



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

REPLY TO
ATTENTION OF

FEB 2 2015

CECW-MVD

MEMORANDUM FOR COMMANDER, Mississippi Valley Division (CEMVD-PD)

SUBJECT: Implementation Guidance for Section 1019 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) – In-Kind Credit Authority

1. Reference is made to paragraph 8 of CECW-MVD memorandum dated 10 July 2009, Subject: Implementation Guidance for Louisiana Coastal Area, Sections 7001-7008, and 7011 of Title VII of the Water Resources Development Act of 2007 (WRDA 2007).
2. Section 1019 of WRRDA 2014 amends section 7007 of WRDA 2007 to authorize credit, in accordance with section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), for the cost of in-kind contributions for a study or project authorized in Title VII of WRDA 2007 that is carried out in the coastal Louisiana ecosystem by a non-federal interest before, on, or after the date of the execution of the partnership agreement for the study or project. In addition, section 1019 amends section 7007 to allow for the transfer of "excess credit" for land, easements, rights of way, relocations and dredged material disposal areas (LERRDs) and in-kind contributions provided by a non-federal interest for a study or project to be applied toward the non-federal cost share of any other study or project carried out under Title VII. Further, section 1019 amends section 7007 to provide that eligibility for credit for studies and projects includes project-specific studies or construction undertaken pursuant to the Louisiana Coastal Area Science and Technology Program (S&T Program). The effective date of these amendments is 8 November 2007. Finally, section 1019 provides that the Secretary shall establish, in coordination with any relevant agencies of the State of Louisiana, a process for implementing the provisions dealing with the transfer of "excess credit" from one study or project to another study or project.
3. The S&T program involves research at a programmatic level and, in general, does not involve project-specific studies or construction that is eligible for credit for in-kind contributions. Any proposal to undertake a project-specific study or construction under the S&T program should be coordinated with the Headquarters (MVD-RIT).
4. The district/division will review Title VII of WRDA 2007 and prepare a list of studies and projects eligible for treatment of credit between studies and projects. The list will identify for each different non-federal sponsor all projects with that sponsor and the phase the project is in (planning, design, or construction), the project purpose and associated cost sharing, and whether the sponsor is undertaking in-kind contributions to

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meet its cost share. This list will be provided to the Headquarters (MVD-RIT) for review. Note that in accordance with section 221 of the Flood Control Act of 1970, as amended, any work by a non-federal interest after 8 November 2007 is eligible for credit only if undertaken pursuant to an executed agreement, which includes an in-kind Memorandum of Understanding (MOU).

5. The transfer of “excess credit” may be afforded across all phases (planning, design, or construction) of projects in Title VII. Credits originating from an applicable planning study could be applied toward the non-federal share of a construction project, and vice-versa, etc. The determination of whether there is “excess credit” that is eligible for transfer will be made only upon completion of a study, design, or construction of a project, respectively. Excess credit for eligible work undertaken by a non-federal sponsor will only be considered toward another study or project authorized in Title VII of WRDA 2007 that involves the same sponsor. In all cases, credit for in-kind contributions will not be afforded for work that was done prior to the execution of an agreement, which includes an in-kind MOU, except that design for the construction would be eligible for credit as long as the agreement covering construction is executed prior to the award of the construction contract.

6. Section 7007(e) of WRDA 2007 requires the Secretary to monitor non-federal contributions to ensure that such contributions equal the non-federal share of a Title VII study or project during each 5-year period beginning on the date of the commencement of the first study or project under Title VII. Each study or project will be monitored by the district in coordination with the non-federal sponsor and managed for all non-federal contributions, including potential credit for work performed pursuant to an executed in-kind MOU on that particular study or project, so that those contributions equal the non-federal share. In the case where the non-federal sponsor contributions are not in proportional balance with federal expenditures on a particular study or project, the non-federal sponsor will provide necessary contributions (cash, in-kind work, transfer of approved excess credit, or LERRDs) to maintain the proportional balance with federal expenditures.

7. In accordance with ER 1165-2-208, Integral Determinations will be prepared to document that the contributions for which a non-federal sponsor is seeking credit are integral to the study or project. In addition, the Integral Determinations will document the amount of credit that is in excess of the non-federal share for that particular study or project and eligible for transfer to another study or project, respectively, involving the same non-federal sponsor and subject to the requirements in paragraph 5. Approval of these Integral Determinations will follow requirements of ER 1165-2-208.

