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113TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 113–246
Part 1

WATER RESOURCES REFORM AND DEVELOPMENT ACT OF 2013

R E P O R T

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

TO ACCOMPANY

H.R. 3080

together with

ADDITIONAL VIEWS

OCTOBER 21, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

WATER RESOURCES REFORM AND DEVELOPMENT ACT OF 2013

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Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

TOGETHER WITH

ADDITIONAL VIEWS

[To accompany H.R. 3080]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3080) to provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Water Resources Reform and Development Act of 2013".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definition of Secretary.

TITLE I—PROGRAM REFORMS AND STREAMLINING

Sec. 101. Vertical integration and acceleration of studies.
Sec. 102. Expediting the evaluation and processing of permits.
Sec. 103. Environmental streamlining.
Sec. 104. Consolidation of studies.
Sec. 105. Removal of duplicative analyses.
Sec. 106. Expediting approval of modifications and alterations of projects by non-Federal interests.
Sec. 107. Construction of projects by non-Federal interests.
Sec. 108. Contributions by non-Federal interests.
Sec. 109. Contributions by non-Federal interests for management of Corps of Engineers inland navigation facilities.
Sec. 110. Additional contributions by non-Federal interests.
Sec. 111. Clarification of impacts to other Federal facilities.
Sec. 112. Clarification of previously authorized work.
Sec. 113. Tribal partnership program.
Sec. 114. Technical corrections.
Sec. 115. Water infrastructure public-private partnership pilot program.
Sec. 116. Annual report to Congress.
Sec. 117. Actions to be taken in conjunction with the President's annual budget submission to Congress.
Sec. 118. Hurricane and storm damage reduction study.
Sec. 119. Non-Federal plans to provide additional flood risk reduction.
Sec. 120. Review of emergency response authorities.
Sec. 121. Emergency communication of risk.
Sec. 122. Improvements to the National Dam Safety Program Act.
Sec. 123. Restricted areas at Corps of Engineers dams.
Sec. 124. Levee safety.
Sec. 125. Vegetation on levees.
Sec. 126. Reduction of Federal costs.
Sec. 127. Advanced modeling technologies.
Sec. 128. Enhanced use of electronic commerce in Federal procurement.
Sec. 129. Corrosion prevention.
Sec. 130. Resilient construction and use of innovative materials.
Sec. 131. Assessment of water supply in arid regions.
Sec. 132. River basin commissions.
Sec. 133. Sense of Congress regarding water resources development bills.
Sec. 134. Donald G. Waldon Lock and Dam.
Sec. 135. Aquatic invasive species.
Sec. 136. Recreational access.
Sec. 137. Territories of the United States.
Sec. 138. Sense of Congress regarding interstate water agreements and compacts.

TITLE II—NAVIGATION IMPROVEMENTS

Subtitle A—Ports

Sec. 201. Expanded use of Harbor Maintenance Trust Fund.
Sec. 202. Assessment and prioritization of operation and maintenance.
Sec. 203. Preserving United States harbors.
Sec. 204. Consolidation of deep draft navigation expertise.
Sec. 205. Disposal sites.

Subtitle B—Inland Waterways

Sec. 211. Definitions.
Sec. 212. Project delivery process reforms.
Sec. 213. Efficiency of revenue collection.
Sec. 214. Inland waterways revenue studies.
Sec. 215. Inland waterways stakeholder roundtable.
Sec. 216. Preserving the Inland Waterway Trust Fund.
Sec. 217. Public comment on lock operations.
Sec. 218. Assessment of operation and maintenance needs of the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway.
Sec. 219. Upper Mississippi River protection.
Sec. 220. Corps of Engineers lock and dam energy development.

TITLE III—DEAUTHORIZATIONS AND BACKLOG PREVENTION

Sec. 301. Deauthorization of inactive projects.

Sec. 302. Review of Corps of Engineers assets.
Sec. 303. Backlog prevention.
Sec. 304. Deauthorizations.
Sec. 305. Land conveyances.

TITLE IV—WATER RESOURCES INFRASTRUCTURE

Sec. 401. Authorization of final feasibility studies.
Sec. 402. Project modifications.

SEC. 2. DEFINITION OF SECRETARY.

In this Act, the term "Secretary" means the Secretary of the Army.

TITLE I—PROGRAM REFORMS AND STREAMLINING

SEC. 101. VERTICAL INTEGRATION AND ACCELERATION OF STUDIES.

(a) IN GENERAL.—To the extent practicable, a feasibility study initiated by the Secretary, after the date of enactment of this Act, under section 905(a) of the Water Resources Development Act of 1986 (33 U.S.C. 2282(a)) shall—

(1) result in the completion of a final feasibility report not later than 3 years after the date of initiation;

(2) have a maximum Federal cost of $3,000,000; and

(3) ensure that personnel from the district, division, and headquarters levels of the Corps of Engineers concurrently conduct the review required under that section.

(b) EXCEPTION.—If the Secretary determines that a feasibility study described in subsection (a) will not be conducted in accordance with subsection (a), the Secretary, not later than 30 days after the date of making the determination, shall—

(1) prepare an updated feasibility study schedule and cost estimate;

(2) notify the non-Federal feasibility cost sharing partner that the feasibility study has been delayed; and

(3) provide written notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate as to the reasons the requirements of subsection (a) are not attainable.

(c) TERMINATION OF AUTHORIZATION.—A feasibility study for which the Secretary has issued a determination under subsection (b) is not authorized after the last day of the 1-year period beginning on the date of the determination if the Secretary has not completed the study on or before such last day.

(d) REPORT.—Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that describes—

(1) the status of the implementation of this section, including a description of each feasibility study subject to the requirements of this section;

(2) the amount of time taken to complete each such feasibility study; and

(3) any recommendations for additional authority necessary to support efforts to expedite the feasibility study process, including an analysis of whether the limitation established by subsection (a)(2) needs to be adjusted to address the impacts of inflation.

(e) REVIEWS.—Not later than 90 days after the date of the initiation of a study described in subsection (a) for a project, the Secretary shall—

(1) take all steps necessary to initiate the federally mandated reviews that the Secretary is required to complete as part of the study, including environmental reviews;

(2) convene a meeting of all Federal, tribal, and State agencies identified under section 2045(d) of the Water Resources Development Act of 2007 (33 U.S.C. 2348(d)), as amended by this Act, and that may be required by law to conduct or issue a review, analysis, or opinion on or to make a determination concerning a permit or license for the study;

(3) provide the agencies referred to in paragraph (2) with all relevant information related to the scope and potential impacts of the project, including environmental impacts; and

(4) take all steps necessary to provide information that will enable required reviews and analyses related to the project to be conducted by other agencies in a thorough and timely manner.

SEC. 102. EXPEDITING THE EVALUATION AND PROCESSING OF PERMITS.

Section 214 of the Water Resources Development Act of 2000 (33 U.S.C. 2201 note) is amended—

(1) in subsection (a)—

(A) by inserting "or public-utility company (as defined in section 1262 of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451))" after "non-Federal public entity";

(B) by inserting "or company" after "that entity"; and

(C) by adding at the end the following: "To the maximum extent practicable, the Secretary shall ensure that expediting the evaluation of a permit through the use of funds accepted and expended under this section does not adversely affect the timeline for evaluation (in the Corps district in which the project or activity is located) of permits under the jurisdiction of the Department of the Army of other entities that have not contributed funds under this section."; and

(2) by striking subsection (e).

SEC. 103. ENVIRONMENTAL STREAMLINING.

(a) DECLARATION OF POLICY.—

(1) IN GENERAL.—Congress declares that—

(A) the benefits of water resources projects are important to the Nation's economy and environment;

(B) it is in the national interest to expedite the delivery of water resources projects;

(C) it is in the national interest for Federal and State agencies, local governments, Indian tribes, and other entities involved in water resources projects—

(i) to accelerate study completion and project delivery and to reduce costs; and

(ii) to ensure that the planning, design, engineering, construction, and funding of water resources projects is done in an efficient and effective manner, promoting accountability for public investments and encouraging greater local and private sector involvement in project financing and delivery while addressing public safety and protecting the environment; and

(D) delay in the delivery of water resources studies and projects—

(i) increases project costs, flood risks, and local and Federal expenditures for emergency management and recovery;

(ii) harms the economy of the United States; and

(iii) impedes the shipment of goods for the conduct of commerce.

(2) POLICY.—Given the declarations set forth in paragraph (1), it is the policy of the United States that—

(A) recommendations to Congress regarding such projects should be accelerated by coordinated and efficient environmental reviews and cooperative efforts to quickly resolve disputes during the development of water resources projects;

(B) the Secretary shall have the lead role among Federal agencies in facilitating the environmental review process for water resources projects;

(C) each Federal agency shall cooperate with the Secretary to expedite the environmental review process for water resources projects;

(D) programmatic approaches shall be used if applicable to reduce the need for project-by-project reviews and decisions by Federal agencies;

(E) the Secretary shall identify opportunities for non-Federal sponsors to assume responsibilities of the Secretary if such responsibilities can be assumed in a manner that protects public health and safety, the environment, and public participation; and

(F) the Assistant Secretary of the Army for Civil Works shall identify and promote the deployment of innovations aimed at reducing the time and money required to deliver water resources projects while protecting the environment.

(b) STREAMLINED PROJECT DELIVERY.—

(1) IN GENERAL.—Section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348) is amended to read as follows:

"SEC. 2045. STREAMLINED PROJECT DELIVERY.

"(a) DEFINITIONS.—In this section, the following definitions apply:

"(1) ENVIRONMENTAL IMPACT STATEMENT.—The term 'environmental impact statement' means the detailed statement of environmental impacts required to be prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(2) ENVIRONMENTAL REVIEW PROCESS.—

"(A) IN GENERAL.—The term 'environmental review process' means the process of preparing an environmental impact statement, environmental assessment, categorical exclusion, or other document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for a project study.

"(B) INCLUSIONS.—The term 'environmental review process' includes the process for and completion of any environmental permit, approval, review, or study required for a project study under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(3) FEDERAL JURISDICTIONAL AGENCY.—The term 'Federal jurisdictional agency' means a Federal agency with jurisdiction over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a project study under applicable Federal laws, including regulations.

"(4) PROJECT.—The term 'project' means a Corps of Engineers water resources project.

"(5) PROJECT SPONSOR.—The term 'project sponsor' means the non-Federal interest as defined in section 221(b) of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b).

"(6) PROJECT STUDY.—The term 'project study' means a feasibility study for a project carried out pursuant to section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282).

"(b) APPLICABILITY.—The procedures in this section are applicable to all project studies initiated after the date of enactment of the Water Resources Reform and Development Act of 2013 and for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and may be applied, to the extent determined appropriate by the Secretary, to other project studies initiated after such date of enactment and for which an environmental review process document is prepared under such Act.

"(c) LEAD AGENCIES.—

"(1) FEDERAL LEAD AGENCY.—The Corps of Engineers shall be the Federal lead agency in the environmental review process for a project study.

"(2) NON-FEDERAL PROJECT SPONSOR AS JOINT LEAD AGENCY.—At the discretion of the Secretary and subject to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), a non-Federal project sponsor that is an agency defined in subsection (a)—

"(A) may serve as a joint lead agency with the Corps of Engineers for purposes of preparing any environmental review process document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

"(B) may assist in the preparation of any such environmental review process document required under the National Environmental Policy Act of 1969 if the Secretary provides guidance in the preparation process, participates in preparing the document, independently evaluates that document, and approves and adopts the document before the Secretary takes any subsequent action or makes any approval based on that document.

"(3) ADOPTION AND USE OF DOCUMENTS.—Any environmental review process document prepared in accordance with this subsection shall be adopted and used by any Federal agency in making any approval of a project subject to this section as the document required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to the same extent that the Federal agency may adopt or use a document prepared by another Federal agency under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(4) ROLES AND RESPONSIBILITY OF FEDERAL LEAD AGENCY.—With respect to the environmental review process for any project, the Federal lead agency shall have authority and responsibility—

"(A) to take such actions as are necessary and proper, within the authority of the Federal lead agency, to facilitate the expeditious resolution of the environmental review process for the project study; and

"(B) to prepare or ensure that any required environmental impact statement or other document for a project study required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is completed in accordance with this section and applicable Federal law.

"(d) PARTICIPATING AND COOPERATING AGENCIES.—

"(1) IDENTIFICATION.—The Federal lead agency shall identify, as early as practicable in the environmental review process for a project study, any Federal or State agency, local government, or Indian tribe that may—

"(A) have jurisdiction over the project;

"(B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or

"(C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study.

"(2) INVITATION.—

"(A) IN GENERAL.—The Federal lead agency shall invite any such agency identified under paragraph (1) to become a participating or cooperating agency in the environmental review process for the project study.

"(B) DEADLINE.—An invitation to participate issued under subparagraph (A) shall establish a deadline by which a response to the invitation shall be submitted, which may be extended by the Federal lead agency for good cause.

"(3) FEDERAL COOPERATING AGENCY.—Any Federal agency that is invited by the Federal lead agency to participate in the environmental review process for a project study shall be designated as a cooperating agency by the Federal lead agency unless the invited agency informs the Federal lead agency, in writing, by the deadline specified in the invitation that the invited agency—

"(A) has no jurisdiction or authority with respect to the project;

"(B) has no expertise or information relevant to the project study; and

"(C) does not intend to submit comments on the project study.

"(4) EFFECT OF DESIGNATION.—

"(A) REQUIREMENT.—A participating or cooperating agency shall comply with the requirements of this section and any schedule established under this section.

"(B) IMPLICATION.—Designation under this subsection shall not imply that the participating or cooperating agency—

"(i) supports a proposed project; or

"(ii) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

"(5) CONCURRENT REVIEWS.—Each participating or cooperating agency shall—

"(A) carry out the obligations of that agency under other applicable law concurrently and in conjunction with the required environmental review process unless doing so would prevent such agency from conducting needed analysis or otherwise carrying out their obligations under those other laws; and

"(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

"(e) PROGRAMMATIC COMPLIANCE.—

"(1) IN GENERAL.—The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that—

"(A) eliminates repetitive discussions of the same issues;

"(B) focuses on the actual issues ripe for analyses at each level of review;

"(C) establishes a formal process for coordinating with participating and cooperating agencies, including the creation of a list of all data that is needed to carry out the environmental review process; and

"(D) complies with—

"(i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

"(ii) all other applicable laws.

"(2) REQUIREMENTS.—In carrying out paragraph (1), the Secretary shall—

"(A) as the first step in drafting guidance under that paragraph, consult with relevant Federal and State agencies, local governments, Indian tribes, and the public on the use and scope of the programmatic approaches;

"(B) emphasize the importance of collaboration among relevant Federal agencies, State agencies, local governments, and Indian tribes in undertaking programmatic reviews, especially with respect to reviews with a broad geographical scope;

"(C) ensure that the programmatic reviews—

"(i) promote transparency, including of the analyses and data used in the environmental review process, the treatment of any deferred issues raised by a Federal or State agency, local government, Indian tribe, or the public, and the temporal and special scales to be used to analyze those issues;

"(ii) use accurate and timely information in the environmental review process, including—

"(I) criteria for determining the general duration of the usefulness of the review; and

"(II) the timeline for updating any out-of-date review;

"(iii) describe—

"(I) the relationship between programmatic analysis and future tiered analysis; and

"(II) the role of the public in the creation of future tiered analysis; and

"(iv) are available to other relevant Federal and State agencies, local governments, Indian tribes, and the public;

"(D) allow not less than 60 days of public notice and comment on any proposed guidance; and

"(E) address any comments received under subparagraph (D).

"(f) COORDINATED REVIEWS.—

"(1) COORDINATION PLAN.—

"(A) ESTABLISHMENT.—The Federal lead agency, after consultation with each participating and cooperating agency and the non-Federal project sponsor or joint lead agency, as applicable, shall establish a plan for coordinating public and agency participation in and comment on the environmental review process for a project study.

"(B) INCORPORATION.—In developing the plan established under subparagraph (A), the Federal lead agency shall take under consideration the scheduling requirements under section 101 of the Water Resources Reform and Development Act of 2013.

"(2) SCHEDULE.—

"(A) IN GENERAL.—The Federal lead agency, after consultation with each participating and cooperating agency and the non-Federal project sponsor or joint lead agency, as applicable, shall establish, as part of the coordination plan established in paragraph (1)(A), a schedule for completion of the environmental review process for the project study. In developing the schedule, the Federal lead agency shall take under consideration the scheduling requirements under section 101 of the Water Resources Reform and Development Act of 2013.

"(B) FACTORS FOR CONSIDERATION.—In establishing the schedule, the Federal lead agency shall consider factors such as—

"(i) the responsibilities of participating and cooperating agencies under applicable laws;

"(ii) the resources available to the participating and cooperating agencies and the non-Federal project sponsor or joint lead agency, as applicable;

"(iii) the overall size and complexity of the project;

"(iv) the overall schedule for and cost of the project; and

"(v) the sensitivity of the natural and historic resources that may be affected by the project.

"(C) CONSISTENCY WITH OTHER TIME PERIODS.—A schedule under subparagraph (A) shall be consistent with any other relevant time periods established under Federal law.

"(D) MODIFICATION.—The Federal lead agency may—

"(i) lengthen a schedule established under subparagraph (A) for good cause; or

"(ii) shorten a schedule only with the concurrence of the affected participating and cooperating agencies and the non-Federal project sponsor or joint lead agency, as applicable.

"(E) DISSEMINATION.—A copy of a schedule established under subparagraph (A) shall be—

"(i) provided to each participating and cooperating agency and the non-Federal project sponsor or joint lead agency, as applicable; and

"(ii) made available to the public.

"(3) COMMENT DEADLINES.—The Federal lead agency shall establish the following deadlines for comment during the environmental review process for a project study:

"(A) DRAFT ENVIRONMENTAL IMPACT STATEMENTS.—For comments by agencies and the public on a draft environmental impact statement, a period of not more than 60 days after such document is made publicly available, unless—

"(i) a different deadline is established by agreement of the Federal lead agency, all participating and cooperating agencies, and the non-Federal project sponsor or joint lead agency, as applicable; or

"(ii) the deadline is extended by the Federal lead agency for good cause.

"(B) OTHER COMMENT PERIODS.—For all other comment periods established by the Federal lead agency for agency or public comments in the environmental review process, a period of not more than 30 days after the

date on which the materials for which comment is requested are made available, unless—

"(i) a different deadline is established by agreement of the Federal lead agency, all participating and cooperating agencies, and the non-Federal project sponsor or joint lead agency, as applicable; or

"(ii) the deadline is extended by the Federal lead agency for good cause.

"(4) DEADLINES FOR DECISIONS UNDER OTHER LAWS.—

"(A) PRIOR APPROVAL DEADLINE.—If a participating or cooperating agency is required to make a determination regarding or otherwise approve or disapprove the project study prior to the record of decision or finding of no significant impact, such participating or cooperating agency shall make such determination or approval not later than 30 days after the Federal lead agency publishes notice of the availability of a final environmental impact statement or other final environmental document, or not later than such other date that is otherwise required by law, whichever occurs first.

"(B) OTHER DEADLINES.—With regard to any determination or approval of a participating or cooperating agency that is not subject to subparagraph (A), each participating or cooperating agency shall make any required determination or otherwise approve or disapprove the project study not later than 90 days after the date that the Federal lead agency approves the record of decision or finding of no significant impact for the project study, or not later than such other date that is otherwise required by law, whichever occurs first.

"(C) RECORD CLOSED.—In the event that any participating or cooperating agency fails to make a determination or approve or disapprove the project study within the applicable deadline described in subparagraph (A), the Federal lead agency may close the record and find the record sufficient for the project study as it relates to such agency determination or approval.

"(g) ISSUE IDENTIFICATION AND RESOLUTION.—

"(1) COOPERATION.—The Federal lead agency and participating and cooperating agencies shall work cooperatively in accordance with this section to identify and resolve issues that may delay completion of the environmental review process or result in the denial of any approval required for the project study under applicable laws.

"(2) FEDERAL LEAD AGENCY RESPONSIBILITIES.—

"(A) IN GENERAL.—The Federal lead agency shall make information available to the participating and cooperating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration.

"(B) DATA SOURCES.—Such information under subparagraph (A) may be based on existing data sources, including geographic information systems mapping.

"(3) PARTICIPATING AND COOPERATING AGENCY RESPONSIBILITIES.—Based on information received from the Federal lead agency, participating and cooperating agencies shall identify, as early as practicable, any issues of concern regarding the potential environmental or socioeconomic impacts of the project, including any issues that may substantially delay or prevent an agency from granting a permit or other approval that is needed for the project study.

"(4) ACCELERATED ISSUE RESOLUTION AND ELEVATION.—

"(A) IN GENERAL.—Upon the request of a participating or cooperating agency or non-Federal project sponsor, the Secretary shall convene an issue resolution meeting with the relevant participating and cooperating agencies and the non-Federal project sponsor or joint lead agency, as applicable, to resolve issues that may—

"(i) delay completion of the environmental review process; or

"(ii) result in denial of any approval required for the project study under applicable laws.

"(B) MEETING DATE.—A meeting requested under this paragraph shall be held not later than 21 days after the date on which the Secretary receives the request for the meeting, unless the Secretary determines that there is good cause to extend that deadline.

"(C) NOTIFICATION.—Upon receipt of a request for a meeting under this paragraph, the Secretary shall notify all relevant participating and cooperating agencies of the request, including the issue to be resolved and the date for the meeting.

"(D) ELEVATION OF ISSUE RESOLUTION.—If a resolution cannot be achieved within 30 days after a meeting under this paragraph and a determination

is made by the Secretary that all information necessary to resolve the issue has been obtained, the Secretary shall forward the dispute to the heads of the relevant agencies for resolution.

"(E) CONVENTION BY SECRETARY.—The Secretary may convene an issue resolution meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under subparagraph (A).

"(h) STREAMLINED DOCUMENTATION AND DECISIONMAKING.—

"(1) IN GENERAL.—The Federal lead agency in the environmental review process for a project study, in order to reduce paperwork and expedite decisionmaking, shall prepare a condensed final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(2) CONDENSED FORMAT.—A condensed final environmental impact statement for a project study in the environmental review process shall consist only of—

"(A) an incorporation by reference of the draft environmental impact statement;

"(B) any updates to specific pages or sections of the draft environmental impact statement as appropriate; and

"(C) responses to comments on the draft environmental impact statement and copies of the comments.

"(3) TIMING OF DECISION.—Notwithstanding any other provision of law, in conducting the environmental review process for a project study, the Federal lead agency shall combine a final environmental impact statement and a record of decision for the project study into a single document if—

"(A) the alternative approved in the record of decision is either a preferred alternative identified in the draft environmental impact statement or is a modification of such preferred alternative developed in response to comments on the draft environmental impact statement; and

"(B) the Federal lead agency has a written commitment from parties responsible for implementation of the measures applicable to the approved alternative that are identified in the final environmental impact statement that they will implement those measures.

"(i) LIMITATIONS.—Nothing in this section shall preempt or interfere with—

"(1) any practice of seeking, considering, or responding to public comment; or

"(2) any power, jurisdiction, responsibility, or authority that a Federal or State agency, local government, Indian tribe, or non-Federal project sponsor has with respect to carrying out a project study or any other provision of law applicable to a project.

"(j) TIMING OF CLAIMS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or other approval issued by a Federal agency for a project study shall be barred unless it is filed not later than 150 days after publication of a notice in the Federal Register announcing that the permit, license, or other approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law which allows judicial review. Nothing in this subsection shall create a right to judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or other approval.

"(2) NEW INFORMATION.—The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under title 40, Code of Federal Regulations. The preparation of a supplemental environmental impact statement or other environmental document when required by this section shall be considered a separate final agency action and the deadline for filing a claim for judicial review of such action shall be 150 days after the date of publication of a notice in the Federal Register announcing such action.

"(k) CATEGORICAL EXCLUSIONS.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall—

"(A) survey the use by the Corps of Engineers of categorical exclusions in projects;

"(B) publish a review of the survey that includes a description of—

"(i) the types of actions that were categorically excluded or may be the basis for developing a new categorical exclusion; and

"(ii) any requests previously received by the Secretary for new categorical exclusions; and

"(C) solicit requests from other Federal agencies and non-Federal project sponsors for new categorical exclusions.

"(2) NEW CATEGORICAL EXCLUSIONS.—Not later than 1 year after the date of enactment of this subsection, if the Secretary identifies, based on the review under paragraph (1), a category of activities that merit establishing a categorical exclusion not in existence on the day before the date of enactment of this subsection, the Secretary shall publish a notice of proposed rulemaking to propose that new categorical exclusion, to the extent that the categorical exclusion meets the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (or successor regulation).

"(l) IMPLEMENTATION GUIDANCE.—The Secretary shall prepare guidance documents that describe the processes that the Secretary will use to implement this section.".

(2) CLERICAL AMENDMENT.—The table of contents contained in section 1(b) of the Water Resources Development Act of 2007 is amended by striking the item relating to section 2045 and inserting the following:

"Sec. 2045. Streamlined project delivery.".

(c) CATEGORICAL EXCLUSION IN EMERGENCIES.—For the repair, reconstruction, or rehabilitation of a water resources project that is in operation or under construction when damaged by an event or incident that results in a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall treat such repair, reconstruction, or rehabilitation activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations, if such repair or reconstruction activity is in the same location with the same capacity, dimensions, and design as the original water resources project as before the declaration described in this section.

SEC. 104. CONSOLIDATION OF STUDIES.

(a) IN GENERAL.—

(1) REPEAL.—Section 905(b) of the Water Resources Development Act of 1986 (33 U.S.C. 2282(b)) is repealed.

(2) CONFORMING AMENDMENT.—Section 905(a)(1) of such Act (33 U.S.C. 2282(a)(1)) is amended by striking "perform a reconnaissance study and".

(b) CONTENTS OF FEASIBILITY REPORTS.—Section 905(a)(2) of such Act (33 U.S.C. 2282(a)(2)) is amended by adding at the end the following: "A feasibility report shall include a preliminary analysis of the Federal interest and the costs, benefits, and environmental impacts of the project.".

(c) APPLICABILITY.—The Secretary shall continue to carry out a study for which a reconnaissance level investigation has been initiated before the date of enactment of this Act as if this section, including the amendments made by this section, had not been enacted.

SEC. 105. REMOVAL OF DUPLICATIVE ANALYSES.

Section 911 of the Water Resources Development Act of 1986 (33 U.S.C. 2288) is repealed.

SEC. 106. EXPEDITING APPROVAL OF MODIFICATIONS AND ALTERATIONS OF PROJECTS BY NON-FEDERAL INTERESTS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, after providing notice and an opportunity for comment, shall establish a process for the review of section 14 applications in a timely and consistent manner.

(b) SECTION 14 APPLICATION DEFINED.—In this section, the term "section 14 application" means an application submitted by an applicant to the Secretary requesting permission for the temporary occupation or use of a public work, or the alteration or permanent occupation or use of a public work, under section 14 of the Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved March 3, 1899 (commonly known as the "Rivers and Harbors Appropriation Act of 1899") (33 U.S.C. 408).

(c) BENCHMARK GOALS.—

(1) ESTABLISHMENT OF BENCHMARK GOALS.—In carrying out subsection (a), the Secretary shall—

(A) establish benchmark goals for determining the amount of time it should take the Secretary to determine whether a section 14 application is complete;

(B) establish benchmark goals for determining the amount of time it should take the Secretary to approve or disapprove a section 14 application; and

(C) to the extent practicable, use such benchmark goals to make a decision on section 14 applications in a timely and consistent manner.

(2) BENCHMARK GOALS.—

(A) BENCHMARK GOALS FOR DETERMINING WHETHER SECTION 14 APPLICATIONS ARE COMPLETE.—To the extent practicable, the benchmark goals established under paragraph (1) shall provide that—

(i) the Secretary reach a decision on whether a section 14 application is complete not later than 15 days after the date of receipt of the application; and

(ii) if the Secretary determines that a section 14 application is not complete, the Secretary promptly notify the applicant of the specific information that is missing or the analysis that is needed to complete the application.

(B) BENCHMARK GOALS FOR REVIEWING COMPLETED APPLICATIONS.—To the extent practicable, the benchmark goals established under paragraph (1) shall provide that—

(i) the Secretary generally approve or disapprove a completed section 14 application not later than 45 days after the date of receipt of the completed application; and

(ii) in a case in which the Secretary determines that additional time is needed to review a completed section 14 application due to the type, size, cost, complexity, or impacts of the actions proposed in the application, the Secretary approve or disapprove the application not later than 180 days after the date of receipt of the completed application.

(3) NOTICE.—In any case in which the Secretary determines that it will take the Secretary more than 45 days to review a completed section 14 application, the Secretary shall—

(A) provide written notification to the applicant; and

(B) include in the written notice a best estimate of the Secretary as to the amount of time required for completion of the review.

(d) FAILURE TO ACHIEVE BENCHMARK GOALS.—In any case in which the Secretary fails make a decision on a section 14 application in accordance with the process established under this section, the Secretary shall provide written notice to the applicant, including a detailed description of—

(1) why the Secretary failed to make a decision in accordance with such process;

(2) the additional actions required before the Secretary will issue a decision; and

(3) the amount of time the Secretary will require to issue a decision.

