



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

JAN 9 2009

CECW-MVD

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

SUBJECT: Implementation Guidance for Section 5092 of the Water Resources Development Act (WRDA) of 2007 – GARRISON AND KATHIO TOWNSHIP, MINNESOTA

1. Section 5092(a) expands the project description provided in Section 219(f)(61) of WRDA 1992, as amended, to include Crow Wing County, Mille Lacs County, and Mille Lacs Indian Reservation; increases Federal participation on this section 219 assistance project from \$11,000,000 to \$17,000,000; and authorizes both the Sanitary District and the Mille Lacs Band of Ojibwe to receive assistance with each entity serving as the non-Federal sponsor for its respective portion of the project. A copy of Section 5092 of WRDA 2007 and Section 219 of WRDA 1992, as amended, are enclosed for your information.

2. Section 5092(b) authorizes the Secretary to use the cost sharing and contracting procedures available to the Secretary under Section 569 of the Water Resources Development Act of 1999 (113 Stat. 368) (Section 569) in carrying out the project authorized by Section 219(f)(61) of WRDA 1992, as amended. In order to utilize such procedures, the non-Federal sponsor must provide a written request to the District Engineer. The Section 569 cost sharing and contracting procedures (Section 569 procedures) that will be used are: 1) the non-Federal share is 25 percent; 2) the Federal share will be provided in the form of reimbursement; 3) credit will be afforded for the reasonable costs of design work completed by the non-Federal interest before entering into an agreement with the Secretary for a project; and 4) credit will be afforded for the reasonable costs associated with obtaining permits necessary for the construction, operation, and maintenance of the project on publicly owned or controlled land. See paragraph 3 below for a more detailed explanation. A copy of Section 569(e)(3) of WRDA 1999, Northeastern Minnesota, as amended by Section 5095 of WRDA 2007, is enclosed for your information.

a. The Section 569 procedures will only apply to increments of the Section 219(f)(61) assistance project that do not have an executed agreement as of 7 November 2007. Therefore, existing agreements for increments of the Section 219(f)(61) assistance project executed on or before 7 November 2007 will not be amended to incorporate the Section 569 procedures.

b. Existing agreements for increments of the Section 219(f)(61) assistance project executed on or after 8 November 2007, may be amended to reflect the Section 569 procedures. In this situation, contact the MVD RIT for direction on drafting the amendment.

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c. For new projects, the district should prepare an agreement package that incorporates the Section 569 procedures and submit it through MVD to the MVD RIT for review and approval following current Corps procedures. Close coordination with the Vertical Team should be maintained during development of this non-standard agreement.

3. Section 219(f)(61) design and construction assistance projects implemented using Section 569 procedures will be developed consistent with existing implementation guidance for Section 219 of WRDA 1992, except as described below.

a. Cost Sharing. The non-Federal sponsor's share is 25 percent of total design costs or total project costs. The non-Federal sponsor is responsible for providing all lands, easements, rights-of-way, and relocations (LERR) required for the project and for obtaining any necessary permits. The non-Federal sponsor will receive credit for the value of such LERRs and the cost of obtaining permits toward its share of total project costs, but not to exceed 25 percent of total project costs. In addition, the non-Federal sponsor will receive credit toward its share of total design costs or total project costs, as applicable, for the reasonable costs of design work it completes prior to entering into an agreement with the Government. The non-Federal sponsor will be responsible for 100 percent of the operation, maintenance, repair, rehabilitation, and replacement costs associated with a completed construction project.

b. Reimbursement of Federal share. The Federal share will be provided in the form of reimbursement of the value of the non-Federal sponsor's total contributions for the project that exceed its required 25 percent share (i.e. sponsor performs all design or construction work). Reimbursement is not authorized for any construction initiated prior to the execution of an agreement between the Government and the non-Federal sponsor. The Government will process reimbursement payments based on invoices submitted by the non-Federal sponsor and the amount of reimbursement will be determined in accordance with the terms and conditions of the project specific agreement and will be subject to the availability of Federal funding and the limitation of Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103. While the general principles and procedures for implementing Section 102, identified in Headquarters guidance (Memorandum, CECW-B/CECW-A, 30 May 2000, subject: Implementation of Section 102 of the Energy and Water Development Appropriations Act, 2000, Public Law 106-60), are still applicable, the limits identified in this guidance memorandum have been modified by Section 102 of the Energy and Water Development Appropriations Act for Fiscal Year 2006, Public Law 109 which states that reimbursements for all applicable general authorities and under specific project

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authorities cannot exceed \$100,000,000 in each fiscal year. Headquarters Programs Integration Division should be consulted for procedures for reporting and managing any USACE projects subject to Section 102.

c. Credit for Design Work Prior to Agreement. Credit will be afforded for design work performed by the non-Federal sponsor prior to execution of an agreement between the Government and the non-Federal sponsor. The amount of credit to be afforded will be determined in accordance with the terms and conditions of the project specific agreement.

d. Credit for Obtaining Permits. Credit will be afforded for the reasonable costs incurred by the non-Federal sponsor associated with obtaining permits necessary for the construction, operation, and maintenance of the project on publicly owned or controlled land. The value of the credit afforded, when combined with the value of LERRs provided for the project, cannot exceed 25 percent of total project costs.

