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

REPLY TO
ATTENTION OF:

CECW-BC

1 FEB 2001

MEMORANDUM FOR Commander, Southwestern Division

Subject: Implementation Guidance for the Water Resources Development Act of 1999 (WRDA 99), Section 375

1. Attached for your information and use is implementation guidance for Section 375 of the WRDA 99 – Waurika Lake, Oklahoma, Water Conveyance Facilities.

2. Questions or comments regarding this guidance should be brought to the attention of Vince Montante, (CECW-BC) of my staff at (202) 761 – 8583.

FOR THE COMMANDER:

Encl

THOMAS F. CAVER, JR., P.E.
Chief, Programs Management Division
Office of Deputy Commanding General
for Civil Works

CECW-BC

GUIDANCE FOR IMPLEMENTATING CERTAIN PROVISIONS OF THE WATER RESOURCES DEVELOPMENT ACT OF 1999

SECTION: 375 Waurika Lake, Oklahoma, Water Conveyance Facilities

CITATION: For the project for construction of the water conveyances authorized by the first section of Public Law 88-253 (77 Stat. 841), the requirements for the Waurika Project Master Conservancy District to repay the $2,900,000 in costs (including interest) resulting from the October 1991 settlement of the claim before the United States Claims Court, and to make a payment of $595,000 of the final cost representing a portion of the difference between the 1978 estimate of cost and the actual cost determined after completion of the project in 1991, are waived.

SYNOPIS: The Waurika Dam and Lake is a multi-purpose reservoir for flood control, water supply, water quality and recreation. The project and the related municipal and industrial (M&I) water conveyance facilities were authorized by Public Law 88-253. The non-Federal sponsor for the water supply storage portion of the reservoir and the water conveyance facilities is the Waurika Project Master Conservancy District. The maximum authorized payback period for the non-Federal share of the water storage capacity and the water conveyance facilities is 50 years.

In August 1970, the Master Conservancy District signed a contract with the United States to pay back the costs of 27.609% of the water supply storage in 50 equal annual payments after the project became operational for water supply purposes, September 1, 1977. Construction of the dam and reservoir began in July 1971 and impoundment of water began in August 1977. The Conservancy District began making payments in November 1977 based on the amortization schedule developed for the 1970 agreement and the preliminary cost estimates at that time. The contract was revised in June 1986 to reflect the final costs and related amortization schedule.

In June 1978, the Conservancy District signed three contracts for the specific segments (Southern, Eastern and Western) of the water conveyance facilities. The amortization schedules included in the contracts were preliminary and were to be adjusted when all final contract costs were determined. In addition, the repayment period was for 50 years and the amortization schedule for each segment was a stepped payback plan by which actual payments did not exceed interest until the 21st or 22nd year, depending on the specific segment. Construction of water conveyance facilities began in 1975 and final work on all segments was completed in August 1981, over a year behind the original schedule. Payments by the Conservancy District began in September 1981 based on the initial amortization schedules in the contracts.

The contractor for the Eastern and Western water conveyance facilities submitted a bid that was about $5 million below the government estimate. The contractor was ultimately unable to complete the work and filed for bankruptcy. The contractor's bonding agent, Travelers Indemnity Company, took over the work and completed the project. Travelers ultimately filed suit in United States Claims Court in August 1985 requesting either a payment of damages for $3.9 million based on specific overpayments to the original contractor or a payment for damages of $5.6 million based on allegations of fraudulent representations. Each claim also requested payment of interest, attorneys fees and costs. The litigation was ultimately settled in October 1991 for $1.9 million plus appropriate interest of $1.0 million, for a total of $2.9 million, with no acknowledgment of negligence on the part of the United States. The settlement did not include any attorneys fees and related costs.

The Conservancy District had been advised in 1985 and again in 1986 that there were additional costs related to the construction of the various project segments, in addition to the Travelers claim, which would be part of the final costs for the project. The Conservancy District was advised when the Government's request for dismissal of Travelers claim was denied. However, the Conservancy District was not a participant in the negotiations and ultimate settlement of the claim. In July 1991 the Conservancy District was formally notified of the necessary revision to the amortization schedule for each of the segments. The Eastern and Western segments revision included the Travelers claim settlement in addition to those construction costs previously noted, while the revision to the Southern segment only reflected final construction costs. The annual payments for the first twenty years of the stepped payment schedules were not changed; however, the final payment level was significantly affected.

The Tulsa District has reviewed the final project costs. It determined that the final costs identified in 1991 are valid and not related to support of the claim process and confirmed that the actual construction costs were approximately $1,200,000 greater than the 1978 estimate of costs for construction. It also found that the costs of lands acquired solely for the conveyance facilities had been incorrectly charged as costs of the overall Waurika Dam and Lake project. In addition, it was determined that the costs of the claim settlement could be amortized from the time at which it was actually paid. In April 1998, the Master Conservancy District was provided documentation for the increased final costs for each of the water conveyance segments (proper costs for lands), the reduced final costs for their share of the water supply portion of the overall project (reduced lands costs), the changed point in time for amortizing the costs of the claim settlement, and the revised amortization schedules and related annual payments for the water supply portion of the overall project and the three segments of the conveyance facilities.

SUBJECT: Implementation Guidance – WRDA 99, Section 375

IMPLEMENTATION GUIDANCE: SWT is directed to implement the provisions of Section 375. SWT should insure that only the specific amounts included in Section 375 of WRDA 99 are waived when recalculating final project costs for the Waurika Dam and Lake Project, Oklahoma. Revised amortization schedules and related annual payments should be provided to the Master Conservancy District as soon as practical.