(e) NOTIFICATION.—

(1) SUBMISSION TO CONGRESS.—The Secretary shall provide a copy of any written notice provided under subsection (d) to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(2) PUBLIC AVAILABILITY.—The Secretary shall maintain a publicly available database, including on the Internet, on—

(A) all section 14 applications received by the Secretary; and

(B) the current status of such applications.

SEC. 107. CONSTRUCTION OF PROJECTS BY NON-FEDERAL INTERESTS.

(a) CONSTRUCTION OF WATER RESOURCES DEVELOPMENT PROJECTS.—Section 211 of the Water Resources Development Act of 1996 (33 U.S.C. 701b–13) is amended—

(1) in the section heading by striking "**FLOOD CONTROL**" and inserting "**WATER RESOURCES DEVELOPMENT**"; and

(2) by striking "flood control" each place it appears and inserting "water resources development".

(b) COMPLETION OF STUDIES AND DESIGN ACTIVITIES.—Section 211(c) of such Act (33 U.S.C. 701b–13(c)) is amended by striking "date of the enactment of this Act" and inserting "date of enactment of the Water Resources Reform and Development Act of 2013".

(c) AUTHORITY TO CARRY OUT IMPROVEMENTS.—Section 211(d)(1) of such Act (33 U.S.C. 701b–13(d)(1)) is amended—

(1) by striking subparagraph (A)(i) and inserting the following:

"(i) IN GENERAL.—A non-Federal interest may carry out construction for which studies and design documents are prepared under subsection (b) only if—

"(I) the Secretary approves the project for construction; and

"(II) the project is specifically authorized by Congress."; and

(2) by striking subparagraph (B) and inserting the following:

"(B) STUDIES AND DESIGN ACTIVITIES UNDER SUBSECTION (c).—Any non-Federal interest that has received from the Secretary under subsection (c) a favorable recommendation to carry out a water resources development project, or separable element thereof, based on the results of completed studies and design documents for the project or element may carry out the project or element if—

"(i) a final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been filed for the project or element; and

"(ii) the project is specifically authorized by Congress.".

(d) REIMBURSEMENT.—Section 211(e) of such Act (33 U.S.C. 701b–13(e)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B) by striking "and" at the end;

(B) in subparagraph (C) by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(D) if the project is specifically authorized by Congress."; and

(2) in paragraph (6)—

(A) by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(B) in subparagraph (B) (as so redesignated)—

(i) by striking "At the request" and inserting "In accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), at the request"; and

(ii) by inserting before the period at the end the following: ", or toward the non-Federal share of any other authorized water resources development study or project of such non-Federal interest".

(e) OTHER MATTERS.—Section 211 of such Act (33 U.S.C. 701b–13) is amended by adding at the end the following:

"(h) OPERATION AND MAINTENANCE OF NAVIGATION PROJECTS.—Whenever a non-Federal interest constructs improvements to a harbor or inland harbor, the Secretary shall be responsible for maintenance in accordance with section 101(b) of the Water Resources Development Act of 1986 (33 U.S.C. 2211(b)) if—

"(1) the Secretary determines, before construction, that the improvements, or separable elements thereof, are economically justified and environmentally acceptable;

"(2) the Secretary certifies that the project is constructed in accordance with applicable permits and the appropriate engineering and design standards;

"(3) the Secretary does not find that the project, or separable element thereof, is no longer economically justified or environmentally acceptable; and

"(4) the project is specifically authorized by Congress.

"(i) IMPLEMENTATION.—All laws and regulations that would apply to the Secretary if the Secretary were carrying out a project shall apply to the non-Federal interest carrying out a project under this section.

"(j) NOTIFICATION OF COMMITTEES.—The Secretary shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate prior to initiation of negotiations with a non-Federal interest regarding the utilization of the authorities under this section.".

(f) REPEALS.—The following provisions are repealed:

(1) Section 204 of the Water Resources Development Act of 1986 (33 U.S.C. 2232).

(2) Section 206 of the Water Resources Development Act of 1992 (33 U.S.C. 426i–1) and the item relating to that section in the table of contents contained in section 1(b) of that Act.

(3) Section 404 of the Water Resources Development Act of 1990 (33 U.S.C. 2232 note; 104 Stat. 4646) and the item relating to that section in the table of contents contained in section 1(b) of that Act.

SEC. 108. CONTRIBUTIONS BY NON-FEDERAL INTERESTS.

(a) IN GENERAL.—Section 5 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved June 22, 1936 (33 U.S.C. 701h), is amended—

(1) by striking "from States and political subdivisions thereof," and inserting "from a non-Federal interest (as defined in section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b))";

(2) by striking ", which includes planning and design";

(3) by inserting ", including a project for navigation on the inland waterways," after "study or project";

(4) by striking "by States and political subdivisions thereof," and inserting "by a non-Federal interest";

(5) by striking ": *Provided further*, That the term 'States' means the several States, the District of Columbia, the commonwealths, territories, and possessions of the United States, and Federally recognized Indian tribes"; and

(6) by inserting ": *And provided further*, That the term 'work' means the planning, design, or construction of an authorized water resources development study or project, or the repair, restoration, or replacement of an authorized water resources development project that has been damaged by an event or incident that results in a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)" after "contributing interests".

(b) NOTIFICATION FOR CONTRIBUTED FUNDS.—Prior to the initiation of negotiations for accepting contributed funds under section 5 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved June 22, 1936 (33 U.S.C. 701h), the Secretary shall provide written notice to the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives and the Committee on Environment and Public Works and the Committee on Appropriations of the Senate.

(c) TECHNICAL AMENDMENTS.—The following provisions are repealed:

(1) Section 111(b) of the Energy and Water Development and Related Agencies Appropriations Act, 2012 (125 Stat. 858).

(2) Section 4 of the Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved March 4, 1915 (33 U.S.C. 560).

SEC. 109. CONTRIBUTIONS BY NON-FEDERAL INTERESTS FOR MANAGEMENT OF CORPS OF ENGINEERS INLAND NAVIGATION FACILITIES.

(a) IN GENERAL.—Section 225 of the Water Resources Development Act of 1992 (33 U.S.C. 2328) is amended—

(1) by striking the section designation and heading and inserting the following:

"SEC. 225. CONTRIBUTIONS BY NON-FEDERAL INTERESTS FOR MANAGEMENT OF CORPS OF ENGINEERS FACILITIES.";

(2) in subsection (a) by striking "managing recreation facilities" and inserting "operating, maintaining, and managing inland navigational facilities, recreational facilities,"; and

(3) in subsection (b) by striking "and management of recreation facilities" and inserting ", maintenance, and management of inland navigation facilities, recreational facilities,".

(b) CLERICAL AMENDMENT.—The table of contents contained in section 1(b) of the Water Resources Development Act of 1992 is amended by striking the item relating to section 225 and inserting the following:

"225. Contributions by non-Federal interests for management of Corps of Engineers facilities.".

SEC. 110. ADDITIONAL CONTRIBUTIONS BY NON-FEDERAL INTERESTS.

Section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280) is amended—

(1) by striking "In order to insure" and inserting "(a) IN GENERAL.—In order to insure"; and

(2) by adding at the end the following:

"(b) CONTRIBUTIONS BY NON-FEDERAL INTERESTS.—Notwithstanding subsection (a), in accordance with section 5 of the Act entitled 'An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes', approved June 22, 1936 (33 U.S.C. 701h), the Secretary may accept funds from a non-Federal interest for any authorized water resources development project that has exceeded its maximum cost under subsection (a), and use such funds to carry out such project, if the use of such funds does not increase the Federal share of the cost of such project.".

SEC. 111. CLARIFICATION OF IMPACTS TO OTHER FEDERAL FACILITIES.

In any case where the modification or construction of a water resources development project carried out by the Secretary adversely impacts other Federal facilities, the Secretary may accept from other Federal agencies such funds as may be necessary to address the adverse impact, including by removing, relocating, or reconstructing such facilities.

SEC. 112. CLARIFICATION OF PREVIOUSLY AUTHORIZED WORK.

(a) IN GENERAL.—The Secretary may carry out measures to improve fish species habitat within the boundaries and downstream of a water resources project constructed by the Secretary that includes a fish hatchery if the Secretary—

(1) has been explicitly authorized to compensate for fish losses associated with the project; and

(2) determines that the measures are—

(A) feasible;

(B) consistent with authorized project purposes and the fish hatchery; and

(C) in the public interest.

(b) COST SHARING.—

(1) IN GENERAL.—Subject to paragraph (2), the non-Federal interest shall contribute 35 percent of the total cost of carrying out activities under this section, including the costs relating to the provision or acquisition of required land, easements, rights-of-way, dredged material disposal areas, and relocations.

(2) OPERATION AND MAINTENANCE.—The non-Federal interest shall contribute 100 percent of the costs of operation, maintenance, replacement, repair, and rehabilitation of the measures carried out under this section.

SEC. 113. TRIBAL PARTNERSHIP PROGRAM.

(a) IN GENERAL.—Section 203 of the Water Resources Development Act of 2000 (33 U.S.C. 2269) is amended—

(1) in subsection (d)(1)(B)—

(A) by striking "The ability" and inserting the following:

"(i) IN GENERAL.—The ability"; and

(B) by adding at the end the following:

"(ii) DETERMINATION.—Not later than 180 days after the date of enactment of the Water Resources Reform and Development Act of 2013, the Secretary shall issue guidance on the procedures described in clause (i).."; and

(2) by striking subsection (e) and inserting the following:

"(e) RESTRICTIONS.—The Secretary is authorized to carry out activities under this section in fiscal years 2014 through 2023.".

(b) COOPERATIVE AGREEMENTS WITH INDIAN TRIBES.—The Secretary may enter into a cooperative agreement with an Indian tribe (or a designated representative of an Indian tribe) to carry out authorized activities of the Corps of Engineers to protect fish, wildlife, water quality, and cultural resources.

SEC. 114. TECHNICAL CORRECTIONS.

(a) LIMITATION; STATUTORY CONSTRUCTION.—Section 221(a)(4)(E) of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b(a)(4)(E)) is amended by striking clause (ii) and inserting the following:

"(ii) LIMITATION.—In any case in which a specific provision of law provides for a non-Federal interest to receive credit toward the non-Federal share of the cost of a study for, or construction or operation and maintenance of, a water resources project, the Secretary shall apply—

"(I) the specific provision of law instead of this paragraph; or

"(II) at the request of the non-Federal interest, the specific provision of law and such provisions of this paragraph as the non-Federal interest may request.

"(iii) STATUTORY CONSTRUCTION.—Nothing in this subparagraph may be construed to affect the applicability of subparagraph (C).".

(b) WATER RESOURCES PROJECT DEFINED.—Section 221(b) of such Act (42 U.S.C. 1962d–5b(b)) is amended—

(1) by moving paragraphs (1) and (2) and the matter following paragraph (2) 2 ems to the right;

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(3) by striking "(b) DEFINITION" and all that follows through "The term" and inserting the following:

"(b) DEFINITIONS.—

"(1) NON-FEDERAL INTEREST.—The term"; and

(4) by adding at the end the following:

"(2) WATER RESOURCES PROJECT.—The term 'water resources project' includes projects studied, reviewed, designed, constructed, operated and maintained, or otherwise subject to Federal participation under the authority of the civil works program of the Secretary of the Army for the purposes of navigation, flood damage reduction, ecosystem restoration, hurricane and storm damage reduction,

water supply, recreation, hydroelectric power, fish and wildlife conservation, water quality, environmental infrastructure, resource protection and development, and related purposes.".

(c) CORRECTION.—Section 221(c) of such Act (42 U.S.C. 1962d–5b(c)) is amended by striking "enforcible" and inserting "enforceable".

(d) FEDERAL ALLOCATION.—Section 2008(a) of the Water Resources Development Act of 2007 (33 U.S.C. 2340(a)) is amended by adding at the end the following: "This subsection shall apply without regard to whether the original partnership agreement was entered into before, on, or after the date of enactment of this subsection.".

(e) IN-KIND CREDIT.—Section 221(a)(4)(C) of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b(a)(4)(C)) is amended by striking "In any case" and all that follows through the period at the end and inserting the following:

"(i) CONSTRUCTION.—

"(I) IN GENERAL.—In any case in which the non-Federal interest is to receive credit under subparagraph (A) for the cost of construction carried out by the non-Federal interest before execution of a partnership agreement and that construction has not been carried out as of the date of enactment of this clause, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such work and shall do so prior to the non-Federal interest initiating construction or issuing a written notice to proceed for the construction.

"(II) ELIGIBILITY.—Construction that is carried out after the execution of an agreement under subclause (I) and any design activities that are required for that construction, even if the design activity is carried out prior to the execution of the agreement, shall be eligible for credit.

"(ii) PLANNING.—

"(I) IN GENERAL.—In any case in which the non-Federal interest is to receive credit under subparagraph (A) for the cost of planning carried out by the non-Federal interest before execution of a feasibility cost sharing agreement, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such planning and shall do so prior to the non-Federal interest initiating that planning.

"(II) ELIGIBILITY.—Planning that is carried out by the non-Federal interest after the execution of an agreement under subclause (I) shall be eligible for credit.".

SEC. 115. WATER INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a pilot program to evaluate the cost effectiveness and project delivery efficiency of allowing non-Federal interests to carry out authorized water resources development projects for coastal harbor improvement, channel improvement, inland navigation, flood damage reduction, aquatic ecosystem restoration, and hurricane and storm damage reduction.

(b) PURPOSES.—The purposes of the pilot program established under subsection (a) are—

(1) to identify cost-saving project delivery alternatives that reduce the backlog of authorized Corps of Engineers projects; and

(2) to evaluate the technical, financial, and organizational benefits of allowing a non-Federal interest to carry out and manage the design or construction (or both) of 1 or more of such projects.

(c) SUBSEQUENT APPROPRIATIONS.—Any activity undertaken under this section is authorized only to the extent specifically provided for in subsequent appropriations Acts.

(d) ADMINISTRATION.—In carrying out the pilot program established under subsection (a), the Secretary shall—

(1) identify for inclusion in the program at least 15 projects that are authorized for construction for coastal harbor improvement, channel improvement, inland navigation, flood damage reduction, or hurricane and storm damage reduction;

(2) notify in writing the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate of each project identified under paragraph (1);

(3) in consultation with the non-Federal interest associated with each project identified under paragraph (1), develop a detailed project management plan for the project that outlines the scope, financing, budget, design, and construction resource requirements necessary for the non-Federal interest to execute the project, or a separable element of the project;

(4) at the request of the non-Federal interest associated with each project identified under paragraph (1), enter into a project partnership agreement with the non-Federal interest under which the non-Federal interest is provided full project management control for the financing, design, or construction (or any combination thereof) of the project, or a separable element of the project, in accordance with plans approved by the Secretary;

(5) following execution of a project partnership agreement under paragraph (4) and completion of all work under the agreement, issue payment, in accordance with subsection (g), to the relevant non-Federal interest for that work; and

(6) regularly monitor and audit each project carried out under the program to ensure that all activities related to the project are carried out in compliance with plans approved by the Secretary and that construction costs are reasonable.

(e) SELECTION CRITERIA.—In identifying projects under subsection (d)(1), the Secretary shall consider the extent to which the project—

(1) is significant to the economy of the United States;

(2) leverages Federal investment by encouraging non-Federal contributions to the project;

(3) employs innovative project delivery and cost-saving methods;

(4) received Federal funds in the past and experienced delays or missed scheduled deadlines;

(5) has unobligated Corps of Engineers funding balances; and

(6) has not received Federal funding for recapitalization and modernization since the project was authorized.

(f) DETAILED PROJECT SCHEDULE.—Not later than 180 days after entering into a project partnership agreement under subsection (d)(4), a non-Federal interest, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule for the relevant project, based on estimated funding levels, that specifies deadlines for each milestone with respect to the project.

(g) PAYMENT.—Payment to the non-Federal interest for work completed pursuant to a project partnership agreement under subsection (d)(4) may be made from—

(1) if applicable, the balance of the unobligated amounts appropriated for the project;

(2) other amounts appropriated to the Corps of Engineers, except that the total amount transferred to the non-Federal interest may not exceed the estimate of the Federal share of the cost of construction, including any required design; and

(3) revenue generated by the project.

(h) TECHNICAL ASSISTANCE.—At the request of a non-Federal interest participating in the pilot program established under subsection (a), the Secretary may provide to the non-Federal interest, if the non-Federal interest contracts with and compensates the Secretary, technical assistance with respect to—

(1) a study, engineering activity, or design activity related to a project carried out by the non-Federal interest under the program; and

(2) obtaining permits necessary for such a project.

(i) IDENTIFICATION OF IMPEDIMENTS.—

(1) IN GENERAL.—The Secretary shall—

(A) except as provided in paragraph (2), identify any procedural requirements under the authority of the Secretary that impede greater use of public-private partnerships and private investment in water resources development projects;

(B) develop and implement, on a project-by-project basis, procedures and approaches that—

(i) address such impediments; and

(ii) protect the public interest and any public investment in water resources development projects that involve public-private partnerships or private investment in water resources development projects; and

(C) not later than 1 year after the date of enactment of this section, issue rules to carry out the procedures and approaches developed under subparagraph (B).

(2) RULE OF CONSTRUCTION.—Nothing in this section may be construed to allow the Secretary to waive any requirement under—

(A) sections 3141 through 3148 and sections 3701 through 3708 of title 40, United States Code;

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(C) any other provision of Federal law.

(j) PUBLIC BENEFIT STUDIES.—

(1) IN GENERAL.—Before entering into a project partnership agreement under subsection (d)(4), the Secretary shall conduct an assessment of whether, and provide justification in writing to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate that, the proposed agreement provides better public and financial benefits than a similar transaction using public funding or financing.

(2) REQUIREMENTS.—An assessment under paragraph (1) shall—

(A) be completed in a period of not more than 90 days;

(B) take into consideration any supporting materials and data submitted by the relevant non-Federal interest and other stakeholders; and

(C) determine whether the proposed project partnership agreement is in the public interest by determining whether the agreement will provide public and financial benefits, including expedited project delivery and savings for taxpayers.

(k) NON-FEDERAL FUNDING.—A project carried out under the pilot program established under subsection (a) may consist of the non-Federal interest financing the non-Federal share of the project.

(l) APPLICABILITY OF FEDERAL LAW.—Any provision of Federal law that would apply to the Secretary if the Secretary were carrying out a project shall apply to a non-Federal interest carrying out a project under this section.

(m) COST SHARE.—Nothing in this section affects a cost-sharing requirement under Federal law that is applicable to a project carried out under the pilot program established under subsection (a).

(n) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report describing the results of the pilot program established under subsection (a), including any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.

(o) NON-FEDERAL INTEREST DEFINED.—In this section, the term "non-Federal interest" includes non-Federal government entities and private entities.

SEC. 116. ANNUAL REPORT TO CONGRESS.

(a) IN GENERAL.—Not later than February 1 of each year, the Secretary shall develop and submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate an annual report, to be entitled "Report to Congress on Future Water Resources Development", that identifies the following:

(1) FEASIBILITY REPORTS.—Each feasibility report that meets the criteria established in subsection (c)(1)(A).

(2) PROPOSED FEASIBILITY STUDIES.—Any proposed feasibility study submitted to the Secretary by a non-Federal interest pursuant to subsection (b) that meets the criteria established in subsection (c)(1)(A).

(3) PROPOSED MODIFICATIONS.—Any proposed modification to an authorized water resources development project or feasibility study that meets the criteria established in subsection (c)(1)(A) that—

(A) is submitted to the Secretary by a non-Federal interest pursuant to subsection (b); or

(B) is identified by the Secretary for authorization.

(b) REQUESTS FOR PROPOSALS.—

(1) PUBLICATION.—Not later than May 1 of each year, the Secretary shall publish in the Federal Register a notice requesting proposals from non-Federal interests for proposed feasibility studies and proposed modifications to authorized water resources development projects and feasibility studies to be included in the annual report.

(2) DEADLINE FOR REQUESTS.—The Secretary shall include in each notice required by this subsection a requirement that non-Federal interests submit to the Secretary any proposals described in paragraph (1) by not later than 120 days after the date of publication of the notice in the Federal Register in order for such proposals to be considered for inclusion in the annual report.

(3) NOTIFICATION.—On the date of publication of each notice required by this subsection, the Secretary shall—

(A) make the notice publicly available, including on the Internet; and

(B) provide written notification of such publication to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(c) CONTENTS.—

(1) FEASIBILITY REPORTS, PROPOSED FEASIBILITY STUDIES, AND PROPOSED MODIFICATIONS.—

(A) CRITERIA FOR INCLUSION IN REPORT.—The Secretary shall include in the annual report only those feasibility reports, proposed feasibility studies, and proposed modifications to authorized water resources development projects and feasibility studies that—

(i) are related to the missions and authorities of the Corps of Engineers;

(ii) require specific authorization by Congress in law or otherwise;

(iii) are not authorized by Congress;

(iv) have not been included in any previous annual report; and

(v) if authorized, could be carried out by the Corps of Engineers.

(B) DESCRIPTION OF BENEFITS.—For each proposed feasibility study and proposed modification to an authorized water resources development project or feasibility study included in the annual report, the Secretary shall describe the potential benefit of the proposed feasibility study or modification, including, to the extent applicable, whether the water resources development project that is the subject of the proposed feasibility study, or the proposed modification, will—

(i) reduce risks to human life or public safety or property;

(ii) benefit the national economy;

(iii) stimulate the creation of jobs;

(iv) reduce the need for future disaster relief;

(v) promote the development and delivery of domestic energy resources;

(vi) improve the competitiveness of United States exports;

(vii) improve water-related transportation for interstate or international commerce;

(viii) restore or protect, or mitigate the impacts of a water resources development project on, the environment; or

(ix) promote the use of cost-effective and sustainable solutions to water resources challenges.

(2) TRANSPARENCY.—The Secretary shall include in the annual report, for each feasibility report, proposed feasibility study, and proposed modification to an authorized water resources development project or feasibility study included under paragraph (1)(A)—

(A) the name of the associated non-Federal interest, including the name of any non-Federal interest that has contributed, or is expected to contribute, a non-Federal share of the cost of—

(i) the feasibility report;

(ii) the proposed feasibility study;

(iii) the authorized feasibility study for which the modification is proposed; or

(iv) construction of—

(I) the water resources development project that is the subject of—

(aa) the feasibility report;

(bb) the proposed feasibility study; or

(cc) the authorized feasibility study for which a modification is proposed; or

(II) the proposed modification to an authorized water resources development project;

(B) a letter or statement of support for the feasibility report, proposed feasibility study, or proposed modification to an authorized water resources development project or feasibility study from each associated non-Federal interest;

(C) the purpose of the feasibility report, proposed feasibility study, or proposed modification to an authorized water resources development project or feasibility study;

(D) an estimate of the Federal, non-Federal, and total costs of—

(i) the proposed feasibility study, or proposed modification to an authorized feasibility study; and

(ii) construction of—

(I) the water resources development project that is the subject of—

(aa) the feasibility report; or

(bb) the authorized feasibility study for which a modification is proposed, with respect to the change in costs resulting from such modification; or

(II) the proposed modification to an authorized water resources development project; and

(E) an estimate, to the extent practicable, of the monetary and nonmonetary benefits of—

(i) the water resources development project that is the subject of—

(I) the feasibility report;

(II) the proposed feasibility study; or

(III) the authorized feasibility study for which a modification is proposed, with respect to the benefits of such modification; or

(ii) the proposed modification to an authorized water resources development project.

(3) CERTIFICATION.—The Secretary shall include in the annual report a certification stating that each feasibility report, proposed feasibility study, and proposed modification to an authorized water resources development project or feasibility study included in the annual report meets the criteria in paragraph (1)(A).

(4) APPENDIX.—The Secretary shall include in the annual report an appendix listing the proposals submitted under subsection (b) that were not included in the annual report under paragraph (1)(A) and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion under such paragraph.

(d) SPECIAL RULE FOR INITIAL ANNUAL REPORT.—Notwithstanding any other deadlines required by this section, the Secretary shall—

(1) not later than 30 days after the date of enactment of this Act, publish in the Federal Register a notice required by subsection (b)(1);

(2) include in such notice a requirement that non-Federal interests submit to the Secretary any proposals described in subsection (b)(1) by not later than 90 days after the date of publication of such notice in the Federal Register in order for such proposals to be considered for inclusion in the first annual report developed by the Secretary under this section; and

(3) not later than 180 days after the date of enactment of this Act, submit an annual report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(e) PUBLICATION.—Upon submission of the annual report to Congress, the Secretary shall make the annual report publicly available, including through publication on the Internet.

(f) DEFINITIONS.—In this section, the following definitions apply:

(1) ANNUAL REPORT.—The term "annual report" means the report required by subsection (a).

(2) FEASIBILITY REPORT.—The term "feasibility report" means a final feasibility report developed under section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282), and includes—

(A) a report described in section 105(d)(2) of such Act (33 U.S.C. 2215(d)(2)); and

(B) where applicable, any associated report of the Chief of Engineers.

(3) FEASIBILITY STUDY.—The term "feasibility study" has the meaning given that term in section 105 of the Water Resources Development Act of 1986 (33 U.S.C. 2215).

(4) NON-FEDERAL INTEREST.—The term "non-Federal interest" has the meaning given that term in section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b).

SEC. 117. ACTIONS TO BE TAKEN IN CONJUNCTION WITH THE PRESIDENT'S ANNUAL BUDGET SUBMISSION TO CONGRESS.

(a) RECOMMENDATIONS FOR CORPS OF ENGINEERS CONSTRUCTION PROJECTS IN PRESIDENT'S BUDGET.—

(1) IN GENERAL.—For each fiscal year, as part of the President's annual budget submission to Congress under section 1105(a) of title 31, United States Code, the President shall—

(A) identify and recommend Corps of Engineers construction projects for which Congress should provide funding at the full level authorized for the project; and

(B) provide an explanation of the process used by the President in making the recommendations.

(2) COVERED PERIOD.—The President shall make recommendations under paragraph (1) for the fiscal year for which the budget submission is prepared and each of the succeeding 4 fiscal years.

(3) BASIS FOR MAKING RECOMMENDATIONS.—The President shall base recommendations under paragraph (1) on the assumption that $2,000,000,000 will be appropriated for Corps of Engineers construction projects for each fiscal year.

(b) MISSOURI RIVER BASIN.—To assist in the prioritization of Federal activities carried out related to the project for mitigation of fish and wildlife losses, Missouri River Bank Stabilization and Navigation Project, Missouri, Kansas, Iowa, and Nebraska, authorized by section 601(a) of the Water Resources Development Act of 1986 (100 Stat. 4143), and in conjunction with the President's submission to Congress of a budget under section 1105(a) of title 31, United States Code, the Secretary shall submit to Congress a report that provides—

(1) an inventory of all Federal actions taken and a prioritization of all Federal actions planned in furtherance of the project, including an inventory of lands owned, acquired, or directly controlled by the Federal Government, and lands enrolled in federally assisted conservation programs;

(2) a description of the specific Federal actions proposed for the upcoming fiscal year in furtherance of the project;

(3) an assessment of the progress made in furtherance of the project, including a description of how each of the actions identified under paragraph (1) have impacted such progress; and

(4) an assessment of additional actions necessary to achieve the results of the project.

SEC. 118. HURRICANE AND STORM DAMAGE REDUCTION STUDY.

As part of the study for flood and storm damage reduction related to natural disasters to be carried out by the Secretary under title II of division A of the Disaster Relief Appropriations Act, 2013, under the heading "Department of the Army—Corps of Engineers—Civil—Investigations" (127 Stat. 5), the Secretary shall make specific project recommendations. The Secretary may include those recommendations in the report entitled "Report to Congress on Future Water Resources Development", developed in accordance with this Act.

SEC. 119. NON-FEDERAL PLANS TO PROVIDE ADDITIONAL FLOOD RISK REDUCTION.

(a) IN GENERAL.—If requested by a non-Federal interest, the Secretary shall carry out a locally preferred plan that provides a higher level of protection than a flood risk management project authorized under this Act if the Secretary determines that—

(1) the plan is technically feasible and environmentally acceptable; and

(2) the benefits of the plan exceed the costs of the plan.

(b) NON-FEDERAL COSTS.—If the Secretary carries out a locally preferred plan under subsection (a), the cost attributable to the higher level of protection provided under the plan shall be paid by the non-Federal interest.

SEC. 120. REVIEW OF EMERGENCY RESPONSE AUTHORITIES.

(a) IN GENERAL.—The Secretary shall undertake a review of implementation of section 5 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved August 18, 1941 (33 U.S.C. 701n), to evaluate the alternatives available to the Secretary to ensure—

(1) the safety of affected communities to future flooding and storm events;

(2) the resiliency of water resources development projects to future flooding and storm events;

(3) the long-term cost effectiveness of water resources development projects that provide flood control and hurricane and storm damage reduction benefits; and

(4) the policy goals and objectives that have been outlined by the President as a response to recent extreme weather events, including Hurricane Sandy, that relate to preparing for future floods are met.

