



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

APR 10 2009

CEMP-NAD

MEMORANDUM FOR COMMANDER, North Atlantic Division (CENAD-PSD-P)

SUBJECT: Implementation Guidance for Section 5126 of the Water Resources Development Act of 2007 – Upper Susquehanna River Basin, Pennsylvania and New York

1. Section 5126 of the Water Resources Development Act (WRDA) of 2007 amends Section 567 of WRDA 1996 and authorizes the Secretary, in cooperation with the Secretary of Agriculture, the State of Pennsylvania, and the State of New York to conduct a study, and develop and carry out a strategy for using wetland restoration, soil and water conservation practices, and nonstructural measures to reduce flood damage, improve water quality, and create wildlife habitat. The following portions of the Upper Susquehanna River basin are addressed in this section: (a) Juniata River watershed, Pennsylvania, at an estimated Federal cost of \$8,000,000; (b) Susquehanna River watershed upstream of the Chemung River, New York at an estimated Federal cost of \$20,000,000, the Secretary may utilize not more than \$5,000,000 to design and construct feasible pilot projects for the Susquehanna River watershed upstream of the Chemung River, NY, during the development of the strategy. The Secretary shall evaluate the results of these pilot projects and consider the results in the development of the strategy. The total cost for any of these single pilot projects will not exceed \$500,000; and (c) Chemung River watershed, New York, at an estimated Federal cost of \$5,000,000. A copy of Section 567, as amended, is enclosed.

2. Study and Strategy Development.

a) Studies will be conducted for the purpose of developing an overall strategy for each of the three named watersheds in coordination with the non-Federal interests, the Secretary of Agriculture, and the States of Pennsylvania and New York, as appropriate, in accordance with the Corps' watershed planning guidance scheduled to be issued shortly. The strategy will determine problems, needs and opportunities in the watershed, and identify a range of alternatives (including wetland restoration, soil and conservation practices and non-structural measures) that contribute to the overall watershed goals of flood damage reduction, improved water quality, and creation of wildlife habitat. In addition, the strategy will identify potential projects that may be implemented by the Corps using its authorities, as well as projects that may be implemented by others using their authorities for the purposes of meeting the overall watershed goals. Each watershed strategy will be submitted through HQUSACE to the Assistant Secretary of the Army (Civil Works) (ASA(CW)) for approval. The strategy may include a recommendation as to the appropriate level of review and approval for Corps projects to be implemented under the strategy. Not all strategies must be submitted and approved at the same time. The Upper Susquehanna River and Chemung River strategies may be combined, as they are both within boundaries of the State of New York .

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b) The studies to develop the strategy will be cost shared 75 percent Federal, 25 percent non-Federal. The non-Federal share may be provided through in-kind services and materials. The study agreement between the Corps and the non-Federal interest(s) will be based on the draft model Section 729 Assessment Agreement currently designated as an interim model. A copy of this model is available from CECW-PC. Since this is a new use of this agreement, the draft study agreement for studies conducted under the authority of Section 567, as amended, must be submitted to HQUSACE for ASA (CW) approval. Each agreement will be supported by a project management plan that describes the scope, schedule, and cost of the effort required to conduct the study.

(1) Juniata River watershed, Pennsylvania - Subject to appropriations, the District will negotiate and execute an agreement with non-Federal interests to share the cost of the study to develop a strategy that will guide future restoration of the Juniata River Basin.

(2) Upper Susquehanna upstream of the Chemung River Basin, New York - A Feasibility Cost Sharing Agreement was executed in January 2002 with the New York State Department of Environmental Conservation for the Upper Susquehanna River Basin Ecosystem Restoration – Cooperstown Area Feasibility Study. Using funds currently available under the Cooperstown Area Feasibility Study, a new study agreement must be negotiated and executed for the purposes of developing a new strategy, consistent with the Corps' watershed planning approach, for the Upper Susquehanna and Chemung River Basins. The District will make maximum use of appropriate, existing information in the development of this strategy. Funding for any additional work beyond that which may be accomplished using existing funds must be appropriated.

