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

REPLY TO
ATTENTION OF
CECW-P

NOV 04 2015

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1020 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) – Transfer of Excess Credit

1. Section 1020 of WRRDA 2014 provides authority for the Secretary to approve a comprehensive plan submitted by a non-Federal interest that identifies the transfer of credit for in-kind contributions that are in excess of the required non-Federal cost share for a study or project toward the required non-Federal cost share on a different study or project. Additionally, Section 1020 establishes certain Congressional reporting and notification requirements. It further provides that the authority terminates on June 10, 2024. A copy of Section 1020 of WRRDA 2014 is enclosed.

2. A non-Federal interest submitting a comprehensive plan pursuant to this section must be the non-Federal sponsor for all studies and projects covered by the comprehensive plan, and the non-Federal sponsor must meet the requirements of Section 221(b) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b(b)). The comprehensive plan should identify the studies and projects for which that non-Federal sponsor intends to provide in-kind contributions that are in excess of the required non-Federal cost share for the study or project and identify the authorized studies and projects to which the excess credit would be applied. Only studies without a Chief's Report or projects for which physical construction has not been completed as of June 10, 2014 are eligible for inclusion in the comprehensive plan. In addition, the comprehensive plan should describe the project purpose and associated cost-sharing requirements for each study and project, and the phase of the project for which credit is generated or to which credit will be applied; describe how credit for in-kind contributions and any transfer of excess credit will meet the non-Federal sponsor's required cost-share; and include a calculation demonstrating that the total amount of credit does not exceed the total non-Federal share for the studies and/or projects in the comprehensive plan. Further, the comprehensive plan should explain how application of excess credit will help expedite the completion of a project or group of projects; reduce costs to the Federal Government; and aid the completion of a project that provides significant flood risk reduction or environmental benefits. Because the comprehensive plan requires the identification of authorized studies or projects toward which excess credit may be applied, non-Federal sponsors may not "bank" excess credit to apply toward future studies or projects not yet authorized. The non-Federal sponsor should submit the comprehensive plan to the appropriate Corps of Engineers District office.

3. The District will review the comprehensive plan and then submit it, along with District Commander's recommendations, through the Division to the respective Headquarters

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(HQ) Regional Integration Team (RIT) for review and processing to the Assistant Secretary of the Army (Civil Works) (ASA(CW)) for a decision. The District will confirm the completeness of information provided and will include an assessment of whether the applying of credit as set out in the comprehensive plan will help to expedite the completion of a project or group of projects; reduce costs to the Federal Government; and aid the completion of a project that provides significant flood risk reduction or environmental benefits. The Division will provide its assessment of the comprehensive plan and include the Division Commander's recommendations.

4. If the ASA (CW) approves the comprehensive plan, the District, in coordination with the non-Federal sponsor, will develop an overarching agreement that describes the process and requirements governing the transfer of credit. The draft overarching agreement will be submitted by the District, through the Division, to the appropriate HQ RIT for review and submission to ASA(CW) for a decision. The total amount of credit covered by the overarching agreement may not exceed the total non-Federal share for all studies and projects identified in the comprehensive plan. The district, in coordination with the non-Federal sponsor, should determine whether transfer of excess credit will be within the same phases of a project, e.g., excess credit for studies applied only to other studies, or whether excess credit may be transferred across phases, e.g., study to construction. A focus of the agreement should be affording credit in a manner that helps to expedite the completion of a project or group of projects, one of the criteria identified in the law. The determination of whether there is excess credit for a specific study or project can be made only after completion of that study or project. To the extent that excess credit relates to a project which has exceeded its Section 902 project cost limit, such credit may not be transferred until a Federal law is enacted authorizing an increase in the Section 902 limit for the project. Individual agreements for studies and projects will be developed, or amended, to be consistent with the overarching agreement.