(b) SCOPE OF REVIEW.—In carrying out the review, the Secretary shall—

(1) review the historical precedents and implementation of section 5 of such Act, including those actions undertaken by the Secretary, over time, under that section—

(A) to repair or restore a project; and

(B) to increase the level of protection for a damaged project to address future conditions;

(2) evaluate the difference between adopting, as an appropriate standard under section 5 of such Act, the repair or restoration of a project to pre-flood or pre-storm levels and the repair or restoration of a project to a design level of protection, including an assessment for each standard of—

(A) the implications on populations at risk of flooding or damage;

(B) the implications on probability of loss of life;

(C) the implications on property values at risk of flooding or damage;

(D) the implications on probability of increased property damage and associated costs;

(E) the implications on local and regional economies; and

(F) the estimated total cost and estimated cost savings;

(3) incorporate the science on expected rates of sea-level rise and extreme weather events; and

(4) incorporate the work completed by the Hurricane Sandy Rebuilding Task Force, established by Executive Order 13632 (December 7, 2012).

(c) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the review.

SEC. 121. EMERGENCY COMMUNICATION OF RISK.

(a) IN GENERAL.—In any river basin where the Secretary carries out flood risk management activities subject to an annual operating plan, the Secretary shall establish procedures for providing the public and affected governments, including Indian tribes, in the river basin with—

(1) timely information regarding expected water levels;

(2) advice regarding appropriate preparedness actions;

(3) technical assistance; and

(4) any other information or assistance determined appropriate by the Secretary.

(b) PROCEDURES.—The Secretary shall utilize the procedures only when precipitation or runoff exceeds those calculations considered as the lowest risk to life and property contemplated by the annual operating plan.

(c) DEFINITIONS.—In this section, the following definitions apply:

(1) AFFECTED GOVERNMENT.—The term "affected government" means a State, local, or tribal government with jurisdiction over an area that will be affected by a flood.

(2) ANNUAL OPERATING PLAN.—The term "annual operating plan" means a plan prepared by the Secretary that describes potential water condition scenarios for a river basin for a year.

SEC. 122. IMPROVEMENTS TO THE NATIONAL DAM SAFETY PROGRAM ACT.

(a) ADMINISTRATOR.—

(1) IN GENERAL.—The National Dam Safety Program Act (33 U.S.C. 467 et seq.) is amended by striking "Director" each place it appears and inserting "Administrator".

(2) CONFORMING AMENDMENT.—Section 2(3) of such Act (33 U.S.C. 467(3)) is amended in the paragraph heading by striking "DIRECTOR" and inserting "ADMINISTRATOR".

(b) INSPECTION OF DAMS.—Section 3(b)(1) of such Act (33 U.S.C. 467a(b)(1)) is amended by striking "or maintenance" and inserting "maintenance, condition, or provision for emergency operations".

(c) NATIONAL DAM SAFETY PROGRAM.—

(1) OBJECTIVES.—Section 8(c)(4) of such Act (33 U.S.C. 467f(c)(4)) is amended to read as follows:

"(4) develop and implement a comprehensive dam safety hazard education and public awareness initiative to assist the public in mitigating against, preparing for, responding to, and recovering from dam incidents;".

(2) BOARD.—Section 8(f)(4) of such Act (33 U.S.C. 467f(f)(4)) is amended by inserting ", representatives from nongovernmental organizations," after "State agencies".

SEC. 123. RESTRICTED AREAS AT CORPS OF ENGINEERS DAMS.

Section 2 of the Freedom to Fish Act (Public Law 113–13; 127 Stat. 449) is amended—

(1) in subsection (b)(1) by striking "until the date that is 2 years after the date of enactment of this Act";

(2) in the heading of subsection (c) by inserting "OR MODIFIED" after "NEW"; and

(3) in subsection (c)—

(A) in matter preceding paragraph (1) by inserting "new or modified" after "establishes any"; and

(B) in paragraph (3) by striking "until the date that is 2 years after the date of enactment of this Act" and inserting "until the Secretary has complied with the provisions of this subsection".

SEC. 124. LEVEE SAFETY.

Section 22 of the Water Resources Development Act of 1974 (42 U.S.C. 1962d–16) is amended by redesignating subsection (e) as subsection (f) and inserting after subsection (d) the following:

"(e) LEVEE SAFETY.—

"(1) IN GENERAL.—At the request of a State or political subdivision thereof, and in consultation with that State and appropriate non-Federal interests, the Secretary may provide technical assistance to a State to—

"(A) encourage effective State or local programs intended to ensure levee safety to protect human life and property;

"(B) assist the State or political subdivision in establishing and carrying out a levee safety program; or

"(C) improve an existing State or local levee safety program.

"(2) PURPOSES.—The purposes of technical assistance provided under this subsection shall be—

"(A) to ensure that human lives and property that are protected by new and existing levees are safe;

"(B) to encourage the use of appropriate engineering policies and procedures for levee site investigation, design, construction, operation and maintenance, and emergency preparedness;

"(C) to encourage effective levee safety programs in a State;

"(D) to develop and support public education and awareness projects to increase public acceptance and support of levee safety programs;

"(E) to build public awareness of the residual risks associated with living in levee protected areas; and

"(F) to develop technical assistance materials, seminars, and guidelines to improve the security of levees in the United States.

"(3) FEDERAL GUIDELINES.—

"(A) IN GENERAL.—In carrying out this subsection, the Secretary, in consultation with States and non-Federal interests, shall establish Federal guidelines relating to levee safety.

"(B) INCORPORATION OF FEDERAL ACTIVITIES.—The guidelines established under subparagraph (A) shall encompass, to the maximum extent practicable, activities and practices carried out by appropriate Federal agencies.

"(C) INCORPORATION OF STATE AND LOCAL ACTIVITIES.—The guidelines established under subparagraph (A) shall encompass, to the maximum extent practicable—

"(i) the activities and practices carried out by States, local governments, and the private sector to safely build, regulate, operate, and maintain levees; and

"(ii) Federal activities that facilitate State efforts to develop and implement effective State programs for the safety of levees, including levee inspection, levee rehabilitation, locally developed flood plain management, and public education and training programs.

"(D) REVIEW.—The Secretary shall allow States and non-Federal interests, including appropriate stakeholders, to review and comment on the guidelines established under subparagraph (A) before the guidelines are made final.

"(4) ASSISTANCE FOR STATE LEVEE SAFETY PROGRAMS.—

"(A) ELIGIBILITY.—To be eligible for technical assistance under this subsection, a State shall—

"(i) be in the process of establishing or have in effect a State levee safety program under which a State levee safety agency, in accordance with State law, carries out the guidelines established under paragraph (3); and

"(ii) allocate sufficient funds in the budget of that State to carry out such State levee safety program.

"(B) WORK PLANS.—The Secretary shall enter into an agreement with each State receiving technical assistance under this subsection to develop a work plan necessary for the State levee safety program of that State to reach a level of program performance that meets the guidelines established under paragraph (3).

"(C) INSPECTION PROGRAMS.—The Secretary shall work with States receiving technical assistance under this subsection to develop State technical guidelines for levee inspection programs that—

"(i) address hazard classifications and technically based frameworks for levee assessment; and

"(ii) are incorporated into State levee safety programs.

"(D) MAINTENANCE OF EFFORT.—Technical assistance may not be provided to a State under this subsection during a fiscal year unless the State enters into an agreement with the Secretary to ensure that the State will maintain during that fiscal year aggregate expenditures for programs to ensure levee safety that are at or above the average annual level of such expenditures for the State for the 2 fiscal years preceding that fiscal year.".

SEC. 125. VEGETATION ON LEVEES.

(a) REVIEW.—The Secretary of the Army, in accordance with subsection (c), shall undertake a comprehensive review of the Corps of Engineers policy guidelines on vegetation management for levees (in this section referred to as the "guidelines"). The Secretary shall commence the review upon the date of enactment of this Act.

(b) FACTORS.—

(1) IN GENERAL.—In conducting the review, the Secretary shall examine the guidelines in view of—

(A) the varied interests and responsibilities in managing flood risks, including the need to provide the greatest levee safety benefit with limited resources;

(B) preserving, protecting, and enhancing natural resources, including the potential benefit that vegetation on levees can have in providing habitat for species of concern;

(C) protecting the rights of Indian tribes pursuant to treaties and statutes;

(D) determining how vegetation impacts the performance of a levee or levee system during a storm or flood event; and

(E) such other factors as the Secretary considers appropriate.

(2) REGIONAL AND WATERSHED CONSIDERATIONS.—In conducting the review, the Secretary shall specifically consider factors that promote and allow for consideration of potential variances from national guidelines on a regional or watershed basis. Such factors may include regional or watershed soil conditions, hydrologic factors, vegetation patterns and characteristics, environmental resources, levee performance history, institutional considerations, and other relevant factors. The scope of a variance approved by the Secretary may include an exemption to national guidelines where appropriate.

(c) COOPERATION AND RECOMMENDATIONS.—

(1) IN GENERAL.—The review shall be undertaken in cooperation with interested Federal agencies and in consultation with interested representatives of State and local governments, Indian tribes, appropriate nongovernmental organizations, and the public.

(2) RECOMMENDATIONS.—Corps of Engineers Regional Integration Teams, representing districts, divisions, and headquarters, in consultation with State and Federal resources agencies, and with participation by local agencies, shall recommend to the Secretary vegetation management policies for levees that conform with State and Federal laws and other applicable requirements.

(d) REVISION OF GUIDELINES.—

(1) IN GENERAL.—During the 1-year period beginning on the date of enactment of this Act, the Secretary shall—

(A) provide the public 30 days to review and comment on the guidelines;

(B) revise the guidelines based on consideration of the results of the public review; and

(C) submit to Congress a report that contains a summary of the activities of the Secretary and a description of the findings of the Secretary under this section.

(2) CONTENT; INCORPORATION INTO MANUAL.—The revised guidelines shall—

(A) provide a practical process for approving regional or watershed variances from the national guidelines, reflecting due consideration of measures to maximize public safety benefits with limited resources, levee performance, regional climatic and hydrologic variations, environmental quality, implementation challenges, and allocation of responsibilities; and

(B) be incorporated into the manual proposed under section 5(c) of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved August 18, 1941 (33 U.S.C. 701n(c)).

(e) CONTINUATION OF WORK.—Concurrent with completion of the requirements of this section, the Secretary shall proceed without interruption or delay with those ongoing or programmed projects and studies, or elements of projects or studies, that are not directly related to vegetation variance policy.

SEC. 126. REDUCTION OF FEDERAL COSTS.

Section 204(a) of the Water Resources Development Act of 1992 (33 U.S.C. 2326(a)) is amended by adding at the end the following:

"(4) REDUCING COSTS.—To reduce or avoid Federal costs, the Secretary shall consider the beneficial use of dredged material in a manner that contributes to the maintenance of sediment resources in the nearby coastal system.".

SEC. 127. ADVANCED MODELING TECHNOLOGIES.

(a) IN GENERAL.—To the greatest extent practicable, the Secretary shall encourage and incorporate advanced modeling technologies, including 3-dimensional digital modeling, for activities related to water resources development projects and studies.

(b) ACTIVITIES.—In carrying out subsection (a), the Secretary, to the greatest extent practicable, shall—

(1) compile information related to advanced modeling technologies, including industry best practices with respect to the use of the technologies;

(2) disseminate to non-Federal interests the information described in paragraph (1); and

(3) promote the use of advanced modeling technologies.

(c) ADVANCED MODELING TECHNOLOGY DEFINED.—In this section, the term "advanced modeling technology" means an available or developing technology, including 3-dimensional digital modeling, that can expedite project delivery for or improve the evaluation of water resources development projects that receive Federal funding by—

(1) accelerating and improving the environmental review process;

(2) increasing effective public participation;

(3) enhancing the detail and accuracy of project designs;

(4) increasing safety;

(5) accelerating construction and reducing construction costs; or

(6) otherwise achieving such purposes.

SEC. 128. ENHANCED USE OF ELECTRONIC COMMERCE IN FEDERAL PROCUREMENT.

(a) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report describing the Secretary's actions to carry out section 2301 of title 41, United States Code, regarding the use of electronic commerce in Federal procurement.

(b) CONTENTS.—The report submitted under subsection (a) shall include, with respect to the 2 fiscal years most recently ended before the fiscal year in which the report is submitted—

(1) an identification of the number, type, and dollar value of procurement solicitations with respect to which the public was permitted to respond to the solicitation electronically, which shall differentiate between solicitations that allowed full or partial electronic submission;

(2) an analysis of the information provided under paragraph (1) and actions that could be taken by the Secretary to refine and improve the use of electronic submission for procurement solicitation responses;

(3) an analysis of the potential benefits of and obstacles to implementing fuller use of electronic submission for procurement solicitation responses, including with respect to cost savings, error reduction, paperwork reduction, increased bidder participation, and competition, and expanded use of electronic bid data collection for cost-effective contract management and timely reporting; and

(4) an analysis of the options and technologies available to facilitate expanded implementation of electronic submission for procurement solicitation responses and the suitability of each option and technology for contracts of various types and sizes.

SEC. 129. CORROSION PREVENTION.

(a) IN GENERAL.—To the greatest extent practicable, the Secretary shall encourage and incorporate corrosion prevention activities at water resources development projects.

(b) ACTIVITIES.—In carrying out subsection (a), the Secretary, to the greatest extent practicable, shall ensure that contractors performing work for water resources development projects—

(1) use best practices to carry out corrosion prevention activities in the field;

(2) use industry recognized standards and corrosion mitigation and prevention methods when—

(A) determining protective coatings;

(B) selecting materials; and

(C) determining methods of cathodic protection, design, and engineering for corrosion prevention;

(3) use certified coating application specialists and cathodic protection technicians and engineers;

(4) use best practices in environmental protection to prevent environmental degradation, and to ensure careful handling of all hazardous materials;

(5) demonstrate a history of employing industry-certified inspectors to ensure adherence to best practices and standards; and

(6) demonstrate a history of compliance with applicable requirements of the Occupational Safety and Health Administration.

(c) CORROSION PREVENTION ACTIVITIES DEFINED.—In this section, the term "corrosion prevention activities" means—

(1) the application and inspection of protective coatings for complex work involving steel and cementitious structures, including structures that will be exposed in immersion;

(2) the installation, testing, and inspection of cathodic protection systems; and

(3) any other activities related to corrosion prevention the Secretary determines appropriate.

SEC. 130. RESILIENT CONSTRUCTION AND USE OF INNOVATIVE MATERIALS.

The Secretary, to the extent practicable, shall encourage the use of durable, resilient, and sustainable materials and practices, including the use of geosynthetic materials, advanced composites, and innovative technologies, in carrying out the activities of the Corps of Engineers.

SEC. 131. ASSESSMENT OF WATER SUPPLY IN ARID REGIONS.

(a) IN GENERAL.—The Secretary shall conduct an assessment of the management practices, priorities, and authorized purposes at Corps of Engineers reservoirs in arid regions to determine the effects of such practices, priorities, and purposes on water supply during periods of drought.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the assessment.

SEC. 132. RIVER BASIN COMMISSIONS.

Section 5019 of the Water Resources Development Act of 2007 (121 Stat. 1201) is amended by adding at the end the following:

"(f) REPORT.—After each fiscal year, if the Secretary did not allocate funds in accordance with subsection (b), the Secretary, in conjunction with the President's next submission to Congress of a budget under section 1105(a) of title 31, United States Code, shall submit to Congress a report that describes—

"(1) the reasons why the Secretary did not allocate funds in accordance with subsection (b) during that fiscal year; and

"(2) the impact, on the jurisdiction of each Commission specified in subsection (b), of not allocating the funds, including with respect to—

"(A) water supply allocation;

"(B) water quality protection;

"(C) regulatory review and permitting;

"(D) water conservation;

"(E) watershed planning;

"(F) drought management;

"(G) flood loss reduction;

"(H) recreation; and

"(I) energy development.".

SEC. 133. SENSE OF CONGRESS REGARDING WATER RESOURCES DEVELOPMENT BILLS.

(a) FINDINGS.—Congress finds the following:

(1) Between 1986 and 2000, a water resources development bill was typically enacted every 2 years.

(2) Since 2000, only 1 water resources development bill has been enacted.

(b) SENSE OF CONGRESS.—It is the sense of Congress that, because the missions of the Corps of Engineers are unique and benefit all individuals in the United States and because water resources development projects are critical to maintaining economic prosperity, national security, and environmental protection, Congress should consider a water resources development bill not less than once every Congress.

SEC. 134. DONALD G. WALDON LOCK AND DAM.

It is the sense of Congress that, at an appropriate time and in accordance with the rules of the House of Representatives and the Senate, to recognize the contribu-

tions of Donald G. Waldon, whose selfless determination and tireless work, while serving as administrator of the Tennessee-Tombigbee Waterway for 21 years, contributed greatly to the realization and success of the Tennessee-Tombigbee Waterway Development Compact, that the lock and dam located at mile 357.5 on the Tennessee-Tombigbee Waterway should be known and designated as the "Donald G. Waldon Lock and Dam".

SEC. 135. AQUATIC INVASIVE SPECIES.

Section 104(a) of the River and Harbor Act of 1958 (33 U.S.C. 610(a)) is amended by inserting "and aquatic invasive species" after "noxious aquatic plant growths".

SEC. 136. RECREATIONAL ACCESS.

(a) IN GENERAL.—The Secretary may not prohibit the use of a floating cabin on waters under the jurisdiction of the Secretary if—

(1) the floating cabin is in compliance regulations for recreational vessels issued under chapter 43 of title 46, United States Code, and section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322); and

(2) the Secretary has authorized the use of recreational vessels on such waters.

(b) FLOATING CABIN DEFINED.—In this section, the term "floating cabin" means a vessel, as defined in section 3 of title 1, United States Code, with overnight accommodations.

SEC. 137. TERRITORIES OF THE UNITED STATES.

Section 1156 of the Water Resources Development Act of 1986 (33 U.S.C. 2310) is amended—

(1) by striking "The Secretary shall waive" and inserting "(a) IN GENERAL.—The Secretary shall waive"; and

(2) by adding at the end the following:

"(b) INFLATION ADJUSTMENT.—The Secretary shall adjust the dollar amount specified in subsection (a) for inflation for the period beginning on November 17, 1986, and ending on the date of enactment of this subsection.".

SEC. 138. SENSE OF CONGRESS REGARDING INTERSTATE WATER AGREEMENTS AND COMPACTS.

(a) FINDINGS.—Congress finds the following:

(1) States and local interests have primary responsibility for developing water supplies for domestic, municipal, industrial, and other purposes.

(2) The Federal Government cooperates with States and local interests in developing water supplies through the construction, maintenance, and operation of Federal water resources development projects.

(3) Interstate water disputes are most properly addressed through interstate water agreements or compacts that take into consideration the concerns of all affected States.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Congress and the Secretary should urge States to reach agreement on interstate water agreements and compacts;

(2) at the request of the Governor of a State, the Secretary should facilitate and assist in the development of an interstate water agreement or compact;

(3) Congress should provide prompt consideration of interstate water agreements and compacts; and

(4) the Secretary should adopt policies and implement procedures for the operation of reservoirs of the Corps of Engineers that are consistent with interstate water agreements and compacts.

TITLE II—NAVIGATION IMPROVEMENTS

Subtitle A—Ports

SEC. 201. EXPANDED USE OF HARBOR MAINTENANCE TRUST FUND.

(a) IN GENERAL.—For any fiscal year in which target appropriations described in subsection (b) are met, the Secretary may use up to 5 percent of the total amount made available to the Secretary from the Harbor Maintenance Trust Fund for the eligible operations and maintenance costs described in section 210(a)(2) of the Water Resources Development Act of 1986 (33 U.S.C. 2238(a)(2)) for that fiscal year for expanded uses of the Harbor Maintenance Trust Fund.

(b) TARGET APPROPRIATIONS.—For purposes of this section, target appropriations are met for a fiscal year if the total amount made available to the Secretary from

the Harbor Maintenance Trust Fund for that fiscal year equals or exceeds, as determined by the Secretary, the following:

(1) For fiscal year 2014, 65 percent of the total amount of harbor maintenance taxes received in fiscal year 2013.

(2) For fiscal year 2015, 67 percent of the total amount of harbor maintenance taxes received in fiscal year 2014.

(3) For fiscal year 2016, 69 percent of the total amount of harbor maintenance taxes received in fiscal year 2015.

(4) For fiscal year 2017, 71 percent of the total amount of harbor maintenance taxes received in fiscal year 2016.

(5) For fiscal year 2018, 73 percent of the total amount of harbor maintenance taxes received in fiscal year 2017.

(6) For fiscal year 2019, 75 percent of the total amount of harbor maintenance taxes received in fiscal year 2018.

(7) For fiscal year 2020, and each fiscal year thereafter, 80 percent of total amount of harbor maintenance taxes received in the previous fiscal year.

(c) DEFINITIONS.—In this section, the following definitions apply:

(1) ELIGIBLE HARBORS AND INLAND HARBORS DEFINED.—The term "eligible harbor or inland harbor" means a harbor or inland harbor that, historically, as determined by the Secretary—

(A) generates an amount of harbor maintenance taxes; that exceeds

(B) the value of work carried out for the harbor or inland harbor using amounts from the Harbor Maintenance Trust Fund.

(2) EXPANDED USES.—The term "expanded uses" means the following activities performed for an eligible harbor or inland harbor:

(A) The maintenance dredging of a berth in a harbor that is accessible to a Federal navigation project and that benefits commercial navigation at the harbor.

(B) The maintenance dredging and disposal of legacy-contaminated sediment, and sediment unsuitable for open water disposal, if—

(i) such dredging and disposal benefits commercial navigation at the harbor; and

(ii) such sediment—

(I) is located in and affects the maintenance of a Federal navigation project; or

(II) is located in a berth that is accessible to a Federal navigation project.

(3) TOTAL AMOUNT OF HARBOR MAINTENANCE TAXES RECEIVED.—The term "total amount of harbor maintenance taxes received" means, with respect to a fiscal year, the aggregate of amounts appropriated, transferred, or credited to the Harbor Maintenance Trust Fund under section 9505(a) of the Internal Revenue Code of 1986 for that fiscal year as set forth in the current year estimate provided in the President's budget request for the subsequent fiscal year, submitted pursuant to section 1105 of title 31, United States Code.

(d) CONFORMING AMENDMENT.—Section 9505(c)(1) of the Internal Revenue Code of 1986 is amended by striking "(as in effect on the date of the enactment of the Water Resources Development Act of 1996)".

(e) SENSE OF CONGRESS.—It is the sense of Congress that any increase in harbor maintenance programs described in this section shall result from an overall increase in appropriations for the civil works program of the Corps of Engineers and not from similar reductions in the appropriations for other programs, projects, and activities carried out by the Corps of Engineers for other authorized purposes.

SEC. 202. ASSESSMENT AND PRIORITIZATION OF OPERATION AND MAINTENANCE.

(a) ASSESSMENT.—Section 210 of the Water Resources Development Act of 1986 (33 U.S.C. 2238) is amended by adding at the end the following:

"(c) ASSESSMENT OF OPERATION AND MAINTENANCE NEEDS.—

"(1) IN GENERAL.—Not later than 90 days after the date of enactment of this subsection, and biennially thereafter, the Secretary shall assess the operation and maintenance needs of the harbors referred to in subsection (a)(2).

"(2) TYPES OF HARBORS.—In carrying out paragraph (1), the Secretary shall assess the operation and maintenance needs of the harbors used for—

"(A) commercial navigation;

"(B) commercial fishing;

"(C) subsistence, including utilization by Indian tribes (as such term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) for subsistence and ceremonial purposes;

"(D) use as a harbor of refuge;

"(E) transportation of persons;

"(F) purposes relating to domestic energy production, including the fabrication, servicing, or supply of domestic offshore energy production facilities;

"(G) activities of the Secretary of the department in which the Coast Guard is operating;

"(H) public health and safety related equipment for responding to coastal and inland emergencies;

"(I) recreation purposes; and

"(J) any other authorized purpose.

"(3) REPORT TO CONGRESS.—For fiscal year 2015, and biennially thereafter, in conjunction with the President's annual budget submission to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that, with respect to harbors referred to in subsection (a)(2)—

"(A) identifies the operation and maintenance costs associated with the harbors, including those costs required to achieve and maintain the authorized length, width, and depth for the harbors, on a project-by-project basis;

"(B) identifies the amount of funding requested in the President's budget for the operation and maintenance costs associated with the harbors, on a project-by-project basis;

"(C) identifies the unmet operation and maintenance needs associated with the harbors, on a project-by-project basis; and

"(D) identifies the harbors for which the President will allocate funding over the next 5 fiscal years for operation and maintenance activities, on a project-by-project basis, including the amounts to be allocated for such purposes.".

(b) OPERATION AND MAINTENANCE OF EMERGING HARBOR PROJECTS.—Section 210 of such Act (33 U.S.C. 2238) is further amended by adding at the end the following:

"(d) OPERATION AND MAINTENANCE OF EMERGING HARBOR PROJECTS.—

"(1) IN GENERAL.—To the maximum extent practicable, the Secretary shall make expenditures to pay for operation and maintenance costs of the harbors referred to in subsection (a)(2), including expenditures of funds appropriated from the Harbor Maintenance Trust Fund, based on an equitable allocation of funds among all such harbors, regardless of the size or tonnage throughput of the harbor.

"(2) CRITERIA.—In determining the equitable allocation of funds under paragraph (1), the Secretary shall—

"(A) utilize the information obtained in the assessment conducted under subsection (c);

"(B) consider the national and regional significance of harbor operation and maintenance; and

"(C) not make such allocation based solely on the tonnage transiting through a harbor.

"(3) EMERGING HARBORS.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), in making expenditures described in paragraph (1) for each of fiscal years 2015 and 2016, the Secretary shall allocate not less than 10 percent of the total amount of the expenditures to pay for operation and maintenance costs of emerging harbors.

"(B) EMERGING HARBOR DEFINED.—In this paragraph, the term 'emerging harbor' means a harbor referred to in subsection (a)(2) that transits less than 1,000,000 tons of commerce annually.

"(4) EMERGENCY EXPENDITURES.—Nothing in this subsection may be construed to prohibit the Secretary from making an expenditure to pay for the operation and maintenance costs of a specific harbor, including the transfer of funding from the operation and maintenance of a separate project, if—

"(A) the Secretary determines that the action is necessary to address the navigation needs of a harbor where safe navigation has been severely restricted due to an unforeseen event; and

"(B) the Secretary provides advance notice and information on the need for the action to the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives and the Committee on Environment and Public Works and the Committee on Appropriations of the Senate.

"(5) MANAGEMENT OF GREAT LAKES NAVIGATION SYSTEM.—To sustain effective and efficient operation and maintenance of the Great Lakes Navigation System, including any navigation feature in the Great Lakes that is a Federal responsibility with respect to operation and maintenance, the Secretary shall manage

and allocate funding for all of the individually authorized projects in the Great Lakes Navigation System as components of a single, comprehensive system, recognizing the interdependence of the projects.".

SEC. 203. PRESERVING UNITED STATES HARBORS.

(a) IN GENERAL.—The Secretary may enter into an agreement with a non-Federal interest, at the request of the non-Federal interest, under which the Secretary agrees to maintain a navigation project for a harbor or inland harbor (in this section referred to as a "federally authorized harbor") in accordance with section 101(b) of the Water Resources Development Act of 1986 (33 U.S.C. 2211(b)).

(b) REPORT BY NON-FEDERAL INTEREST.—

(1) IN GENERAL.—To be eligible to enter into an agreement under subsection (a) with respect to a federally authorized harbor, a non-Federal interest shall submit to the Secretary a report justifying economic investment in maintenance of the harbor.

(2) JUSTIFICATION OF INVESTMENT.—A report submitted under paragraph (1) may justify economic investment in the maintenance of a federally authorized harbor based on—

(A) projected economic benefits, including transportation savings and job creation; and

(B) other factors, including navigation safety, national security, and sustainability of subsistence harbors.

(3) TERMINATION OF CERTAIN AGREEMENTS.—An agreement entered into under subsection (a) with respect to a federally authorized harbor shall contain terms to allow the Secretary to terminate the agreement if the Secretary determines that Federal economic investment in maintaining the harbor is no longer justified.

(c) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed to preclude the operation and maintenance of a federally authorized harbor under section 101(b) of the Water Resources Development Act of 1986 (33 U.S.C. 2211(b)).

SEC. 204. CONSOLIDATION OF DEEP DRAFT NAVIGATION EXPERTISE.

Section 2033(e) of the Water Resources Development Act of 2007 (33 U.S.C. 2282a(e)) is amended by adding at the end the following:

"(3) DEEP DRAFT NAVIGATION PLANNING CENTER OF EXPERTISE.—

"(A) IN GENERAL.—The Secretary shall consolidate deep draft navigation expertise within the Corps of Engineers into a deep draft navigation planning center of expertise.

"(B) LIST.—Not later than 60 days after the date of the consolidation required under subparagraph (A), the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a list of personnel, including the grade levels and expertise of the personnel, assigned to the center described in subparagraph (A).".

SEC. 205. DISPOSAL SITES.

(a) IN GENERAL.—The Secretary, in accordance with subsections (b) and (c) and with the concurrence of the Administrator of the Environmental Protection Agency, is authorized to reopen the Cape Arundel Disposal Site (in this section referred to as the "Site") as an alternative dredged material disposal site under section 103(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413(b)).

(b) DEADLINE.—The Site may remain open under subsection (a) until the earlier of—

(1) the date on which the Site does not have any remaining disposal capacity;

(2) the date on which an environmental impact statement designating an alternative dredged material disposal site for southern Maine has been completed; or

(3) the date that is 5 years after the date of enactment of this Act.