(i) Pilot Projects. As part of developing the strategy for the Upper Susquehanna River basin, upstream of the Chemung River, New York, feasible pilot projects may be implemented during this phase to demonstrate alternative approaches for the strategy. Upon executing a new study cost sharing agreement, project proposals located upstream of the Chemung River, New York, may be identified and submitted to HQUSACE for approval, subject to the availability of funds. Pilot projects must be cost effective and must be consistent with Corps mission areas, cannot exceed a total project cost of \$500,000 and will be cost shared 75 percent Federal and 25 percent non-Federal. A short letter report describing the recommended pilot project including information on the cost, the non-Federal sponsor and its financial capability, project goals, project outputs and project schedule and resolution of all environmental compliance responsibilities must be provided for approval. Construction of pilot projects can occur only after approval of the letter report, and approval and execution of a design/construction partnership agreement. It is also dependent upon the non-Federal sponsor's ability to secure any necessary lands, easements, rights of way, relocations, and disposal areas. Non-Federal sponsors will be required to operate and maintain the pilot projects at 100 percent non-Federal cost. Results of these pilot projects will be considered in the development of the strategy.

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(ii) Upper Susquehanna River Basin – Cooperstown Area Ecosystem Restoration Feasibility Study. Since the non-Federal sponsor has constructed this project, no further work will be undertaken to implement this project.

(3) Chemung River Basin - Subject to appropriations, the District may negotiate and execute an agreement with non-Federal interests to share the cost of the study to develop a strategy that will guide future restoration that covers only the Chemung River Basin if it is not included in the study discussed in paragraph 2(b) (2) above.

3. Implementation. Upon approval of the strategy for each watershed by the ASA (CW), potential Corps projects identified as part of the strategy for meeting the overall watershed goals may be considered for further study and implementation. However, no work may be undertaken until such time as funds are appropriated for such work. Potential Corps projects identified in the strategy must be planned, designed and constructed consistent with the policy and procedural requirements of the Continuing Authorities Program (CAP) found in Appendix F, ER 1105-2-100. Any exceptions to policy must be approved by the ASA (CW).

a) Cost sharing for the feasibility phase will be initially Federally funded up to \$100,000. Any remaining feasibility phase costs will be shared 50/50 with an appropriate non-Federal sponsor pursuant to the terms of a CAP feasibility cost sharing agreement. A feasibility cost sharing agreement is not required if the feasibility phase can be completed for \$100,000 or less. Any unused portion of the federally funded \$100,000 is not transferable to the design and implementation phase. Approval of the decision document will be by letter of the MSC Commander to the District Commander, with a copy furnished to HQUSACE. This authority may not be further delegated to the District Commander.

b) Costs for the design and implementation of projects will be shared with the non-Federal sponsor in accordance with the cost sharing requirements of Section 103 of WRDA 1986. Upon the approval by the MSC Commander of the decision document that recommends proceeding into the design and implementation phase, a Project Partnership Agreement (PPA) will be negotiated and executed using the appropriate CAP model. The non-Federal sponsor will be responsible for 100 percent of all operations and maintenance costs upon completion of project construction.

c) Any recommended projects exceeding the normal CAP per project limits must be submitted to HQUSACE for determination of the appropriate level of approval prior to proceeding to design and implementation.

4. Section 567, as amended, does not authorize the transfer of funds, either in advance or as reimbursements, to the non-Federal sponsor.

5. In carrying out the strategy, acquisition of wetlands may only be from willing sellers. However, it must be noted that projects with very limited manipulation of the ecosystem that

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utilize extensive tracts of land appear to present themselves as preservation measures rather than restoration measures. Such projects are not likely to be appropriate Civil Works ecosystem restoration investments.

