



DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314-1000

Reply to
Attention of:

CEMP-SWD (1105-2-10a)

31 DEC 2006

SUBJECT: Lower Colorado River Basin Phase I, Texas

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on the study of flood damage reduction, ecosystem restoration, and recreation for the Lower Colorado River Basin in the vicinities of Onion Creek in Travis County and the City of Austin, Texas, and the Colorado River at Wharton, Texas. It is accompanied by the reports of the district and division engineers. These reports are an interim response to resolutions by the Committee on Commerce, United States Senate, adopted August 4, 1936, and the River and Harbor Acts approved August 26, 1937 and March 2, 1945, respectively. In addition the Onion Creek portion of this report is in partial response to a resolution by the Committee on Transportation and Infrastructure of the United States House of Representatives adopted May 6, 1998. These resolutions and Acts requested examinations and surveys and a review of reports to be made for the Colorado River and Onion Creek for flood damage reduction, environmental restoration and protection, and other related purposes. Preconstruction engineering and design activities for the Lower Colorado River Basin Phase I project will continue under the authority provided by the resolutions and Acts cited above.

2. The reporting officers recommend authorization of a plan for flood damage reduction, ecosystem restoration and recreation for two separable components within the Lower Colorado River Basin. The Onion Creek Component (covered in Volume 2 of the feasibility report) is located in the Austin vicinity, Travis County, Texas. The Onion Creek component is made up of two separable segments, the Timber Creek segment and the Onion Creek Forest/Yarrabee Bend segment. The Wharton Component (covered in Volume 3 of the feasibility report) is located in the Wharton vicinity, Wharton County, Texas.

a. The recommended plan for the Timber Creek segment of the Onion Creek Component is a combined NED/NER plan that optimizes flood damage reduction and recreation benefits relative to costs while providing cost effective increases in the ecosystem value in Travis County. The recommended plan would reduce flood damages, diminish the threat of loss of life, and preserve and enhance the environmental resources of the area. The flood damage reduction measure within the Timber Creek segment of the Onion Creek watershed includes the acquisition and removal of approximately 81 residential structures from the 4 percent annual chance of exceedence (25-year) floodplain. The vacated land would then be utilized for recreation and ecosystem restoration. Approximately 40 acres of the vacated lands would be converted to a park that would consist of 20 picnic shelters, 8 small group shelters, 1 large group shelter,

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5,300 linear feet of unpaved trails, 1,200 linear feet of paved trails, 2 basketball courts, 1 restroom, and 12,000 square feet of parking and associated infrastructure. The remaining vacated lands as well as land acquired solely for the purpose of ecosystem restoration would be used to restore approximately 16 acres to riparian woodlands.

b. The recommended plan for the Onion Creek Forest/Yarrabee Bend segment of the Onion Creek Component is also a combined NED/NER plan that optimizes flood damage reduction and recreation benefits relative to costs while providing cost effective increases in the ecosystem value in the City of Austin. The recommended plan would reduce flood damages, diminish the threat of loss of life, and preserve and enhance the environmental resources of the area. The flood damage reduction measures include the acquisition and removal of approximately 410 residential structures from the 4 percent annual chance of exceedence (25-year) floodplain. The vacated land would then be utilized for recreation and ecosystem restoration. Approximately 100 acres of the vacated lands would be converted to a park that would consist of 32 picnic shelters, 32 small group shelters, 1 large group shelter, 7,860 linear feet of unpaved trails, 9,680 linear feet of paved trails, 7,400 linear feet of multi-use trails, 1 footbridge, 4 basketball courts, 2 tennis courts, 19 volleyball courts, 1 restroom, and 20,000 square feet of parking and associated infrastructure. The remaining vacated lands as well as lands acquired solely for the purpose of ecosystem restoration would be used to restore approximately 190 acres of riparian woodlands.

