

3. Responsibilities. The Commander, Buffalo District (CELRB) will carry out Army responsibilities under section 573, except as described in this paragraph.

a. On 10 February 1994, the Assistant Secretary of the Army for Civil Works (ASA(CW)) delegated to the USACE representative on the OLMC the authority to approve the OLMP. This delegation is in effect and will remain in effect until 17 August 2000, the effective date of repeal of the OLMC. ASA(CW) has retained authority to approve amendments to the OLMP pursuant to section 573(c)(1).

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b. The ASA(CW) has retained the authority to approve extensions to the Partnership pursuant to section 573(b)(3).

c. Agreements will be processed and approved in accordance with normal procedures.

#### 4. Partnership.

a. The Onondaga Lake Partnership will consist at a minimum of CELRB, the Environmental Protection Agency (EPA), the State of New York, and Onondaga County. Additional Federal agencies and political subdivisions of the State may be included in the discretion of the original members. CELRB will establish the Partnership and be responsible for leading the Partnership. The Partnership will terminate on 17 August 2014 unless the ASA(CW) and the Governor of New York agree otherwise in writing before 17 August 2014.

b. Partnership activities are those activities that are not allocable to a particular study or project element. Partnership activities include coordinating CELRB activities to restore, conserve, and manage Onondaga Lake with the activities of EPA and other Federal and non-Federal interests, proposing and managing approval of revisions to the OLMP, providing non-element specific technical assistance to Federal and non-Federal interests concerning their programs to restore, conserve, and manage the resources of Onondaga Lake, and preparing and updating a Lake-wide (general) Project Management Plan (PMP) governing CELRB participation in the Onondaga Lake program (see paragraph 5).

c. Amendments to the OLMP may be proposed by any member of the Partnership. CELRB will provide for public review and comment, obtain the concurrence of the Governor of the State of New York, seek the approval of EPA, and submit the proposed amendments to HQUSACE to obtain the approval of the ASA(CW). CELRB, through CELRD and HQUSACE, will keep the ASA(CW) informed of the development of prospective amendments to the OLMP.

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d. CELRB will provide to CECW-B, through CELRD, copies of agendas, presentations, and memorandums for the record from completed Partnership meetings and related working group meetings and public meetings and events. CELRB also should report to CECW-B, through CELRD, on potential implementation, interagency, or policy issues that might affect program performance. CECW-B will furnish this information to the Office of the ASA(CW).

e. Because the OLMC will cease to exist on 17 August 2000, FY 2000 General Investigations funds originally requested in the President's budget and appropriated for support to the OLMC also may be used for Partnership activities and transition to the Partnership. Like participation in the OLMC before it, CELRB participation in Partnership activities is included in the President's FY 2001 budget as a specifically funded special study at 100 percent Federal expense under the General Investigations account.

## 5. Program Implementation.

a. The OLMP, the Amended Consent Judgment, and the CELRB Lake-wide PMP will serve as the bases for CELRB-managed planning, design, and construction of project elements pursuant to section 573(a)(1) and for grants pursuant to section 573(a)(2).

b. CELRB-Managed Planning, Design, and Construction (Section 573(a)(1)). Subject to the availability of funds, CELRB shall manage planning, design, and construction of elements of the Onondaga Lake program pursuant to section 573(a)(1).

1. CELRB-managed activities must be consistent with the OLMP, including approved amendments thereto.

2. CELRB-managed activities that are within the purview of the Amended Consent Judgment, Atlantic States Legal Foundation et al v. Onondaga County Department of Drainage and Sanitation, et al, 88-CV-0066 (U.S.D.C. N.D.N.Y.), dated 20 January 1998, ("Amended Consent Judgment") must comply with the Amended Consent Judgment.

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3. In accordance with the Project Labor Agreement covering the ACJ Lake Improvement Project, dated 16 December 1998 ("PLA"), Article 3, Section 1, the PLA "shall only apply to that on-site [construction] work expressly designated by [Onondaga] County in its bid specifications as work performed pursuant to the Amended Consent Judgment, including any amendments and/or modifications thereto." In addition, Article 3, Section 3 of the PLA states in relevant part that the PLA "shall not apply to the County or any state agency, authority, or other municipal or public entity." Consequently, CELRB is not obligated to include the provisions of the PLA in any solicitations or contracts issued by CELRB. However, in accordance with section 573(a)(1), where Onondaga County provides in-kind services as part of its cost share (see paragraph 4.d.), CELRB will recognize costs incurred by the county to comply with the PLA in contracting as part of the value of the in-kind services that is credited toward the county's share of element costs.

4. Each CELRB-managed planning, design, and/or construction element shall be implemented under a Design Agreement or Project Cooperation Agreement (PCA). Each PCA must comply with Section 221 of the Flood Control Act of 1970, as amended, and must be supported by an approved decision document that meets the requirements in EC 1165-2-204, paragraph 7.c., or its successor. The work performed under each agreement shall be treated as a separable element and cost shared separately. Planning and design costs incurred under one agreement will not be incorporated into construction costs under a subsequent agreement.

c. Grants (Section 573(a)(2)). Subject to the availability of funds, CELRB shall provide grants to the State of New York and political subdivisions of the State for the environmental restoration, conservation, and management of Onondaga Lake pursuant to Section 573(a)(2). All grants should be coordinated with the U.S. Environmental Protection Agency. Each grant will be provided through an assistance agreement.

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d. Costs allocable to each element (whether the element is CELRB-managed work or work under a grant) are to be cost shared with a non-Federal share of not less than 30 percent. In accordance with section 573(d)(1), up to 100 percent of the non-Federal share may be provided through in-kind services. To be credited toward the non-Federal share (that is, cost shared), in-kind services must be provided after the date of execution of the applicable agreement and are subject to audit. Reimbursement of in-kind services is not authorized by section 573; consequently, if the value of in-kind services exceeds 30 percent of the costs of the work under an agreement, the increment over 30 percent will not be reimbursed; rather, the non-Federal share will be the greater of the value of the in-kind services or 30 percent. In accordance with Section 573(d)(2) of WRDA 99, the costs of CELRB participation in the Design Coordination Team or Project Coordination Team are 100 percent Federal.

e. CELRB-managed planning, design and construction activities that provide outputs that are consistent with Administration policy may be recommended for inclusion in the President's budget. All recommended planning, design and construction activities will be included in one justification sheet for the Onondaga Lake, New York, project under the Construction, General account.

f. Section 307 of WRDA 92 is not affected by Section 573 of WRDA 99.

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5. Amount Authorized To Be Appropriated. All funds provided for Onondaga Lake, New York, on or after 17 August 1999, whether for program implementation or Partnership activities, will be applied toward the amount authorized to be appropriated by Section 573(f) of WRDA 99. Funds provided are equal to funds appropriated (conference amount minus savings and slippage), plus funds reprogrammed to the project, minus funds reprogrammed from the project. No agreement may be signed and no financial obligation may be made that would commit the Government to financing more than the amount authorized to be appropriated by Section 573(f) of WRDA 99, unless directed otherwise in law.

FOR THE COMMANDER:

/S/

HANS A. VAN WINKLE  
Major General, USA  
Deputy Commander for Civil Works