



**DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108**

**OCT 31 2008**

**MEMORANDUM FOR DIRECTOR OF CIVIL WORKS**

**SUBJECT: Implementation Guidance for Section 4038 of the Water Resources Development Act of 2007 (WRDA 2007) – Boise River, Idaho**

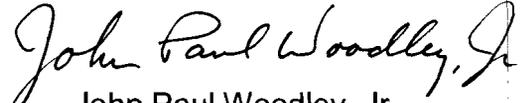
1. Section 4038 of WRDA 2007 amends section 414 of WRDA 1999 (P.L. 106-53) which directed the Secretary to conduct a study to determine the feasibility of undertaking flood control on the Boise River in Boise, Idaho. Section 4038 of WRDA 2007 authorizes the Secretary to add ecosystem restoration and water supply as project purposes to be studied and directs the Secretary to credit toward the non-Federal share of the cost of the study those costs, not to exceed \$500,000, of work carried out by the non-Federal interest before the date of the Feasibility Cost Sharing Agreement (FCSA), if the Secretary determines that the work is integral to the study. Copies of the referenced legislation are enclosed for information.
2. In order to afford credit for work accomplished by the non-Federal sponsor prior to execution of the FCSA pursuant to Section 4038, such work must be determined to be integral to the feasibility study for the Boise River project. The integral determination must be made prior to approval of the FCSA. Only in-kind contributions determined to be integral to the project or separable element of the project will be considered eligible for credit pursuant to the provisions of the applicable cost sharing agreement. The requirements of this paragraph are limited to making the determination of whether the in-kind contributions are integral to the project. Determination of the actual value of the in-kind contributions and then affording credit for such amount will be accomplished by the Government in accordance with the limitations, conditions, and terms of the applicable cost sharing agreement. Further guidance on the criteria for in-kind integral determinations is enclosed. Approval of the integral determination for this study is delegated to the Commander, Northwestern Division, and may not be delegated further. In addition, the Project Management Plan (PMP) must be updated to explicitly document the work already performed and/or financed by the non-Federal interest, not to exceed \$500,000, that has been determined to be integral and will be used as part of the feasibility study for the Boise River project.
3. If all or a portion of the work is determined to be integral to the study, the District shall prepare a non-standard FCSA and include the appropriate language regarding determining the value of and affording credit for work accomplished by the non-Federal sponsor prior to execution of the FCSA. This FCSA will require approval by HQUSACE located in Washington, DC. The NWD Commander will forward to the NWD RIT one hardcopy and an electronic copy of a FCSA package containing: a clean copy of the negotiated draft FCSA; a copy of the draft FCSA with the deviations from the model FCSA along with detailed reasons for each deviation; Certificate of Legal Review signed

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by the District Counsel; current letter of intent from the non-Federal sponsor, and the non-Federal sponsor's signed Self-Certification of Financial Capability for Agreements. All documents requiring signature (Certificate of Legal Review, letter of intent, and the non-Federal sponsor's self-certification of financial capability) must be scanned so that required signatures are contained in the electronic file. Close coordination with the Vertical Team should be maintained in developing this non-standard agreement.

4. Credit afforded for work accomplished by the non-Federal sponsor prior to execution of the FCSA that is determined to be integral to the study will not exceed \$500,000. In-kind contributions to be performed by the non-Federal sponsor after execution of the FCSA will follow existing rules and procedures. The actual value of the eligible in-kind contributions will be determined in accordance with the terms and conditions of the FCSA. The total amount of credit for in-kind contributions by the non-Federal sponsor shall not exceed the non-Federal cash requirement for the study. Reimbursement for in-kind contributions that exceed the non-Federal sponsor's cash requirement for the study is not authorized.

Encl

  
John Paul Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)