c. In addition to participating with the Corps for a solution to the water resource problems in the Onion Creek Component, the City of Austin actively pursued funding under the Federal Emergency Management Agency's Hazard Mitigation Grant Program (HMGP), being administered by the State of Texas, Division of Emergency Management. A HMGP in the Timber Creek segment was completed in August 2003 with 40 relocations. For the Onion Creek Forest/Yarrabee Bend segment, a HMGP application was approved on 16 June 2006, for an amount up to \$6,256,000, for purchase of up to 118 selected homes in the Onion Creek Forest area. These buyouts are to be performed only on a willing seller basis, and must be completed by 16 June 2008. This HMGP program is cost-shared at the rate of 75 percent Federal and 25 percent non-Federal. The Corps estimates that not all of the selected homes could be purchased under this grant program. The exact number will not be known until the program expires. However, this action would reduce the Corps' project by an unknown amount. The lands that have been, or may be acquired by the sponsor for the HMGP's will not be credited against the lands that the sponsor must provide for the Corps project and the cost of these lands will not be included in the total project cost. However, the recommended recreation features that may be placed on these lands will be cost shared and the cost of these features will be included in the total project cost. Implementation of the Corps project (i.e., execution of a Project Cooperation Agreement) for the Onion Creek/Yarrabee Bend project area would not be undertaken until the HMGP program is completed in June 2008.

d. For both segments of the Onion Creek Component, mitigation of impacts to the environment are not required as the project by its very nature would be a positive contribution to the fish and wildlife resources of the area.

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e. The recommended plan for the Wharton Component is the NED plan for flood damage reduction with a betterment for interior drainage facilities. The flood damage reduction measures along the Colorado River and two smaller streams, Baughman Slough and Caney Creek, in the City of Wharton, Texas, include approximately 26,900 feet of levees, 2,280 feet of floodwalls, 7,000 feet of channel modifications, and interior drainage features. Based on a preliminary assessment of the interior drainage facilities, some aspects of the facilities are larger in scale than that which would be in the Federal interest. The non-Federal sponsor has agreed to pay 100 percent of the cost of interior drainage facilities that are larger than required to meet Federal standards and are thus referred to as a betterment. Further refinement of the project during preconstruction engineering and design may result in alterations to the interior facilities as well as other project features. The flood damage reduction plan for the City of Wharton would effectively remove the vast majority of the city from the 1 percent annual chance of exceedence (100-year) floodplain. For the Wharton portion, the project utilizes the project's sump areas to offset the impacts of the project. The impacts on 65 acres of woodlands would be offset by planting trees on 84 acres within project sump areas, while the impacts to 10 acres of wetlands would be offset by establishing wetland habitat on 10 acres of the sump areas.

3. The total first cost of all components and segments of the Lower Colorado River Basin project, based on October 2006 price levels, is estimated to be \$110,730,000. The estimated total first cost of the overall recommended project is approximately \$100,480,000 for flood damage reduction, \$4,620,000 for ecosystem restoration, and \$5,640,000 for recreation.

a. Based on October 2006 price levels, the estimated first cost of the Timber Creek segment is \$10,800,000. Based on the cost sharing rules associated with flood damage reduction, ecosystem restoration, and recreation, the Federal share of the estimated first cost of the Timber Creek segment is \$6,730,000 and the non-Federal share is \$4,070,000. Travis County, Texas would be the non-Federal cost sharing sponsor for all features of the recommended plan in the Timber Creek segment. Travis County would be responsible for the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of flood damage reduction features in the Timber Creek segment after construction, a cost currently estimated to be \$30,000 per year. Flood damage reduction and recreation costs total \$10,480,000, and include \$1,830,000 in relocation assistance costs. Equivalent annual costs for the flood damage reduction and recreation measures, based on a discount rate of 4.875 percent and a 50-year period of analysis, are \$510,000. This amount includes \$30,000 for local annual operation, maintenance, repair, rehabilitation, and replacement. Estimated equivalent annual benefits for flood damage reduction and recreation are \$870,000, and net annual benefits are \$360,000. The ratio of benefits-to-costs is 1.7. The estimated first cost of ecosystem restoration for 16 acres of riparian woodlands in the Timber Creek segment is \$300,000. This would be a cost of approximately \$20,000 per acre. The project would result in a net increase of 5.9 habitat units at a cost of \$3,600 per average annual habitat unit. Since outputs for the ecosystem restoration measures are not measured in monetary units, the costs for these measures are not included in the estimated equivalent annual costs shown above.