(c) LIMITATIONS.—The use of the Site as a dredged material disposal site under subsection (a) shall be subject to the conditions that—

(1) conditions at the Site remain suitable for the continued use of the Site as a dredged material disposal site; and

(2) the Site not be used for the disposal of more than 80,000 cubic yards from any single dredging project.

Subtitle B—Inland Waterways

SEC. 211. DEFINITIONS.

In this subtitle, the following definitions apply:

(1) INLAND WATERWAYS TRUST FUND.—The term "Inland Waterways Trust Fund" means the Inland Waterways Trust Fund established by section 9506(a) of the Internal Revenue Code of 1986.

(2) QUALIFYING PROJECT.—The term "qualifying project" means any construction or major rehabilitation project for navigation infrastructure of the inland and intracoastal waterways that is—

(A) authorized before, on, or after the date of enactment of this Act;

(B) not completed on the date of enactment of this Act; and

(C) funded at least in part from the Inland Waterways Trust Fund.

SEC. 212. PROJECT DELIVERY PROCESS REFORMS.

(a) REQUIREMENTS FOR QUALIFYING PROJECTS.—With respect to each qualifying project, the Secretary shall require—

(1) for each project manager, that—

(A) the project manager have formal project management training and certification; and

(B) the project manager be assigned from among personnel certified by the Chief of Engineers; and

(2) for an applicable cost estimation, that—

(A) the Secretary utilize a risk-based cost estimate with a confidence level of at least 80 percent; and

(B) the cost estimate be implemented—

(i) for a qualifying project that requires an increase in the authorized amount in accordance with section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280), during the preparation of a post-authorization change report or other similar decision document;

(ii) for a qualifying project for which the first construction contract has not been awarded, prior to the award of the first construction contract;

(iii) for a qualifying project without a completed feasibility report in accordance with section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282), prior to the completion of such a report; and

(iv) for a qualifying project with a completed feasibility report in accordance with section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282) that has not yet been authorized, during design for the qualifying project.

(b) ADDITIONAL PROJECT DELIVERY PROCESS REFORMS.—Not later than 18 months after the date of enactment of this Act, the Secretary shall—

(1) establish a system to identify and apply on a continuing basis best management practices from prior or ongoing qualifying projects to improve the likelihood of on-time and on-budget completion of qualifying projects;

(2) evaluate early contractor involvement acquisition procedures to improve on-time and on-budget project delivery performance; and

(3) implement any additional measures that the Secretary determines will achieve the purposes of this subtitle, including—

(A) the implementation of applicable practices and procedures developed pursuant to management by the Secretary of an applicable military construction program;

(B) the development and use of a portfolio of standard designs for inland navigation locks;

(C) the use of full-funding contracts or formulation of a revised continuing contracts clause; and

(D) the establishment of procedures for recommending new project construction starts using a capital projects business model.

(c) PILOT PROJECTS.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary may carry out pilot projects to evaluate processes and procedures for the study, design, and construction of qualifying projects.

(2) INCLUSIONS.—At a minimum, the Secretary shall carry out pilot projects under this subsection to evaluate—

(A) early contractor involvement in the development of features and components;

(B) an appropriate use of continuing contracts for the construction of features and components; and

(C) applicable principles, procedures, and processes used for military construction projects.

(d) INLAND WATERWAYS USER BOARD.—Section 302 of the Water Resources Development Act of 1986 (33 U.S.C. 2251) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) DUTIES OF USERS BOARD.—

"(1) IN GENERAL.—The Users Board shall meet not less frequently than semiannually to develop and make recommendations to the Secretary and Congress regarding the inland waterways and inland harbors of the United States.

"(2) ADVICE AND RECOMMENDATIONS.—For commercial navigation features and components of the inland waterways and inland harbors of the United States, the Users Board shall provide—

"(A) prior to the development of the budget proposal of the President for a given fiscal year, advice and recommendations to the Secretary regarding construction and rehabilitation priorities and spending levels;

"(B) advice and recommendations to Congress regarding any completed feasibility report in accordance with section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282) relating to those features and components;

"(C) advice and recommendations to Congress regarding an increase in the authorized cost of those features and components;

"(D) not later than 60 days after the date of the submission of the budget proposal of the President to Congress, advice and recommendations to Congress regarding construction and rehabilitation priorities and spending levels; and

"(E) advice and recommendations on the development of a long-term capital investment program in accordance with subsection (d).

"(3) PROJECT DEVELOPMENT TEAMS.—The chairperson of the Users Board shall appoint a representative of the Users Board to serve as an informal advisor to the project development team for a qualifying project or the study or design of a commercial navigation feature or component of the inland waterways and inland harbors of the United States.

"(4) INDEPENDENT JUDGMENT.—Any advice or recommendation made by the Users Board to the Secretary shall reflect the independent judgment of the Users Board.";

(2) by striking subsection (c) and inserting the following:

"(c) DUTIES OF SECRETARY.—The Secretary shall—

"(1) communicate not less than once each quarter to the Users Board the status of the study, design, or construction of all commercial navigation features or components of the inland waterways or inland harbors of the United States; and

"(2) submit to the Users Board a courtesy copy of all completed feasibility reports relating to a commercial navigation feature or component of the inland waterways or inland harbors of the United States.

"(d) CAPITAL INVESTMENT PROGRAM.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary, in coordination with the Users Board, shall develop and submit to Congress a report describing a 20-year program for making capital investments on the inland and intracoastal waterways based on the application of objective, national project selection prioritization criteria.

"(2) CONSIDERATION.—In developing the program under paragraph (1), the Secretary shall take into consideration the 20-year capital investment strategy contained in the Inland Marine Transportation System (IMTS) Capital Projects Business Model, Final Report published on April 13, 2010, as approved by the Users Board.

"(3) CRITERIA.—In developing the plan and prioritization criteria under paragraph (1), the Secretary shall ensure, to the maximum extent practicable, that investments made under the 20-year program described in paragraph (1)—

"(A) are made in all geographical areas of the inland waterways system; and

"(B) ensure efficient funding of inland waterways projects.

"(4) STRATEGIC REVIEW AND UPDATE.—Not later than 5 years after the date of enactment of this subsection, and not less frequently than once every 5 years thereafter, the Secretary, in coordination with the Users Board, shall—

"(A) submit to Congress a strategic review of the 20-year program in effect under this subsection, which shall identify and explain any changes to the project-specific recommendations contained in the previous 20-year program (including any changes to the prioritization criteria used to develop the updated recommendations); and

"(B) make revisions to the program, as appropriate.

"(e) PROJECT MANAGEMENT PLANS.—The chairperson of the Users Board and the project development team member appointed by the chairperson under subsection (b)(3) may sign the project management plan for the qualifying project or the study or design of a commercial navigation feature or component of the inland waterways and inland harbors of the United States.

"(f) ADMINISTRATION.—The Users Board shall be subject to the Federal Advisory Committee Act, other than section 14, and, with the consent of the appropriate agency head, the Users Board may use the facilities and services of any Federal agency. For the purposes of complying with such Act, the members of the Users Board shall not be considered special Government employees (as defined in section 202 of title 18, United States Code). Non-Federal members of the Users Board while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.".

SEC. 213. EFFICIENCY OF REVENUE COLLECTION.

Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall prepare a report on the efficiency of collecting the fuel tax for the Inland Waterways Trust Fund, which shall include—

(1) an evaluation of whether current methods of collection of the fuel tax result in full compliance with requirements of the law;

(2) whether alternative methods of collection would result in increased revenues into the Inland Waterways Trust Fund; and

(3) an evaluation of alternative collection options.

SEC. 214. INLAND WATERWAYS REVENUE STUDIES.

(a) INLAND WATERWAYS CONSTRUCTION BONDS STUDY.—

(1) STUDY.—The Secretary, in coordination with the Secretary of the Treasury, shall conduct a study on the feasibility of authorizing the issuance of federally tax-exempt bonds secured against the available proceeds, including projected annual receipts, in the Inland Waterways Trust Fund established by section 9506(a) of the Internal Revenue Code of 1986.

(2) CONTENTS.—In carrying out the study, the Secretary and the Secretary of the Treasury shall examine the implications of issuing such bonds, including the potential revenues that could be generated and the projected net cost to the Treasury, including loss of potential revenue.

(3) CONSULTATION.—In carrying out the study, the Secretary and the Secretary of the Treasury, at a minimum, shall consult with—

(A) representatives of the Inland Waterway Users Board established by section 302 of the Water Resources Development Act of 1986 (33 U.S.C. 2251);

(B) representatives of the commodities and bulk cargos that are currently shipped for commercial purposes on the segments of the inland and intracoastal waterways listed in section 206 of the Inland Waterways Revenue Act of 1978 (33 U.S.C. 1804);

(C) representatives of other users of locks and dams on the inland and intracoastal waterways, including persons owning, operating, using, or otherwise benefitting from—

(i) hydropower generation facilities;

(ii) electric utilities that rely on the waterways for cooling of existing electricity generation facilities;

(iii) municipal and industrial water supply;

(iv) recreation;

(v) irrigation water supply; or

(vi) flood damage reduction;

(D) other stakeholders associated with the inland and intracoastal waterways, as identified by the Secretary or the Secretary of the Treasury; and

(E) the heads of other appropriate Federal agencies, including the Secretary of Transportation, the Secretary of the Interior, and the Administrator of the Environmental Protection Agency.

(4) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of the Treasury shall submit a joint report on the results of the study to—

(A) the Committee on Transportation and Infrastructure, the Committee on Ways and Means, and the Committee on the Budget of the House of Representatives; and

(B) the Committee on Environment and Public Works, the Committee on Finance, and the Committee on the Budget of the Senate.

(b) POTENTIAL FEES FOR BENEFICIARIES AND USERS OF INLAND AND INTRACOASTAL WATERWAYS INFRASTRUCTURE.—

(1) IN GENERAL.—The Secretary shall conduct a study and submit to Congress a report on potential user fees and revenues from other sources that could be collected to generate additional revenues for the Inland Waterways Trust Fund established by section 9506(a) of the Internal Revenue Code of 1986.

(2) SCOPE OF STUDY.—

(A) IN GENERAL.—In carrying out the study, the Secretary shall evaluate an array of potential user fees and other revenues options that, when combined with funds generated by section 4042 of the Internal Revenue Code of 1986, are sufficient to support one-half of annual construction expenditure levels of $380,000,000 for the authorized purposes of the Inland Waterways Trust Fund.

(B) POTENTIAL REVENUE OPTIONS FOR STUDY.—In carrying out the study, the Secretary, at a minimum, shall evaluate potential user fees and other revenue options identified in—

(i) the report of the Congressional Budget Office entitled "Paying for Highways, Airways, and Waterways: How Can Users Be Charged?", dated May 1, 1992;

(ii) the draft bill submitted by the Assistant Secretary of the Army (Civil Works) to Congress entitled the "Lock User Fee Act of 2008", dated April 4, 2008;

(iii) the Inland Marine Transportation System (IMTS) Capital Projects Business Model, Final Report, published on April 12, 2010, as approved by the Inland Waterways Users Board established by section 302 of the Water Resources Development Act of 1986 (33 U.S.C. 2251); and

(iv) the draft bill submitted by the President to Congress entitled the "Inland Waterways Capital Investment Act of 2011", dated September 2011.

(3) CONDUCT OF STUDY.—In carrying out the study, the Secretary shall—

(A) take into consideration whether the potential user fees and revenues from other sources—

(i) are equitably associated with the construction, operation, and maintenance of inland and intracoastal waterway infrastructure, including locks, dams, and navigation channels; and

(ii) can be efficiently collected;

(B) consult with, at a minimum—

(i) representatives of the Inland Waterways Users Board; and

(ii) representatives of other nonnavigation beneficiaries of inland and intracoastal waterway infrastructure, including persons benefitting from—

(I) municipal water supply;

(II) hydropower;

(III) recreation;

(IV) industrial water supply;

(V) flood damage reduction;

(VI) agricultural water supply;

(VII) environmental restoration;

(VIII) local and regional economic development; or

(IX) local real estate interests; and

(iii) representatives of other interests, as identified by the Secretary; and

(C) provide the opportunity for public hearings in each of the geographic regions that contain segments of the inland and intracoastal waterways listed in section 206 of the Inland Waterways Revenue Act of 1978 (33 U.S.C. 1804).

(4) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit a report on the results of the study to—

(A) the Committee on Transportation and Infrastructure, the Committee on Ways and Means, and the Committee on the Budget of the House of Representatives; and

(B) the Committee on Environment and Public Works, the Committee on Finance, and the Committee on the Budget of the Senate.

SEC. 215. INLAND WATERWAYS STAKEHOLDER ROUNDTABLE.

(a) IN GENERAL.—The Secretary shall conduct an inland waterways stakeholder roundtable to provide for a review and evaluation of alternative approaches—

(1) to address the financial needs of the Inland Waterways Trust Fund; and

(2) to support the water infrastructure needs of the Inland Waterways System.

(b) SELECTION OF PARTICIPANTS.—

(1) IN GENERAL.—Not later than 45 days after the date on which the Secretary submits to Congress the report required by section 214(b), the Secretary shall select individuals to be invited to participate in the stakeholder roundtable.

(2) COMPOSITION.—The individuals selected under paragraph (1) shall include—

(A) representatives of affected shippers and suppliers;

(B) representatives of State and Federal water managers; and

(C) other interested persons with direct knowledge of the Inland Waterways System.

(c) FRAMEWORK AND AGENDA.—The Secretary shall work with a group of the individuals selected under subsection (b) to develop the framework and agenda for the stakeholder roundtable.

(d) CONDUCT OF STAKEHOLDER ROUNDTABLE.—

(1) IN GENERAL.—Not later than 120 days after the date on which the Secretary submits to Congress the report required by section 214(b), the Secretary shall conduct the stakeholder roundtable.

(2) ISSUES TO BE DISCUSSED.—The stakeholder roundtable shall provide for the review and evaluation described in subsection (a) and shall include the following:

(A) An evaluation of alternatives that have been developed to address funding options for the Inland Waterways System.

(B) An evaluation of the funding status of the Inland Waterways Trust Fund.

(C) Prioritization of the ongoing and projected water infrastructure needs of the Inland Waterways System.

(D) Identification of a process forward for meeting such needs, with timeline for addressing the funding challenges for the inland waterways trust system.

(e) REPORT TO CONGRESS.—Not later than 180 days after the date on which the Secretary submits to Congress the report required by section 214(b), the Secretary shall submit to Congress a report that contains—

(1) a summary the stakeholder roundtable, including areas of concurrence on funding approaches and areas or disagreement in meeting funding needs; and

(2) recommendations developed by the Secretary for logical next steps to address the issues discussed at the stakeholder roundtable.

SEC. 216. PRESERVING THE INLAND WATERWAY TRUST FUND.

(a) OLMSTED PROJECT REFORM.—

(1) IN GENERAL.—Notwithstanding section 102(a) of the Water Resources Development Act of 1986 (33 U.S.C. 2212(a)), for each fiscal year beginning after the date of enactment of this Act, 25 percent of the cost of construction for the Olmsted Project shall be paid from amounts appropriated from the Inland Waterways Trust Fund.

(2) DEFINITION.—In this subsection the term "Olmsted Project" means the project for navigation, Lower Ohio River, Locks 52 and 53, Illinois and Kentucky, authorized by section 3(a)(6) of the Water Resources Development Act of 1988 (102 Stat. 4013).

(3) SENSE OF CONGRESS.—It is the sense of Congress that the appropriation for the Olmsted project should be not less than $150,000,000 for each fiscal year until construction of the project is completed.

(4) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate regarding the lessons learned from the experience of planning and constructing the Olmsted Project and how such lessons might apply to future inland waterway studies and projects.

(b) ANNUAL REPORT ON PROGRESS AND COSTS.—For any inland waterways project that the Secretary carries out that has an estimated total cost of $500,000,000 or more, the Secretary shall submit to the congressional committees referred to in subsection (a)(4) an annual financial plan for the project. The plan shall be based on detailed annual estimates of the cost to complete the remaining elements of the project and on reasonable assumptions, as determined by the Secretary, of any future increases of the cost to complete the project.

SEC. 217. PUBLIC COMMENT ON LOCK OPERATIONS.

At least 90 days before carrying out a proposed modification to the operation of a lock at a project for navigation on the inland waterways, the Secretary shall—

(1) provide notice of the proposed modification in the Federal Register; and

(2) accept public comments on the proposed modification.

SEC. 218. ASSESSMENT OF OPERATION AND MAINTENANCE NEEDS OF THE ATLANTIC INTRACOASTAL WATERWAY AND THE GULF INTRACOASTAL WATERWAY.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall assess the operation and maintenance needs of the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway.

(b) TYPES OF ACTIVITIES.—In carrying out subsection (a), the Secretary shall assess the operation and maintenance needs of the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway as used for the following purposes:

(1) Commercial navigation.

(2) Commercial fishing.

(3) Subsistence, including utilization by Indian tribes (as such term is defined by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) for subsistence and ceremonial purposes.

(4) Use as ingress and egress to harbors of refuge.

(5) Transportation of persons.

(6) Purposes relating to domestic energy production, including fabrication, servicing, and supply of domestic offshore energy production facilities.

(7) Activities of the Secretary of the department in which the Coast Guard is operating.

(8) Public health and safety related equipment for responding to coastal and inland emergencies.

(9) Recreation purposes.

(10) Any other authorized purpose.

(c) REPORT TO CONGRESS.—For fiscal year 2015, and biennially thereafter, in conjunction with the President's annual budget submission to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that, with respect to the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway—

(1) identifies the operation and maintenance costs required to achieve the authorized length, width, and depth;

(2) identifies the amount of funding requested in the President's budget for operation and maintenance costs; and

(3) identifies the unmet operation and maintenance needs of the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway.

SEC. 219. UPPER MISSISSIPPI RIVER PROTECTION.

(a) ECONOMIC IMPACT STUDY.—Not later than 180 days after the date of enactment of this Act, the Secretary shall conduct a study and submit to Congress a report on the impact of closing the Upper St. Anthony Falls Lock and Dam on the economy and the environment, including an assessment of the annual average tonnage moving through the Upper St. Anthony Falls Lock and Dam during the preceding 5 years.

(b) MANDATORY CLOSURE.—Not later than 1 year after the date of enactment of this Act, the Secretary shall close the Upper St. Anthony Falls Lock and Dam if the Secretary determines pursuant to the study conducted under subsection (a), or based on other appropriate information made available to the Secretary, that the annual average tonnage moving through the Upper St. Anthony Falls Lock and Dam during the preceding 5 years was not more than 1,500,000 tons.

(c) EMERGENCY OPERATIONS.—Nothing in this section may be construed to prevent the Secretary from carrying out emergency lock operations necessary to mitigate flood damage.

(d) UPPER ST. ANTHONY FALLS LOCK AND DAM DEFINED.—In this section, the term "Upper St. Anthony Falls Lock and Dam" means the lock and dam located on Mississippi River Mile 853.9 in Minneapolis, Minnesota.

SEC. 220. CORPS OF ENGINEERS LOCK AND DAM ENERGY DEVELOPMENT.

Section 1117 of the Water Resources Development Act of 1986 (100 Stat. 4236) is amended to read as follows:

"SEC. 1117. W.D. MAYO LOCK AND DAM.

"(a) IN GENERAL.—The Cherokee Nation of Oklahoma may—

"(1) design and construct one or more hydroelectric generating facilities at the W.D. Mayo Lock and Dam on the Arkansas River, Oklahoma; and

"(2) market the electricity generated from any such facility.

"(b) PRECONSTRUCTION REQUIREMENTS.—

"(1) PERMITS.—Before the date on which construction of a hydroelectric generating facility begins under subsection (a), the Cherokee Nation shall obtain any permit required under Federal or State law, except that the Cherokee Nation shall be exempt from licensing requirements that may otherwise apply to construction, operation, or maintenance of the facility under the Federal Power Act (16 U.S.C. 791a et seq.).

"(2) REVIEW OF PLANS AND SPECIFICATIONS.—The Cherokee Nation may initiate the design or construction of a hydroelectric generating facility under subsection (a) only after the Secretary reviews and approves the plans and specifications for the design and construction.

"(c) PAYMENT OF DESIGN AND CONSTRUCTION COSTS.—

"(1) IN GENERAL.—The Secretary may accept funds offered by the Cherokee Nation and use such funds to carry out the design and construction of a hydroelectric generating facility under subsection (a).

"(2) ALLOCATION OF COSTS.—The Cherokee Nation shall—

"(A) bear all costs associated with the design and construction of a hydroelectric generating facility under subsection (a); and

"(B) provide any funds necessary for the design and construction to the Secretary prior to the Secretary initiating any activities related to the design and construction.

"(d) ASSUMPTION OF LIABILITY.—The Cherokee Nation shall—

"(1) hold all title to a hydroelectric generating facility constructed under subsection (a) and may, subject to the approval of the Secretary, assign such title to a third party;

"(2) be solely responsible for—

"(A) the operation, maintenance, repair, replacement, and rehabilitation of the facility; and

"(B) the marketing of the electricity generated by the facility; and

"(3) release and indemnify the United States from any claims, causes of action, or liabilities that may arise out of any activity undertaken to carry out this section.

"(e) ASSISTANCE AVAILABLE.—The Secretary may provide technical and construction management assistance requested by the Cherokee Nation relating to the design and construction of a hydroelectric generating facility under subsection (a).

"(f) THIRD PARTY AGREEMENTS.—The Cherokee Nation may enter into agreements with the Secretary or a third party that the Cherokee Nation or the Secretary determines are necessary to carry out this section.".

TITLE III—DEAUTHORIZATIONS AND BACKLOG PREVENTION

SEC. 301. DEAUTHORIZATION OF INACTIVE PROJECTS.

(a) PURPOSES.—The purposes of this section are—

(1) to identify $12,000,000,000 in water resources development projects authorized by Congress that are no longer viable for construction due to—

(A) a lack of local support;

(B) a lack of available Federal or non-Federal resources; or

(C) an authorizing purpose that is no longer relevant or feasible;

(2) to create an expedited and definitive process to deauthorize water resources development projects that are no longer viable for construction; and

(3) to allow the continued authorization of water resources development projects that are viable for construction.

(b) DEAUTHORIZATION OF PROJECTS AUTHORIZED BEFORE WRDA 2007.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, and shall publish in the Federal Register, a report that lists each authorized water resources development project, or separable element of a project, authorized for construction before November 8, 2007—

(A) for which—

(i) construction was not initiated before the date of enactment of this Act; or

(ii) construction was initiated before the date of enactment of this Act, but for which no funds, Federal or non-Federal, were obligated for

construction of the project or separable element during the 5-year period ending on July 1, 2013; and

(B) that is identified in accordance with paragraph (3).

(2) SPECIAL RULE FOR ONGOING CONSTRUCTION.—A project or separable element shall not be listed pursuant to paragraph (1)(A)(ii) if the project or separable element is being constructed as of the date of enactment of this Act.

(3) IDENTIFICATION OF PROJECTS.—

(A) IN GENERAL.—The Secretary shall identify in the report submitted under paragraph (1) projects and separable elements that—

(i) meet the requirements described in subparagraph (A) of that paragraph; and

(ii) in the aggregate have an estimated Federal cost to complete (as of the date of the report) that is at least $12,000,000,000.

(B) SEQUENCING OF PROJECTS.—In identifying projects and separable elements under subparagraph (A), the Secretary shall identify projects and separable elements according to the order in which the projects and separable elements were authorized, beginning with the earliest authorized projects and separable elements and ending upon the aggregate estimated Federal cost to complete for the projects and separable elements identified satisfying the requirement under subparagraph (A)(ii).

(4) CONGRESSIONAL REVIEW PERIOD; DEAUTHORIZATION.—After the expiration of the 180-day period beginning on the date of the submission of the report under this subsection, any project or separable element identified in that report is hereby deauthorized, unless during such period the non-Federal interest for the project or separable element provides, under Federal law, all funds necessary to complete the project or separable element.

(c) TREATMENT OF PROJECT MODIFICATIONS.—For purposes of this section, if an authorized water resources development project or separable element has been modified in an Act of Congress, the date of the authorization of the project or separable element shall be deemed to be the date of the most recent such modification.

SEC. 302. REVIEW OF CORPS OF ENGINEERS ASSETS.

(a) ASSESSMENT AND INVENTORY.—Not later than 1 year after the date of enactment of this Act, the Secretary shall conduct an assessment of all properties under the control of the Corps of Engineers and develop an inventory of the properties that are not needed for the missions of the Corps of Engineers.

(b) CRITERIA.—In conducting the assessment and developing the inventory under subsection (a), the Secretary shall use the following criteria:

(1) The extent to which the property aligns with the current missions of the Corps of Engineers.

(2) The economic impact of the property on existing communities in the vicinity of the property.

(3) The extent to which the utilization rate for the property is being maximized and is consistent with nongovernmental industry standards for the given function or operation.

(4) The extent to which the reduction or elimination of the property could reduce operation and maintenance costs of the Corps of Engineers.

(5) The extent to which the reduction or elimination of the property could reduce energy consumption by the Corps of Engineers.

(c) NOTIFICATION.—As soon as practicable following completion of the inventory of properties under subsection (a), the Secretary shall provide the inventory to the Administrator of General Services.

(d) REPORT TO CONGRESS.—Not later than 30 days after the date of the notification under subsection (c), the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report containing the findings of the Secretary with respect to the assessment and inventory required under subsection (a).

SEC. 303. BACKLOG PREVENTION.

(a) PROJECT DEAUTHORIZATION.—

(1) IN GENERAL.—A water resources development project, or separable element of such a project, authorized for construction by this Act shall not be authorized after the last day of the 7-year period beginning on the date of enactment of this Act unless during that period funds have been obligated for construction of such project.

(2) IDENTIFICATION OF PROJECTS.—Not later than 60 days after the expiration of the 7-year period referred to in paragraph (1), the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Represent-

atives and the Committee on Environment and Public Works of the Senate a report that identifies the projects deauthorized under paragraph (1).

(b) REPORT TO CONGRESS.—Not later than 60 days after the expiration of the 12-year period beginning on the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that contains—

(1) a list of any water resources development projects authorized by this Act for which construction has not been completed during that period;

(2) a description of the reasons the projects were not completed; and

(3) a schedule for the completion of the projects based on expected levels of appropriations.

SEC. 304. DEAUTHORIZATIONS.

(a) IN GENERAL.—The following projects are not authorized after the date of enactment of this Act:

(1) WALNUT CREEK (PACHECO CREEK), CALIFORNIA.—The portions of the project for flood protection on Walnut Creek, California, constructed under section 203 of the Flood Control Act of 1960 (Public Law 86–645; 74 Stat. 488), consisting of the Walnut Creek project from Sta 0+00 to Sta 142+00 and the upstream extent of the Walnut Creek project along Pacheco Creek from Sta 0+00 to Sta 73+50.

(2) WALNUT CREEK (SAN RAMON CREEK), CALIFORNIA.—The portion of the project for flood protection on Walnut Creek, California, constructed under section 203 of the Flood Control Act of 1960 (Public Law 86–645; 74 Stat. 488), consisting of the culvert constructed by the Department of the Army on San Ramon Creek from Sta 4+27 to Sta 14+27.

(3) HILLSBOROUGH (HILLSBORO) BAY AND RIVER, FLORIDA.—Those portions of the project for navigation, Hillsborough (Hillsboro) Bay and River, Florida, authorized by the Act of March 3, 1899 (30 Stat. 1126; chapter 425), that extend on either side of the Hillsborough River from the Kennedy Boulevard bridge to the mouth of the river that cause the existing channel to exceed 100 feet in width.

(4) KAHULUI WASTEWATER RECLAMATION FACILITY, MAUI, HAWAII.—The project carried out pursuant to the authority provided by section 14 of the Flood Control Act of 1946 (33 U.S.C. 701r) to provide shoreline protection for the Kahului Wastewater Reclamation Facility, located on the Island of Maui in the State of Hawaii.

(5) CHICAGO HARBOR, ILLINOIS.—The portion of the project for navigation, Chicago Harbor, Illinois, authorized by the first section of the Act of March 3, 1899 (30 Stat. 1129; chapter 425), and the first section of the Act of March 2, 1919 (40 Stat. 1283; chapter 95), and described as follows:

(A) Beginning at the southwest corner of Metropolitan Sanitary District of Greater Chicago sluice gate that abuts the north wall of the Chicago River Lock.

(B) Thence running north for approximately 290 feet.

(C) Thence running east approximately 1,000 feet.

(D) Thence running south approximately 290 feet.

(E) Thence running west approximately 1,000 feet to the point of origin.

(6) LUCAS-BERG PIT, ILLINOIS WATERWAY AND GRANT CALUMET RIVER, ILLINOIS.—The portion of the project for navigation, Illinois Waterway and Grand Calumet River, Illinois, authorized by the first section of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved July 24, 1946 (60 Stat. 636; chapter 596), that consists of the Lucas-Berg Pit confined disposal facility, Illinois.

(7) ROCKLAND HARBOR, MAINE.—The portion of the project for navigation, Rockland Harbor, Maine, authorized by the Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved June 3, 1896 (29 Stat. 202), and described as follows:

(A) Beginning at the point in the 14-foot turning basin limit with coordinates N162,927.61, E826,210.16.

(B) Thence running north 45 degrees 45 minutes 15.6 seconds east 287.45 feet to a point N163,128.18, E826,416.08.