6. Credit. Section 567, as amended, provides authority to afford credit toward the non-Federal share of the cost of the project for the costs of in-kind services and materials provided by the non-Federal interest both before and after execution of the Design Agreement (DA) and the PPA, as applicable. The guidance and procedures contained in Engineering Circular (EC) 1165-2-208, In-Kind Contribution Provisions of Section 221, should be used to determine eligibility of credit for such in-kind contributions. The actual value of the in-kind contributions will be determined in accordance with the terms and conditions of the DA or the PPA for the project. In addition, all proposed in-kind contributions must be determined to be integral to the project (see paragraph 6 and Table 2 of the EC) and, as discussed in paragraph 3 of the EC, excess in-kind contributions will not be shared between multiple PPAs. Credit will be afforded only for those projects initiated after approval of the strategy.

7. No work may be undertaken under this authority until such time as funds are appropriated to accomplish such work.

FOR THE COMMANDER:

Encl



Mohan Singh, P.E.
Chief, North Atlantic Division
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UPPER SUSQUEHANNA RIVER BASIN,
PENNSYLVANIA AND NEW YORK

Section 567 of the Water Resources Development Act (WRDA) of 1996, as amended by Section 579 of WRDA 1999, Section 538 of WRDA 2000, and Section 5126 of WRDA 2007

(a) **STUDY AND STRATEGY DEVELOPMENT.** – The Secretary, in cooperation with the Secretary of Agriculture, the State of Pennsylvania, and the State of New York, shall conduct a study, and develop and carry out a strategy, for using wetland restoration, soil and water conservation practices, and nonstructural measures to reduce flood damage, improve water quality, and create wildlife habitat in the following portions of the Upper Susquehanna River basin:

(1) The Juniata River watershed, Pennsylvania, at an estimated Federal cost of \$8,000,000.

(2) The Susquehanna River watershed upstream of the Chemung River, New York, at an estimated Federal cost of \$20,000,000, of which the Secretary may utilize not more than \$5,000,000 to design and construct feasible pilot projects during the development of the strategy to demonstrate alternatives approaches for the strategy. The total cost for any single pilot project may not exceed \$500,000. The Secretary shall evaluate the results of the pilot projects and consider the results in the development of the strategy.

(3) The Chemung River watershed, New York, at an estimated Federal cost of \$5,000,000.

(b) **Non-Federal Share.** – The non-Federal share of the cost of the study and development of the strategy shall be 25 percent and may be provided through in-kind services and materials.

(c) **PARTNERSHIP AGREEMENTS.** – In conducting the study and developing and carrying out the strategy under this section, the Secretary shall enter into cost-sharing and partnership agreements to provide financial assistance to appropriate Federal, State, and local government agencies and appropriate nonprofit, nongovernmental organization with expertise in wetland restoration, with the consent of the affected local government. Financial assistance provided may include activities for the implementation of wetlands restoration projects and soil and water conservation measures.

(d) IMPLEMENTATION OF STRATEGY. -

(1). IN GENERAL.- The Secretary shall undertake development and implementation of the strategy under this section in cooperation with local landowners and local government officials. Projects to carry out the strategy shall be designed to take advantage of ongoing or planned actions by other agencies, local municipalities, or nonprofit, nongovernmental organizations with expertise in wetland restoration that would increase the effectiveness or decrease the overall cost of carrying out recommended projects and may include the acquisition of wetlands, from willing sellers, that contribute to the Upper Susquehanna River basin ecosystem.

(2). PRIORITY PROJECT. - In carrying out projects to implement the strategy, the Secretary shall give priority to the project for ecosystem restoration, Cooperstown, New York, described in the Upper Susquehanna River Basin- Cooperstown Area Ecosystem Restoration Feasibility Study, dated December 2004, prepared by the Corps of Engineers and the New York State Department of the Environmental Conservation.

(e). CREDIT. - The Secretary shall credit toward the non-Federal share of the cost of a project under this section-

(1). In accordance with the section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), the cost of design and construction work carried out by the non-Federal interest for the project before the date of the partnership agreement for the project; and

(2). The cost of the in-kind services and materials provided for the project by the non-Federal interest.