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b. Based on October 2006 price levels, the estimated first cost of the recommended plan for the Onion Creek Forest/Yarrabee Bend segment is \$72,360,000. Based on the cost sharing rules associated with flood damage reduction, ecosystem restoration, and recreation, the Federal share of the estimated first cost of the Onion Creek Forest/Yarrabee Bend segment is \$46,210,000 and the non-Federal share is \$26,150,000. The City of Austin, Texas would be the non-Federal cost sharing sponsor for all features of the recommended plan in this segment. The City of Austin would be responsible for the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of flood damage reduction features, a cost currently estimated to be \$200,000 per year. Flood damage reduction and recreation costs total \$68,070,000, and include \$11,130,000 in relocation assistance costs. Equivalent average annual costs for the flood damage reduction and recreation measures, based on a discount rate of 4.875 percent and a 50-year period of analysis, are \$3,410,000. This amount includes \$200,000 for local annual operation, maintenance, repair, rehabilitation, and replacement. Estimated equivalent annual benefits for flood damage reduction and recreation are \$5,270,000, and net annual benefits are \$1,860,000. The ratio of benefits-to-costs is 1.5. The estimated first cost of ecosystem restoration for 190 acres of riparian woodlands in the Onion Creek Forest/Yarrabee Bend segment is \$4,290,000. This would be a cost of approximately \$23,000 per acre. The project would result in a net increase of 56.8 habitat units at a cost of approximately \$4,900 per average annual habitat unit. Since outputs for the ecosystem restoration measures are not measured in monetary units, the costs for these measures are not included in the estimated equivalent annual costs shown above. It is noted that the voluntary FEMA HMGP identified in paragraph 2.c. may affect the project outputs as stated above. If FEMA buyouts are realized, the cost of the Corps project for the Onion Creek Forest/Yarrabee Bend segment will decrease, and although the flood damage reduction benefits may be reduced slightly, the recreation benefits would remain constant and hence, the net benefits are likely to increase.

c. As provided in Section 104 of WRDA 1986, the reporting officers recommend that the non-Federal sponsor, the City of Austin, receive credit for advance implementation of a portion of the permanent evacuation plan. The credit would be for the removal of approximately 250 structures located within the 25-year floodplain of Onion Creek Forest/Yarrabee Bend Community. The city plans to remove these structures prior to project authorization. The Fort Worth District has certified that the city has met the requirements for credit under section 104, that removal of these structures would be separately useful for flood damage reduction, integral to the Federal project, environmentally acceptable, economically justified, and urgently needed to mitigate flood damages. The city had previously removed 43 structures and as such these structures would not be eligible for credit under section 104. The estimated cost for the structures that would meet the section 104 requirements is about \$3,500,000. This credit was tentatively approved by the ASA (CW) on 14 September 2006, contingent upon the requirements of section 104 and project authorization.

d. Based on October 2006 price levels, the estimated first cost of the NED Plan for the Wharton component is \$25,690,000, with a Federal share of \$16,700,000 and a non-Federal share of 10,870,000. A preliminary estimate of the first cost of the betterment for interior drainage facilities is \$1,880,000, which would be a 100 percent non-Federal cost. As such, the

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recommended NED Plan with Betterment would have an estimated first cost of \$27,570,000, with a Federal share of \$16,700,000 and non-Federal share of \$10,870,000. Further refinement of the project during preconstruction engineering and design may result in changes to the interior facilities and cost-sharing responsibilities. The City of Wharton, Texas would be the non-Federal cost sharing sponsor for all features of the recommended plan in the Wharton area. The City of Wharton would also be responsible for the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of flood damage reduction features in the Wharton area after construction, a cost currently estimated to be \$50,000 per year. Equivalent annual costs for the Wharton component, based on a discount rate of 4.875 percent and a 50-year period of analysis are estimated at \$1,620,000, including OMRR&R of \$50,000. Equivalent annual benefits are estimated at \$4,300,000. This results in equivalent annual net benefits of \$2,680,000, and a benefit-to-cost ratio of 2.7.