(C) Thence running south 13 degrees 17 minutes 53.3 seconds east 129.11 feet to a point N163,002.53, E826,445.77.

(D) Thence running south 45 degrees 45 minutes 18.4 seconds west 221.05 feet to a point N162,848.30, E826,287.42.

(E) Thence running north 44 degrees 14 minutes 59.5 seconds west 110.73 feet to the point of origin.

(8) CORSICA RIVER, QUEEN ANNE'S COUNTY, MARYLAND.—The portion of the project for improving the Corsica River, Maryland, authorized by the first section of the Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved July 25, 1912 (37 Stat. 205), and described as follows: Approximately 2,000 feet of the eastern section of the project channel extending from—

(A) centerline station 0+000 (coordinates N506350.60, E1575013.60); to

(B) station 2+000 (coordinates N508012.39, E1574720.18).

(9) GLOUCESTER HARBOR AND ANNISQUAM RIVER, MASSACHUSETTS.—The portions of the project for navigation, Gloucester Harbor and Annisquam River, Massachusetts, authorized by section 2 of the Act entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved of March 2, 1945 (59 Stat. 12; chapter 19), consisting of an 8-foot anchorage area in Lobster Cove, and described as follows:

(A) Beginning at a bend along the easterly limit of the existing project, N3063230.31, E878283.77, thence running northwesterly about 339 feet to a point, N3063478.86, E878053.83, thence running northwesterly about 281 feet to a bend on the easterly limit of the existing project, N3063731.88, E877932.54, thence running southeasterly about 612 feet along the easterly limit of the existing project to the point of origin.

(B) Beginning at a bend along the easterly limit of the existing project, N3064065.80, E878031.45, thence running northwesterly about 621 feet to a point, N3064687.05, E878031.13, thence running southwesterly about 122 feet to a point, N3064686.98, E877908.85, thence running southeasterly about 624 feet to a point, N3064063.31, E877909.17, thence running southwesterly about 512 feet to a point, N3063684.73, E877564.56, thence running about 741 feet to a point along the westerly limit of the existing project, N3063273.98, E876947.77, thence running northeasterly about 533 feet to a bend along the westerly limit of the existing project, N3063585.62, E877380.63, thence running about 147 feet northeasterly to a bend along the westerly limit of the project, N3063671.29, E877499.63, thence running northeasterly about 233 feet to a bend along the westerly limit of the existing project, N3063840.60, E877660.29, thence running about 339 feet northeasterly to a bend along the westerly limit of the existing project, N3064120.34, E877852.55, thence running about 573 feet to a bend along the westerly limit of the existing project, N3064692.98, E877865.04, thence running about 113 feet to a bend along the northerly limit of the existing project, N3064739.51, E877968.31, thence running 145 feet southeasterly to a bend along the northerly limit of the existing project, N3064711.19, E878110.69, thence running about 650 feet along the easterly limit of the existing project to the point of origin.

(10) IPSWICH RIVER, MASSACHUSETTS.—The portion of the project for navigation, Ipswich River, Massachusetts, authorized by the first section of the Act of August 5, 1886 (24 Stat. 317, chapter 929) consisting of a 4-foot channel located at the entrance to the inner harbor at Ipswich Harbor, and described as follows:

(A) Lying northwesterly of a line commencing at N3,074,938.09, E837,154.87.

(B) Thence running easterly approximately 60 feet to a point with coordinates N3,074,972.62, E837,203.93.

(11) EAST FORK OF TRINITY RIVER, TEXAS.—The portion of the project for flood protection on the East Fork of the Trinity River, Texas, authorized by section 203 of the Flood Control Act of 1962 (76 Stat. 1185), that consists of the 2 levees identified as Kaufman County Levees K5E and K5W.

(12) BURNHAM CANAL, WISCONSIN.—The portion of the project for navigation, Milwaukee Harbor Project, Milwaukee, Wisconsin, known as the Burnham Canal, authorized by the first section of the Act entitled "An Act for the protection of commerce on Lake Michigan", approved March 3, 1843 (5 Stat. 619; chapter 85), and described as follows:

(A) Beginning at channel point #415a N381768.648, E2524554.836, a distance of about 170.58 feet.

(B) Thence running south 53 degrees 43 minutes 41 seconds west to channel point #417 N381667.728, E2524417.311, a distance of about 35.01 feet.

(C) Thence running south 34 degrees 10 minutes 40 seconds west to channel point #501 N381638.761, E2524397.639, a distance of about 139.25 feet.

(D) Thence running south 34 degrees 10 minutes 48 seconds west to channel point #503 N381523.557, E2524319.406, a distance of about 235.98 feet.

(E) Thence running south 32 degrees 59 minutes 13 seconds west to channel point #505 N381325.615, E2524190.925, a distance of about 431.29 feet.

(F) Thence running south 32 degrees 36 minutes 05 seconds west to channel point #509 N380962.276, E2523958.547, a distance of about 614.52 feet.

(G) Thence running south 89 degrees 05 minutes 00 seconds west to channel point #511 N380952.445, E2523344.107, a distance of about 74.68 feet.

(H) Thence running north 89 degrees 04 minutes 59 seconds west to channel point #512 N381027.13, E2523342.91, a distance of about 533.84 feet.

(I) Thence running north 89 degrees 05 minutes 00 seconds east to channel point #510 N381035.67, E2523876.69, a distance of about 47.86 feet.

(J) Thence running north 61 degrees 02 minutes 07 seconds east to channel point #508 N381058.84, E2523918.56, a distance of about 308.55 feet.

(K) Thence running north 36 degrees 15 minutes 29 seconds east to channel point #506 N381307.65, E2524101.05, a distance of about 199.98 feet.

(L) Thence running north 32 degrees 59 minutes 12 seconds east to channel point #504 N381475.40, E2524209.93, a distance of about 195.14 feet.

(M) Thence running north 26 degrees 17 minutes 22 seconds east to channel point #502 N381650.36, E2524296.36, a distance of about 81.82 feet.

(N) Thence running north 88 degrees 51 minutes 05 seconds west to channel point #419 N381732.17, E2524294.72, a distance of about 262.65 feet.

(O) Thence running north 82 degrees 01 minutes 02 seconds east to channel point #415a, the point of origin.

(13) MANITOWOC HARBOR, WISCONSIN.—The portion of the project for navigation, Manitowoc River, Manitowoc, Wisconsin, authorized by the Act of August 30, 1852 (10 Stat. 58; chapter 104), and described as follows: The triangular area bound by—

(A) 44.09893383N and 087.66854912W;

(B) 44.09900535N and 087.66864372W; and

(C) 44.09857884N and 087.66913123W.

(b) SEWARD WATERFRONT, SEWARD, ALASKA.—

(1) IN GENERAL.—Subject to paragraph (2), the portion of the project for navigation, Seward Harbor, Alaska, identified as Tract H, Seward Original Townsite, Waterfront Park Replat, Plat No 2012–4, Seward Recording District, shall not be subject to navigation servitude beginning on the date of enactment of this Act.

(2) ENTRY BY FEDERAL GOVERNMENT.—The Federal Government may enter upon the property referred to in paragraph (1) to carry out any required operation and maintenance of the general navigation features of the project referred to in paragraph (1).

(c) PORT OF HOOD RIVER, OREGON.—

(1) EXTINGUISHMENT OF PORTIONS OF EXISTING FLOWAGE EASEMENT.—With respect to the properties described in paragraph (2), beginning on the date of enactment of this Act, the flowage easement identified as Tract 1200E–6 on the Easement Deed recorded as Instrument No. 740320 is extinguished above elevation 79.39 feet (NGVD 29), the ordinary high water line.

(2) AFFECTED PROPERTIES.—The properties described in this paragraph, as recorded in Hood River County, Oregon, are as follows:

(A) Instrument Number 2010–1235.

(B) Instrument Number 2010–02366.

(C) Instrument Number 2010–02367.

(D) Parcel 2 of Partition Plat 2011–12P.

(E) Parcel 1 of Partition Plat 2005–26P.

(3) EXTINGUISHMENT OF FLOWAGE EASEMENT.—With respect to the properties described in paragraph (2), the flowage easement is extinguished if the elevation of the property is above the standard project flood elevation.

(4) FEDERAL LIABILITIES.—The United States shall not be liable for any injury caused by the extinguishment of the easement under this subsection.

(5) NO EFFECT ON OTHER RIGHTS.—Nothing in this subsection affects the remaining rights and interests of the Corps of Engineers for authorized project purposes.

SEC. 305. LAND CONVEYANCES.

(a) TULSA PORT OF CATOOSA, ROGERS COUNTY, OKLAHOMA LAND EXCHANGE.—

(1) LAND EXCHANGE.—On conveyance by the Tulsa Port of Catoosa to the United States of all right, title, and interest in and to the non-Federal land, the Secretary shall convey to the Tulsa Port of Catoosa all right, title, and interest of the United States in and to the Federal land.

(2) DEFINITIONS.—In this subsection, the following definitions apply:

(A) FEDERAL LAND.—The term "Federal land" means the approximately 87 acres of land situated in Rogers County, Oklahoma, contained within United States Tracts 413 and 427 and acquired for the McClellan-Kerr Arkansas Navigation System.

(B) NON-FEDERAL LAND.—The term "non-Federal land" means the approximately 34 acres of land situated in Rogers County, Oklahoma, and owned by the Tulsa Port of Catoosa that lie immediately south and east of the Federal land.

(3) SPECIFIC CONDITIONS.—

(A) DEEDS.—

(i) DEED TO NON-FEDERAL LAND.—The Secretary may only accept conveyance of the non-Federal land by warranty deed, as determined acceptable by the Secretary.

(ii) DEED TO FEDERAL LAND.—The Secretary shall convey the Federal land to the Tulsa Port of Catoosa by quitclaim deed and subject to any reservations, terms, and conditions the Secretary determines necessary to—

(I) allow the United States to operate and maintain the McClellan-Kerr Arkansas River Navigation System; and

(II) protect the interests of the United States.

(iii) CASH PAYMENT.—If the appraised fair market value of the Federal land, as determined by the Secretary, exceeds the appraised fair market value of the non-Federal land, as determined by the Secretary, the Tulsa Port of Catoosa shall make a cash payment to the United States reflecting the difference in the appraised fair market values.

(b) CITY OF ASOTIN, WASHINGTON.—

(1) IN GENERAL.—The Secretary shall convey to the city of Asotin, Asotin County, Washington, without monetary consideration, all right, title, and interest of the United States in and to the land described in paragraph (3).

(2) REVERSION.—If the land transferred under this subsection ceases at any time to be used for a public purpose, the land shall revert to the United States.

(3) DESCRIPTION.—The land to be conveyed to the city of Asotin, Washington, under this subsection are—

(A) the public ball fields designated as Tracts 1503, 1605, 1607, 1609, 1611, 1613, 1615, 1620, 1623, 1624, 1625, 1626, and 1631; and

(B) other leased areas designated as Tracts 1506, 1522, 1523, 1524, 1525, 1526, 1527, 1529, 1530, 1531, and 1563.

(c) GENERALLY APPLICABLE PROVISIONS.—

(1) SURVEY TO OBTAIN LEGAL DESCRIPTION.—The exact acreage and the legal description of any real property to be conveyed under this section shall be determined by a survey that is satisfactory to the Secretary.

(2) APPLICABILITY OF PROPERTY SCREENING PROVISIONS.—Section 2696 of title 10, United States Code, shall not apply to any conveyance under this section.

(3) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require that any conveyance under this section be subject to such additional terms and conditions as the Secretary considers necessary and appropriate to protect the interests of the United States.

(4) COSTS OF CONVEYANCE.—An entity to which a conveyance is made under this section shall be responsible for all reasonable and necessary costs, including real estate transaction and environmental documentation costs, associated with the conveyance.

(5) LIABILITY.—An entity to which a conveyance is made under this section shall hold the United States harmless from any liability with respect to activities carried out, on or after the date of the conveyance, on the real property conveyed. The United States shall remain responsible for any liability with respect to activities carried out, before such date, on the real property conveyed.

TITLE IV—WATER RESOURCES INFRASTRUCTURE

SEC. 401. AUTHORIZATION OF FINAL FEASIBILITY STUDIES.

The following final feasibility studies for water resources development and conservation and other purposes are authorized to be carried out by the Secretary substantially in accordance with the plan, and subject to the conditions, described in the respective reports designated in this section:

(1) NAVIGATION.—

A. State	B. Name	C. Date of Report of Chief of Engineers	D. Estimated Federal Cost	E. Estimated Non-Federal Cost
1. TX, LA	Sabine Neches Waterway, Southeast Texas and Southwest Louisiana	July 22, 2011	$779,399,000	$359,227,000
2. FL	Jacksonville Harbor-Milepoint	April 30, 2012	$27,804,000	$9,122,000
3. GA	Savannah Harbor Expansion Project	Aug. 17, 2012	$461,000,000	$201,000,000
4. TX	Freeport Harbor	Jan. 7, 2013	$121,132,000	$116,342,000
5. FL	Canaveral Harbor (Sect 203 Sponsor Report)	Feb. 25, 2013	$28,652,000	$11,588,000

(2) FLOOD RISK MANAGEMENT.—

A. State	B. Name	C. Date of Report of Chief of Engineers	D. Estimated Federal Cost	E. Estimated Non-Federal Cost
1. KS	Topeka	Aug. 24, 2009	$15,494,000	$8,343,000
2. CA	American River Watershed, Common Features Project, Natomas Basin	Dec. 30, 2010	$943,300,000	$479,500,000
3. IA	Cedar River, Cedar Rapids	Jan. 27, 2011	$67,216,000	$36,194,000
4. MN, ND	Fargo-Moorhead Metro	Dec. 19, 2011	$801,542,000	$979,806,000
5. KY	Ohio River Shoreline, Paducah	May 16, 2012	$12,893,000	$6,943,000

(3) HURRICANE AND STORM DAMAGE RISK REDUCTION.—

A. State	B. Name	C. Date of Report of Chief of Engineers	D. Estimated Initial Federal Cost and Estimated Total Federal Cost for Life of Project	E. Estimated Initial Non-Federal Cost and Estimated Total Non-Federal Cost for Life of Project
1. NC	West Onslow Beach and New River Inlet (Topsail Beach)	Sept. 28, 2009	Initial Cost: $30,557,000 Total Cost: $132,372,000	Initial Cost: $17,315,000 Total Cost: $132,372,000
2. NC	Surf City and North Topsail Beach	Dec. 30, 2010	Initial Cost: $81,484,000 Total Cost: $106,182,000	Initial Cost: $43,900,000 Total Cost: $106,182,000
3. CA	San Clemente Shoreline	April 5, 2012	Initial Cost: $7,500,000 Total Cost: $43,400,000	Initial Cost: $4,000,000 Total Cost: $43,400,000

(4) HURRICANE AND STORM DAMAGE RISK REDUCTION AND ENVIRONMENTAL RESTORATION.—

A. State	B. Name	C. Date of Report of Chief of Engineers	D. Estimated Federal Cost	E. Estimated Non-Federal Cost
1. MS	Mississippi Coastal Improvement Program (MSCIP) Hancock, Harrison, and Jackson Counties	Sept. 15, 2009	$815,090,000	$438,890,000

(5) ENVIRONMENTAL RESTORATION.—

A. State	B. Name	C. Date of Report of Chief of Engineers	D. Estimated Federal Cost	E. Estimated Non-Federal Cost
1. MD	Mid-Chesapeake Bay Island	Aug. 24, 2009	$1,221,721,000	$657,849,000
2. FL	Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, Caloosahatchee River (C–43) West Basin Storage Project, Hendry County	March 11, 2010	$297,189,000	$297,189,000
3. LA	Louisiana Coastal Area	Dec. 30, 2010	$954,452,000	$513,936,000
4. MN	Marsh Lake	Dec. 30, 2011	$6,403,000	$3,564,000

A. State	B. Name	C. Date of Report of Chief of Engineers	D. Estimated Federal Cost	E. Estimated Non-Federal Cost
5. FL	Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, C–111 Spreader Canal Western Project	Jan. 30, 2012	$88,992,000	$88,992,000
6. FL	CERP Biscayne Bay Coastal Wetland, Florida	May 2, 2012	$96,209,000	$96,209,000
7. FL	Central and Southern Florida Project, Broward County Water Preserve Area	May 21, 2012	$433,353,500	$433,353,500
8. LA	Louisiana Coastal Area-Barataria Basin Barrier	June 22, 2012	$283,567,000	$152,690,000
9. NC	Neuse River Basin	April 23, 2013	$23,253,100	$12,520,900

SEC. 402. PROJECT MODIFICATIONS.

(a) MIAMI HARBOR, MIAMI-DADE COUNTY, FLORIDA.—

(1) IN GENERAL.—The project for navigation, Miami Harbor, Miami-Dade County, Florida, authorized by section 1001(17) of the Water Resources Development Act of 2007 (121 Stat. 1052), is modified to authorize the Secretary to construct the project at a total cost of $152,510,000, with an estimated Federal cost of $92,007,000 and a non-Federal cost of $60,503,000.

(2) APPLICABILITY.—Paragraph (1) shall take effect on November 8, 2007.

(b) LOWER OHIO RIVER, ILLINOIS AND KENTUCKY.—The project for navigation, Lower Ohio River, Locks and Dams 52 and 53, Illinois and Kentucky, authorized by section 3(a)(6) of the Water Resources Development Act of 1988 (102 Stat. 4013), is modified to authorize the Secretary to construct the project at a total cost of $2,300,000,000, with a first Federal cost of $2,300,000,000.

(c) LITTLE CALUMET RIVER BASIN (CADY MARSH DITCH), INDIANA.—The project for flood control, Little Calumet River Basin (Cady Marsh Ditch), Indiana, authorized by section 401(a) of the Water Resources Development Act of 1986 (100 Stat. 4115), and modified by section 127 of Public Law 109–103 (119 Stat. 2259), is further modified to authorize the Secretary to construct the project at a total cost of $269,988,000, with an estimated Federal cost of $202,800,000 and a non-Federal cost of $67,188,000.

PURPOSE OF LEGISLATION

H.R. 3080 authorizes the United States Army Corps of Engineers to carry out water resources development activities for the Nation, usually through cost-sharing partnerships with non-federal sponsors. Activities include navigation, flood damage reduction, shoreline protection, hydropower, dam safety, water supply, recreation, environmental restoration and protection, and disaster response and recovery.

H.R. 3080 also makes fundamental reforms to the Corps of Engineers planning process, accelerates project delivery, empowers non-federal project sponsors, and strengthens congressional oversight.

BACKGROUND AND NEED FOR LEGISLATION

America is blessed with an unparalleled network of natural harbors and rivers. The ports, channels, locks, dams, and other infra-

structure that support our maritime and waterways transportation system and provide flood protection for our homes and businesses are vitally important to a healthy national economy and job growth.

Ensuring a sound infrastructure network is a shared responsibility, with a strong federal role recognized by our Founding Fathers. The Water Resources Reform and Development Act (WRRDA) of 2013 promotes our Nation's competitiveness, prosperity, and economic growth by upholding the seminal federal responsibility to maintain a strong transportation infrastructure and ensure the efficient flow of domestic and international commerce.

Through WRRDA, Congress authorizes the key missions of the Corps of Engineers, including developing, maintaining, and supporting the Nation's economically vital waterway infrastructure and supporting effective and targeted flood protection and environmental restoration needs.

WRRDA also provides Congress the opportunity to make much needed policy reforms, strengthen oversight, cut red tape, reduce bureaucracy, and open the door to innovation and stronger partnerships that will improve infrastructure development.

Historically, water resources legislation has been enacted every two years to provide oversight of and policy direction to the Administration and the Corps of Engineers. But since such a measure has not been enacted since 2007, Congress has been silent on needed reforms and has failed to take action to develop, maintain, and support our Nation's vital water infrastructure needs.

HEARINGS

On April 16, 2013, the Subcommittee on Water Resources and Environment held a hearing on "The Foundations for a New Water Resources Development Act." On April 24, 2013, the Subcommittee on Water Resources and Environment held a hearing on "The President's Fiscal Year 2014 Budget: Administration Priorities for the U.S. Army Corps of Engineers." On June 5, 2013, the Subcommittee on Water Resources and Environment held a hearing on "A Review of the United States Army Corps of Engineers Chief's Reports."

LEGISLATIVE HISTORY AND CONSIDERATION

On September 11, 2013, House Committee on Transportation and Infrastructure Chairman Bill Shuster and Ranking Member Nick Rahall and Subcommittee on Water Resources and Environment Chairman Bob Gibbs and Ranking Member Tim Bishop introduced H.R. 3080, the Water Resources Reform and Development Act (WRRDA) of 2013. On September 19, 2013, the Committee on Transportation and Infrastructure met in open session and ordered the bill reported favorably to the House by voice vote with a quorum present.

An amendment was offered in Committee by Chairman Shuster making several technical and conforming changes, including a number of additions and clarifications to the introduced version of H.R. 3080. The amendment was unanimously approved by voice vote.

An amendment was offered in Committee by Representative DeFazio, which was withdrawn. The amendment would have created new authority for the Corps of Engineers related to aquatic invasive species control.

An amendment was offered in Committee by Representative Hahn, which was withdrawn. The amendment would have increased the percentage spent on expanded uses of the Harbor Maintenance Trust Fund pursuant to section 201 of H.R. 3080.

An amendment was offered in Committee by Representative Hahn, which was withdrawn. The amendment would have taken the Harbor Maintenance Trust Fund off-budget.

An amendment was offered in Committee by Representative Southerland, which was amended by a substitute amendment by Chairman Shuster. The substitute amendment offered by Chairman Shuster clarifies the roles of the federal government, the Army Corps of Engineers, Congress, and the states during interstate disputes over water supply. The Shuster substitute amendment was adopted by voice vote.

An amendment was offered in Committee by Representative Napolitano, which was withdrawn. The amendment would have required that no less than 30 percent of those Harbor Maintenance taxes go back to the state in which they were collected.

An amendment was offered in Committee by Representative Brown of Florida, which was withdrawn. The amendment would have authorized, on a contingent basis, those Chief's Reports that were completed within one year from the time H.R. 3080 is enacted.

An amendment was offered in Committee by Representative Nolan, which was withdrawn. The amendment would have prohibited states from indemnifying the Corps of Engineers during the construction of a project if that indemnification was counter to state law.

An amendment was offered in Committee by Representative Frankel, which was withdrawn. The amendment would have authorized the Corps of Engineers to utilize foreign sources of sediment for beach nourishment projects.

An amendment was offered in Committee by Representative Cohen, which was withdrawn. The amendment would direct the development of a management plan through a new multi-agency program for the purpose of identifying opportunities for ecosystem restoration projects along the entire length of the Mississippi River.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no record votes taken in connection with consideration of H.R. 3080.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 3080 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 21, 2013.

Hon. BILL SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3080, the Water Resources Reform and Development Act of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

DOUGLAS W. ELMENDORF, *Director.*

Enclosure.

H.R. 3080—Water Resources Reform and Development Act of 2013

Summary: H.R. 3080 would authorize the U.S. Army Corps of Engineers (Corps) to construct water projects for mitigating storm and hurricane damage, restoring ecosystems, and improving flood management. The legislation also would authorize the agency to assist states and local governments with levee safety programs and to assist Indian tribes with planning and technical assistance for water resources projects. Finally, H.R. 3080 would direct the Corps to implement a pilot program to enter agreements with nonfederal partners to manage and construct certain projects. Those agreements would be subject to appropriation of all federal costs.

Assuming appropriation of the necessary amounts, including adjustments for anticipated inflation, CBO estimates that implementing H.R. 3080 would cost about $3.5 billion over 2014–2018 period. Spending would continue for authorized projects after 2018, and CBO estimates that such spending would total $4.7 billion over the 2019–2023 period.

Pay-as-you-go procedures do not apply because enacting the bill would not affect direct spending or revenues.

H.R. 3080 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3080 is shown in the following table. The costs

of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2014	2015	2016	2017	2018	2014–2018
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Title I						
Program Reforms and Streamlining						
Estimated Authorization Level	78	78	76	86	90	408
Estimated Outlays	33	57	66	76	81	314
Title IV						
Water Resources Infrastructure						
Estimated Authorization Level	787	803	820	838	857	4,105
Estimated Outlays	315	557	687	780	798	3,137
Other Provisions						
Estimated Authorization Level	5	1	*	*	1	9
Estimated Outlays	3	3	1	*	1	8
Total Changes[a]						
Estimated Authorization Level	870	882	897	925	949	4,422
Estimated Outlays	351	617	754	857	880	3,459

Note: Components may not sum to totals because of rounding. * = less than $500,000.
[a] CBO estimates that spending on authorized projects would continue after 2018 and total $4.7 billion over the 2019–2023 period.

Basis of estimate: For this estimate, CBO assumes that H.R. 3080 will be enacted early in 2014 and that the necessary amounts will be appropriated for each fiscal year. Estimates of amounts necessary to implement the bill are based on information from the Corps of Engineers, and outlays are estimated based on historical spending patterns for similar projects.

Title I—Program Reforms and Streamlining

CBO estimates that implementing title I would cost $314 million over the 2014–2018 period, assuming appropriation of the necessary amounts.

Title I would direct the Corps to establish a pilot program to enter into partnerships with nonfederal entities to construct 15 water infrastructure projects. Those projects would be selected by the Corps to improve coastal harbors and navigation; to reduce hurricane, storm, and flood damage; and to restore aquatic ecosystems. Under the partnerships, nonfederal entities would manage the construction, financing, and design of those projects according to plans approved by the Corps. However, under title I, the Corps could not enter into any such partnerships until the necessary amounts to complete those projects have been appropriated. Based on information provided by the Corps on the cost of projects that could meet the selection criteria in the bill, CBO estimates that federal costs would total $50 million over the 2014–2018 period, assuming appropriation of necessary amounts.

Title 1 also would direct the Corps to establish federal guidelines for ensuring the safety of levees and would authorize the Corps, upon request, to enter into agreements with the state or local governments to provide planning assistance and technical expertise to improve levee safety. Based on information provided by the Corps on federal costs to develop guidelines and provide such assistance and assuming appropriation of necessary amounts, CBO estimates that the program would cost $61 million over the 2014–2018 period.

Title I would increase discretionary costs because it would expand and clarify the Corps' existing authorities to carry out certain activities. CBO estimates that those costs would total $193 million over the 2014–2018 period. Those activities include:

- Controlling aquatic invasive species in the nation's navigable waters;
- Improving fish habitat in areas where the Corps' projects are near fish hatcheries;
- Streamlining environmental reviews and coordinating with other federal agencies to quickly resolve environmental issues that affect water resources projects;
- Crediting nonfederal project sponsors with in-kind contributions above their cost-share requirement or prior to finalizing a project cooperation agreement; and
- Renewing the Corps' authority to assist Indian tribes with planning and technical expertise for constructing water resources projects.

Finally, title I also would cost $10 million to implement a variety of specified studies and management initiations.

Title IV—Water Resources Infrastructure

CBO estimates that implementing title IV would cost about $3.1 billion over the 2014–2018 period, assuming appropriation of the necessary amounts.

Title IV would authorize the Corps to construct 23 new projects that are designed to improve the nation's navigation system, strengthen flood-risk management, and restore the environment.

The six largest projects would have a total estimated cost of $8.8 billion, with the federal share of those costs totaling about $5.3 billion. CBO estimates that $2.1 billion of those costs would be incurred over the 2014–2018 period. Those projects are:

- Mid-Chesapeake Bay Island Ecosystem Restoration Project to restore wetlands in Maryland;
- Louisiana Coastal Area Ecosystem Restoration, including six separable elements to restore shoreline and swamp ecosystems and reduce marsh degradation;
- American River Watershed Common Features project to reduce risk from floods in the Natomas Basin near Sacramento, California;
- Mississippi Coastal Improvement Program to reduce risks from hurricanes, storms, and floods;
- Fargo-Moorhead Metropolitan area in Minnesota and North Dakota to reduce risks from floods; and
- Sabine Neches Waterway in southwest Texas and southeast Louisiana to improve navigation.

Based on information from the Corps, CBO estimates that construction costs for the other 17 projects would total about $1 billion over the next five years.

Other provisions

H.R. 3080 would direct the Corps to implement changes to navigation projects on the Inland Waterway system aimed at improving delivery times and reducing cost overruns. The bill also would require the Corps to evaluate the efficiency of fuel tax collections on the nation's waterways that are deposited into the Inland Water-

ways Trust Fund (IWTF), evaluate alternative approaches for increasing collections to the fund, and study the use of tax-exempt bonds to fund inland waterways projects. Based on information from the Corps, CBO estimates that implementing those provisions would cost $7 million over the 2014–2018 period.

H.R. 3080 also would aim to clear project backlogs by directing the Corps to identify and publish in the *Federal Register* inactive projects authorized prior to enactment of the Water Resources Development Act of 2007. The bill defines projects as inactive if construction has not commenced or if funds were not provided for a project in the five years prior to July 1, 2013. Six months after being listed in the *Federal Register,* those projects would be automatically deauthorized unless a nonfederal sponsor provides funding to complete the project. Also, to prevent future backlogs, projects authorized in H.R. 3080 would be automatically deauthorized if no funds have been appropriated for those projects after seven years. Based on information from the Corps, CBO estimates that the provision would cost around $500,000 to implement over the 2014–2018 period.