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8. For each non-federal sponsor that is eligible for, and requests, the transfer of excess credit across projects, USACE in coordination with the appropriate non-federal sponsor will develop an overarching agreement that describes the process and requirements for such transfer prior to the first transfer.

A handwritten signature in black ink, appearing to read 'S. L. Stockton', written in a cursive style.

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

Encl

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Section 1019 of the Water Resources Reform and Development Act of 2014:

SEC. 1019. CLARIFICATION OF IN-KIND CREDIT AUTHORITY.

(a) NON-FEDERAL COST SHARE.—Section 7007 of the Water Resources Development Act of 2007 (121 Stat. 1277) is amended—

(1) in subsection (a), by inserting “, on, or after” after “before”;

(2) by striking subsection (d) and inserting the following:

“(d) TREATMENT OF CREDIT BETWEEN PROJECTS.—The value of any land, easements, rights-of-way, relocations, and dredged material disposal areas and the costs of planning, design, and construction work provided by the non-federal interest that exceed the non-federal cost share for a study or project under this title may be applied toward the non-federal cost share for any other study or project carried out under this title.”; and

(3) by adding at the end the following:

“(g) DEFINITION OF STUDY OR PROJECT.—In this section, the term ‘study or project’ includes any eligible activity that is—

“(1) carried out pursuant to the coastal Louisiana ecosystem science and technology program authorized under section 7006(a); and

“(2) in accordance with the restoration plan.”.

(b) IMPLEMENTATION.—Not later than 90 days after the date of enactment of this Act, the Secretary, in coordination with any relevant agencies of the State of Louisiana, shall establish a process by which to carry out the amendment made by subsection (a)(2).

(c) EFFECTIVE DATE.—The amendments made by subsection

(a) take effect on November 8, 2007.

Section 7007 of the Water Resources Development Act of 2007, as amended:

SEC. 7007. NON-FEDERAL COST SHARE.

(a) Credit.—The Secretary shall credit, in accordance with section 221 of the Flood Control Act 1970 (42 U.S.C. 1962d-5b), toward the non-Federal share of the cost of a study or project under this title the cost of work carried out in the coastal Louisiana ecosystem by the non-Federal interest for the project before, on, or after the date of the execution of the partnership agreement for the study or project.

(b) Sources of Funds.—The non-federal interest may use, and the Secretary shall accept, funds provided by a Federal agency under any other Federal program, to satisfy, in whole or in part, the non-federal share of the cost of the study or project if the Federal agency that provides the funds determines that the funds are authorized to be used to carry out the study or project.

(c) Nongovernmental Organizations.—A nongovernmental organization shall be eligible to contribute all or a portion of the non-federal share of the cost of a project under this title.

(d) Treatment of Credit Between Projects. The value of any land,

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easements, dredged material disposal areas and the cost of planning, design, and construction work provided by the Non-federal interest that exceed the non-federal cost share for a study or project under this title may be applied toward the non-federal cost share for any other study or project carried out under this title.

(e) Periodic Monitoring.--

(1) In general.--To ensure that the contributions of the non-federal interest equal the non-federal share of the cost of a study or project under this title during each 5-year period beginning after the date of commencement of the first study or project under this title, the Secretary shall--

(A) monitor for each study or project under this title the non-federal provision of cash, in-kind services and materials, and land, easements, rights-of-way, relocations, and disposal areas; and

(B) manage the requirement of the non-federal interest to provide for each such study or project cash, in-kind services and materials, and land, easements, rights-of-way, relocations, and disposal areas.

(2) Other monitoring.--The Secretary shall conduct monitoring separately for the study phase, construction phase, preconstruction engineering and design phase, and planning phase for each project authorized on or after the date of enactment of this Act for all or any portion of the coastal Louisiana ecosystem.

(f) Audits.--Credit for land, easements, rights-of-way, relocations, and disposal areas (including land value and incidental costs) provided under this section, and the cost of work provided under this section, shall be subject to audit by the Secretary.

(g) Definition of Study or Project.--In this section, the term "study or project" includes any eligible activity that is--

(1) carried out pursuant to the coastal Louisiana ecosystem science and technology program authorized under section 7006(a); and

(2) in accordance with the restoration plan.