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MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND
DISTRICT COMMANDS

SUBJECT: Implementation Guidance for Section 203 of the Water Resources Development Act of 2000 (WRDA 2000), Tribal Partnership Program

1. Section 203 of WRDA 2000. Section 203 of WRDA 2000, Public Law 106-541, authorizes the Secretary of the Army, in cooperation with Indian tribes and the heads of other Federal agencies, to study and determine the feasibility of carrying out projects that will substantially benefit Indian tribes. The projects would be undertaken at sites primarily within Indian country, as defined in 18 U.S.C. 1151. Section 203, titled the Tribal Partnership Program (TPP), also establishes cost sharing provisions, defines cooperation and consultation requirements, and authorizes appropriations. The statutory language for this section is contained in enclosure 1.

2. Matters to be Studied. Section 203 provides an authority through which the U.S. Army Corps of Engineers can conduct studies that will substantially benefit Indian tribes. The statutory language for the TPP defines the matters to be studied to include flood damage reduction, environmental restoration and protection, preservation of natural and cultural resources, and, “such other projects as the Secretary, in cooperation with Indian tribes and the heads of other Federal agencies, determines to be appropriate.” The TPP provides an opportunity to assist with water resources projects that address economic, environmental and cultural resources needs.

3. Program Management and Budgeting.

a. When funded, Section 203 studies shall be part of a discrete program. Section 203 studies will subsequently be proposed for funding under this program, subject to the approval of the Administration. HQUSACE will recommend study proposals that most clearly address the matters to be studied above and, in the interest of developing program priorities, specific annual themes may be identified for the program. These annual themes, to be developed in HQUSACE and approved by the Office of the Assistant Secretary of the Army for Civil Works (OASA/CW), will be consistent with the statutory language establishing the program and will provide focus to prioritize proposals in a limited budget environment.

b. When funded, up to \$ 100,000 of Federal funds may be used to prepare a reconnaissance study in accordance with guidance in ER 1105-2-100, Appendix G, paragraph G-7. The purpose of a

reconnaissance study is to identify the problem, the project purposes, types of outputs, and whether or not the intended project purpose and/or likely outputs are consistent

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with Army/Corps implementation and budgetary policy. If it is determined that the outputs are not consistent with Army/Corps implementation and budgetary policy, no further studies should be undertaken and a recommendation as to an appropriate course of action should be made to the tribal interests. If it is determined that the outputs are consistent with Army/Corps implementation and budgetary policy, you must identify a cost sharing partner, define the scope of the feasibility study and negotiate a Feasibility Cost Sharing Agreement (FCSA). Recognize that these studies have a cost limit, so discipline must be exercised throughout the process in scoping the level of detail and duration of such studies, especially the reconnaissance phase, in order to maximize the return on our efforts and preserve as much funding as possible for as many studies as possible.

c. Proceeding into the next phase of study will be subject to HQUSACE approval of the reconnaissance study and execution of the FCSA. Section 203 feasibility studies will be cost shared 50/50 and all the sponsor's share may be provided as in-kind services. The use of other Federal agency funds for the non-Federal share of the feasibility study costs shall be guided by Article II.F. of the model FCSA, which requires approval of the use of those funds by the contributing agency. Section 203 states that any cost sharing agreement for a study under this provision shall be subject to the ability of the non-Federal entity to pay. A draft Ability to Pay rule is currently being developed for coordination with the Office of the Assistant Secretary of the Army (Civil Works) and the Office of Management and Budget. When finalized, this rule will apply to section 203 studies. Until such time as the rule is final, reductions under the section 203 Ability to Pay provision cannot be applied.

d. In accordance with Section 203 (c), all activities undertaken under this authority must be coordinated with the Department of the Interior to avoid conflicts and to consider the authorities and programs of DOI as well as other Federal agencies.

e. Pre-authorization feasibility reports shall be sent, upon completion, to HQUSACE for review and approval. Approved Section 203 feasibility reports shall be submitted to the ASA(CW) for transmittal to OMB and ultimately to Congress. Since section 203 does not provide construction authority, additional congressional construction authority will be required.

Encl

JAMES F. JOHNSON
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(see pages 3 & 4)

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