



Reply to
Attention of:

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

19 DEC 2007

CEMP-SWD

MEMORANDUM FOR Commander, Southwestern Division, ATTN: CESWD-PDS

SUBJECT: Implementation of Section 3135 (h) of the Water Resources Development Act of 2007 (WRDA 2007) – Ottawa County, Oklahoma.

1. Section 3135 (h) of WRDA 2007, P.L. 110-114, amends Section 111 of P.L. 108-37 to include authority for the Secretary to provide financial assistance to facilitate the buy out of properties located in areas identified by the State of Oklahoma as areas that are or will be at risk of damage caused by land subsidence and associated properties otherwise identified by the State. In addition, it removes the requirement that the non-Federal interests provide the necessary real estate but requires the non-Federal interest be responsible for operating and maintaining any restoration alternatives constructed or carried out under this section.
2. Implementation guidance for Section 111 of the Energy and Water Development Appropriations Act of 2004, Public Law 108-137, CECW-P/CEMP Memorandum dated 9 August 2004 directed that the \$3.5 million provided to implement Section 111 could be used to provide technical, planning, design and construction assistance to non-Federal interests to remedy adverse environmental and human health impacts in Ottawa County, Oklahoma. Construction was defined to include work associated with the physical implementation of the project by the Corps and subsequent monitoring and adaptive management actions for up to five years after the completion of physical construction. Section 111(d) specified that the non-Federal interest was responsible for providing all lands, easements, and rights-of-way.
3. Under the 9 August 2004 guidance, Tulsa District executed a grant to the Oklahoma Department of Environmental Quality (ODEQ) in FY 2007. The grant provides that Tulsa District will reimburse ODEQ a maximum of \$3.5 Million from the funds provided to implement Section 111 of P.L. 108-137 for expenses incurred in the demolition and disposal of houses, businesses, and public use structures and, when appropriate, utility and road relocation associated with demolition. In addition, Tulsa District will reimburse ODEQ for expenses incurred in project administration, contractor oversight, agency reporting requirements, and compliance with National Environmental Policy Act (NEPA) and other applicable laws. The grant did not permit reimbursement of funds used for buyouts, as the responsibility for providing the necessary real estate interests had been placed on the local sponsor by Section 111(d), of P.L. 108-137.

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4. The Tulsa District may use any of the funds previously provided to implement Section 111 of P.L. 108-137 for buyouts and in accordance with this authorization may amend the existing grant agreement with ODEQ to allow reimbursements for buyouts. Any buyout shall not be considered to be part of a federally assisted program or project for purposes of Public Law 91-646 (42 U.S.C. 4601 et seq.), consistent with section 2301 of Public Law 109-234 (120 Stat. 455-456). In accordance with Section 111 of P.L. 108-137 implementation guidance, the SWD Commander may approve the amended grant agreement document.

5. Appropriate NEPA compliance documentation will be prepared to evaluate and disclose the effects of buyouts and relocations using previously appropriated funds. Little additional work is likely to be required to complete the necessary NEPA documentation for any additional buyouts for which funds may later be made available under the authorization provided in Section 3135(a). Therefore, the NEPA documentation may be expanded to include these potential buyouts as well. The NEPA documentation will make extensive use of environmental analysis information in the EA recently conducted by the ODEQ; however some additional socioeconomic impact analysis will have to be conducted. Efforts should be made to complete all necessary activities expeditiously so that previously appropriated funds for buyouts and relocations can be utilized during the first quarter of calendar year 2008.

6. Separate implementation guidance will be developed for Section 3135 (a) through (g) of WRDA 2007. A new agreement will be required for any work accomplished under the authority of 3135 (a) through (g). However, no work can be initiated under Section 3135 (a) through (g) until funds have been appropriated for such work and until implementation guidance has been provided.

FOR THE COMMANDER:



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