DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CERE-C

08 JUN 2001

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation of Certain Real Estate Provisions in the Water Resources Development Act of 2000 (WRDA 2000) and the Omnibus Appropriations Act for FY 2001

1. The purpose of this memorandum is to provide implementation guidance on certain real estate provisions in WRDA 2000. WRDA 2000 is available on the Corps homepage. From the homepage, go to Civil Works, Planning and Policy, Branches, Legislative Management Branch, WRDAs. One can either pull up the Conference Report, House Report 106-1020, or S.2796 for a copy of WRDA 2000. In addition, WRDA 2000 can be accessed on Thomas, the website for Congress. The address is http://thomas.loc.gov/. Click on 106th Congress. Then go to Public Laws, and then the range of public laws that would include Public Law 106-541. The real estate provisions are in various sections of the law, although most of the land conveyances are in section 348.

2. For all of the conveyances, a Report of Excess should be completed, accompanied by an Environmental Baseline Study, Finding of Suitability to Transfer, and appropriate NEPA and cultural resources documentation. The standard documentation may be modified as appropriate for each conveyance.

3. Guidance is provided for the following provisions:

a. Section 332 - John Day Pool - Section 332(a) congressionally extinguishes the reversionary interest and use restrictions relating to port or industrial purposes on lands covered by the deeds listed in 332(b). It also extinguishes the human habitation or other building structure use restriction in areas where the elevation is above the standard project flood elevation, and allows for the use of fill material to raise low areas above the standard project flood elevation, except in a wetland area where a section 404 permit is required. The fee owner should record this statutory language. Administratively, the Corps should amend its property records and monitor the areas that are raised by use of fill material. This is similar to the provision found in section 564 of WRDA 99. (NWD)

b. Section 348

(a) Thompson, Connecticut - The fee conveyance shall be without consideration to the Town of Thompson and subject to a reversionary interest if the parcel ceases to be held in public ownership or used for fire fighting and related emergency purposes. (NAD)

(b) Washington, D. C. - The fee conveyance shall be for consideration to the Lucy Webb Hayes National Training School for Deaconesses and Missionaries Conducting Sibley Memorial Hospital, taking into account the terms and conditions of the conveyance imposed in this subsection. (NAD)

(c) Joliet, Illinois - The fee conveyance shall be without consideration to the Joliet Park District, subject to a reversionary interest if the parcel ceases to be held in public ownership or to be used as headquarters of the park district or for related purposes. This land is under military jurisdiction, although a right of access to the 20 feet paralleling the seawall is required for the Illinois Waterway Project. An easement will need to be retained for this civil works project for access, operation and maintenance of the seawall, and the right to moor, load and unload vessels. (LRD in coordination with MVD)

(d) Ottawa, Illinois - The conveyance of an easement interest in lands above elevation 461 feet National Geodetic Vertical Datum shall be for consideration to the underlying fee owner, the Young Men's Christian Association of Ottawa (YMCA). The conveyance is subject to the conditions stated in the subsection and a reversionary interest if the easement conveyed ceases to be used for purposes for which the YMCA was established. (MVD)

(e) Bayou Teche, Louisiana - After renovations of the Keystone Lock facility have been completed and subject to the conditions stated in this subsection, the Secretary may convey, without consideration, the land described to St. Martin Parish. The conveyance also is subject to a reversionary interest if the Parish fails to operate, maintain, repair, replace, and rehabilitate the lock in accordance with regulations prescribed by the Secretary that are consistent with the project's authorized purposes. (MVD)

(f) Ontonagon, Michigan - The Secretary may convey to the Ontonagon County Historical Society, at Federal expense, the lighthouse and land underlying and adjacent to the lighthouse. The Secretary shall determine the extent of the land to be conveyed, determine the acreage and legal description and prepare a map. In addition, the Secretary is responsible for any necessary environmental response required as a result of prior Federal use or ownership. The Historical Society is responsible for any additional operation, maintenance, repair, rehabilitation or replacement costs after the conveyance. The conveyance also is subject to a reverter clause if the property ceases to be owned by the Historical Society or to be used for public purposes.
The language of this subsection, being more specific in nature, overrides the generally applicable provision found in subsection (n)(3), below, with regard to the Historical Society paying the necessary and reasonable conveyance costs. Although the language of (f)(1) is permissive

regarding the conveyance, "(t)he Secretary may convey . . . at Federal expense," the subsequent language in (f)(2) is mandatory with respect to the Secretary determining the land to be conveyed and a legal description, preparing a map, and being responsible for necessary environmental costs. Read together, once a decision is made to convey the property, it is at full Federal expense. Technically, the grantee could provide a survey and perform other work associated with the conveyance but these are Federal costs. (LRD)

