



**DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108**

DEC 12 2008

**MEMORANDUM FOR the Deputy Commanding General for Civil and Emergency Operations**

**SUBJECT: Implementation Guidance for Section 3109 of the Water Resources Development Act of 2007 (WRDA 2007) - Lower Yellowstone Project, Montana**

Section 3109 provides the Secretary discretionary authority to use funds appropriated to carry out the Missouri River Recovery Program (MRRP) to assist the Bureau of Reclamation (Reclamation) in the design and construction of Reclamation's Lower Yellowstone project located at Intake, Montana, for the purpose of ecosystem restoration. A copy of the provision is enclosed for information.

Using existing funds for the MRRP, Omaha District may assist Reclamation with design activities necessary to move the Lower Yellowstone project at Intake, Montana, forward to construction. Design activities shall be conducted using MRRP funds and shall include preparation of a decision document which will contain at a minimum the following items to justify proceeding with the project:

- a. Plan Formulation Analysis,
- b. Incremental Analysis/Cost Effectiveness Analysis,
- c. Appropriate NEPA Documentation, and
- d. Results of Agency Technical Review and Independent External Peer Review.

Because of the significance of this work, the crediting to the Corps obligations under the Endangered Species Act requires further assurances. The District Study Team, Major Subordinate Command and the NWD Regional Integration Team will conduct an In Progress Review (IPR) for OASA(CW), prior to final approval or delegation of approval authority by the OASA(CW) of the decision document, to confirm the appropriateness of the proposed work. The decision document shall describe how project implementation will address the Missouri River Biological Opinion (BiOp), particularly anticipated improvements to fish habitat and more viable fish populations for listed species; anticipated credit towards habitat targets specified under the BiOp; and, define success criteria in conjunction with the lower Yellowstone Project at Intake and address measures specified by the BiOp that may be modified if the criteria are met. Construction of the proposed project utilizing MRRP funds must result in a net cost savings to the Corps. The views of the USFWS and other resource agencies shall be presented. The decision document will also describe actions the Corps will take to

verify that Reclamation is operating the project as required to achieve the BiOp requirements and that credit towards habitat targets are achieved.

Continued study and design work on this project may be considered for implementation with MRRP funds in accordance with the existing budgetary policy and procedural guidance for the MRRP program.

In moving forward on implementation of the project the following considerations must be clearly communicated to Reclamation and other project stakeholders:

- a. The purpose of this project is for endangered species recovery and ecosystem restoration following provisions of the Missouri River Recovery Program;
- b. Reclamation is the current owner of the facility; the Corps will not own, operate, nor maintain the project facilities;
- c. Additional lands, easements, relocations and disposal/borrow areas may be acquired for project implementation; Reclamation and Corps will execute agreements prior to additional real estate acquisition wherein Reclamation agrees to be responsible for the administrative jurisdiction for the real estate and provide the Corps with necessary rights-of-entry for construction purposes;
- d. Reclamation will be responsible for determining and obtaining any non-Federal sponsor repayment responsibilities associated with the project.

No Missouri River Recovery Program funds should be expended for construction activities at Lower Yellowstone Intake Project before approval of the decision document and until after an agreement or memorandum between the U.S. Fish and Wildlife Service and the Corps regarding how the project will be credited to the Corps of Engineers for meeting habitat targets specified under the Missouri River Biological Opinion has been executed and a Memorandum of Agreement or suitable document between Reclamation and the Corps has been executed.



John Paul Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)

Encl

**SEC. 3109. LOWER YELLOWSTONE PROJECT, MONTANA.**

The Secretary may use funds appropriated to carry out the Missouri River recovery and mitigation program to assist the Bureau of Reclamation in the design and construction of the Lower Yellowstone project of the Bureau, Intake, Montana, for the purpose of ecosystem restoration.

CF:

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SACW: File

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