The bill would withdraw the authorization for 13 Corps projects originally authorized before 1964. Information from the Corps indicates that those projects are complete and no additional construction is planned; therefore, CBO expects that deauthorizing them would not have a budget impact.

Finally, H.R. 3080 would direct the Corps to prioritize navigation projects funded with appropriations from the Harbor Maintenance Trust Fund (HMTF) based on regional and national needs associated with the nation's harbors. The bill also would establish targets for appropriations that would be equal to an increasing percentage of annual revenues and interest credited to the fund. Over the past five years, appropriations from the HMTF have averaged around $800 million a year—or about $700 million a year less than the revenues and interest credited to the fund. However, because current law authorizes the appropriation of whatever sums as are necessary from the HMTF, CBO estimates that this provision would not increase the amounts authorized to be appropriated from the HMTF.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 3080 contains no intergovernmental or private-sector mandates as defined in UMRA. Several provisions, including those that allow nonfederal partners more flexibility and authority to complete water projects and those that authorize the Cherokee Nation to build hydroelectric facilities, would benefit state, local, and tribal governments. Those new authorities could result in increased spending by public entities, but those expenditures would be the result of voluntary actions and not intergovernmental mandates.

Previous CBO estimate: On April 17, 2013, CBO transmitted a cost estimate for a version of S. 601, the Water Resources Development Act of 2013, that was provided to CBO by the Senate Committee on Environment and Public Works on April 12, 2013.

CBO estimated that implementing S. 601 would cost $5.7 billion over the 2014–2018 period. Significant differences between H.R. 3080 and S. 601 are highlighted below:

• H.R. 3080 would authorize four new projects that would not be authorized by S. 601.

• Both H.R. 3080 and S. 601 would authorize the appropriation of more than $1 billion for the Olmsted navigation project in Illinois and Kentucky. The cost estimate for S. 601 that CBO prepared in April 2013 included the cost of this authorization. However, on October 17, 2013, an increase in the authorized cost for the Olmsted project was enacted by Public Law 113–46. As a result, CBO did not include any additional authorization cost for the Olmsted project in the cost estimate for H.R. 3080.

• S. 601 would authorize the Corps to establish grant programs to assist local and state governments with levee safety; CBO estimates that program would cost $230 million over the 2014–2018 period. H.R. 3080 would authorize the Corps to provide technical and planning assistance but does not include grants to provide financial assistance to state and local governments. CBO estimates that this provision would cost $50 million over the 2014–2018 period.

• S. 601 includes a loan guarantee program for state and local governments and certain nongovernmental entities to complete water infrastructure projects that is not included in H.R. 3080. CBO estimates that loan guarantee program would cost $40 million over the 2014–2018 period.

Estimate prepared by: Federal Costs: Aurora Swanson; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to authorize the key missions of the Corps of Engineers, including developing, maintaining, and supporting the Nation's economically vital waterway infrastructure and supporting effective and targeted flood protection and environmental restoration needs. Additionally, H.R. 3080 is intended to cut federal red tape and bureaucracy, accelerate the project delivery process, promote fiscal responsibility, and strengthen our water transportation networks to promote competiveness, prosperity, and economic growth. Finally, WRRDA will make major reforms to increase transparency, accountability, and congressional oversight in reviewing and prioritizing future water resources development activities.

ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee finds that no provision of H.R. 3080 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee estimates that enacting H.R. 3080 specifically directs the completion of a specific rule making within the meaning of section 551 of title 5, United States Code. Section 103 of H.R. 3080 requires the Corps of Engineers to carry out a rulemaking regarding environmental streamlining of water resources development feasibility studies.

FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 3080 does not preempt any state, local, or tribal law. H.R. 3080 preserves the rights and permitting authorities of states.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation, though the Inland Waterways Users Board, as created in the Water Resources Development Act of 1986, under Section 212 of H.R. 3080 has to comply with the Federal Advisory Committee Act.

APPLICABILITY OF LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

TITLE I—PROGRAM REFORMS AND STREAMLINING

Section 101. Vertical integration and acceleration of studies

This section limits Corps of Engineers feasibility studies to 3 years and $3 million in federal costs per feasibility study. It also

requires District, Division, and Headquarters personnel to concurrently conduct reviews of a feasibility study. For any feasibility study not complete after 3 years, upon notification of the non-federal project sponsor and Congress, the Secretary of the Army may take up to one additional year to complete the feasibility study. If the feasibility study is still not complete, authorization for the feasibility study is terminated.

The Committee has been concerned about the length of time it often takes for the Corps of Engineers to complete its feasibility studies. While there are several reasons studies can sometimes take 15 years or more, the Committee believes that the time can be shortened by setting the deadlines established in this legislation. The schedule set by this section closely follows the one which the Corps is working to implement administratively. The Committee believes that setting an aggressive schedule in statute will increase the likelihood that necessary effort and resources will be provided so that feasibility studies will be completed in 3 years after the date of a feasibility cost-sharing agreement with a non-federal sponsor.

Section 102. Expediting the evaluation and processing of permits

This section provides permanent authority for the Corps of Engineers to accept funds from non-federal public interests to expedite the processing of permits within the regulatory program of the Corps of Engineers. Additionally, this section allows public utility companies to participate in the program. Finally, this section directs the Secretary to ensure that the use of the authority does not slow down the permit processing time of applicants that do not participate in the section 214 program.

According to testimony presented to the Committee, more than $220 billion in annual economic investment is directly related to activities associated with the Corps of Engineers regulatory program, specifically, decisions reached under section 404 of the Clean Water Act. Currently, not every Corps of Engineers District utilizes the section 214 program. By authorizing a permanent program, the Committee provides direction and encourages each District to participate in the section 214 program and ensure regulatory decisions are reached in a timely manner. The Committee expects that when funds are offered by an entity under this section, the Secretary will accept and utilize those funds in an expeditious manner.

Section 103. Environmental streamlining

This section accelerates Corps of Engineers studies and reviews by requiring that the Secretary of the Army hold the lead role in facilitating the environmental review process; creates opportunities for non-federal sponsors to assume greater responsibilities in protecting public health, safety, and the environment; and authorizes deadlines for all agencies providing materials and comments for studies and reviews.

Section 103(b) applies to water resources project studies carried out pursuant to section 905 of the Water Resources Development Act of 1986. This section is not intended to apply to the Corps of Engineers regulatory authorities, including those related to section 404 of the Clean Water Act or section 10 of the Rivers and Harbors Act of 1899, for other non-Corps of Engineers infrastructure

projects. For example, if a pipeline company was pursuing a project to construct or expand a pipeline to transport energy products, and that pipeline project, because its proposed route was over navigable water, would require a permit under the Clean Water Act, nothing in this section would affect the regulatory review undertaken by the Corps as it relates to such project.

In this section, non-federal interests are meant to be inclusive in nature, and River Basin Commissions should be considered as a non-federal interest as it pertains to this section.

Section 104. Consolidation of studies

This section repeals requirements that the Corps of Engineers conduct a reconnaissance study prior to initiating a feasibility study. It creates an accelerated process that allows non-federal project sponsors and the Corps of Engineers to proceed directly to the feasibility study.

While repealing the requirement that the Corps of Engineers carry out reconnaissance studies and produce a reconnaissance report, some of the activities prescribed by Section 905(b) of the Water Resources Development of 1986, as amended, may be carried out at the beginning of the feasibility study process as required under section 101 of this Act. At any point during a feasibility study, the Secretary may terminate the study when it is clear that a project in the public interest is not possible for technical, legal, or financial reasons.

Section 105. Removal of duplicative analyses

This section repeals a requirement that the Corps of Engineers re-evaluate cost estimates immediately after initial cost estimates have been completed.

While the Committee applauds the Corps of Engineers for centuries of planning, constructing, and operating and maintaining projects that are integral to the Nation's economic security, implementation of section 911 of the Water Resources Development Act of 1986 has led to unnecessary and duplicative reviews. Value engineering is a useful tool in carrying out water resources development projects, however, requiring the analysis of cost estimates immediately after costs have been initially estimated is counter-productive. By repealing section 911, the Committee intends the Corps of Engineers to continue to apply value engineering techniques to projects, but to apply them in consultation with contractors immediately prior to or after the project has initiated construction.

Section 106. Expediting approval of modifications and alterations of project by non-federal interests

This section requires the Secretary of the Army to develop a 45-day benchmark for reviewing and processing applications from non-federal entities to modify or improve eligible federal water resources projects, and a 180-day benchmark for those applications on more complicated project modifications.

The Committee has heard from numerous stakeholders regarding critiques of Corps of Engineers implementation of section 14 of the Rivers and Harbors Appropriation Act of 1899, commonly referred to as "section 408" activities. While the Corps of Engineers should continue to make determinations on modifications of existing fed-

eral projects pursuant to section 408, the Committee supports benchmarking as a tool for the agency to utilize to reach decisions in a timely manner. The benchmarks in this Act are intended to provide clarity for when determinations should be reached in many instances. If determinations are reached prior to those benchmarks in this Act, it is not the intent of the Committee that the Corps delay the determination until the benchmark is reached. Rather, the Corps should make the non-federal interest aware of the determination as soon as possible within the benchmark windows required by this section.

Section 107. Construction of projects by non-federal interests

This section authorizes non-federal project sponsors to provide funds to the Corps of Engineers to carry out studies and authorizes non-federal project sponsors to carry out authorized federal water resources development projects.

The Committee has heard from numerous stakeholders who have financing in place that is in excess of the non-federal requirements and would like the opportunity to either carry out an authorized activity on their own, or contract with the Corps of Engineers to carry out the work on a federal project, as they can do for flood control projects currently under section 211 of the Water Resources Development Act of 1996. Under current law and practice, it is very difficult for the Corps of Engineers to accept contributed funds to carry out authorized activities if no federal funds have been designated for that activity. This section of this Act is intended to remedy this situation to authorize the Corps of Engineers to accept and expend contributed funds absent federal funds, or to authorize the non-federal interest to carry out the work on a federal project subject to credit or reimbursement.

Since 1986, Congress has authorized this arrangement several times, but only for a limited set of project purposes. By repealing certain sections of law, this section is also intended to harmonize section 204 of the Water Resources Development Act of 1986, section 206 of the Water Resources Development Act of 1992, section 404 of the Water Resources Development Act 1990, and section 211 of the Water Resources Development Act 1996. This section is intended to apply to all congressionally-authorized water resources studies and projects, including those activities typically associated with pre-construction, engineering, and design work, commonly referred to as "P.E.D."

Section 108. Contributions by non-federal interests

This section clarifies the non-federal interests that may contribute funds toward construction of authorized water resources projects. Additionally, this section clarifies that inland navigation facilities and the repair of water resources facilities after an emergency declaration are eligible for contributed funds from non-federal interests.

For example, this section clarifies non-federal interests, as defined by section 221 of the Flood Control Act of 1970 as amended, to participate in the financing of the construction of projects on the inland navigation system. Currently, capital improvement projects are financed 50 percent from the General Fund of the Treasury, and 50 percent from the Inland Waterway Trust Fund. While this

section does not alter that arrangement, it does authorize non-federal interests to finance capital improvement projects on the inland navigation system. For instance, under current law, a state cannot finance the construction of a new lock and dam. This section is intended to authorize that type of financing activity.

Section 109. Contributions by non-federal interests for management of Corps of Engineers inland navigation facilities

This section authorizes the Secretary of the Army to accept non-federal contributions from non-federal entities to operate and maintain the Nation's inland waterways transportation system.

The Corps of Engineers is undergoing a review of those 239 lock projects at 193 sites on the inland navigation system to prioritize operation and maintenance funding needs. Up until several years ago, almost all of the locks in the system were manned 24 hours a day, 7 days a week, 365 days a year. However, due to the age of the system, limited use for some of the projects that are far up on tributaries, and limited operation and maintenance funds, the Corps of Engineers is proposing to limit the operations of certain locks on a District-by-District basis. While the Committee applauds the Corps in their efforts to prioritize projects, the Committee is wary of a lack of coordination amongst Districts when implementing these changes in hours of service and, in a few cases, proposals to limit the hours of service based on inaccurate or limited data.

While changes in hours of service are imminent and in some cases have already been implemented, non-federal interests have expressed a willingness to finance the operations and maintenance of projects where the hours of service have been proposed to be reduced. This section is intended to allow the Corps of Engineers to accept such funds to ensure traffic is not unduly impacted on the inland navigation system.

Section 110. Additional contributions by non-federal interests

This section allows the Secretary to accept funds from a non-federal interest for any authorized water resources development project that meets or exceeds their cost limit as long as the federal share does not increase.

Section 111. Clarification of impacts to other federal facilities

This section clarifies that when a Corps of Engineers project adversely impacts other federal facilities, the Secretary of the Army may accept funds from other federal agencies to address the impacts, including removal, relocation, and reconstruction of such facilities.

For instance, the Committee is aware that the Corps of Engineers' planned Isabella Lake Dam Safety Modification Project will require damage to or demolition of multiple U.S. Forest Service administrative, workshop, and recreation buildings and facilities around the reservoir. Failure to rebuild or relocate these facilities could cause severe economic hardship to the communities in the region. A 1964 memorandum of agreement between the Secretaries of the Army and Agriculture indicates the Corps of Engineers' commitment to replace any Forest Service facilities adversely affected by Corps projects. The 2008 Ancillary Operating Agreement No. 4

for Lake Isabella, California, between the Corps of Engineers Sacramento District Engineer and Sequoia National Forest Supervisor indicates the Corps shall replace recreation and administrative facilities that are impacted by Lake Isabella project activities. However, recently the Corps of Engineers has concluded that it does not have sufficient authority to replace Forest Service facilities impacted by the Lake Isabella project. Therefore, the Committee strongly encourages the Corps of Engineers to explore all available solutions to rebuild or relocate U.S. Forest Service facilities impacted by the Isabella Lake Dam Safety Modification Project.

Section 112. Clarification of previously authorized work

This section clarifies that the Corps of Engineers may carry out measures to improve fish species habitat within the boundaries and downstream of a Corps project that includes a fish hatchery if the Corps is explicitly authorized to compensate for fish losses associated with the project.

The Committee is aware of the confusion surrounding work carried out by the Corps of Engineers related to compliance requirements of other laws outside of the jurisdiction of the Committee. This section is intended to clarify the Corps of Engineers has the authority to carry out work for compliance activities related to the Endangered Species Act.

Section 113. Tribal partnership program

This section authorizes the Corps of Engineers to carry out water-related planning activities and construct water resources development projects that are located primarily within Indian country.

Previous Water Resources Development Acts have authorized individual Tribes to carry out these activities. This section is intended to provide this authority generically so that all Tribes may benefit.

Tribes associated with Corps of Engineers projects have specific needs regarding management of resources. This section is intended to allow Tribes, as sovereign entities, to develop contractual agreements with the federal government to allow for coordinated management of resources and evaluation of the effects of Corps of Engineers management on tribally important issues.

Section 114. Technical corrections

This section corrects two provisions in the Water Resources Development Act of 2007 that have not been properly executed due to unintended interpretations. In previous Water Resources Development Acts, credit was authorized for individual projects. However, many of these provisions had been written differently over time, though the intent was the same. In an effort to harmonize those activities for which credit could be authorized, Congress requested technical assistance from the Corps of Engineers in drafting a credit provision that could be applied to all Corps projects. While the language provided by the Corps of Engineers was part of the Water Resources Development Act of 2007, the Corps then came back to Congress saying that specific section of law could not be executed. This provision ensures non-federal project sponsors receive credit for contributions to carrying out federal water re-

sources development projects that are in excess of non-federal cost-sharing requirements. This section also provides for in-kind credit for work done by the non-federal sponsor prior to execution of a project cooperation agreement with the Corps of Engineers for work done prior to the enactment of this Act.

This section explicitly authorizes the Secretary to enter into a written agreement with the non-federal interest to credit certain costs and in-kind contributions against the non-federal share of cost of the project.

The Committee typically receives numerous requests for project-specific credit during the development of this Act. While requests for credit typically have received favorable consideration in this legislation and prior water resources legislation, the Committee has concluded that a general provision allowing credit under specified conditions would minimize the need for future project-specific provisions and, at the same time, assure consistency in considering future proposals for credit.

The Committee is becoming increasingly wary of non-federal interests advocating for credit for work not captured by a cost-sharing agreement or a partnership agreement. The Committee would strongly encourage non-federal interests to sign cost-sharing agreements and partnership agreements prior to carrying out any work related to a proposed project, otherwise such work will not be eligible for credit.

Section 115. Water infrastructure public-private partnership pilot program

This section authorizes the Secretary of the Army to enter into agreements with non-federal interests, including private entities, to finance construction of at least 15 authorized water resources development projects.

The definition of water resources development projects is intended to cover Corps of Engineers activities related to construction and major rehabilitation projects.

Section 116. Annual report to Congress

This section requires the Secretary of the Army to annually publish a notice in the *Federal Register* requesting proposals, from non-federal interests, for project authorizations, studies, and modifications to existing Corps of Engineers projects. Further, it requires the Secretary submit to Congress and make publicly available an annual report of those activities that are related to the missions of the Corps of Engineers and require specific authorization by law. Additionally, this section requires the Secretary to certify the proposals included in the annual report meet the criteria established by Congress in this section.

The section requires that information be provided about each proposal that is in the annual report submitted to the Congress. This information is meant to help the Committee and the Congress set priorities regarding which potential studies, projects, and modifications will receive authorizations. The Secretary is expected to make use of information that is readily available and is not expected to begin a detailed and time-consuming analysis for additional information.

During Committee consideration of H.R. 3080, the Manager's Amendment contained a provision to require the Corps of Engineers submit to Congress an appendix containing description of those projects requested by non-federal interests that were not included in the annual report. The activities to be included in the appendix provide an additional layer of transparency that will allow Congress to review all non-federal interest submittals to the Corps of Engineers. This will allow Congress to receive a more complete spectrum of potential project studies, authorizations, and modifications. Activities described in the appendix are not subject to authorization from Congress.

Section 117. Actions to be taken in conjunction with the President's annual budget submission to Congress

This section requires the Corps of Engineers, as part of the President's annual budget process, to identify and recommend to Congress water resources projects that should receive the fully authorized amount of funding in each of the current and succeeding four fiscal years, assuming an annual construction budget of $2 billion. This information is meant to inform the Congress on which projects potentially could be fully funded in a single fiscal year making it possible to construct a project using the most efficient construction schedule. This section also requires the Corps of Engineers, as part of the President's annual budget process, to report to Congress on the prioritization of federal actions to be carried out during the next fiscal year to mitigate for fish and wildlife losses as a result of Corps of Engineers projects in the Missouri River Basin.

Section 118. Hurricane and storm damage reduction study

This section requires the Secretary of the Army to make specific project recommendations to Congress as a result of the study funded in the Disaster Relief Appropriations Act of 2013.

Section 119. Non-federal plans to provide additional flood risk reduction

This section authorizes the Secretary of the Army to carry out a locally preferred plan at non-federal expense if that project increment provides a higher level of flood protection and is economically justified, technically achievable, and environmentally acceptable.

In certain cases, non-federal project sponsors would prefer the Corps of Engineers carry out a locally-preferred plan that is more robust than that recommended in a Chief's Report. In current practice, the Corps of Engineers will carry out a more robust locally preferred plan at the request of the non-federal interest. This provision is intended to merely codify current practice as it relates to flood damage reduction projects authorized in this Act, and as such, is not intended to affect current law with respect to establishing cost share for an authorized project.

Section 120. Review of emergency response authorities

This section authorizes the Secretary of the Army to evaluate alternative levels of restoration for federal flood damage reduction projects that are damaged after storm events.

Under Public Law 84–99, section 5 of the 1941 Act, the Corps of Engineers has the authority to repair or restore certain qualifying

flood damage reduction projects that have been impacted by storm events, and may strengthen, raise, extend, or otherwise modify these projects at the discretion of the Secretary of the Army. Typically, the Corps of Engineers will, at a minimum, repair these projects to their pre-event condition. This section is intended for the Corps of Engineers to review their historic and current practices in implementing Public Law 84–99 activities, including activities related to economically feasible, non-structural alternatives.

Section 121. Emergency communication of risk

This section authorizes the Secretary of the Army to establish procedures for notifying the public and affected governments and Indian tribes of flood risk when precipitation and runoff in a river basin presents a risk to life and property.

Following the flood events on the Missouri River and Mississippi River in 2011, concern was raised by Members of Congress related to the lack of communication from the Corps of Engineers to non-federal interests during these events. While the duration and volume of these events are difficult to predict and conditions are variable, the Committee has an expectation of improved communications from the Corps of Engineers during subsequent storm events.

Section 122. Improvements to the National Dam Safety Program act

This section authorizes technical and clarifying changes to the Federal Emergency Management Agency's National Dam Safety Program.

Section 123. Restricted areas at Corps of Engineers dams

This section would prohibit the Secretary of the Army from installing permanent barriers or restricting public access in the vicinity of the 10 dams on the Cumberland River in Kentucky and Tennessee.

Section 124. Levee safety

This section amends the Planning Assistance to States program to include state and other non-federal levee safety programs as an eligible activity and authorizes the Corps of Engineers to provide technical assistance to states and other appropriate non-federal interests that voluntarily participate in levee safety activities.

Section 125. Vegetation on levees

This section requires the Secretary of the Army to re-issue regulations regarding vegetation on levees that take into consideration and incorporate regional characteristics, habitat for species of concern, and levee performance.

Section 126. Reduction of federal costs

This section authorizes the Corps of Engineers to place dredged material in nearby shoreline systems to protect coastal infrastructure and reduce emergency repair costs.

Section 127. Advanced modeling technologies

This section encourages the Corps of Engineers to utilize industry best modeling practices to expedite project delivery or improve the evaluation of water resources development projects.

Section 128. Enhanced use of electronic commerce in federal procurement

This section requires the Secretary of the Army submit a report to Congress detailing activities carried out by the Corps of Engineers in order to comply with procurement laws related to electronic bidding.

Section 129. Corrosion prevention

This section encourages the Corps of Engineers to incorporate corrosion prevention activities to extend the lifecycle of federal water resources projects.

Section 130. Resilient construction and innovative technology

This section encourages the Corps of Engineers to use durable, resilient, and sustainable materials in carrying out activities related to water resources development projects.

For the purposes of this section, "resilient" means construction methods or materials that allow a project to resist hazards brought on by a major disaster and to continue to provide the primary functions of the project after a major disaster, and reduce the magnitude or duration of a disruptive event to a project.

Section 131. Assessment of water supply in arid regions

This section requires the Secretary of the Army to issue a report on practices, priorities, and authorized purposes at Corps of Engineers reservoirs in arid regions of the United States and their effect on water supply during times of drought.

The intent of this section is to direct the Secretary to look at reservoirs under the jurisdiction of the Secretary in regions typically associated with drought conditions in the West to determine if existing operations and management can be modified to allow for greater capture of stormwater runoff for potential use in water reuse, recycling and groundwater recharge. The Committee believes that the Secretary has some administrative capacity to modify operations to accommodate the capture of stormwater.

Section 132. River Basin Commissions

This section requires that, for every year the President does not request funding for Corps of Engineers activities related to participating in River Basin Commissions, the Secretary of the Army must submit to Congress a justification on the lack of funding and an analysis of the associated impacts.

River Basin Commissions are providing an important role in organization and coordination on watershed level impacts and issues. The funding of the River Basin Commissions is based on joint support from the River basin states and the federal government. The lack of the federal share is resulting in reduced state involvement, which is leading to a loss of important coordination on watershed level water quality and water allocation issues. The Committee impresses upon the Secretary the importance of providing support to the River Basin Commissions that the Congress, through previous Water Resources Development Acts, has directed be accomplished.

Section 133. Sense of Congress regarding water resources development bills

This section re-affirms that Water Resources Development Acts should be considered by Congress every two years.

Section 134. Donald G. Waldon lock and dam

This section provides that it is the Sense of Congress that a lock and dam in Alabama be named after Donald G. Waldon, a former administrator of the Tennessee-Tombigbee Waterway.

Section 135. Aquatic invasive species

This section amends section 104 of the River and Harbor Act of 1958 by adding the removal of aquatic invasive species as an eligible activity under the program for the eradication of noxious aquatic plant growth. The intent of this section is to have the Secretary manage and control aquatic invasive species, including both aquatic plant and animal species.

Section 136. Recreational access

This section clarifies that floating cabins on reservoirs cannot be prohibited by the Corps of Engineers if they meet the United States Coast Guard definition of a recreational vessel.

Section 137. Territories of the United States

This section updates the cost sharing responsibilities for the Corps of Engineers for work performed in American Samoa, Guam, Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

Section 138. Sense of Congress regarding interstate water agreements and compacts

This Sense of Congress emphasizes the role of the Congress, the Corps of Engineers, states, and non-federal interests during interstate disputes over water supply and water management and recognizes the primary responsibility on interstate water agreements and compacts ultimately rests with the states.

TITLE II—NAVIGATION IMPROVEMENTS

Subtitle A—Ports

Section 201. Expanded use of Harbor Maintenance Trust Fund

This section sets target expenditures from the Harbor Maintenance Trust Fund increasing each year so that by fiscal year 2020, and every year thereafter, no less than 80 percent of the funds collected go to operation and maintenance activities. In each year where the target expenditures from the Harbor Maintenance Trust Fund are met, the Secretary of the Army may use up to five percent of the total expenditures on specific expanded uses, to consist of the dredging of berths and the dredging and disposal of contaminated sediments affecting a federal navigation project.

This section is intended to incentivize expenditures out of the Harbor Maintenance Trust Fund. According to a May 2013 estimate by the Congressional Budget Office, if no revisions were to be made to the Harbor Maintenance Trust Fund, in 2020 the fund

would collect $3.1 billion in revenues and interest, leading to a balance in the Harbor Maintenance Trust Fund of $18.9 billion. By incentivizing expenditure through the creation of annual targets, thereby leading to expanded uses of the Harbor Maintenance Trust Fund to those who currently do not benefit, the Committee believes more funds will go to their intended purposes while maintaining flexibility for the Committee on Appropriations to continue to fund other vital programs and activities.

Section 202. Assessment and prioritization of operation and maintenance

This section requires the Secretary of the Army review the operation and maintenance needs of different types of harbors, and to identify the unmet needs in the President's annual budget submission to Congress. To the maximum extent practicable, the Secretary shall make future operation and maintenance expenditures based on an equitable allocation among all harbor types regardless of size and tonnage, based on the review and assessment made by the Secretary. For fiscal years 2015 and 2016, the Secretary of the Army shall allocate 10 percent of the annual Harbor Maintenance Trust Fund expenditures on harbors that have throughput of less than 1 million tons.

Currently, the Corps of Engineers utilizes annual tonnage as the primary metric by which to prioritize harbor maintenance funding. While it is important to prioritize limited funds, the Committee remains concerned that the annual tonnage metric is not an accurate representation of the values provided by the Nation's ports. For instance, some oil and gas fabrication ports on the Gulf Coast see little or no tonnage annually. However, these ports are vital to the economic security of the Nation. Other ports like some in the Northeast, the Gulf States, the Great Lakes, and Pacific Northwest are primarily used for subsistence or commercial fishing and are integral to regional economies.

Another category of critical ports include those essential for the protection of public health and safety, such as those ports that serve as berthing areas for the United States Coast Guard, local police or fire vessels, or serve as critical points of access to service domestic power generation facilities, including nuclear facilities.

Approximately 70 percent of annual Harbor Maintenance Trust Fund expenditures go to the 59 ports that receive the most annual tonnage. Approximately six percent of Harbor Maintenance Trust Fund expenditures go to ports with less than 1 million tons of annual throughput, yet the vast majority of the Nation's ports see less than 1 million tons annually. While the Corps of Engineers carries out the assessment, not less than 10 percent of annual expenditures is to be spent on ports with less than 1 million tons of annual throughput.

For the purposes of section 202, the "Great Lakes" means Lake Superior, Lake Huron, Lake Michigan, Lake Erie, and Lake Ontario. In addition, for the purposes of section 202, the "Great Lakes Navigation System" means all connecting waters between the Great Lakes that are a federal responsibility with respect for operation and maintenance, any navigation features in the Great Lakes that are a federal operation or maintenance responsibility, and

areas of the Saint Lawrence River that are operated or maintained by the government for commercial navigation.

Section 203. Preserving United States harbors

This section authorizes non-federal interests to enter into agreements with the Secretary of the Army to provide the Corps of Engineers with an economic justification in order to receive priority federal operation and maintenance funding for authorized projects. Agreements under this section do not change the Secretary's responsibility to carry out at federal expense the maintenance of federal navigation channels, and nothing in this section is intended to affect the application of section 101 of the Water Resources Development Act of 1986 to harbors that choose not to utilize the authority in this section.

Many ports in the Nation would likely see more traffic if the channels leading to those were dredged on a more consistent basis. However, in many cases, to be eligible for funding from the Harbor Maintenance Trust Fund, they would have to see more than 1 million tons in annual throughput. Yet, those ports are caught in the unenviable situation of not being able to reach the annual tonnage metric since the channels leading to the port have not been dredged consistently. This section is intended to help ports get out of this "Catch-22" scenario created by the Corps of Engineers annual tonnage metric prioritization scheme.

Section 204. Consolidation of deep draft navigation expertise

This section requires the Secretary of the Army to consolidate coastal navigation expertise into one location.