(g) Pike County, Missouri - This is a land exchange between S.S.S., Inc. (S.S.S.) and the United States. If the value of the land conveyed to S.S.S. by the United States exceeds the value of the land conveyed by S.S.S. to the United States, S. S. S. shall pay the difference in cash or cash equivalent. There is a 2-year time limit from the date of enactment of this Act, December 11, 2000, for this exchange to be completed. The Government must provide legal descriptions for both properties. For the parcel being acquired by the Government, the grantee may remove improvements and the Government may require the grantee to remove improvements. The grantee shall have no claim against the Government and the Government shall not incur or be liable for any cost associated with the removal or relocation of any improvement. (MVD)

(h) St. Clair and Benton Counties, Missouri - The conveyance shall be without consideration to the Iconium Fire Protection District, subject to a reversionary interest if the property ceases to be held in public ownership or to be as a site for a fire station. (NWD)

(i) Candy Lake, Oklahoma - Section 563(c)(1)(B) of WRDA 99 is amended by deleting "a deceased individual" and inserting "an individual". That particular sentence should read, "The term "previous owner of land" means a person (including a corporation) that conveyed, or a descendant of an individual who conveyed, land to the Corps of Engineers for use in the Candy Lake project in Osage County, Oklahoma." Since this is an amendment to a prior statute, which authorized the conveyance, subsection (n), below, does not apply. (SWD)

(j) Manor Township, Pennsylvania - The Secretary shall convey to the Township of Manor the real property described. Any portion of the property may be conveyed without consideration if it is retained in public ownership and used for public park and recreation or other public purposes. Such property conveyed without consideration is subject to a reversionary interest if it ceases to held in public ownership or to be used for public park and recreation or other public purposes. (LRD)

(k) Richard B. Russell, South Carolina - This is an amendment to section 563(i) of WRDA 99. The Secretary shall convey to the State of South Carolina, without consideration, the land described in Exhibits A, F, and H of Army Lease No. DACW21-1-93-0910. Such land shall be retained in public ownership and managed in perpetuity for fish and wildlife mitigation purposes in accordance with a plan approved by the Secretary. The conveyance is subject to a reversionary interest if it is not managed in accordance with this plan. Subject to the Secretary and the State entering into an agreement with the State to manage the land conveyed, the Secretary shall pay the State $4,850,000. The agreement shall specify the terms and conditions under which payment shall be made and the rights and remedies available to the Federal Government to recover all or a portion of the payment if the State fails to manage any parcel in a manner satisfactory to the Secretary. (SAD)

(l) Savannah River, South Carolina - Real Estate and Civil Works are responsible for implementation. After execution of an agreement between the Secretary and City of North Augusta and Aiken County, the Government shall repair and rehabilitate the New Savannah Bluff Lock and Dam and construct appropriate fish passage devices at the Dam at Federal expense. After repair and rehabilitation and construction of the fish passage devices, the New Savannah Bluff Lock and Dam may be conveyed, without consideration, to the City of North Augusta and Aiken County.

CECW-PC has requested that the Section 216 report previously submitted for the New Savannah Bluff and Dam Project be revised in accordance with this provision and the amendment to this provision found in section 113 of Division B, Title 1, Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 2001, of Public Law 106-554. This provision provides for construction of the fish passage devices. A copy of the statute is enclosed for your reference. (SAD)

(m) Tri-Cities Area, Washington - This is an amendment to 501(i) of WRDA 96 and provides that any of the local governments, with the agreement of the appropriate district engineer, may exempt from the conveyance to the local government, all or any part of the property to be conveyed to the local government. In addition, subsection (m)(2) provides that the "Kennewick Man Site" and such adjacent areas as the Secretary determines are necessary to protect the historic site, shall remain in Federal ownership. Since this is an amendment to a prior statute, which authorized the conveyance, subsection (n), discussed below, does not apply. (NWD)

(n) Generally Applicable Provisions - These provisions apply to all of the conveyances listed in section 348 except as noted above.

(1) Screening under 10 U.S.C. 2696 is waived.

(2) The conveyances are subject to additional terms and conditions as the Secretary determines to be necessary and appropriate to protect the interests of the United States.

(3) All of the entities or proposed grantees are responsible for all reasonable and necessary costs, including real estate transaction and environmental compliance costs associated with the conveyance.

