

# Legislative Drafting Service Fundamentals for Ecosystem Restoration Projects

Dr. Hank Jarboe  
Water Resources Planner  
Great Lakes and Ohio River Division

NCER 11



US Army Corps of Engineers  
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# LDS Fundamentals for Ecosystem Restoration Projects

- Legislative Language Used for Corps Civil Works Projects.
  - Guidance For the Civil Works Legislative Process Contained in EC 1105-2-220
  - Authorization Language
    - Managed by Legislative Management Branch, Planning and Policy Division, Civil Works Directorate
  - Appropriation Language
    - Managed by Programs Management Division, Civil Works Directorate



# LDS Fundamentals for Ecosystem Restoration Projects

- Know your subject
  - ▶ A great Record of Congressional Contact (RCC) is the foundation of well-written draft legislative language.
    - An RCC should provide all of the necessary project or program information to draft language
    - The RCC should provide a point of contact for
      - ▷ additional project information
      - ▷ or a clarification of information already provided



# LDS Fundamentals for Ecosystem Restoration Projects

- Know your resources
  - ▶ Have a good knowledge of the Corps existing authorities
  - ▶ Know where to locate examples of legislative language
  - ▶ Have a local District LDS expert identified that may provide willing mentorship in drafting language
    - Experience is the best teacher
    - Consult Your Office of Counsel (will, shall, may, notwithstanding, etc.) required part of the chop
    - Planning and Policy



# LDS Fundamentals for Ecosystem Restoration Projects

- No One Correct Way for Writing Draft Legislative Language
  - **“The Writing of LDS is Author-Specific”**
  - It will change through the review process, guaranteed
  - Don’t take too much pride in ownership
- Before initiating the drafting of language adopt an objective to accomplish with the format established for the LDS
  - This is up to the individual
  - Thorough enough to facilitate the development of HQ Implementation Guidance



# LDS Fundamentals for Ecosystem Restoration Projects

- Can be used for proposed Authorizations or the amendment of existing legislation
- Important Elements/Sections to Include in an Authorization LDS
  - Provision Title
  - In General
  - Special Project Specific Provisions
  - Cost Sharing
  - Operations and Maintenance
  - Applicability of Other Laws
  - Authorization of Appropriations
  - Disclaimer





# LDS Fundamentals for Ecosystem Restoration Projects

- Layout for draft Authorization Language (example)
- SECTION . TITLE
  - (a) SUBTITLE (ALL CAPS) –
    - (1) SUBTITLE (ALL CAPS) – (if no subtitle then no CAPS)
      - (A) SUBTITLE (ALL CAPS) – (if no subtitle then no CAPS)
      - (B) SUBTITLE (ALL CAPS) -
    - (2) SUBTITLE (ALL CAPS) –
      - (A) SUBTITLE (ALL CAPS) – (if no subtitle then no CAPS)
      - (B) SUBTITLE (ALL CAPS) -
  - (b) SUBTITLE (ALL CAPS) –
    - (1)
      - (A)
      - (B)
    - (2)
      - (A)
      - (B)



# LDS Fundamentals for Ecosystem Restoration Projects

- Important Elements to Include in Authorization LDS
  - PROVISION TITLE
    - A good provision title is brief and in just a few words provides the overall purpose and a location where the project is to occur (waterbody or watershed, City and State)
    - i.e. “Savannah Georgia” vs “Floodplain Mapping, Little Calumet River, Chicago, Illinois”
  - IN GENERAL
    - This section provides the overall intent of the authorization. The description is typically brief includes the proposed action to be taken (i.e. conduct a study), and has a geographical reference to location. In this section it is a good idea to relate the proposed activity to a Corps mission area (i.e. The Secretary may participate in a project for ecosystem restoration, navigation, or flood risk management).
      - Project location – defines boundaries for work
      - Recommend KIS approach





# LDS Fundamentals for Ecosystem Restoration Projects

- Important Elements to Include in Authorization LDS
  - Placeholder for Special Project Specific Provisions
    - Will include additional aspects of the authorization that may make it unique or what the legislator wants to call attentions too
    - Each of these subsections need to be titled and contain enough information to thoroughly explain or define the feature of the legislation being addressed.
    - Examples of subsections
      - PARTICIPATION BY OTHER GROUPS
      - REQUIREMENTS
      - FORMS OF ASSISTANCE
      - COORDINATION
      - TECHNOLOGIES AND INNOVATIVE APPROACHES
      - CONTRIBUTIONS
      - PRIORITIES
      - DEFINITITIONS



# LDS Fundamentals for Ecosystem Restoration Projects

- Important Elements to Include in Authorization LDS
  - COST SHARING
    - Cost Sharing Ratios
      - Section establishes what Federal and non-Federal ratios are for sharing of cost in project, or any phase of the project. This allows for a deviation from the standard F:NF cost sharing ratios
  - CREDITS PROVIDED
    - For Work
      - Past Work
      - Current Work
      - Future Work
    - For Material Provided
    - For Lands, Easements, Rights of Way, Relocations, and Disposal Areas



# LDS Fundamentals for Ecosystem Restoration Projects

- Important Elements to Include in Authorization LDS
- OPERATIONS AND MAINTENANCE
  - O&M
    - What Activities Constitute O&M
    - Who will do the O&M
    - What is the sharing of responsibility for O&M
    - What are the reporting requirements
  - MONITORING
    - Who will do the monitoring
    - What will be monitored
    - How will monitoring be conducted
  - ADAPTIVE MANAGEMENT (AM)
    - Who will determine if AM is necessary
    - How will the requirement for AM be determined
    - Who will implement the AM
    - Who will determine if the AM is successful



# LDS Fundamentals for Ecosystem Restoration Projects

- Important Elements to Include in Authorization LDS
  - APPLICABILITY TO OTHER LAWS
    - Good to get OC help with this
    - Iron Clad Statement for this:
      - **“Nothing in this section shall be construed to waive, limit, or otherwise affect the applicability of any provision of Federal or State law that would otherwise apply to a project to be carried out with the assistance provided under this section.”**



# LDS Fundamentals for Ecosystem Restoration Projects

- Important Elements to Include in Authorization LDS
  - AUTHORIZATION OF APPROPRIATIONS
    - A statement which indicates a statutory cost limit for how much may be necessary to carry out the provision.
    - May be detrimental if the estimate is an underestimate of costs, which would require legislation to amend the amount.
    - Large amounts of money in legislation for a project in their area looks good to constituents. Even if the project is never completed and funds never appropriated, the impression to the voters is provided that something positive is being done for them by their legislator.
    - Bottom line, if requested by a Congressional to draft this information in language you must comply for this or any other section of draft legislation. If required, try to remember you are identifying a project cost so make the estimate as accurate as possible. Be sure to talk to the team member that has that information.



# LDS Fundamentals for Ecosystem Restoration Projects

- Important Elements to Include in Authorization LDS
  - Disclaimer
    - ***“The draft legislation is provided as a drafting service at your request and should not be construed as an Army or Administration position on this proposal. Under departmental procedures, the official position on the merits of this legislation will be developed by the Secretary of the Army in response to a request from the Chairman of the Committee having the legislation under consideration, and then only after coordination with the Office of Management and Budget and other agencies.”***





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## QUESTIONS?



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