



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

REPLY TO
ATTENTION OF

JUL 9 2009

CECW-MVD

MEMORANDUM FOR COMMANDER, Mississippi Valley Division (CEMVD-PD)

SUBJECT: Implementation Guidance for Section 3096 of the Water Resources Development Act (WRDA) of 2007 – GRANITE FALLS, MINNESOTA

1. Section 3096(a) directs the Secretary to implement the locally preferred plan (LPP) for flood damage reduction, Granite Falls, Minnesota, at a total cost of \$12,000,000, with an estimated Federal cost of \$8,000,000 and an estimated non-Federal cost of \$4,000,000. Further, in carrying out the project, the Secretary shall utilize, to the extent practicable, the existing detailed project report dated 2002 prepared under authority of Section 205 of the Flood Control Act of 1948. Pursuant to Section 3096(b) the Secretary shall allow the non-Federal interests to participate in the financing of the project in accordance with Section 903(c) of WRDA 1986 if the detailed project report indicates that applying section 903(c) is necessary to implement the project. In accordance with section 3096(c) the Secretary shall credit towards the non-Federal share of the project the cost of design and construction work carried out by the non-Federal interests for the project before the date of execution of the project partnership agreement (PPA) for the project. Finally, section 3096(d) limits the maximum amount of Federal funds that may be expended on the project to \$8,000,000. A copy of section 3096 is enclosed for your information.

2. Subject to the availability of funds, the district will update the analysis of the LPP, including its environmental acceptability, technical feasibility, the level of flood damage risk reduction, and document the National Economic Development (NED) benefits, using, to the extent practicable, the detailed project report dated 2002. The report shall also document any project features that do not produce NED benefits greater than costs in accordance with Section 903(c) of WRDA 1986. In the event the LPP or separable element thereof does not produce NED benefits greater than costs, Federal participation in the cost of the project will be limited to the Federal share of the project or separable element costs that are equal to the estimated value of the NED benefits of that project or separable element. The Federal cost sharing shall be in accordance with the cost sharing provisions of Section 103 of WRDA 1986, as amended. The non-Federal interest will be required to pay, during construction of the project or separable element, an amount sufficient to make the remaining costs of the project or separable element equal to the estimated value of the NED benefits of the project or separable element. In addition, the report will include a determination on whether or not application of Section 903(c) of WRDA 1986 is necessary to implement the Granite Fall project and resultant impact on non-Federal cost sharing. The updated report must be submitted to Headquarters for review and approval by the Assistant Secretary of the Army for Civil Works (ASA(CW)). The maximum amount of Federal funds that may be expended on this project is \$8,000,000.

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3. Only design and construction work performed prior to the execution of the project partnership agreement (PPA) and determined to be integral to the project will be considered eligible for credit. The guidance and procedures contained in Engineering Circular No. 1165-2-208, In-Kind Contribution Provisions of Section 221, dated 6 June 2008, will be used to determine eligibility of credit for such design and construction work. Any design and construction work undertaken after enactment of WRDA 2007 but prior to execution of the PPA will be eligible for credit only if such work is carried out after execution of an In-Kind Memorandum of Understanding (MOU) (see paragraph 4 and Table 1 of the EC) and determined to be integral to the project (see paragraph 6 and Table 2 of the EC). The actual value of the eligible work and amount of credit afforded will be determined in accordance with the terms and conditions of the PPA for the project. Credit will only be afforded toward the non-Federal share of the project or separable element costs that are equal to the estimated value of the NED benefits of that project or separable element. The total amount of credit for in-kind contributions shall not exceed the non-Federal cash requirement for the project.

Section 3096 does not provide authority to afford credit for planning work carried out prior to execution of the PPA or for planning, design or construction work carried out after the date of execution of the PPA. The updated report should discuss as appropriate eligible In-Kind work to be performed pursuant to an MOU that the non-Federal interests may be eligible to receive credit for towards the cost of design and construction work carried out prior to execution of the PPA for the project.

4. No work shall be undertaken to implement the LLP until funds are specifically appropriated for such work and the updated detailed project report is approved by the ASA(CW). At such time that the updated detailed project report has been approved by the ASA(CW) and funds are appropriated for construction a PPA that reflects the LPP and the application of 903(c) of WRDA 1986 will be developed and submitted to HQUSACE from review and approval by the ASA(CW).

FOR THE COMMANDER:



THEODORE A. BROWN, P.E.
Chief, MVD Regional Integration Team
Directorate of Civil Works

Encl

SEC. 3096. GRANITE FALLS, MINNESOTA.

(a) **IN GENERAL.**—The Secretary is directed to implement the locally preferred plan for flood damage reduction, Granite Falls, Minnesota, at a total cost of \$12,000,000, with an estimated Federal cost of \$8,000,000 and an estimated non-Federal cost of \$4,000,000. In carrying out the project, the Secretary shall utilize, to the extent practicable, the existing detailed project report dated 2002 for the project prepared under the authority of section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s).

(b) **PROJECT FINANCING.**—In evaluating and implementing the project under this section, the Secretary shall allow the non-Federal interests to participate in the financing of the project in accordance with section 903(c) of the Water Resources Development Act of 1986 (100 Stat. 4184) if the detailed project report evaluation indicates that applying such section is necessary to implement the project.

(c) **CREDIT.**—The Secretary shall credit, in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), toward the non-Federal share of the project the cost of design and construction work carried out by the non-Federal interest for the project before the date of execution of a partnership agreement for the project.

(d) **MAXIMUM FUNDING.**—The maximum amount of Federal funds that may be expended for the flood damage reduction shall be \$8,000,000.