(4) Grantees shall hold the United States harmless from any liability with respect to activities carried out, on or after the date of the conveyance, on the real property conveyed.

c. Section 535 - Crowder Point, Oklahoma - The Secretary shall enter into a lease, not to exceed 99 years, with the City of Crowder, Oklahoma, of approximately 260 acres of land at Crowder Point on Lake Eufala, under which the City may develop, operate and maintain as a public park all or a portion of this land. The lease shall be for no consideration and shall include such terms and conditions as the Secretary determines are necessary to protect the interests of the United States. (SWD)

d. Section 546 - Wynoochee Lake, Wynoochee River, Washington - This section authorizes the City of Aberdeen, Washington to transfer its interest in 570.5 acres of land at Wynoochee Lake to the City of Tacoma, subject to the conditions and limitation stated. Section 203 of WRDA 90 authorized the transfer to the City of Aberdeen, from the Army, subject to certain conditions. These same conditions apply to the transfer to the City of Tacoma, except for an amendment to the condition stated in section 203(b)(1). The City of Tacoma is responsible for the operation, maintenance, repair, replacement and rehabilitation of the project only for so long as it has a valid license with the Federal Energy Regulatory Commission for operation of Wynoochee Dam. The limitation requires the Secretary to determine that the City of Tacoma will be able to operate, maintain, repair, replace, and rehabilitate the project before the land may be transferred. A copy of section 203 of WRDA 90 is included for your reference. (NWD)

4. Guidance on the following provisions has been or will be provided under separate cover.

a. Section 208 - Reburial and Conveyance Authority - Implementation guidance was provided by CECW-PG Memorandum dated 11 May 01. Additional Real Estate guidance will be provided in the future.

b. Section 226 - Administrative Costs of Land Conveyances - This section requires that ability to pay criteria be applied to payment of administrative expenses by non-Federal governmental or nonprofit entities for land conveyances (other than those under section 348). In the Conference Report, the Managers have asked the Secretary to give priority consideration for a limitation on administrative costs for conveyances to Summerfield Cemetery Association, Wister, Oklahoma, (Wister Lake), to the Choctaw County Industrial Authority, Hugo, Oklahoma, (Lake Hugo), and to recipients of the conveyance at Candy Lake, Oklahoma. This conference language also will be addressed by separate guidance.

c. Section 301 - Tennessee-Tombigbee Waterway Wildlife Mitigation Project, Alabama and Mississippi. Guidance will be provided by separate cover.

d. Section 516 - Lake Sidney Lanier, Georgia, Home Preservation - Implementation guidance was provided by CERE-C Memorandum dated 9 April 01.

e. Section 540 - Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and South Dakota Terrestrial Wildlife Habitat Restoration (Amendment to Title VI) - Counsel is responsible for implementing this provision. Real Estate guidance will be provided as necessary.

f. Title VIII - Wildlife Refuge Enhancement - Conveyance of Fort Peck Cabin Sites - Implementation guidance was provided by CERE-C Memorandum dated 26 April 01.

5. An additional real estate provision is found in Public Law 106-554, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 2001, which incorporated H. R. 5666, Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 2001, Division B, Title 1, section 114. This section concerns the Congressional extinguishment of the reversionary interest and use restriction relating to port or industrial purposes in the deed recorded October 17, 1967, in Book 291, page 148, Deed of Records for Umatilla County, Oregon. The human habitation or other building structure use restriction also is extinguished where the elevation is above the standard project flood elevation. Use of fill is authorized to raise low areas above the standard project flood elevation, *without increasing the risk of flooding in or outside the flood plain*, except where a section 404 permit is required. The italicized wording is different than that found in section 332 of WRDA 2000. The fee owner should record this statutory language. Administratively, the Corps should amend its property records and monitor the areas that are raised by use of fill material. A copy of the statute is provided for your reference. (NWD)

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6. Funding is not available at this Headquarters for implementing these provisions. Real estate actions or land conveyances should be considered and identified as new initiatives. You should follow normal budget procedures unless an exception is specifically approved by the Chief, Programs Management Division (CECW-B).

7. Please call Roseann Bindner, 202-761-7503, if you have any questions concerning the history of this legislation or this particular guidance; otherwise, call the person responsible for the geographical area.

FOR THE COMMANDER:

Encls

Elizabeth L Fasot
LINDA D. GARVIN
Director of Real Estate

DISTRIBUTION:
COMMANDERS
GREAT LAKES AND OHIO RIVER DIVISION, ATTN: CELRD-ET-R
CHICAGO DISTRICT, ATTN: CELRC-RE
DETROIT DISTRICT, ATTN: CELRE-RE
HUNTINGTON DISTRICT, ATTN: CELRH-RE
LOUISVILLE DISTRICT, ATTN: CELRL-RE
NASHVILLE DISTRICT, ATTN: CELRN-RE
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ROCK ISLAND DISTRICT, ATTN: CEMVR-RE
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NORTHWESTERN DIVISION, ATTN: CENWD-ET-R

