



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

Reply to attention:

APR 12 2011

CEMP-CR/CECC-R

FOR COMMANDER, NORTHWESTERN DIVISION (CENWD-PDS-R and CECC-NWD)

SUBJECT: Implementation Guidance for Section 3164 of the Water Resources Development Act of 2007 (WRDA 2007) – McNary Lock and Dam, McNary National Wildlife Refuge, Washington and Idaho

1. Section 3164 of WRDA 2007 transferred administrative jurisdiction over certain lands acquired for the McNary Lock and Dam project from the Secretary of the Army (Secretary) to the Secretary of the Interior. The transferred lands consist of those lands identified in cooperative agreement number DACW68-4-00-13 which was executed in January of 2000 by and between the Department of the Army and the United States Fish and Wildlife Service (USF&WS). A copy of Section 3164 of WRDA 07 is enclosed.
2. The transfer of administrative jurisdiction is subject to easements existing as of November 8, 2007. As provided for in Section 3164 (c)(2), the Secretary retains the right to flood the transferred land to the standard project flood elevation and to manipulate the level of the McNary project pool. In addition, the Secretary retains the right to: access the transferred land as may be required to install, maintain, and inspect sediment ranges and carry out similar activities; construct and develop wetland, riparian habitat, or other environmental restoration features authorized by Section 1135 of WRDA 1986 and Section 206 of WRDA 1999; dredge and deposit fill materials; and carry out management actions for the purpose of reducing the take of juvenile salmonids by avian colonies that inhabit, before, on, or after November 8, 2007, any island included in the transferred land; however, exercise of any of these rights requires prior coordination with the Director of the USF&WS. As provided for in Section 3164(d)(2)(A), the habitat unit credits provided for the Lower Snake River Fish and Wildlife Compensation Plan through development of the Cummins property are retained by the Secretary.
3. The District should complete a disposal report and include any appropriate environmental documentation. Because the transfer of administrative jurisdiction was accomplished as a matter of law, the role of the Federal agencies involved is solely ministerial as they have no discretion in implementing the transfer. Therefore, there is no “major Federal action” triggering NEPA requirements. Furthermore, even if this action were arguably a “major Federal action” that required NEPA review, this activity is subject to a categorical exclusion from NEPA documentation. See 33 CFR 230.9(r) and (s), and 40 CFR 1508.4. The disposal report completed by the District should include the determination that there is no “major Federal action” triggering NEPA requirements along with any other environmental documentation that is determined to be required.

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4. In order to finalize the transfer, the District is directed to draft a Letter of Transfer for submittal to CEMP-CR, along with the disposal report, for further action. The Letter of Transfer should identify the appropriate USF&WS official who will be responsible for administering the land transferred pursuant to Section 3164.

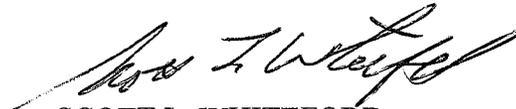
5. In accordance with Section 3164(e), the Director of USF&WS is responsible for all costs associated with this transfer, including costs for survey, environmental compliance, and any other administrative costs which are required to implement this transfer of administrative jurisdiction and, in accordance with Section 3164 (d)(3), the Director of the USF&WS shall continue operation of the Madame Dorian Recreation Area for public use and boater access. Additionally, as provided for in Section 3164 (d)(2) (B) regarding the Site Development Plan, the Director shall obtain prior approval of the Washington State department of fish and wildlife for any change to the previously approved site development plan for the parcel of land formerly known as the “Cummins property”.

7. Any questions regarding this guidance should be addressed to Laura Ouverson Norman at 202-761-0023 or Patricia Kenny at 202-761-8884.

FOR THE COMMANDER:

Encl

cc:
CENWW-RE
CENWW-OC



SCOTT L. WHITEFORD
Director of Real Estate

SEC. 3164. MCNARY LOCK AND DAM, MCNARY NATIONAL WILDLIFE REFUGE, WASHINGTON AND IDAHO.

(a) Transfer of Administrative Jurisdiction- Administrative jurisdiction over the land acquired for the McNary Lock and Dam project and managed by the United States Fish and Wildlife Service under cooperative agreement number DACW68-4-00-13 with the Corps of Engineers, Walla Walla District, is transferred from the Secretary to the Secretary of the Interior.

(b) Easements- The transfer of administrative jurisdiction under paragraph (1) shall be subject to easements in existence as of the date of enactment of this Act on land subject to the transfer.

(c) Rights of Secretary-

(1) IN GENERAL- Except as provided in subparagraph (C), the Secretary shall retain rights described in subparagraph (B) with respect to the land for which administrative jurisdiction is transferred under paragraph (1).

(2) RIGHTS- The rights of the Secretary referred to in paragraph (1) are the rights--

(A) to flood land described in subsection (a) to the standard project flood elevation;

(B) to manipulate the level of the McNary project pool;

(C) to access land described in subsection (a) as may be required to install, maintain, and inspect sediment ranges and carry out similar activities;

(D) to construct and develop wetland, riparian habitat, or other environmental restoration features authorized by section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a) and section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330);

(E) to dredge and deposit fill materials; and

(F) to carry out management actions for the purpose of reducing the take of juvenile salmonids by avian colonies that inhabit, before, on, or after the date of enactment of this Act, any island included in the land described in subsection (a).

(3) COORDINATION- Before exercising a right described in any of subparagraphs (C) through (F) of paragraph

(2), the Secretary shall coordinate the exercise with the Director of the United States Fish and Wildlife Service.

(d) Management-

(1) IN GENERAL- The land described in subsection (a) shall be managed by the Secretary of the Interior as part of the McNary National Wildlife Refuge.

(2) CUMMINS PROPERTY-

(A) RETENTION OF CREDITS- Habitat unit credits described in the memorandum entitled 'Design Memorandum No. 6, LOWER SNAKE RIVER FISH AND WILDLIFE COMPENSATION PLAN, Wildlife Compensation and Fishing Access Site Selection, Letter Supplement No. 15, SITE DEVELOPMENT PLAN FOR THE WALLULA HMU' provided for the Lower Snake River Fish and Wildlife Compensation Plan through development of the parcel of land formerly known as the 'Cummins property' shall be retained by the Secretary despite any changes in management of the parcel on or after the date of enactment of this Act.

(B) SITE DEVELOPMENT PLAN- The Director shall obtain prior approval of the Washington State department of fish and wildlife for any change to the previously approved site development plan for the parcel of land formerly known as the 'Cummins property'.

(3) MADAME DORIAN RECREATION AREA- The Director shall continue operation of the Madame Dorian Recreation Area for public use and boater access.

(e) Administrative Costs- The Director shall be responsible for all survey, environmental compliance, and other administrative costs required to implement the transfer of administrative jurisdiction under subsection (a).