e. As provided in Section 104 of WRDA 1986, the reporting officers recommend that the non-Federal sponsor, the City of Wharton, Texas, receive credit for advance implementation of a portion of the flood damage reduction project. The credit would be for the construction of improvements to Santa Fe Ditch to alleviate significant flood damages to the city. The Fort Worth District has certified that the city has met the requirements for credit under section 104, and that the work is likely to be separately useful for flood damage reduction, integral to the Federal project, environmentally acceptable, economically justified, and urgently needed to mitigate flood damages. The estimated cost of this project is \$2,900,000. The amount of credit will be the lesser of cost that the Government would have incurred for the work or the actual costs subject to audit for reasonableness, allocability, and allowability. However, in no instance will the credit applied exceed the value of additional cash, LERRD, and other creditable contributions, or 45 percent of total project costs for flood control, whichever is the lesser. This credit was tentatively approved by ASA (CW) on 25 January 2006 contingent upon the requirements of section 104 and project authorization. As of October 2006, all required right-of-way has been acquired, and construction has begun by the city.

4. Washington level review indicates that the project is technically sound, environmentally acceptable, and economically justified. The plan conforms with essential elements of the U.S. Water Resources Council's Economic and Environmental Principles for Water and Related Land Resources Implementation studies and complies with other administration and legislative policies and guidelines. Also, the views of interested parties, including Federal, State, and local agencies have been considered.

5. I generally concur in the findings, conclusions and recommendations of the reporting officers. Accordingly, I recommend that the plan described herein be authorized, with such modifications as in the discretion of the Chief of Engineers may be advisable. This recommendation is subject to cost sharing, financing, and other applicable requirements of Federal and State laws and policies, including Section 103 of WRDA 1986, as amended.

6. Federal implementation of the recommended plans for the Timber Creek and Onion Creek/Yarrabee Bend segments of the Onion Creek Component would be subject to the

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respective non-Federal sponsors agreeing to comply with applicable Federal laws and policies, including but not limited to:

a. Provide 35 percent total non-structural flood damage reduction costs as further specified below:

(1) Provide 25 percent of design costs allocated by the Government to non-structural flood damage reduction in accordance with the terms of a design agreement entered into prior to commencement of design work for the project;

(2) Provide, during the first year of construction, any additional funds necessary to pay the full non-Federal share of design costs allocated by the Government to non-structural flood damage reduction;

(3) Provide all lands, easements, and rights-of-way, including those required for relocations, the borrowing of material, and the disposal of dredged or excavated material; perform or ensure the performance of all relocations; and construct all improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material all as determined by the Government to be required or to be necessary for the construction, operation, and maintenance of the non-structural flood damage reduction features;

(4) Provide, during construction, any additional funds necessary to make its total contribution for non-structural flood damage reduction equal to 35 percent of total non-structural flood damage reduction costs;

b. Provide 35 percent of total ecosystem restoration costs as further specified below:

(1) Provide 25 percent of design costs allocated by the Government to ecosystem restoration in accordance with the terms of a design agreement entered into prior to commencement of design work for the project;

(2) Provide, during the first year of construction, any additional funds necessary to pay the full non-Federal share of design costs allocated by the Government to ecosystem restoration;

(3) Provide all lands, easements, and rights-of-way, including those required for relocations, the borrowing of material, and the disposal of dredged or excavated material; perform or ensure the performance of all relocations; and construct all improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material all as determined by the Government to be required or to be necessary for the construction, operation, and maintenance of the ecosystem restoration features;

(4) Provide, during construction, any additional funds necessary to make its total contribution for ecosystem restoration equal to 35 percent of total ecosystem restoration costs;

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c. Provide 50 percent of total recreation costs as further specified below:

(1) Provide 25 percent of design costs allocated by the Government to recreation in accordance with the terms of a design agreement entered into prior to commencement of design work for the project;

(2) Provide, during the first year of construction, any additional funds necessary to pay the full non-Federal share of design costs allocated by the Government to recreation;

