DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON DC 20314-1000

CECW-PM

OCT 21 2009

MEMORANDUM FOR COMMANDER, GREAT LAKES AND OHIO RIVER DIVISION (CELRD-PDS-P)

SUBJECT: Implementation Guidance for Section 3089 of the Water Resources Development Act of 2007 (WRDA 2007) – St. Clair River and Lake St. Clair, Michigan

1. Section 3089 of WRDA 2007 amends Section 426 of WRDA 1999 to direct the Secretary to establish and lead a partnership of appropriate Federal and State agencies in the management of the St. Clair River and Lake St. Clair watersheds and in the development and implementation of projects consistent with the June 2004 management plan to restore and conserve the St. Clair River and Lake St. Clair watersheds. Section 3089 also directs the Secretary to develop a strategic implementation plan (SIP) in accordance with the management plan; to provide technical, planning, and engineering assistance to non-Federal interests for developing and implementing activities consistent with the management plan; to plan, design, and implement projects consistent with the management plan; and to provide financial and technical assistance, including grants, to non-Federal interests and nonprofit entities for the Federal share of the cost of planning, design, and implementation of projects to restore, conserve, manage, and sustain the St. Clair River and Lake St. Clair watersheds. A total of $20,000,000 has been authorized to be appropriated to carry out this section of law. Copies of Section 3089 and Section 426 of WRDA 1999 are enclosed for information.

2. The June 2004 management plan referred to in the legislation was prepared in response to Section 426 of WRDA 1999 as it existed prior to enactment of the WRDA 2007 amendment. The Detroit District prepared the management plan in a collaborative effort with U.S. Federal, State, and local agencies, with input from Canadian Federal, provincial, and local agencies, as well as from other stakeholders in the watershed. The plan identifies a variety of problems and opportunities present in the St. Clair River and Lake St. Clair watershed and addresses issues such as the environmental health of the watershed, human health in the region, habitat diversity, commercial navigation, fisheries and recreational boating. It identifies 110 recommendations for actions to protect and restore the watershed, some of which could potentially be considered for implementation under the authority of Section 426 of WRDA 99, as amended by Section 3089 of WRDA 2007, or under other existing Corps authorities.

3. Implementation of Section 426 of WRDA 99, as amended, entails three distinct tasks: a) establishing a partnership; b) developing a SIP; and c) implementing activities consistent with the June 2004 implementation plan. Projects and activities that may be considered for Corps implementation are those that are clearly within traditional Corps mission areas. Activities outside of traditional Corps mission areas, such as environmental infrastructure assistance projects, will not be implemented except to

the extent funds are specifically appropriated for such activities and then will follow the policies and procedures, including the requirement for cost sharing agreements, applicable to environmental infrastructure projects. In addition, any work consistent with Section 312 of WRDA 90, as amended, will be accomplished in accordance with the policies and procedures associated with that authority.

a. Partnership. Using funds provided in the FY 09 Appropriations Act, the Detroit District may establish a partnership of appropriate Federal agencies (including EPA) and the State of Michigan (including appropriate political subdivisions of the State) to promote cooperation among the Federal, State and local governments and other involved parties in the St. Clair River and watershed and to analyze the development and implementation of projects by appropriate Federal, state, and local entities consistent with the management plan.

b. Strategic Implementation Plan. Subject to the availability of funds, the Detroit District Engineer will develop a St. Clair and Lake St. Clair strategic implementation plan (SIP) using the problems and opportunities identified in the June 2004 management plan. The SIP should be a Five Year Strategic plan that evaluates a range of alternative courses of action; describes the criteria used to evaluate the alternative approaches; identifies specific projects or actions that may be implemented by the Corps using its authorities as well as projects or actions that may be implemented by other Federal, State and local entities using their authorities; and sets priorities for the purpose of meeting the overall St. Clair watershed goals in an integrated approach consistent with Corps watershed planning principles. Input from the Partnership will be considered during development of the SIP. The assessment to develop the SIP will be cost shared 75 percent Federal, 25 percent non-Federal. The non-Federal share may be provided through in-kind services and materials. Development of the agreement between the Corps and the non-Federal interest(s) will be based on the draft interim model Section 729 Assessment Agreement. A copy of this interim model is available from CECW-PC. The draft agreement must be submitted to HQUSACE for ASA(CW) approval and must be supported by a watershed assessment plan that describes the scope, schedule and cost of the effort required to conduct the assessment. Upon completion, the proposed SIP will be submitted to HQUSACE for review and approval by the Secretary.

c. Implementation. Pursuant to Section 426(c)(1)(B), upon completion and approval of the SIP by the ASA(CW), potential Corps projects identified as part of the SIP could be considered for further study and implementation. However, only ecosystem restoration projects identified in the SIP that are of the type, scope and scale of projects implemented pursuant to Section 206 of WRDA 96, as amended, will be considered for implementation. These ecosystem restoration projects must be planned, designed and constructed in accordance with the policy and procedural requirements for Section 206 projects as set out in Appendix F, ER 1105-2-100. A cost shared feasibility study must be completed and approved by the Division Commander prior to implementation. Funds will not be requested for design and implementation until the feasibility study is approved. In addition, cost sharing for the design

and implementation of any feasible ecosystem restoration project will be in accordance with the cost sharing requirements of Section 103 of WRDA 86, including the requirement for non-Federal responsibility for 100 percent of the costs of operation, maintenance, repair, replacement, and rehabilitation of the project. A Project Partnership Agreement will be negotiated and executed using the Section 206 CAP model, modified as appropriate.