Section 205. Disposal Sites

This section provides the ability for the Secretary of the Army, in concurrence with the Administrator of the Environmental Protection Agency, to reopen the Cape Arundel Disposal site in Maine under a set of specific limitations and a timeline.

Subtitle B—Inland Waterways

Section 211. Definitions

This section defines the terms used in this subtitle.

Section 212. Project delivery process reforms

This section requires the Secretary of the Army, for all capital improvement projects on the inland waterways navigation system, to utilize certified project managers, utilize risk-based cost estimates, evaluate early contractor involvement acquisition procedures, review the use of fully funded contracts or continuing contracts, identify best management practices to speed project delivery, and develop a portfolio of standard design for inland navigation locks. This section also augments the duties of the Inland Waterways Users Board and requires the Secretary, in coordination with the Board, to submit to Congress a 20-year investment strategy for the Nation's inland and intracoastal waterways.

Section 213. Efficiency of revenue collection

This section requires the Comptroller General of the United States to prepare an evaluation of current method of collection of the fuel taxes for the Inland Waterways Trust Fund and to review alternative methods of collection.

Section 214. Inland waterways revenue studies

This section requires the Secretary of the Army, in coordination with the Secretary of the Treasury, to carry out a study on the feasibility of authorizing the issuance of federally tax-exempt bonds secured against available proceeds in the Inland Waterways Trust Fund. This section also requires the Secretary of the Army to evaluate alternative revenue options, including those recommended by the Inland Waterways Users Board, for financing inland waterways projects.

Section 215. Inland waterways stakeholder roundtable

This section requires the Secretary of the Army to conduct a meeting of inland waterway stakeholders to review and evaluate alternatives to address the financial needs of the system.

Section 216. Preserving the Inland Waterway Trust Fund

This section authorizes a change in cost-share for the inland navigation project in the vicinity of Olmsted, Illinois, to provide that for each fiscal year after the date of enactment, 25 percent of the cost of construction for the Olmsted Project shall be paid from the Inland Waterways Trust Fund; provides a sense of Congress that expenditures for the Olmsted project should be not less than $150 million annually until completion; and requires that for any inland navigation project that costs more than $500 million, the Secretary shall submit to Congress an annual financial plan for the project.

The Committee remains concerned over the pace of progress at Olmsted Lock and Dam on the Ohio River. However, since this project ultimately impacts the pace of other projects in need of recapitalization, the Committee recommends a change in cost-share for the project and is optimistic this will speed the pace of other projects on the inland navigation system.

Section 217. Public comment on lock operations

This section requires the Secretary of the Army to provide a 90 day notice and public comment period before carrying out any modification to the operation of a navigation lock on the inland system.

Section 218. Assessment of operation and maintenance needs of the atlantic intracoastal Waterway and Gulf Intracoastal Waterway

This section requires the Secretary of the Army to conduct an assessment of the operation and maintenance needs of the Atlantic Intracoastal Waterway System and the Gulf Intracoastal Waterway system.

Section 219. Upper Mississippi River protection

This section directs the Secretary of the Army to assess the implications of changing the operations of a navigation lock on the

Upper Mississippi River System. Under subsection (b), the Secretary must make such a determination within one year of the date of enactment of this section, and may make such a determination based on the information provided by the study authorized by subsection (a) or any public or private source made available to the Secretary, including information provided by the State of Minnesota.

The criteria set forth in this section apply solely to the Upper St. Anthony Falls Lock and Dam. The Corps of Engineers shall not use these criteria to close or limit the hours of operation of any other lock on the federal waterways.

As mentioned in previous sections of this report, tonnage is an arbitrary metric and should not be used as the sole justification in other instances when addressing lock closures for any reason. The concerns at Upper St. Anthony Falls Lock and Dam are unique, not representative of other projects on the Nation's inland navigation system, and should not be used as precedent for agency determinations on other projects.

Section 220. Corps of Engineers lock and dam energy development

This section encourages the development of hydropower generation capacity by non-federal interests at an existing Corps of Engineers lock and dam facility. Any development of hydropower generation capacity developed under this section would be financed entirely by the non-federal interests.

TITLE III—DEAUTHORIZATIONS AND BACKLOG PREVENTION

Section 301. Deauthorization of inactive projects

This section establishes a process that will lead to the deauthorization of old inactive projects valued at a minimum of $12 billion. It requires the Secretary of the Army submit a list of inactive projects to the Congress that were authorized prior to the Water Resources Development Act of 2007, have not begun construction, or, if they have begun construction, have not received any funds, federal or non-federal, in the past 5 years. The Secretary shall identify projects from the oldest authorization to the newest until the total federal cost of the projects on the list totals $12 billion. After a 180 day period of congressional review, the projects on the list are deauthorized.

This Section is not intended to apply to project studies, or any activities authorized in the Water Resources Development Act of 2007.

Traditionally, Water Resources Development Acts contained lists of projects to be deauthorized. However, the Corps of Engineers has seemingly lost track of inactive projects. While the Committee applauds devoting scarce funds and human resources to active projects, the Committee expects the Corps of Engineers to be able to readily identify those projects subject to this section.

Section 302. Inventory and expedited disposition of excess properties

This section requires the Secretary of the Army to complete an assessment of property under the control of the Corps of Engineers within one year and to identify and inventory property that is un-

necessary for project needs. The Secretary is further directed to provide the inventory to the Administrator of General Services. The Corps of Engineers should keep property, real or otherwise, that is integral to their primary missions of providing for navigation, flood damage reduction, and aquatic ecosystem restoration.

Section 303. Backlog prevention

This section terminates the authorization for any project or separable element of a project authorized for construction by this Act after 7 years unless construction has been initiated. At the end of the 7-year period, the Secretary must submit to the Committee on Transportation and infrastructure of the House and the Committee on Environment and Public Works of the Senate a report that identifies the projects deauthorized by this section. After the expiration of a 12-year period, the Secretary shall submit a report to the committees that identifies any projects for which construction has been initiated but not completed, describes the reasons the projects were not completed, and provides a schedule for the completion of the projects based on expected levels of appropriations.

Section 304. Deauthorizations

This section deauthorizes components of 15 Corps of Engineers projects that had previously been authorized for navigation, flood control, shoreline protection, or public works projects.

Section 305. Land conveyances

This section accomplishes the conveyance of land for two projects, both of which transfer lands that will be used either for inland waterways navigation or other public uses.

TITLE IV—WATER RESOURCES INFRASTRUCTURE

Section 401. Authorization of final feasibility studies

This section authorizes 23 water resources projects that have completed the technical review by the Corps of Engineers and are recommended by the Chief of Engineers. The projects are authorized to be carried out in accordance with the plan, and subject to the conditions, described in the Chief's Reports. Each of the projects has as its primary purpose, one of the following: navigation, hurricane and storm damage risk reduction, flood risk management, environmental restoration.

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

REPLY TO
ATTENTION OF

JUL 22 2011

CEMP-SWD (1105-2-10-a)

SUBJECT: Sabine-Neches Waterway Channel Improvement Project, Southeast Texas and Southwest Louisiana

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on navigation improvements for the Sabine-Neches Waterway (SNWW) in Southeast Texas and Southwest Louisiana. It is accompanied by the report of the Galveston District Engineer and the Southwestern Division Engineer. These reports are in response to a Congressional resolution adopted on 5 June 1997 by the Senate Committee on Environment and Public Works. The committee requested a review of the reports on the SNWW and other pertinent reports to determine the feasibility of modifying the channels serving the ports of Beaumont, Port Arthur, and Orange, Texas in the interest of commercial navigation. Pre-construction engineering and design activities for this proposed project, if funded, would be continued under this authority. The existing SNWW 40-Foot Navigation Project was authorized by the River and Harbor Act of 1962 and construction of the 40-foot project was completed in 1968.

2. The report recommends a project that will contribute to the economic efficiency of commercial navigation. The SNWW is a system of navigation channels that have been superimposed upon the Sabine-Neches estuary in Texas and Louisiana. The study evaluated navigation and environmental problems and opportunities for the entire estuarine system, which is defined as the study area. The study area encompasses a 2,000-square-mile area, which contains the smaller project area that includes those areas that would be directly affected by construction of the project (i.e. the dredging footprint, existing and proposed placement areas, and mitigation areas). The study area includes the following water bodies and adjacent coastal wetlands: Sabine Lake and adjacent marshes in Texas and Louisiana, the Neches River channel up to the new Neches River Saltwater Barrier, the Sabine River channel to the Sabine Island Wildlife Management Area, the GIWW west to Star Bayou, the GIWW east to Gum Cove Ridge, the Gulf shoreline extending to 10 miles either side of Sabine Pass, and 35 miles offshore into the Gulf of Mexico.

3. The reporting officers recommend the Locally Preferred Plan (LPP) to modify the existing SNWW. The LPP consists of the following improvements:

a. Deepen the SNWW from 40 to 48 feet and the offshore channel from 42 to 50 feet in depth from offshore to the Port of Beaumont Turning Basin;

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b. Extend the 50-foot deep offshore channel by 13.2 miles to deep water in the Gulf, increasing the total length of channel from 64 to 77 miles;

c. Taper and mark the Sabine Bank Channel from 800 feet wide to 700 feet wide;

d. Deepen and widen Taylor Bayou channels and turning basins;

e. Ease selected bends on the Sabine-Neches Canal and Neches River Channel;

f. Construct new and enlarge/deepen existing turning and anchorage basins on the Neches River Channel.

Dredged material placement for this project would be provided in accordance with the Dredged Material Management Plan (DMMP) developed during the study. Deepening of the SNWW would generate approximately 98 million cubic yards of new work material and 650 million cubic yards of maintenance material over the 50-year period of economic evaluation. Material from the extension channel, Sabine Bank Channel, Sabine Pass Outer Bar Channel, and Sabine Pass Jetty Channel would be placed offshore, either in existing placement areas or newly designated sites. Material from the inland reaches would be placed in existing confined, upland placement sites adjacent to each reach. Expansion of some existing upland sites would also be required. Some dredged material from the inland reaches would be used beneficially to restore large degraded marsh areas on the Neches River and nourish the Gulf shoreline at Texas and Louisiana Points.

4. As discussed further in the report of the Galveston District Engineer and the Southwestern Division Engineer, the recommended plan includes preliminary conclusions that 41 pipelines located within the SNWW Channel must be relocated and are classified as utility relocations for which the non-Federal sponsor must perform or assure performance. In accordance with Section 101(a)(4) of the Water Resources Development Act (WRDA) of 1986, as amended, one-half of the cost of each such relocation will be borne by the owner of the facility being relocated and one-half of the cost of each such relocation will be borne by the non-Federal sponsor. All relocations, including utility relocations, are to be accomplished at no cost to the Federal Government. The recommended plan also includes preliminary conclusions that there are an additional 5 pipelines that must be removed but not replaced. The Government, in coordination with the non-Federal sponsor, will conduct further analysis and finalize its conclusions during the period of pre-construction engineering and design.

5. Environmental benefits of the Neches River beneficial use (BU) features would offset all environmental impacts in the state of Texas and on all Federal lands, by restoring 2,853 acres of emergent marsh, improving 871 acres of shallow water habitat, and nourishing 1,234 acres of existing marsh in Texas. After consideration of project impacts in Texas and on Federal lands in the project area, the Neches River BU features will provide a net increase of 316 Average

Annual Habitat Units (AAHUs). The Gulf Shore BU features would offset minor erosion impacts to Gulf shorelines in Texas and Louisiana by periodically nourishing three miles of shoreline in each state. Unavoidable environmental impacts on non-Federal lands in Louisiana would be fully compensated by restoring 2,783 acres of emergent marsh, improving 957 acres of shallow water habitat, and stabilizing and nourishing 4,355 acres of existing marsh. These actions will provide 1,181 AAHUs to compensate for a loss of 1,159 AAHUs in Louisiana. Post-construction monitoring and adaptive management plans for the BU features and mitigation areas will be required until such time that the following performance criteria are met, as determined by the Division Commander: (1) each mitigation site and the Neches River BU features have an aerial coverage of 60 to 80 percent native, typical, emergent marsh vegetation; and invasive noxious and/or exotic plant species comprise less than 4 percent of mitigation site marsh coverage; (2) Texas Point BU feature shows a decreased erosion rate averaging less than 44 ft/yr after two disposal events; and (3) Louisiana Point BU feature shows an accretion rate averaging more than 1.2 ft/yr after two disposal events.

6. The recommended navigation project is not the National Economic Development (NED) plan. The recommended SNWW improvement is shallower and will be less costly than the NED plan and is the LPP supported by the non-Federal sponsor. The Sabine-Neches Navigation District is the non-Federal cost sharing sponsor.

7. Project Cost Breakdown Based on October 2010 Prices.

a. Total First Cost of Constructing Project. The estimated total first cost of constructing the project is $1,053,000,000 which includes the cost of constructing the general navigation features and the value of lands, easements, rights-of-way and relocations estimated as follows: $894,500,000 for channel modification and dredged material placement; $79,000,000 for environmental mitigation; $52,800,000 for bridge fender modifications; $1,270,000 Federal cost for cultural resources; $774,000 for additional Corps administrative costs; $3,690,000 for the value of lands, easements, rights-of-way, and relocations (except utility relocations) provided by the non-Federal sponsor; and $21,300,000 for the one-half of the cost of utility relocations borne by the non-Federal sponsor pursuant to Section 101(a)(4) of WRDA 1986, as amended.

b. Estimated Federal and non-Federal Shares. The estimated Federal and non-Federal shares of the total first cost of constructing the project are $707,000,000 and $345,990,000, respectively, as apportioned in accordance with the cost sharing provisions of Section 101 of WRDA 1986, as amended, as follows:

(1) The costs for the deepening of the channel from 40 to 45 feet will be shared at the rate of 75 percent by the Government and 25 percent by the non-Federal sponsor. Accordingly, the Federal and non-Federal shares of the estimated $772,000,000 cost in this zone will be approximately $579,000,000 and $193,000,000, respectively, with the difference of $1,270,000 being the Federal cost for cultural resources.

(2) The costs for the deepening of the channel from 45 to 48 feet will be shared at the rate of 50 percent by the Government and 50 percent by the non-Federal sponsor. Accordingly, the Federal and non-Federal shares of the estimated $256,000,000 cost in this zone will be approximately $128,000,000 each.

(3) In addition to payment by the non-Federal sponsor of its share of costs as estimated and addressed in sub-paragraphs (1) and (2) above, the estimated non-Federal share of $345,990,000 includes $3,690,000 for the estimated value of lands, easements, rights-of-way, and relocations (except utility relocations) that it must provide pursuant to Section 101(a)(3) of WRDA 1986, as amended, and $21,300,000 for one-half of the estimated costs of utility relocations borne by the non-Federal sponsor pursuant to Section 101(a)(4) of WRDA 1986, as amended.

c. Additional 10 Percent Payment. In addition to the non-Federal sponsor's estimated share of the total first cost of constructing the project in the amount of $345,990,000, pursuant to Section 101(a)(2) of WRDA 1986, as amended, the non-Federal sponsor must pay an additional 10 percent of the cost of the general navigation features of the project in cash over a period not to exceed 30 years, with interest. The value of lands, easements, rights-of-way, and relocations provided by the non-Federal sponsor under Section 101(a)(3) of WRDA 1986, as amended, and the costs of utility relocations borne by the non-Federal sponsor under Section 101(a)(4) of WRDA 1986, as amended, will be credited toward this payment.

d. Operations and Maintenance Costs. The additional annual cost of operation and maintenance for this recommended plan is estimated at $32,800,000. In accordance with Section 101(b) of WRDA 1986, the non-Federal sponsor will be responsible for an amount equal to 50 percent of the excess of the cost of the operation and maintenance of the project over the cost which would be incurred for operation and maintenance of the project if the project had a depth of 45 feet. The excess annual cost attributable to operation and maintenance for the depth in excess of 45 feet is $12,300,000 with the non-Federal sponsor responsible for $6,150,000.

e. Associated Costs. Estimated total project associated costs of $43,500,000 include $20,700,000 in non-Federal costs associated with dredging of berthing areas and development of other local service facilities; $1,500,000 for navigation aids (a U.S. Coast Guard expense); and $21,300,000 for the one-half of the cost of utility relocations to be borne by the facility owners in accordance with Section 101(a) (4) of WRDA of 1986, as amended.

f. Authorized Project Cost and Section 902 Calculation. The total estimated first cost of the project for the purposes of authorization and calculating the maximum cost of the project pursuant to Section 902 of WRDA 1986, as amended, should include the estimates for general navigation features (GNF) construction costs, the value of lands, easements, and rights-of-way,

the value of relocations provided under Section 101(a)(3) of WRDA 1986, as amended, and the one-half of the costs of utility relocations borne by the non-Federal sponsor for utility relocations under Section 101(a)(4) of WRDA 1986, as amended. Accordingly, as set forth in paragraph 7.a. above, based on October 2010 prices, the estimated total first cost of the project for these purposes is $1,053,000,000 with a Federal share of $707,000,000 and a non-Federal share of $345,990,000.

8. Based on October 2010 price levels, a discount rate of 4 1/8 percent, and a 50-year period of economic analysis, the project average annual benefits and costs for the SNWW improvements are estimated at $115,400,000 and $90,600,000, respectively, with a resulting net benefit of $24,800,000 and a benefit-to-cost ratio of 1.3 to 1.

9. In accordance with the Corps Engineering Circular on review of decision documents, all technical, engineering, and scientific work underwent an open, dynamic, and vigorous review process to ensure technical quality. This included an Agency Technical Review (ATR), an Independent External Peer Review (IEPR), and a Corps Headquarters policy and legal review. All concerns of the ATR have been addressed and incorporated into the final report. The IEPR was completed by Battelle Memorial Institute. A total of 18 comments were documented. The comments were related to plan formulation, vessel fleet analysis, benefits, dredging and sedimentation, risk and uncertainty, and impact of salinity changes. In response, sections in the main report and EIS were expanded to include additional information. The final IEPR Report was completed in June 2010 with all comments addressed sufficiently.

10. Washington level review indicates that the plan recommended by the reporting officers is technically sound, environmentally and socially acceptable, and on the basis of congressional directives, economically justified. The plan complies with all essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Land Related Resources Implementation Studies, except for the measurement of the National Economic Benefits which was modified by Section 6009 of the ESAA of 2005. Further, the recommended plan complies with other administration and legislative policies and guidelines. The views of interested parties, including Federal, State and local agencies, have been considered.

11. I concur in the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that navigation improvements for the Sabine-Neches Waterway be authorized in accordance with the reporting officer's recommended plan at an estimated cost of $1,053,000,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My recommendation is subject to cost sharing, financing, and other applicable requirements of Federal and State laws and policies, including Section 101 of WRDA 1986, as amended. This recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and policies including that the non-Federal sponsor must agree with the following requirements prior to project implementation.

a. Provide 10 percent of the total cost of construction of the GNFs attributable to dredging to a depth not in excess of 20 feet; plus 25 percent of the total cost of construction of the GNFs attributable to dredging to a depth in excess of 20 feet but not in excess of 45 feet; plus 50 percent of the total cost of construction of the GNFs attributable to dredging to a depth in excess of 45 feet as further specified below:

(1) Provide 25 percent of design costs allocated by the Government to commercial navigation 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 commercial navigation;

(3) Provide, during construction, any additional funds necessary to make its total contribution for commercial navigation equal to 10 percent of the total cost of construction of the GNFs attributable to dredging to a depth not in excess of 20 feet; plus 25 percent of the total cost of construction of the GNFs attributable to dredging to a depth in excess of 20 feet but not in excess of 45 feet; plus 50 percent of the total cost of construction of the GNFs attributable to dredging to a depth in excess of 45 feet;

b. Provide all lands, easements, and rights-of way (LER), including those necessary for the borrowing of material and the disposal of dredged or excavated material, and perform or assure the performance of all relocations, including utility relocations, all as determined by the Federal Government to be necessary for the construction or operation and maintenance of the GNFs;

c. Pay with interest, over a period not to exceed 30 years following completion of the period of construction of the GNFs, an additional amount equal to 10 percent of the total cost of construction of the GNFs less the amount of credit afforded by the Government for the value of the LER and relocations, including utility relocations, provided by the Sponsor for the GNFs. If the amount of credit afforded by the Government for the value of LER, and relocations, including utility relocations, provided by the Sponsor equals or exceeds 10 percent of the total cost of construction of the GNFs, the Sponsor shall not be required to make any contribution under this paragraph, nor shall it be entitled to any refund for the value of LER and relocations, including utility relocations, in excess of 10 percent of the total cost of construction of the GNFs;

d. Provide, operate, and maintain, at no cost to the Government, the local service facilities 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;

e. Provide 50 percent of the excess cost of operation and maintenance of the project over that cost which the Federal Government determines would be incurred for operation and maintenance if the project had a depth of 45 feet;

f. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Sponsor owns or controls for access to the project for the purpose of completing, inspecting, operating and maintaining the GNFs;

g. Hold and save the United States free from all damages arising from the construction or operation and maintenance of the project, any betterments, and the local service facilities, except for damages due to the fault or negligence of the United States or its contractors;

h. Keep, and maintain books, records, documents, and 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, and other evidence are required, to the extent and in such detail as will properly reflect total cost of the project, 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 CFR, Section 33.20;

i. 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), 42 USC 9601–9675, that may exist in, on, or under LER that the Federal Government determines to be necessary for the construction or operation and maintenance of the GNFs. However, for lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the Federal Government provides the Sponsor with prior specific written direction, in which case the Sponsor shall perform such investigations in accordance with such written direction;

j. Assume complete financial responsibility, as between the Federal Government and the Sponsor, for all necessary cleanup and response costs of any hazardous substances regulated under CERCLA that are located in, on, or under LER that the Federal Government determines to be necessary for the construction or operation and maintenance of the project;

k. To the maximum extent practicable, perform its obligations in a manner that will not cause liability to arise under CERCLA;

l. Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, (42 U.S.C. 1962d-5b) and Section 101(e) of the WRDA 86, Public Law 99-662, as amended,

(33 U.S.C. 2211(e)) which provide that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the Sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

m. Comply with the 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 necessary for construction, operation, and maintenance of the project including those necessary for relocations, the borrowing of material, 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. 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 substantive 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);

o. Provide the non-Federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project; and

p. Not use funds from other Federal programs, including any non-Federal contribution required as a matching share therefor, to meet any of the Sponsor's obligations for the project unless the Federal agency providing the Federal portion of such funds verifies in writing that such funds are authorized to be used to carry out the project.

12. 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. 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

CEMP-SWD
SUBJECT: Sabine-Neches Waterway Channel Improvement Project, Southeast Texas and Southwest Louisiana

Congress, the States of Louisiana and Texas, the Sabine Neches Navigation District (the non-Federal sponsor), interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

MERDITH W.B. TEMPLE
Major General, USA
Acting Commander

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

CECW-PC (1105-2-10a) APR 30 2012

SUBJECT: Jacksonville Harbor Mile Point Navigation Study, Duval County, Florida

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress, the final feasibility report and environmental assessment on navigation improvements for Jacksonville Harbor Mile Point, Duval County, Florida. It is accompanied by the report of the district and division engineers. This report was prepared in response to a congressional resolution adopted on March 24, 1998 by the House Committee on Transportation and Infrastructure. Congress added funding in the appropriations for Fiscal Year 2000 to begin the reconnaissance phase of the feasibility study. This report constitutes the final report in response to this resolution. Preconstruction engineering and design activities for the Jacksonville Harbor Mile Point, Duval County, Florida Navigation Project will continue under the authority provided by the resolution cited above.

2. The report recommends authorizing a project that will contribute to the economic efficiency of commercial navigation. The recommended plan reduces the ebb tide crosscurrents at the confluence of the St. Johns River with the Intracoastal Waterway (IWW) by construction of a relocated Mile Point training wall. Relocation of the Mile Point training wall involves removal of the western 3,110 feet (ft) of existing Mile Point training wall, including land removal and dredging to open the confluence of the IWW and St. Johns River, construction of a new training wall western leg (~4,250 ft) and relocated eastern leg (~2,050 ft), restoration of Great Marsh Island as the least-cost disposal alternative and mitigation site providing beneficial use of dredged material, and construction of a flow improvement channel to offset project induced adverse impacts.

3. The reporting officers recommend the National Economic Development (NED) Plan to relocate/reconfigure the existing Mile Point Training Wall. The NED plan consists of the following improvements:

a. The training wall reconfiguration includes removal of the western 3,110 ft of the existing Mile Point training wall, construction of a relocated Eastern Leg training wall, approximately 2,050 ft, and a new West Leg training wall, approximately 4,250 ft. Total estimated quantity of material to be excavated is approximately 889,000 cubic yards (cy). All usable stone material recovered from the existing training wall will be stockpiled for use in either the West or East Leg of the relocated training wall and all other material excavated will be placed as beneficial use in the Salt Marsh Mitigation Area at Great Marsh Island and as foundation for the relocated training

wall. It is estimated that approximately 14,600 cy of armor stone can be recovered for reuse purposes; however, additional geophysical exploration will more precisely ascertain the exact quantities of stone available for reuse during the preconstruction, engineering and design phase.

b. The East Leg training wall incorporates a larger scour apron (25') than the West Leg (10') due to the predicted permanent shift of stronger currents in Pablo Creek towards the east, especially during the ebb tide. Channel migration of the IWW is anticipated and realignment of the channel to deep water may become necessary. The relocated East Leg consists of building approximately 2,050 ft of training wall tying into the existing structure on Helen Cooper Floyd Park and the West Leg consists of building approximately 4,250 ft of training wall across the breakthrough at Great Marsh Island. Estimated quantities associated with the East Leg are 26,900 cy of armor stone and 11,900 cy of bedding stone, and for the West Leg are 5,670 cy of concrete (567 units at 10cy/unit) and 32,000 square yards (sy) of geotextile fabric for bags and tubes to be filled with 40,500 cy of excavated material. Both legs will incorporate the use of a total of approximately 34,900 sy of filter fabric.

c. The least-cost disposal method is to restore the breakthrough at Great Marsh Island by constructing an approximate 4,250-foot Western Leg training wall and placing dredged material to restore the island. Restoration of this area provides an opportunity for beneficial use of dredged material and an opportunity to address impacts caused by the physical decay of the ecosystem through erosion of natural habitat caused by the crosscurrents. Without the project, Great Marsh Island will continue to erode. Restoring Great Marsh Island is both the least-cost alternative for dredged material and also provides up to 53 acres of salt marsh restoration. This alternative provides incidental environmental benefits, in addition to providing mitigation for approximately 8.15 acres of impacted salt marsh by the training wall removal.

d. The Flow Improvement Channel (FIC) would be constructed to offset any adverse effects that would be caused by closing off the breakthrough of Great Marsh Island. If Great Marsh Island is restored and the FIC is not built, then water quality is expected to be degraded within Chicopit Bay due to non-point source pollution loadings from the upstream watershed not being flushed out of the hydrological system. This would occur because the restoration would close off the recently formed channel through the eroded portion of Great Marsh Island, which now flushes the bay. The FIC would allow for improved water quality and environmental stability of the project area by potentially improving the flushing of sediment and other waterborne constituents into the adjacent IWW. The construction of the FIC would also restore the historic channel through Chicopit Bay, which has silted in with eroded material from Great Marsh Island. The FIC consists of dredging a channel 80 ft wide and 6 ft deep for a length of approximately 3,620 ft through Western Chicopit Bay. Dredged material from the FIC would be placed back into the Great Marsh Island restoration area.

e. Approximately 51.2 acres of land are under the control of the U.S. Navy. The U.S. Army Corps of Engineers (USACE) will coordinate with the U.S. Navy for a license that will allow

removal of the real property (uplands). Additionally, the federal government has navigational servitude over submerged lands impacted by the proposed project. The non-federal sponsor (Jacksonville Port Authority) owns lands in the vicinity of the proposed project, but those lands will not be impacted by the proposed project. The Nature Conservancy, Incorporated (Inc.) owns lands in the vicinity of the proposed project that may be required for construction of the western leg training wall through perpetual easement. The Nature Conservancy, Inc. is familiar with the proposed project and has indicated their support for the project.

4. Project Cost Breakdown Based on October 2011 Prices.

a. Project First Cost. The estimated project first cost is $35,999,000, which includes the cost of constructing the general navigation features (GNF) and the value of lands, easements, rights-of-way and relocations (LERR) estimated as follows: $32,812,000 for channel modification, turbidity and endangered species monitoring, and dredged material placement; $3,088,000 for environmental mitigation; and $99,000 administrative costs for the value of LERR. The Jacksonville Port Authority is the non-federal cost-sharing sponsor for all features.

b. Estimated Federal and Non-Federal Shares. The estimated federal and non-federal shares of the project first cost are $26,998,000 and $9,001,000, respectively, as apportioned in accordance with the cost sharing provisions of Section 101 of the Water Resources Development Act (WRDA) 1986, as amended (33 U.S.C. 2211), as follows:

(1) The cost for the general navigation features from greater than 20 ft to 45 ft will be shared at a rate of 75 percent by the Government and 25 percent by the non-federal sponsor. Accordingly, the federal and non-federal shares of the costs in this zone are estimated to be $26,924,000 and $8,976,000, respectively.