(3) Provide all lands, easements, and rights-of-way, including those required for relocations, the borrowing of material, and the disposal of dredged or excavated material; perform or ensure the performance of all relocations; and construct all improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material all as determined by the Government to be required or to be necessary for the construction, operation, and maintenance of the recreation features;

(4) Provide, during construction, any additional funds necessary to make its total contribution for recreation equal to 50 percent of total recreation costs;

d. Provide, during construction, 100 percent of the total recreation costs of certain recreation facilities which by regulation may not be cost shared, and for those recreation facilities which may be cost shared, provide 100 percent of the total recreation costs that exceed an amount equal to the sum of 50 percent of the Federal share of total non-structural flood damage reduction costs and 10 percent of the Federal share of total ecosystem restoration costs;

e. Shall not use funds from other Federal programs, including any non-Federal contribution required as a matching share therefore, to meet any of the non-Federal obligations for the project unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is authorized;

f. Not less than once each year, inform affected interests of the extent of protection afforded by the flood damage reduction features;

g. Agree to participate in and comply with applicable Federal floodplain management and flood insurance programs;

h. Comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to prepare a floodplain management plan within one year after the date of signing a project cooperation agreement, and to implement such plan not later than one year after completion of construction of the flood damage reduction features;

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i. Publicize floodplain information in the area concerned and provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with protection levels provided by the flood damage reduction features;

j. Prevent obstructions or encroachments on the project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on project lands, easements, and rights-of-way or the addition of facilities which might reduce the level of protection the flood damage reduction features afford, reduce the outputs produced by the ecosystem restoration features, hinder operation and maintenance of the project, or interfere with the project's proper function;

k. Shall not use the ecosystem restoration features or lands, easements, and rights-of-way required for such features as a wetlands bank or mitigation credit for any another project;

l. Keep the recreation features, and access roads, parking areas, and other associated public use facilities, open and available to all on equal terms;

m. Comply with all applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the project, including those necessary for relocations, the borrowing of materials, or the disposal of dredged or excavated material; and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act;

n. For so long as the project remains authorized, operate, maintain, repair, rehabilitate, and replace the project, or functional portions of the project, including any mitigation features, at no cost to the Federal Government, in a manner compatible with the project's authorized purposes and in accordance with applicable Federal and State laws and regulations and any specific directions prescribed by the Federal Government;

o. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal sponsor owns or controls for access to the project for the purpose of completing, inspecting, operating, maintaining, repairing, rehabilitating, or replacing the project;

p. Hold and save the United States free from all damages arising from the construction, operation, maintenance, repair, rehabilitation, and replacement of the project and any betterments, except for damages due to the fault or negligence of the United States or its contractors;

q. Keep and maintain books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of 3 years after completion of the accounting for which such books, records, documents, or other evidence are required, to the

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extent and in such detail as will properly reflect total project costs, and in accordance with the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 Code of Federal Regulations (CFR) Section 33.20;

r. Comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantial change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 et seq.) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c et seq.);

s. Perform, or ensure performance of, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Public Law 96-510, as amended (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be required for construction, operation, and maintenance of the project. However, for lands that the Federal Government determines to be subject to the navigation servitude, only the Federal Government shall perform such investigations unless the Federal Government provides the non-Federal sponsor with prior specific written direction, in which case the non-Federal sponsor shall perform such investigations in accordance with such written direction;

t. Assume, as between the Federal Government and the non-Federal sponsor, complete financial responsibility for all necessary cleanup and response costs of any hazardous substances regulated under CERCLA that are located in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be required for construction, operation, and maintenance of the project;

u. Agree, as between the Federal Government and the non-Federal sponsor, that the non-Federal sponsor shall be considered the operator of the project for the purpose of CERCLA liability, and to the maximum extent practicable, operate, maintain, repair, rehabilitate, and replace the project in a manner that will not cause liability to arise under CERCLA; and

v. Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element.