4. In accordance with Section 426(c)(1)(B), the District Engineer may provide technical, planning and engineering assistance to non-Federal interests as they develop and implement activities consistent with the June 2004 management plan at such time as funds are appropriated. Provision of this assistance shall be consistent with the technical, planning and engineering assistance provided under the authority of Section 401 of WRDA 1990, as amended, and cost shared 65/35 consistent with that law.

5. Section 426(c) (1) (D) states that the Secretary shall provide, in coordination with the Administrator of the Environmental Protection Agency, financial and technical assistance, including grants to the State of Michigan, (including political subdivisions of the State), and interested nonprofit entities for the Federal share of the cost of planning, design, and implementation of projects. No assistance will be provided under Section 426 (c)(1)(D) unless Congress specifically appropriates funds for such purpose. At such time that funds are appropriated for assistance under this subsection, additional guidance will be provided.

6. This guidance supersedes the St. Clair VTC guidance dated 15 June 2009.

FOR THE COMMANDER:

Encl

MICHAEL G. ENSCH
Chief, Regional Integration Team
Great Lakes and Ohio River Division
Directorate of Civil Works

Water Resources Development Act of 2007

SEC. 3089. ST. CLAIR RIVER AND LAKE ST. CLAIR, MICHIGAN.

Section 426 of the Water Resources Development Act of 1999 (113 Stat. 326) is amended to read as follows:

"SEC. 426. ST. CLAIR RIVER AND LAKE ST. CLAIR, MICHIGAN.

"(a) DEFINITIONS.—In this section, the following definitions apply:

"(1) MANAGEMENT PLAN.— The term 'management plan' means the management plan for the St. Clair River and Lake St. Clair, Michigan, that is in effect as of the date of enactment of the Water Resources Development Act of 2007.

"(2) PARTNERSHIP.—The term 'Partnership' means the partnership established by the Secretary under subsection (b)(1).

"(b) PARTNERSHIP.—

"(1) IN GENERAL.—The Secretary shall establish and lead a partnership of appropriate Federal agencies (including the Environmental Protection Agency) and the State of Michigan (including political subdivisions of the State)—

"(A) to promote cooperation among the Federal Government, State and local governments, and other involved parties in the management of the St. Clair River and Lake St. Clair watersheds; and

"(B) to develop and implement projects consistent with the management plan.

"(2) COORDINATION WITH ACTIONS UNDER OTHER LAW.—

"(A) IN GENERAL.—Actions taken under this section by the Partnership shall be coordinated with actions to restore and conserve the St. Clair River and Lake St. Clair and watersheds taken under other provisions of Federal and State law.

"(B) NO EFFECT ON OTHER LAW.— Nothing in this section alters, modifies, or affects any other provision of Federal or State law.

"(c) IMPLEMENTATION OF ST. CLAIR RIVER AND LAKE ST. CLAIR MANAGEMENT PLAN—

"(1) IN GENERAL.—The Secretary shall—

"(A) develop a St. Clair River and Lake St. Clair strategic implementation plan in accordance with the management plan;

"(B) provide technical, planning, and engineering assistance to non-Federal interests for developing and implementing activities consistent with the management plan;

"(C) plan, design, and implement projects consistent with the management plan; and

"(D) provide, in coordination with the Administrator of the Environmental Protection Agency, financial and technical assistance, including grants, to the State of Michigan (including political subdivisions of the State) and interested nonprofit entities for the Federal share of the cost of planning, design, and implementation of projects to restore, conserve, manage, and sustain the St. Clair River, Lake St. Clair, and associated watersheds.

"(2) SPECIFIC MEASURES.—Financial and technical assistance provided under subparagraphs (B) and (C) of paragraph (1) may be used in support of non-Federal activities consistent with the management plan.

"(d) SUPPLEMENTS TO MANAGEMENT PLAN AND STRATEGIC IMPLEMENTATION PLAN.— In consultation with the Partnership and after providing an opportunity for public review and comment, the Secretary shall develop information to supplement—

"(1) the management plan; and

"(2) the strategic implementation plan developed under subsection (c)(1)(A).

"(e) AUTHORIZATION OF APPROPRIATIONS.— There is authorized to be appropriated to carry out this section $20,000,000.".

SEC. 426. ST. CLAIR RIVER AND LAKE ST. CLAIR, MICHIGAN.

(a) PLAN.—The Secretary, in coordination with State and local governments and appropriate Federal and provincial authorities of Canada, shall develop a comprehensive management plan for St. Clair River and Lake St. Clair.

(b) ELEMENTS.—The plan shall include the following elements:

(1) Identification of the causes and sources of environmental degradation.

(2) Continuous monitoring of organic, biological, metallic, and chemical contamination levels.

(3) Timely dissemination of information of contamination levels to public authorities, other interested parties, and the public.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report that includes the plan developed under subsection (a) and recommendations for potential restoration measures.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $400,000.