4. No work may be undertaken under this authority until funds are appropriated for such purpose.

FOR THE COMMANDER:



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

Encls

Water Resources Development Act of 2007

SEC. 5092. GARRISON AND KATHIO TOWNSHIP, MINNESOTA.

(a) PROJECT DESCRIPTION.—Section 219(f)(61) of the Water Resources Development Act of 1992 (114 Stat. 2763A–221) is amended—

(1) in the paragraph heading by striking “AND KATHIO TOWNSHIP” and inserting “, CROW WING COUNTY, MILLE LACS COUNTY, MILLE LACS INDIAN RESERVATION, AND KATHIO TOWNSHIP”;

(2) by striking “\$11,000,000” and inserting “\$17,000,000”;

(3) by inserting “, Crow Wing County, Mille Lacs County, Mille Lacs Indian Reservation established by the treaty of February 22, 1855 (10 Stat.1165),” after “Garrison”; and

(4) by adding at the end the following: “Such assistance shall be provided directly to the Garrison-Kathio-West Mille Lacs Lake Sanitary District, Minnesota, except for assistance provided directly to the Mille Lacs Band of Ojibwe at the discretion of the Secretary.”.

(b) PROCEDURES.—In carrying out the project authorized by such section 219(f)(61), the Secretary may use the cost sharing and contracting procedures available to the Secretary under section 569 of the Water Resources Development Act of 1999 (113 Stat. 368).

Section 219 of WRDA 1992, ENVIRONMENTAL INFRASTRUCTURE, as amended by Section 504 of WRDA 1996; Section 502 of WRDA 1999; Section 108 of the Departments of Labor, Health And Human Services, and Education, and Related Agencies Appropriations Act of 2001; and Section 5092 of WRDA 2007.

(a) IN GENERAL. – The Secretary is authorized to provide assistance to non-Federal interests for carrying out water-related environmental infrastructure and resource protection and development projects described in subsection (c), including waste water treatment and related facilities and water supply, storage, treatment, and distribution facilities. Such assistance may be in the form of technical and planning and design assistance. If the Secretary is to provide any design or engineering assistance to carry out a project under this section, the Secretary shall obtain by procurement from private sources all services necessary for the Secretary to provide such assistance, unless the Secretary finds that –

(1) The service would require the use of a new technology unavailable in the private sector; or

(2) A solicitation or request for proposal has failed to attract 2 or more bids or proposals.

(b) NON-FEDERAL SHARE. – The non-Federal share of the cost of projects for which assistance is provided under this section shall not be less than 25 percent, except that such share shall be subject to the ability of the non-Federal interest to pay, including the procedures and regulations relating to ability to pay established under section 103 (m) of the Water Resources Development Act of 1986.

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(f) ADDITIONAL ASSISTANCE. – The Secretary may provide assistance under subsection (a) and assistance for construction for the following:

* * * *

(61) GARRISON, CROW WING COUNTY, MILLE LACS COUNTY, MILLE LACS INDIAN RESERVATION, AND KATHIO TOWNSHIP, MINNESOTA. – \$17,000,000 for a wastewater infrastructure project for the city of Garrison, Crow Wing County, Mille Lacs County, Mille Lacs Indian Reservation established by the treaty of February 22, 1855 (10 Stat.1165), and Kathio Township, Minnesota. Such assistance shall be provided directly to the Garrison-Kathio-West Mille Lacs Lake Sanitary District, Minnesota, except for assistance provided directly to the Mille Lacs Band of Ojibwe at the discretion of the Secretary.

**Section 569(e)(3) of WRDA 1999, NORTHEASTERN MINNESOTA,
as amended by Section 5095 of WRDA 2007**

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(e) LOCAL COOPERATION AGREEMENT. –

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(3) COST SHARING. –

(A) IN GENERAL. – The Federal share of project costs under each local cooperation agreement entered into under this subsection shall be 75 percent. The Federal share may be in the form of grants or reimbursements of project costs.

(B) CREDIT FOR DESIGN WORK. – The non-Federal interest shall receive credit for the reasonable costs of design work completed by the non-Federal interest before entering into a local cooperation agreement with the Secretary for a project.

(C) CREDIT FOR INTEREST. – In case of a delay in the funding of the non-Federal share of the costs of a project that is the subject of an agreement under this section, the non-Federal interest shall receive credit for reasonable interest incurred in providing the non-Federal share of the project's costs.

(D) LAND, EASEMENTS, AND RIGHTS-OF-WAY CREDIT. – The non-Federal interest shall receive credit for land, easements, rights of way, and relocations toward the non-Federal share of project costs (including all reasonable costs associated with obtaining permits necessary for the construction, operation, and maintenance of the project on publicly owned or controlled land), but not to exceed 25 percent of total project costs.

(E) OPERATION AND MAINTENANCE. – The non-Federal share of operation and maintenance costs for projects constructed with assistance provide under this section shall be 100 percent.