CERE-C
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KANSAS CITY DISTRICT, ATTN: CENWK-RE
OMAHA DISTRICT, ATTN: CENWO-RE
PORTLAND DISTRICT, ATTN: CENWP-RE
SEATTLE DISTRICT, ATTN: CENWS-RE
WALLA WALLA DISTRICT, ATTN: CENWW-RE
NORTH ATLANTIC DIVISION, ATTN: CENAD-ET-R
BALTIMORE DISTRICT, ATTN: CENAB-RE
NEW ENGLAND DISTRICT, ATTN: CENAE-RE
NEW YORK DISTRICT, ATTN: CENAN-RE
NORFOLK DISTRICT, ATTN: CENAO-RE
PACIFIC OCEAN DIVISION, ATTN: CEPOD-RE
ALASKA DISTRICT, ATTN: CEPOA-RE
HONOLULU DISTRICT, ATTN: CEPOH-RE
SOUTH ATLANTIC DIVISION, ATTN: CESAD-ET-R
JACKSONVILLE DISTRICT, ATTN: CESAJ-RE
MOBILE DISTRICT, ATTN: CESAM-RE
SAVANNAH DISTRICT, ATTN: CESAS-RE
SOUTH PACIFIC DIVISION, ATTN: CESPD-RE
ALBUQUERQUE DISTRICT, ATTN: CESPA-RE
LOS ANGELES DISTRICT, ATTN: CESPL-RE
SACRAMENTO DISTRICT, ATTN: CESPK-RE
SOUTHWESTERN DIVISION, ATTN: CESWD-ETR
FORT WORTH DISTRICT, ATTN: CESWF-RE
GALVESTON DISTRICT, ATTN: CESWG-RE
LITTLE ROCK DISTRICT, ATTN: CESWL-RE
TULSA DISTRICT, ATTN: CESWT-RE

Other Statutes

1. Savannah Bluff

SEC. 113. FISH PASSAGE DEVICES AT NEW SAVANNAH BLUFF LOCK AND DAM, SOUTH CAROLINA. Section 348(l)(2) of the Water Resources Development Act of 2000 is amended—

(1) in subparagraph (A), by striking `Dam, at Federal expense of an estimated $5,300,000' and inserting `Dam and construct appropriate fish passage devices at the Dam, at Federal expense; and

(2) in subparagraph (B), by striking `after repair and rehabilitation,' and inserting after carrying out subparagraph (A).

2. Umatilla County, Oregon

SEC.114. (a) EXTINGUISHMENT OF REVERSIONARY INTERESTS AND USE RESTRICTIONS- With respect to the lands described in the deed described in subsection (b)--

(1) the reversionary interests and the use restrictions relating to port or industrial purposes are extinguished;

(2) the human habitation or other building structure use restriction is extinguished in each area where the elevation is above the standard project flood elevation, and

(3) the use of fill material to raise areas above the standard project flood elevation, without increasing the risk of flooding in or outside of the floodplain, is authorized, except in any area constituting wetland for which a permit under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) would be required.

(b) AFFECTED DEED- The deed referred to is the deed recorded October 17, 1967, in book 291, page 148, Deed of Records of Umatilla County, Oregon, executed by the United States.

3. Aberdeen, Washington

Section 203 of WRDA 90

(a) IN GENERAL- The secretary may transfer to the city of Aberdeen, Washington, by quitclaim deed, all rights, interests, and title of the United States in the approximately 570.5 acres of lan d under the administrative jurisdiction of the Department of the Army acquired for the purposes of the project for Wynoochee Lake, Wynoochee River, Washington, authorized by Section 203 of the Flood Control Act of 1962 (76 stat.1193), together with any improvements thereon.

(b) CONDITIONS- A transfer under this section shall be subject to the following conditions:

(1) The city shall operate, maintain, repair, replace, and rehabilitate the project in accordance with regulations prescribed by the Secretary which are consistent with the project's authorized purposes, including fish and wildlife mitigation.

(2) The city shall hold and save the United States free from any claims or damages resulting from the operation, maintenance, repair, or rehabilitation of the project by the city or its contractors.

(3) If the city uses the land transferred under this section for any purpose other than the project's authorized purposes or generation of hydropower or fails to comply with paragraph (1) or (2), the Secretary shall notify the city of such use or failure. If the city does not correct such nonconforming use or failure during the 1-year period beginning on the date of such notification, the Secretary shall have a right of reverter to reclaim possession and title to the land transferred under this section.

(c) LIMITATION- No transfer under this section may be made until the Secretary has determined that the city can operate, maintain, repair, replace, and rehabilitate the project.

(d) REPAYMENT OF CAPITAL COSTS- Nothing in this section shall be construed to relieve the city of its obligations under the project contract to repay the capital costs of the project allocated to water supply. The Secretary may negotiate a cash settlement to allow the city to prepay the present value of the payments for capital costs due under the contract.