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7. Federal implementation of the recommended plan for the Wharton Component would be subject to the non-Federal sponsor agreeing to comply with applicable Federal laws and policies, including but not limited to:

a. Provide a minimum of 35 percent, but not to exceed 50 percent of total project costs as further specified below:

(1) Provide 25 percent of design costs in accordance with the terms of a design agreement entered into prior to commencement of design work for the project;

(2) Provide, during the first year of construction, any additional funds necessary to pay the full non-Federal share of design costs;

(3) Provide, during construction, a contribution of funds equal to 5 percent of total project costs;

(4) Provide all lands, easements, and rights-of-way, including those required for relocations, the borrowing of material, and the disposal of dredged or excavated material; perform or ensure the performance of all relocations; and construct all improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material all as determined by the Government to be required or to be necessary for the construction, operation, and maintenance of the project;

(5) Provide, during construction, any additional funds necessary to make its total contribution equal to at least 35 percent of total project costs;

b. Provide, during construction, 100 percent of the incremental costs allocated to the betterment for the interior drainage facilities;

c. Shall not use funds from other Federal programs, including any non-Federal contribution required as a matching share therefore, to meet any of the non-Federal obligations for the project unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is authorized;

d. Not less than once each year, inform affected interests of the extent of protection afforded by the project;

e. Agree to participate in and comply with applicable Federal floodplain management and flood insurance programs;

f. Comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to prepare a floodplain management plan within one year after the date of signing a project cooperation agreement, and to implement such plan not later than one year after completion of construction of the project;

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g. Publicize floodplain information in the area concerned and provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with protection levels provided by the project;

h. Prevent obstructions or encroachments on the project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on project lands, easements, and rights-of-way or the addition of facilities which might reduce the level of protection the project affords, hinder operation and maintenance of the project, or interfere with the project's proper function;

i. Comply with all applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the project, including those necessary for relocations, the borrowing of materials, or the disposal of dredged or excavated material; and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act;

j. For so long as the project remains authorized, operate, maintain, repair, rehabilitate, and replace the project, or functional portions of the project, including any mitigation features, at no cost to the Federal Government, in a manner compatible with the project's authorized purposes and in accordance with applicable Federal and State laws and regulations and any specific directions prescribed by the Federal Government;

k. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal sponsor owns or controls for access to the project for the purpose of completing, inspecting, operating, maintaining, repairing, rehabilitating, or replacing the project;

l. Hold and save the United States free from all damages arising from the construction, operation, maintenance, repair, rehabilitation, and replacement of the project and any betterments, except for damages due to the fault or negligence of the United States or its contractors;

m. Keep and maintain books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of 3 years after completion of the accounting for which such books, records, documents, or other evidence are required, to the extent and in such detail as will properly reflect total project costs, and in accordance with the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 Code of Federal Regulations (CFR) Section 33.20;

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n. Comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantial change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c *et seq.*);

o. Perform, or ensure performance of, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Public Law 96-510, as amended (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be required for construction, operation, and maintenance of the project. However, for lands that the Federal Government determines to be subject to the navigation servitude, only the Federal Government shall perform such investigations unless the Federal Government provides the non-Federal sponsor with prior specific written direction, in which case the non-Federal sponsor shall perform such investigations in accordance with such written direction;

p. Assume, as between the Federal Government and the non-Federal sponsor, complete financial responsibility for all necessary cleanup and response costs of any hazardous substances regulated under CERCLA that are located in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be required for construction, operation, and maintenance of the project;

q. Agree, as between the Federal Government and the non-Federal sponsor, that the non-Federal sponsor shall be considered the operator of the project for the purpose of CERCLA liability, and to the maximum extent practicable, operate, maintain, repair, rehabilitate, and replace the project in a manner that will not cause liability to arise under CERCLA; and

r. Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element.

8. The recommendation contained herein reflects the information available at this time and current departmental policies governing formulation of individual projects. It does not reflect program and budgeting priorities inherent in the formulation of a national civil works construction program or the perspective of higher review levels within the executive branch.

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Consequently, the recommendation may be modified before it is transmitted to the Congress as a proposal for authorization and implementation funding. However, prior to transmittal to the Congress, the cities of Austin and Wharton, and Travis County, as the non-Federal sponsors, the State of Texas, interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

A handwritten signature in black ink, appearing to read 'Carl A. Stroock', with a long horizontal flourish extending to the right.

CARL A. STROCK
Lieutenant General, U.S. Army
Chief of Engineers