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

CECW-LRD

JUN 11 2009

MEMORANDUM FOR COMMANDER, GREAT LAKES AND OHIO RIVER DIVISION

SUBJECT: Implementation Guidance for Section 5029 of the Water Resources Development Act (WRDA) of 2007 – Pinhook Creek, Huntsville, Alabama

1. Section 5029 of WRDA 2007 directs the Secretary to design and construct the locally preferred plan (LPP) for flood protection at Pinhook Creek, Huntsville, Alabama. Section 5029 provides authority for the Secretary to credit toward the non-Federal share of the cost of the project, in accordance with section 221 of the Flood Control Act of 1970, the cost of work carried out by the non-Federal interest before the date of the partnership agreement. In addition, Section 5029 provides that the Secretary shall allow the non-Federal interest to participate in the financing of the project in accordance with Section 903 (c) of WRDA 86 if the detailed project report evaluation indicates that applying such section is necessary to implement the project. A copy of Section 5029 is enclosed.

2. Using existing funds provided in the Consolidated Appropriations Act of 2008 (P.L. 110-161), a Limited Reevaluation Report (LRR) shall be prepared in accordance with ER 1105-2-100. The LRR shall provide an updated analysis of the locally-preferred plan (LPP), including its environmental acceptability, technical feasibility, and the level of flood damage reduction, and shall document the National Economic Development (NED) benefits. 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 a 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 share 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 that project or separable element equal to the estimated value of the national economic development benefits of that project or separable element. The report must be submitted to HQUSACE for review and approval by the Secretary.

3. Upon approval of the decision document by the ASA(CW), and using the balance of available funds, the District may enter into a Design Agreement. However, no project construction may be initiated until funds are specifically appropriated to accomplish the work. At such time that funds are appropriated for construction a Project Partnership Agreement (PPA) that reflects the LPP and the application of 903 (c) of WRDA 1986 will be developed and submitted to HQUSACE for review and approval by the ASA(CW).

4. Section 5029(c) provides authority to afford credit toward the non-Federal share of the cost of the project, the cost of work carried out by the non-Federal interest before the date of execution of the PPA, in accordance with section 221 of the Flood Control Act of 1970, as amended. In order to afford credit for work accomplished by the non-Federal sponsor prior to execution of the PPA, such work must be determined to be integral to the project. The guidance and procedures contained in Engineering Circular No. 1165-2-208 In-Kind Contribution Provisions of Section 221 shall be used to determine eligibility of credit for such work. The integral determination must be approved by the ASA(CW). The actual value of the eligible construction work (and design associated with the construction) 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. For the purposes of this project, the milestone to determine the eligibility of credit is 16 August 2000 (date of approval of the original decision document). Section 5029 does not provide authority to afford credit for work carried out by the non-Federal interest after the date of execution of the PPA. Further, the total amount of credit afforded for construction work undertaken by the non-Federal interest shall not exceed the non-Federal cash requirement for the project.

FOR THE COMMANDER:

Encl

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

WATER RESOURCES DEVELOPMENT ACT OF 2007

SEC. 5029. PINHOOK CREEK, HUNTSVILLE, ALABAMA.

(a) PROJECT AUTHORIZATION.—The Secretary shall design and construct the locally preferred plan for flood protection at Pinhook Creek, Huntsville, Alabama. In carrying out the project, the Secretary shall utilize, to the extent practicable, the existing detailed project report for the project prepared under the authority of section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s).

(b) PARTICIPATION BY NON-FEDERAL INTEREST.—The Secretary shall allow the non-Federal interest 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 cost of the project the cost of work carried out by the non-Federal interest before the date of the partnership agreement for the project.