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

REPLY TO
ATTENTION OF

FEB 2 6 2015

CECW-P

MEMORANDUM FOR Commanders, Major Subordinate Commands

SUBJECT: Implementation Guidance for Section 1025 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) - Water Resources Projects on Federal Lands

1. Section 1025 of WRRDA 2014 provides discretionary authority to the Secretary to carry out an authorized water resources development project on federal land that is under the administrative jurisdiction of another federal agency, where the cost of acquisition of such federal land has been paid for by the non-federal sponsor. The Secretary may carry out such a project only after the non-federal sponsor has entered into a Memorandum of Understanding (MOU) with the federal agency with administrative jurisdiction over such federal land, which includes such terms and conditions as the Secretary determines to be necessary. This section does not alter any non-federal cost-sharing requirements. A copy of Section 1025 is enclosed.

2. Policy.

A. During the feasibility phase of a proposed project, if it is determined that project features will be carried out on lands under the administrative jurisdiction of another federal agency (or agencies, as applicable), for which the non-federal sponsor has paid for the acquisition of those lands, the MSC will submit supporting documentation, as described below, to the appropriate Regional Integration Team. The supporting documentation will be reviewed by the USACE vertical team, including HQUSACE Planning and Policy, the Real Estate Division, and the Office of the Chief Counsel. Upon determination that the submittal meets the requirements outlined below and is legally sufficient, HQUSACE will make a recommendation regarding project implementation on such federal lands to the ASA(CW) for consideration.

(1) The submittal will include documentation of the non-federal sponsor's payment to acquire the federal lands that will be used for the proposed project, as well as confirmation from the other federal agency that proposed project lands were acquired by the non-federal sponsor.

(2) The submittal will include a letter of support from the appropriate management level of the other federal agency. The letter will also indicate their intention to sign the MOU.

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(3) The submittal will include the district's analysis of the other federal agency's participation in the proposed project, as well as a discussion of the project related benefits that will be realized on those lands. The submittal will also include a discussion of the circumstances which make USACE the appropriate federal agency to implement and cost share the actions.

(4) The submittal will include an explanation of the environmental and other compliance obligations and costs (such as for the Clean Water Act, the Endangered Species Act, and the National Historic Preservation Act), and a determination of the responsible agency for fulfilling those compliance requirements on the federal lands, including compensatory mitigation activities.

(5) The submittal will include a draft of the MOU to be signed by the non-federal sponsor and the other federal agency. The MOU will:

a. Provide for access to the federal lands for project pre-construction engineering and design activities, and construction and operation purposes. Considerations will include but not be limited to such things as geotechnical and hydrological analyses, equipment staging, construction of project features, and operation, maintenance, repair, replacement, and rehabilitation activities for as long as the project is authorized.

b. Describe the other federal agency's requirements for a civil works project to be implemented on their lands, including necessary approvals, certifications, compliance or compatibility determinations. The responsible party, whether the non-federal sponsor or the other federal agency, to meet such requirements will be documented in the MOU, as well as the time frame for final compliance. Compliance with the other federal agency's requirements will be necessary prior to the signing of the report of the Chief of Engineers.

B. The final MOU signed by the non-federal sponsor and the other federal agency, and incorporating all terms and conditions determined to be necessary by the ASA(CW), shall be submitted and approved by HQUSACE prior to the signing of the report of the Chief of Engineers.

C. The other federal agency should be a Cooperating Agency on any USACE Environmental Impact Statement (EIS) developed pursuant to the National Environmental Policy Act (NEPA), in accordance with NEPA regulations at 40 CFR § 1501.6 and ER 1105-2-100 [para 2-5.a and para 4-3.c(2)(c)]. The district will request this in writing to the other federal agency early in the study process when the situation exists for Section 1025 to be applicable.

3. Upon approval by ASA(CW) that the USACE may carry out the proposed project on federal lands under the administrative jurisdiction of another federal agency, the final feasibility report will document USACE implementation and cost-sharing of such

features. The Items of Local Cooperation in the final report will be reviewed to determine if revisions or additional language is needed. The report of the Chief of Engineers will request Congressional authorization for the USACE to implement the recommended plan on other federal agency lands.

4. Nothing in this provision alters any non-federal cost-sharing requirements, any other applicable provision of law, or any applicable Corps policies, procedures and regulations. Funding for the project, once authorized, will be accomplished through normal USACE budgetary procedures.

Sincerely,

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

Encl

ENCLOSURE.

SEC. 1025. WATER RESOURCES PROJECTS ON FEDERAL LAND.

(a) IN GENERAL.---Subject to subsection (b), the Secretary may carry out an authorized water resources development project on Federal land that is under the administrative jurisdiction of another Federal agency where the cost of the acquisition of such Federal land has been paid for by the non-Federal interest for the project.

(b) MOU REQUIRED.-The Secretary may carry out a project pursuant to subsection (a) only after the non-Federal interest has entered into a memorandum of understanding with the Federal agency that includes such terms and conditions as the Secretary determines to be necessary.

(c) APPLICABILITY.-Nothing in this section alters any non-Federal cost-sharing requirements for the project.