5. Other than allowing for the transfer of excess credit, all other requirements of Section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b(a)(4), related to the affording of credit for in-kind contributions apply. ER 1165-2-208 provides additional guidance on the implementation of Section 221(a)(4). In particular, credit for in-kind contributions, including any excess credit, will not be afforded for work that was undertaken prior to the execution of an appropriate agreement, except that design associated with construction undertaken pursuant to an In-Kind Memorandum of Understanding is eligible for credit. In addition, the Integral Determination prepared to document that the contributions for which a non-Federal sponsor is seeking credit are integral to the study or project will also document the amount of credit that is in excess of the non-Federal share for that particular study or project. Approval of the Integral

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Determination will follow the requirements of ER1165-2-208. While a separate Integral Determination is not required for planning activities which are included in the project management plan, the District will document the excess credit associated with in-kind contributions, with authority for approval with the Division Commander.

6. Section 1020 only authorizes the transfer of excess credit for in-kind contributions and does not authorize the transfer of excess credit associated with the provision of lands, easements, and rights-of-ways, including relocations.

7. Section 1020 establishes Congressional reporting and notification requirements. The ASA(CW) is required to submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available: an interim report on the use of authority under this section not later than June 10, 2016, and once every 2 years thereafter; and a final report by June 10, 2024. The reports will include: a description of the use of the authority during the reporting period; and assessment of the impact of the authority on the time required to complete projects; and an assessment of the authority on other water resources projects. Corps Headquarters will prepare the scheduled interim and final reports and provide them to ASA(CW) for processing to the Congressional Committees at a minimum of 60 days before any submission deadline.

8. Authority to transfer excess credit under Section 1020 terminates on June 10, 2024. Therefore, any credit transferred under this authority must be applied by that date.

Encl

THEODORE A. BROWN, P.E.
Chief, Planning and Policy Division
Directorate of Civil Works

CECW-P
SUBJECT: Implementation Guidance for Section 1020 of the Water Resources Reform and Development Act of 2014 – Transfer of Excess Credit

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SEC. 1020. TRANSFER OF EXCESS CREDIT.

(a) IN GENERAL.—Subject to subsection (b), the Secretary may apply credit for in-kind contributions provided by a non-Federal interest that are in excess of the required non-Federal cost share for a water resources development study or project toward the required non-Federal cost share for a different water resources development study or project.

(b) RESTRICTIONS.—

(1) IN GENERAL.—Except for subsection (a)(4)(D)(i) of that section, the requirements of section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b) (as amended by section 1018(a)) shall apply to any credit under this section.

(2) CONDITIONS.—Credit in excess of the non-Federal share for a study or project may be approved under this section only if—

(A) the non-Federal interest submits a comprehensive plan to the Secretary that identifies—

(i) the studies and projects for which the non-Federal interest intends to provide in-kind contributions for credit that are in excess of the non-Federal cost share for the study or project; and

(ii) the authorized studies and projects to which that excess credit would be applied;

(B) the Secretary approves the comprehensive plan; and

(C) the total amount of credit does not exceed the total non-Federal share for the studies and projects in the approved comprehensive plan.

(c) ADDITIONAL CRITERIA.—In evaluating a request to apply credit in excess of the non-Federal share for a study or project toward a different study or project, the Secretary shall consider whether applying that credit will—

(1) help to expedite the completion of a project or group of projects;

(2) reduce costs to the Federal Government; and

(3) aid the completion of a project that provides significant flood risk reduction or environmental benefits.

+(d) TERMINATION OF AUTHORITY.—The authority provided in this section shall terminate 10 years after the date of enactment of this Act.

(e) REPORT.—

(1) DEADLINES.—

(A) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, and once every 2 years thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available an interim report on the use of the authority under this section.

(B) FINAL REPORT.—Not later than 10 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a final report on the use of the authority under this section.

(2) INCLUSIONS.—The reports described in paragraph (1) shall include—

(A) a description of the use of the authority under this section during the reporting period;

(B) an assessment of the impact of the authority under this section on the time required to complete projects; and

(C) an assessment of the impact of the authority under this section on other water resources projects.

Enclosure