

## § 240.6

## 33 CFR Ch. II (7-1-07 Edition)

This authority provides a basis for non-Federal interests to undertake local work to alleviate flood damages in the period preceding authorization of a Federal project with assurance that they will not adversely affect the project's economic feasibility. It provides local sponsors more flexibility in meeting their flood problems.

### § 240.6 General policy.

(a) Section 104 is applicable only to projects specifically authorized by the Congress (not to projects authorized by the Chief of Engineers under continuing authorities), and only to "flood control" projects except in instances where the Congress may provide, by specific language in the authorization, that a project of other characterization is eligible for section 104 credit consideration.

(1) Section 104 provisions will be applied only at locations where Federal construction of a congressionally authorized project, or separable element thereof, is initiated after April 30, 1986; a congressionally authorized study is underway; or where the feasibility report has been forwarded for Executive Branch review or for consideration by Congress.

(2) The crediting provisions of section 104 are applicable only to non-Federal work started after the reconnaissance phase of Corps preauthorization studies but prior to project authorization. No credit is available under section 104 for non-Federal work started after project authorization.

(3) A credit recommendation will be in response to a specific request from a State, city, municipality or public agency that is the prospective local sponsoring agency for the contemplated Federal plan.

(b) Work eligible for crediting shall be limited to that part of the local improvement directly related to a flood control purpose. (These guidelines, although they generally make reference to flood control "projects," should be understood to have equivalent application to allocated flood control costs in a multiple purpose project.) Measures (structural or nonstructural) undertaken for channel alignment, navigation, recreation, fish and wildlife, land reclamation, drainage, or to protect

against land erosion, and which, in conjunction with the project, do not produce appreciable and dependable effects in preventing damage by irregular and unusual rises in water levels, are not classed as flood control works and are ineligible for credit.

(c) Future work proposed for crediting should be separately useful for flood control or other purposes even if the Federal Government does not construct the contemplated project, and must not create a potential hazard.

(d) For local work initiated before 17 November 1986, but after 17 November 1981, the local sponsoring agency must have requested consideration by letter dated on or before 31 March 1987. For new local work commenced after 17 November 1986, only work for which the sponsor receives notification of compatibility and extent of potential credit pursuant to § 240.9(c) of this regulation shall be eligible for credit.

(e) The maximum amount creditable shall equal the actual expenditures made by non-Federal entities (not limited solely to the project sponsor's specific efforts and expenditures) for work that meets the criteria set forth above and in § 240.7 or 240.8. Expenditures eligible for inclusion in the amount creditable include the costs of all efforts actually required for the non-Federal implementation of the compatible flood control works including, but not necessarily limited to, costs for permits, environmental, cultural or archeological investigations, engineering and design, land acquisition expense, other LERRD, and construction of the flood control works including any required mitigation measure. For construction efforts accomplished by non-Federal interests using their own forces and other resources, for which "costs" may not be recorded, consideration will be given to inclusion of a reasonable estimate of the value thereof (as if accomplished by contract). Regardless of the total amount creditable on this basis, however, the amount actually credited will not exceed the amount that is a reasonable estimate of the reduction in Federal project expenditures resulting from substitution of the local work for authorized project elements or, in the case of compatible work outside the scope of the project

as originally authorized, a reasonable estimate of what Federal expenditures would have been if that work had been Federally constructed. Costs of subsequent maintenance of the creditable non-Federal flood control work will not be credited. In the event that the local construction work is financed by a Federal non-reimbursable grant or other Federal funds, the amount creditable against future local cooperation requirements shall be reduced by a commensurate amount, unless the law governing the grant permits grant funds to be used to meet the non-Federal share of Corps of Engineers cost sharing requirements. However, there will be no corresponding reduction in the costs or benefits considered in the project's economic evaluation.

(f) Regardless of the total amount creditable for compatible work at the time of construction, the local sponsor will be required to contribute 5 percent of the total project cost in cash during construction of the project by the Corps. The credit can only be applied toward the value of needed lands, easements, rights-of-way, relocations, and disposal areas (LERRD) the sponsor would otherwise have to provide plus any additional required cash contribution needed to make the total sponsor contribution equal at least 25 percent of total project costs. As a consequence of crediting non-Federal construction costs against LERRD requirements some costs for LERRD may become a Federal responsibility.

(g) Reimbursement to non-Federal interests will not be made for any excess of costs for compatible works beyond that which can be credited in accordance with §240.6(f). In this regard, reimbursements pursuant to section 103(a)(3) of Pub. L. 99-662 will not be made should the non-Federal share of project-related costs exceed 50 percent of total project-related costs by virtue of such excess of costs for compatible work.

(h) Local interests are responsible for developing all necessary engineering plans and specifications for the work they propose to undertake. However, those costs, including engineering and overhead, directly attributable to the creditable part of local work may be included in the amount credited.

(i) Non-Federal costs in connection with LERRD required for the Federal project, regardless of when incurred, will be recognized in computation of the LERRD component of project costs (the credit provisions of section 104, Pub. L. 99-662, have no direct bearing on this).

(j) Non-Federal construction and LERRD costs in connection with compatible work for which credit can be given will, when those costs are incorporated in project costs, be included in their related categories, and total project cost sharing responsibilities will be adjusted accordingly.

**§240.7 Credit criteria for projects authorized on or before 17 November 1986.**

(a) For work accomplished prior to project authorization, the following local improvements can be construed as compatible and considered for credit:

(1) Work that would constitute an integral part of the Federal project as authorized (integral work);

(2) Work that would have been included in the Federal project if it had not been assumed to be part of the without project condition (external work); and

(3) Work that reduces the construction cost of the Federal plan (substitute work).

(b) For local work accomplished subsequent to project authorization, only work started prior to authorization, and for which credit consideration was requested by letter dated on or before 31 March 1987, is eligible for credit under the provisions of section 104. New non-Federal work initiated after project authorization, provided it is on an element of the authorized project, is subject to limited credit under a separate authority. Such work, if the sponsor desires related credit, should be undertaken under formal agreement pursuant to section 215 of the Flood Control Act of 1968 Pub. L. 90-483, approved August 13, 1968, as amended.

(c) All creditable non-Federal costs for compatible work, and related benefits, may be considered in the project economic evaluation and, to the extent the related benefits are required for economic justification, creditable costs