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

Reply to
Attention of:

SEP 30 2009

CEMP-SWD/CECW-PC

MEMORANDUM FOR COMMANDER, Southwestern Division (CESWD-PDP)

SUBJECT: Implementation Guidance for Section 3154 of the Water Resources Development Act of 2007 and Section 115 of the Omnibus Appropriations Act of 2009 – San Antonio Channel Improvement Project, San Antonio, Texas.

1. The San Antonio Channel, Texas project was originally authorized by section 203 of the Flood Control Act of 1954 (68 Stat. 1259), and amended by section 103 of Water Resources Development Act (WRDA) of 1976 (90 Stat. 2921) as part of the comprehensive plan for flood protection on the Guadalupe and San Antonio Rivers in Texas. Section 335 of WRDA 2000 (114 Stat. 2921) modified the project to include ecosystem restoration and recreation as project features. Section 3154 of WRDA 2007 further modified the project to authorize the Secretary to 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 cost of the project the cost of design and construction work carried out by the non-Federal interest. In addition, Section 115 of Public Law 111-8 authorizes the non-Federal interest to carry out design and construction work on the project in advance of Federal appropriations or to provide funds to the Secretary for the Secretary to use to carry out such work, with reimbursement of costs incurred by the non-Federal interest that are in excess of the non-Federal share of total project costs, subject to the availability of appropriations. A copy of each section is enclosed for information.

2. The non-Federal sponsor may undertake design and construction of the project or may provide funds to the Corps for such work, with credit or reimbursement, as applicable, subject to the following requirements:

a. Prior to initiation of any design or construction work by the non-Federal sponsor, such work must be determined to be integral to the project. Preparation and processing of an Integral Determination Report shall follow the procedures contained in paragraph 6 of Engineering Circular No. 1165-2-208 (In-Kind Contribution Provisions of Section 221). The integral determination shall be made by the Assistant Secretary of the Army (Civil Works) (ASA(CW)). Following the integral determination on approved eligible design and construction work and prior to non-Federal sponsor initiation of such work, the ASA(CW) must approve an amendment to the existing PCA. The amendment will include appropriate provisions for determining the value of the eligible design and construction work and for affording credit and, to the extent the value of eligible work exceeds the non-Federal share of total project costs, for reimbursement, subject to the availability of appropriations.

b. Prior to the non-Federal sponsor providing the Corps funds in excess of the sponsor's required cash contribution for the project (advanced funds), the ASA(CW)) must approve an amendment to the existing PCA that incorporates appropriate provisions for the acceptance of such funds and for reimbursement, subject to the availability of appropriations. Based on the project-specific authorization for the Secretary to accept and use advanced funds for this project, Committee notification is not required.

c. In addition, the amendment to the existing PCA that is prepared for ASA(CW) approval may include provisions that require upon the District Engineer's determination that 1) physical construction of the entire project, except for the monitoring and adaptive management, is complete and that 2) no outstanding claims remain, the district shall perform an interim accounting to determine total project costs, each party's required share, and each party's contribution as of the date of such accounting. Also, the amendment may provide that if the interim accounting determines that the non-Federal sponsor's total eligible contributions as of the date of accounting exceed its required share of total project costs, the Government, subject to the availability of appropriations, shall reimburse a portion, not to exceed 85 percent, of that excess amount to the non-Federal sponsor. No additional reimbursement will be provided until completion of the final accounting.

FOR THE COMMANDER

Encl

STEVEN L. STOCKTON, P.E.
Director of Civil Works

Water Resources Development Act of 2000

SEC. 335. SAN ANTONIO CHANNEL, SAN ANTONIO, TEXAS.
The project for flood control, San Antonio channel, Texas, authorized by section 203 of the Flood Control Act of 1954 (68 Stat. 1259) as part of the comprehensive plan for flood protection on the Guadalupe and San Antonio Rivers in Texas, and modified by section 103 of the Water Resources Development Act of 1976 (90 Stat. 2921), is further modified to include environmental restoration and recreation as project purposes.

Water Resources Development Act of 2007

SEC. 3154. SAN ANTONIO CHANNEL, SAN ANTONIO, TEXAS.
The project for flood control, San Antonio Channel, Texas, authorized by section 203 of the Flood Control Act of 1954 (68 Stat. 1259) as part of the comprehensive plan for flood protection on the Guadalupe and San Antonio Rivers in Texas and modified by section 103 of the Water Resources Development Act of 1976 (90 Stat. 2921) and section 335 of the Water Resources Development Act of 2000 (114 Stat. 2611), is modified to authorize the Secretary to credit, in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5d), toward the non-Federal share of the cost of the project the cost of design and construction work carried out by the non-Federal interest in the project.

Energy and Water Development and Related Agencies Appropriations Act, 2009 (Public Law 111-8)

SEC. 115. The non-Federal interest for the project referenced in section 3154 of the Water Resources Development Act of 2007 (Public Law 110-114; 121 Stat 1148) may carry out design and construction work on the project in advance of Federal appropriations or may provide funds directly to the Secretary for the Secretary to carry out such work: *Provided,* That the Secretary of the Army shall reimburse the non-Federal interest for any costs incurred by the non-Federal interest that are in excess of the non-Federal share of total project costs subject to the availability of appropriations.