(2) In addition to the costs outlined in sub-paragraph (1) above, the project first cost includes administrative costs for LERR estimated at $99,000. The federal administrative costs include project real estate planning, review, and incidental costs between the U.S. Navy and the USACE. Accordingly, the federal and non-federal shares of the administrative costs are estimated to be $74,000 and $25,000, respectively. Credit is given for the incidental costs borne by the non-federal sponsor for LERR per Section 101 of WRDA 1986. Of the non-federal share, approximately $12,500, is eligible for LERR credit.

c. Additional 10 Percent Payment. In addition to the non-federal sponsor's estimated share of the total first cost of constructing the project in the amount of $9,001,000, pursuant to Section 101(a)(2) of WRDA 1986, as amended, the non-federal sponsor must pay an additional 10% of the costs of general navigation features of the project, $3,590,000, in cash over a period not to exceed 30 years, with interest. The value of the LERR provided by the non-federal sponsor under Section 101(a)(3) of WRDA 1986 as amended will be credited toward this payment.

d. Operations and Maintenance Costs. There are no additional costs of operation and maintenance for this recommended plan.

e. Associated Costs. Estimated associated costs of $431,000 include navigation aids, which is a U.S. Coast Guard expense.

f. Authorized Project Cost and Section 902 Calculation. The project first cost, for the purposes of authorization and calculating the maximum cost of the project pursuant to Section 902 of WRDA 1986, as amended, should include estimates for GNF construction costs, the value of LERR provided under Section 101(a)(3) of WRDA 1986, as amended. Accordingly, as set forth in paragraph 4.a. above, based on October 2011 prices, the estimated project first cost for these purposes is $35,999,000 with a federal share of $26,998,000 and a non-federal share of $9,001,000.

5. Based on October 2011 price levels, a 4-percent discount rate, and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated to be $1,737,000. The average annual equivalent benefits are estimated to be $2,440,000. The average annual net benefits are estimated to be $703,000. The benefit-to-cost ratio for the recommended plan is 1.4.

6. Examination of the maximum flood and ebb tide current vectors indicate that flow velocities within the federal navigation channel are very similar between the existing and with-project condition and in isolated areas of the Mile Point turn are about 1 foot/second less under the with-project condition. This comparison suggests that little or no significant net increase in shoaling rates will occur in the Jacksonville Harbor federal channel over existing project conditions. A natural shift of the IWW at the entrance to Pablo Creek will be expected as a result of the realignment of the training wall. Lower water velocities will increase the opportunities for sedimentation on the western side of the entrance; while higher velocities along the eastern side have the potential to scour and undermine the location of the new training wall if unprotected against erosion. However, little or no significant net increase in shoaling of the IWW navigational channel is predicted as a result of the reconfiguration of the Mile Point training wall.

a. Historically, the training walls along the St. Johns River have performed well and required very little maintenance. With proper design and construction, it is anticipated that no maintenance of the relocated training wall legs will be required over the 50 year period of analysis. All dredged material for the recommended plan will be placed at Great Marsh Island; therefore, the selected plan will have no effect on future channel dredging maintenance activities for Jacksonville Harbor or the IWW.

b. Based on model investigations and current measurements, the resulting bottom current velocities from the relocated training wall legs and excavation and removal of a portion of the existing training wall and entire surrounding area to -13 ft Mean Low Water (MLW) are of such

magnitude to expect little deposition to occur in either of the channels. The Chicopit Bay FIC is also not expected to require maintenance dredging. Prior to the breakthrough of Great Marsh Island, a natural channel existed in the same location as the proposed FIC. Historical maps show water depths up to 10 ft due to tidal flushing of Chicopit Bay, as well as freshwater runoff from the neighboring creeks. Once Great Marsh Island is restored, the water from Greenfield and Mount Pleasant Creeks, as well as the large volume of water within Chicopit Bay's tidal prism, will flush in and out through the FIC. The water velocities in the channel are expected to be sufficient to prevent shoaling within the channel.

7. In accordance with the Corps Engineering Circular (EC) 1165-2-211 on sea level change, the study performed an analysis of three Sea Level Rise rates, a baseline estimate representing the minimum expected sea level change, an intermediate estimate, and a high estimate representing the maximum expected sea level change. Projecting the three rates of change provides a predicted low level rise of 0.12 meters (m) or approximately 0.39 ft, an intermediate level rise of 0.25 m or approximately 0.81 ft, and a high level rise of 0.66 m or approximately 2.17 ft. The impact of the low and intermediate level increases of 0.39 ft and 0.81 ft, respectively, would be inconsequential to the performance of the structure and the high level increase of 2.17 ft would only affect the performance of the structure during low probability events that exceeded the Mean Higher High Water (MHHW) level by more than 0.33 ft. Even during such low probability events, the structure will perform its intended purpose to train the river currents with the exception of that very small portion of the water column above the structure's crest. In addition, if over time the actual measured changes in relative sea level are closer to the Scenario III amounts or greater, then the structure's performance can easily be brought back to an optimal level by increasing the crest elevation by up to a foot without major expense. The salt marsh restoration design at Great Marsh Island is based on existing conditions, or current sea level, in order to achieve requisite elevations that would support low and high salt marsh as well as intertidal oyster beds. The restoration of these habitats cannot be performed using projected future sea level as the target species for these habitats would not be able to survive at current water levels. As an adaptive management measure to address future sea level rise, additional dredged material could be used when appropriate to increase the elevation of the Great Marsh Island restoration site and maintain salt marsh and other habitats.

8. In accordance with the Corps EC 1165-2-209 on review of decision documents, all technical, engineering and scientific work underwent an open, dynamic and vigorous review process to ensure technical quality. This included District Quality Control, Agency Technical Review, Policy and Legal Compliance Review, Cost Engineering Directory of Expertise Review and Certification, and Model Review and Approval. Given the nature of the project, an exclusion from the requirement to conduct a Type I Independent External Peer Review was granted on 23 September 2011.

9. Washington level review indicates the plan recommended by the reporting officers is technically sound, environmentally and socially acceptable, and on the basis of congressional

directives, economically justified. The plan complies with all essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Land Related Resources Implementation Studies. The recommended plan complies with other administration and legislative policies and guidelines. The views of interested parties, including federal, state and local agencies, have been considered. State and agency comments received during review of the final report/environmental assessment included concerns raised by the National Park Service related to channel realignment, unrecorded archaeological sites, cultural resources, and water quality within the Timucuan Ecological and Historical Preserve. These concerns were addressed through coordination and a multi-agency meeting and ultimately resolved in a Jacksonville District, USACE response dated February 27, 2012.

10. I concur in the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that navigation improvements for Jacksonville Harbor Mile Point be authorized in accordance with the reporting officer's recommended plan at an estimated cost of $35,999,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My recommendation is subject to cost sharing, financing, and other applicable requirements of federal and State laws and policies, including Section 101 of WRDA 1986, as amended. This recommendation is subject to the non-federal sponsor agreeing to comply with all applicable federal laws and policies including that the non-federal sponsor must agree with the following requirements prior to project implementation.

a. Provide 10 percent of the total cost of construction of the GNFs attributable to dredging to a depth not in excess of 20 ft; plus 25 percent of the total cost of construction of the GNFs attributable to dredging to a depth in excess of 20 ft but not in excess of 45 ft; plus 50 percent of the total cost of construction of the GNFs attributable to dredging to a depth in excess of 45 ft as further specified below:

(1) Provide the non-federal share of design costs allocated by the Government to commercial navigation in accordance with the terms of a design agreement entered into prior to commencement of design work for the project.

(2) Provide, during construction, any additional funds necessary to make its total contribution for commercial navigation equal to 10 percent of the total cost of construction of the GNFs attributable to dredging to a depth not in excess of 20 ft; plus 25 percent of the total cost of construction of the GNFs attributable to dredging to a depth in excess of 20 ft but not in excess of 45 ft; plus 50 percent of the total cost of construction of the GNFs attributable to dredging to a depth in excess of 45 ft.

b. Provide all LERRs, including those necessary for the borrowing of material and the disposal of dredged or excavated material, and perform or assure the performance of all relocations, including utility relocations, all as determined by the federal government to be necessary for the construction or operation and maintenance of the GNFs.

c. Pay with interest, over a period not to exceed 30 years following completion of the period of construction of the GNFs, an additional amount equal to 10 percent of the total cost of construction of the GNFs less the amount of credit afforded by the Government for the value of the LERR is provided by the sponsor for the GNFs. If the amount of credit afforded by the Government for the value of LERR, and relocations, including utility relocations, provided by the sponsor equals or exceeds 10 percent of the total cost of construction of the GNFs, the sponsor shall not be required to make any contribution under this paragraph, nor shall it be entitled to any refund for the value of LERR and relocations, including utility relocations, in excess of 10 percent of the total cost of construction of the GNFs.

d. Provide, operate, and maintain, at no cost to the Government, the local service facilities 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;

e. Provide 50 percent of the excess cost of operation and maintenance of the project over that cost which the federal government determines would be incurred for operation and maintenance if the project had a depth of 45 ft.

f. Accomplish all removals determined necessary by the federal Government other than those removals specifically assigned to the federal Government;

g. Give the federal government a right to enter, at reasonable times and in a reasonable manner, upon property that the Sponsor owns or controls for access to the project for the purpose of completing, inspecting, operating and maintaining the GNFs.

h. Hold and save the United States free from all damages arising from the construction or operation and maintenance of the project, any betterment, and the local service facilities, except for damages due to the fault or negligence of the United States or its contractors.

i. Keep, and maintain books, records, documents, and 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, and other evidence are required, to the extent and in such detail as will properly reflect total cost of the project, 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 Regulation (CFR), Section 33.20.

j. 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), 42 United States Code 9601–9675, that may exist in, on, or under lands, easements,

right-of-ways, relocations and disposal areas (LERRD) that the federal government determines to be necessary for the construction or operation and maintenance of the GNFs. However, for lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the federal government provides the sponsor with prior specific written direction, in which case the sponsor shall perform such investigations in accordance with such written direction.

k. Assume complete financial responsibility, as between the federal government and the sponsor, for all necessary cleanup and response costs of any hazardous substances regulated under CERCLA that are located in, on, or under LERRD that the federal government determines to be necessary for the construction or operation and maintenance of the project;

l. Agree, as between the federal Government and the non-federal sponsor, that the non-federal sponsor shall be considered the operator of the local service facilities for the purpose of CERCLA liability.

m. To the maximum extent practicable, perform its obligations in a manner that will not cause liability to arise under CERCLA.

n. Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, (42 U.S.C. 1962d-5b) and Section 101(e) of the WRDA 86, Public Law 99-662, as amended, (33 U.S.C. 2211(e)) which provide that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element.

o. Comply with the 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 necessary for construction, operation, and maintenance of the project including those necessary for relocations, the borrowing of material, or the disposal of dredged or excavated material; and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

p. 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 substantive 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));

q. Provide the non-federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project.

r. Not use funds from other federal programs, including any non-federal contribution required as a matching share therefore, to meet any of the sponsor's obligations for the project unless the federal agency providing the federal portion of such funds verifies in writing that such funds are authorized to be used to carry out the project.

11. 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. 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 State of Florida, the Jacksonville Port Authority (the non-federal sponsor), interested federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

MERDITH W.B. TEMPLE
Major General, USA
Acting Commander

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

CECW-PC (1105-2-10a) AUG 17 2012

SUBJECT: Savannah Harbor Expansion Project, Georgia and South Carolina

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on the Savannah Harbor Expansion Project, Georgia and South Carolina, which describes navigation improvements to the existing Savannah Harbor Navigation Project. It is accompanied by the report of the district and division engineers. The General Re-Evaluation Report and Final Environmental Impact Statement (GRR/FEIS) evaluate the advisability of increasing the channel depth, providing environmental mitigation to offset project impacts and making other improvements to Savannah Harbor in the interest of navigation and related purposes. Both the GRR and the FEIS are in response to Section 101(b)(9) of the Water Resources Development Act (WRDA) of 1999. This provision authorized construction substantially in accordance with a Chief's Report to be completed no later than December 31, 1999. The required Chief's Report was signed on October 21, 1999. Section 101(b)(9) also mandated that before the project could be carried out, the Secretary, in consultation with affected State and Federal agencies, formulate an analysis of the impacts of project depth alternatives ranging from -42 feet to -48 feet, along with a recommended plan for navigation and an associated mitigation plan, to be approved jointly with the Department of the Interior, the Department of Commerce and the Environmental Protection Agency (EPA). This report is submitted in fulfillment of these conditions, so that the project may be carried out in accordance with the WRDA 1999 authorization, subject to the requested statutory modification to increase the authorized total project cost, as described in paragraph 10 below.

2. The report recommends implementation of a project that will contribute to the economic efficiency of commercial navigation. Savannah Harbor is a deep draft navigation harbor located on the South Atlantic U.S. coast, 75 statute miles south of Charleston Harbor, South Carolina, and 120 miles north of Jacksonville Harbor, Florida. The Harbor comprises the lower 21.3 miles of the Savannah River (which, with certain of its tributaries, forms the boundary between Georgia and South Carolina along its entire length of 313 miles) and 11.4 miles of channel across the bar to the Atlantic Ocean. Improvements were considered from deep water in the ocean upstream to the area of the Garden City Terminal operated by the Georgia Ports Authority. The recommended plan will result in transportation cost savings by allowing the larger Post-Panamax vessels to operate more efficiently and experience fewer tidal and transit delays. The Georgia Department of Transportation is the non-Federal cost sharing sponsor.

3. The reporting officers recommend construction of a -47 foot Mean Lower Low Water (MLLW) depth alternative plan to modify the existing Savannah Harbor Navigation Project. The selected plan would require dredging and subsequent placement of 24 million cubic yards of new work sediments. Approximately 54% of this sediment would be deposited in existing upland

dredged material containment areas (DMCAs) and about 46% would be deposited in the US Environmental Protection Agency-approved Ocean Dredged Material Disposal Site (ODMDS) or an existing DMCA. The required Site Management and Monitoring Plan for the Savannah ODMDS must be completed and signed by the EPA and the Corps before the EPA can issue a concurrence for disposal of material from the SHEP into the Savannah ODMDS. Any portion of this material that does not meet the Ocean Dumping Criteria must be placed within an upland Confined Disposal Facility (CDF) that has sufficient capacity for the volume of proposed dredged material that does not meet the Ocean Dumping Criteria. The selected plan for navigation improvements consists primarily of the following:

a. Extending the existing entrance channel 7.1 miles from Stations -60+000B to -97+680B and deepening to -49 feet MLLW from the new ocean terminus to Station -14B+000B, then deepening to -47 feet MLLW from Station -14B+000B to Station 0+000 and, deepening the inner harbor to -47 feet MLLW from Station 0+000 to 103+000;

b. Widening bends on the entrance channel at one location (Stations -23+000B to -14+000B) and in the inner harbor channel at two locations; (Stations 27+700 to 31+500, and Stations 52+250 to 55+000);

c. Constructing two meeting areas (Stations 14+000 to 22+000 and Stations 55+000 to 59+000);

d. Deepening and enlarging the Kings Island Turning Basin to a width of 1,600-feet;

e. Restoring dredged material volumetric capacity in existing DMCAs; and

f. A mitigation plan which includes the features described below.

Other prior authorized features of the existing Savannah Harbor Navigation Project located beyond the limits described above in paragraph 3 would remain unchanged by the selected plan of improvement and would remain components of the Savannah Harbor Navigation Project.

4. The mitigation plan includes the following features:

a. Construction of a fish bypass around the New Savannah Bluff Lock and Dam in Augusta, Georgia. Construction of this feature would compensate for loss of shortnose and Atlantic sturgeon habitat in the estuary, by allowing the endangered shortnose sturgeon and the endangered Atlantic sturgeon access to historic spawning grounds at the Augusta Shoals that are currently inaccessible;

b. To minimize impacts to ecologically unique tidal freshwater wetlands in the estuary, construction of a series of flow re-routing features in the estuary to include a diversion structure, cut closures, removal of a tidegate structure, and construction of a rock sill and submerged sediment berm;

c. Acquisition and preservation of 2,245 acres of wetlands;

d. Restoration of approximately 28.75 acres of tidal brackish marsh;

e. Installation of an oxygen injection system, to compensate for adverse effects on dissolved oxygen levels in the Savannah River estuary;

f. Construction of a raw water storage impoundment for the City of Savannah's industrial and domestic water treatment facility, to offset increased chloride levels at the intake on Abercorn Creek during periods of low flow and high tide;

g. Construction of a boat ramp on Hutchinson Island to restore access to areas in Back River made inaccessible due to construction of the flow re-routing features;

h. One-time payment to Georgia Department of Natural Resources (GA DNR) for a Striped bass stocking program, to compensate for loss of Striped bass habitat;

i. Recover, document, and curate the items of historic significance of a Civil War ironclad (*CSS Georgia*), listed on the National Register of Historic Places;

j. Monitoring to ensure that (1) the impacts described in the FEIS are not exceeded, and (2) the dissolved oxygen and wetland mitigation features function as intended. Monitoring will occur pre-construction, during construction, and up to 10 years post-construction; and

k. Adaptive management be implemented as outlined in the FEIS to (1) review the results of dissolved oxygen (DO) monitoring as well as the success of wetlands mitigation, and (2) modify features if necessary. In accordance with the FEIS, an Adaptive Management Team will be established, with the active participation of the cooperating agencies, for the purpose of effectively implementing the monitoring and adaptive management plan related to DO levels in the system and wetlands mitigation, and to ensure that the wetlands mitigation requirements and DO levels are met in the system.

5. The Project Cost Breakdown based on October 2011 Prices is estimated as follows:

a. Project First Cost. The estimated project first cost is $652,000,000, which includes the cost of constructing the General Navigation Features (GNFs) and the value of lands, easements, rights of-way and relocations estimated as follows: $257,000,000 for channel modification and dredged material placement; $311,000,000 for environmental and other mitigation; $84,000,000 for pre-engineering and design and construction management; and $163,000 for the value of lands, easements, rights-of-way, and relocations (except utility relocations) provided by the non-Federal sponsor. Included within the environmental mitigation costs is $35,600,000 for monitoring and $24,600,000 for adaptive management. To the extent appropriated by Congress, monitoring and adaptive management will be implemented as outlined in the FEIS, including the Corps commitments for the dissolved oxygen mitigation system and wetlands mitigation.

b. Estimated Federal and Non-Federal Shares. The estimated Federal and non-Federal shares of the project first cost are $454,000,000 and $198,000,000, respectively, as apportioned in accordance with the cost sharing provisions of Section 101(a)(1) of WRDA 1986, as amended (33 U.S.C. 2211(a)(1)), as follows:

(1) The costs for the deepening of the GNFs from -42 to -45 feet MLLW will be shared at the rate of 75 percent by the Government and 25 percent by the non-Federal sponsor. Accordingly, the Federal and non-Federal shares of the estimated $509,000,000 cost in this zone are estimated to be $383,000,000 and $126,000,000, respectively.

(2) The costs for the deepening of the GNFs from -45 to -47 feet MLLW will be shared at the rate of 50 percent by the Government and 50 percent by the non-Federal sponsor. Accordingly, the Federal and non-Federal shares of the estimated $143,000,000 cost in this zone are estimated to be $71,500,000 and $71,500,000, respectively.

(3) As a condition of issuance of the Section 401 Water Quality Certification by the South Carolina Department of Health and Environmental Control (DHEC), the potential non-Federal sponsor, the Georgia Ports Authority (GPA), agreed to provide financial assurance, in a manner acceptable to DHEC, that it will fund operation and maintenance of the Dissolved Oxygen system in any year that sufficient federal funds for the operation and maintenance of the system are not made available. This obligation extends for the life of the project. The GPA intends to place its full share of funds for adaptive management in an escrow account during project construction.

(4) The Savannah Harbor Expansion Project complies with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, dated February 11, 1994. By letter dated July 10, 2012, the GPA has indicated that it intends to establish, with the assistance of the EPA, a community advisory group that meets periodically to identify and address community concerns or recommendations that may arise associated with ongoing port activities. GPA will also facilitate sustainability by pursuing electrification of port infrastructure, reduced idling at distribution centers, and fleet upgrades under the SmartWay Port Drayage Truck program. In addition, in consultation with EPA Region 4 and the Georgia Environmental Protection Division, the GPA intends to conduct an air monitoring study not to exceed one year at no more than four monitoring sites, to evaluate any potential impacts on surrounding communities. This study would occur once the project is complete and GPA is serving Post-Panamax ships in normal operations. These efforts by the GPA are not included in the project costs. In cooperation with this effort, the Corps will provide technical assistance to the community to help explain scientific data or findings related to ongoing port activities and studies. The federal technical assistance is included in the estimated project costs.

c. In addition to payment by the non-Federal sponsor of its share of costs as estimated and addressed in sub-paragraphs b.(1) and (2), the estimated non-Federal share of $198,000,000 includes $163,000 for the estimated value of lands, easements, rights-of-way, and relocations

(except utility relocations) that it must provide pursuant to Section 101(a)(3) of WRDA 1986, as amended (33 U.S.C. 2211(a)(3)).

d. Additional 10 Percent Payment. In addition to the non-Federal sponsor's estimated share of the project first cost determined in b. above, pursuant to Section 101(a)(2) of WRDA 1986, as amended (33 U.S.C. 2211(a)(2)), the non-Federal sponsor must pay an additional 10 percent of the cost of the GNFs of the project in cash over a period not to exceed 30 years, with interest. The additional 10 percent payment is estimated to be $65,000,000 before interest is applied. The value of lands, easements, rights-of-way, and relocations, estimated at $163,000, provided by the non-Federal sponsor under Section 101(a)(3) of WRDA 1986, as amended (33 U.S.C. 2211(a)(3)), and the costs of utility relocations borne by the non-Federal sponsor under Section 101(a)(4) of WRDA 1986, as amended (33 U.S.C. 2211(a)(4)), will be credited toward payment of this amount.

e. Operation and Maintenance Costs. The additional annual cost of operation and maintenance for this recommended plan is estimated to be $5,100,000. In accordance with Section 101(b)(1) of WRDA 1986, as amended (33 U.S.C. 2211(b)(1)), the non-Federal sponsor will be responsible for an amount equal to 50 percent of the excess of the cost of the operation and maintenance of the project over the cost which would be incurred for operation and maintenance of the project if the project had a depth of -45 feet MLLW. The incremental increase in annual cost attributable to operation and maintenance for the depth in excess of -45 feet MLLW is $303,000 with the non-Federal sponsor responsible for $152,000. As specified in the 1999 Report of the Chief of Engineers, the costs of operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the modified City of Savannah water system will remain a City of Savannah responsibility and will not be operated and maintained as a project General Navigation Feature. Similarly, the boat ramp on Hutchinson Island will be transferred to a local entity upon completion of construction. The local entity will be responsible for the OMRR&R. Lands acquired for wetland preservation would be transferred to the Savannah National Wildlife Refuge and the OMRR&R costs would be borne by the US Fish and Wildlife Service. The project will also make a one-time payment to the existing GA DNR Striped bass Stocking Program. This action has no associated OMRR&R costs. Other project mitigation features to address the adverse impacts of the project will be operated and maintained in the same manner as other GNF are operated and maintained.

f. Associated Costs. Estimated associated costs of $7,700,000 include $2,600,000 in non-Federal costs associated with development of local service facilities (including dredging of berthing areas); and $5,100,000 for navigation aids (a U.S. Coast Guard expense).

g. Authorized Project Cost and Section 902 Calculation. The project first cost, for the purposes of calculating the maximum cost of the project pursuant to Section 902 of WRDA 1986, as amended, includes the cost of constructing the GNFs and the value of lands, easements, and rights-of-way. Accordingly, as set forth in paragraph a, above, based on October 2011 prices, the estimated project first cost for these purposes is $652,000,000 with an estimated Federal share of $454,000,000 and an estimated non-Federal share of $198,000,000.

6. Based on October 2011 price levels, a 4-percent discount rate, and a 50-year period of analysis, the total equivalent average annual costs of the -47 foot depth project are estimated to be $38,900,000. The average annual equivalent benefits are estimated to be $213,100,000. The average annual net benefits are $174,200,000. The benefit-to-cost ratio for the recommended plan is 5.5:1.

7. Section 119 of the Energy and Water Development Appropriations (EWDA), 2003, Division D of Public Law 108-7, authorizes the Secretary of the Army, acting through the Chief of Engineers, to credit toward the non-Federal share of the cost of the Savannah Harbor Expansion Project, authorized by Section 101(b)(9) of WRDA 1999, an amount equal to the Federal share of the costs incurred by the non-Federal interests subsequent to project authorization to the extent that the Secretary determines such costs were necessary to ensure compliance with the conditions of the project authorization. Of the project total costs, an estimated $23,000,000 is included for the creditable work. The non-Federal sponsor will receive credit in accordance with cost sharing for Navigation projects as provided for in WRDA 1986.

8. Risk and Uncertainty. Uncertainties were evaluated for economic benefits, costs, environmental impacts, mitigation effect, and sea-level change. The economic sensitivity analysis concluded that a Jasper County terminal would not have a significant effect on the recommendation. In addition, sensitivities to commodity forecasts, vessel availability and loadings confirmed that the improvements to Savannah Harbor are economically beneficial. Consideration was given to uncertainties that exist in the ability to predict the impacts from the proposed harbor deepening alternatives. In accordance with the Corps Engineering Circular EC 1165-2-212 on sea level change, the study performed an analysis of three Sea Level Rise (SLR) rates. The baseline estimate representing the minimum expected sea level change is 0.5-feet. The intermediate estimate is 0.9-feet and the high estimate representing the maximum expected sea level change is 2.3-feet. No impact from sea-level rise uncertainty is expected regarding the dredging, because dredging depths are relative to the Mean Lower Low Water datum, which changes with sea level. Structural features also carry minimal risk from sea-level rise as they are designed to function over a wide range of stages. Sea-level rise has a minor risk of the project over-mitigating from chloride impacts. Other uncertainties, examined in regards to environmental mitigations (dissolved oxygen, biological response), showed little risk.

9. In accordance with the Corps Engineering Circular EC 1165-2-209 on review of decision documents, all technical, engineering and scientific work underwent an open, dynamic and vigorous review process to ensure technical quality. This included District Quality Control (DQC), Agency Technical Review (ATR), Policy and Legal Compliance Review, Cost Engineering Directory of Expertise (DX) Review and Certification, Model Review and Approval and Type I Independent External Peer Review (IEPR). Concerns expressed by the ATR team have been addressed and incorporated into the final report. The IEPR was completed by Battelle Memorial Institute. A total of 24 comments on the report and one comment on the responses to agency and public comments were documented. The IEPR panel considered eight of the comments of medium significance and the others as low significance. The comments were related to plan formulation, commodity forecasts, modeling, beneficial uses, impacts, risks and uncertainties, contingency, and sea-level rise. In response, sections in the main report and EIS

were expanded to include additional information. The final IEPR Report was completed in February 2011.

10. The project was authorized in Section 101(b)(9) of WRDA 1999 to be carried out at a total cost of $230,174,000. When escalated to October 2011 price levels in accordance with the procedure set out in ER 1105-2-100, Appendix G, implementing Section 902 of WRDA 1986, the authorized total project cost amounts to $469,000,000. The current estimated first cost of $652,000,000 exceeds that amount by more than 20 percent, necessitating a statutory modification to the project to increase its authorized total cost.

11. Washington level review indicates that the plan recommended by the reporting officers is technically sound, environmentally and socially acceptable, and on the basis of Congressional directives, economically justified. The plan complies with all essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Land Related Resources Implementation Studies. The recommended plan complies with other administration and legislative policies and guidelines. The views of interested parties, including Federal, State and local agencies, have been considered. State and agency comments received during review of the final report/environmental assessment included concerns raised by the National Marine Fisheries Service, the United States Environmental Protection Agency and the Department of Interior which ranged from funding concerns, to the recent listing of the Atlantic sturgeon and the possible presence of hard bottoms in or near the project footprint to real estate transfer information. These concerns were addressed through coordination and USACE responses dated July 11, 2012. Comments were also received from state of Georgia which were generally in support of the project and recognized that earlier comments had been addressed in the final document. Two entities from the state of South Carolina provided comments expressing their preference for the -45 foot alternative and their concerns regarding the environmental effects. Reponses were provided re-iterating the considerations during the planning process and the extensive coordination that occurred regarding environmental effects and mitigation with the natural resource agencies. In compliance with Section 101(b)(9) of WRDA 1999, representatives of the Secretary of the Interior, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency approve the selected plan and have determined that the associated mitigation plan adequately addresses the potential environmental impacts of the project.

12. I concur with the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the plan to improve navigation in the Savannah Harbor be authorized in accordance with the reporting officers' selected plan at an estimated cost of $652,000,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My recommendation is subject to cost sharing, financing, and other applicable requirements of Federal and State laws and policies, including WRDA 1986, as amended (33 U.S.C. 2211). The non-Federal sponsor would provide the non-Federal cost share and all lands, easements, and rights-of-way, including those necessary for the borrowing of material and the disposal of dredged or excavated material, and would perform or assure the performance of all relocations, including utility relocations. This recommendation is subject to the non-Federal sponsor's agreeing in a Project Partnership Agreement, prior to project implementation, to

comply with all applicable Federal laws and policies, including but not limited to the following requirements:

a. Provide, during construction, funds necessary to make its total contribution for commercial navigation, when added to the non-Federal contribution that may be afforded credit pursuant to Section 119 of the EWDA, 2003, equal to:

(1) 25 percent of the cost of construction of the GNFs attributable to dredging to a depth in excess of -20 feet MLLW but not in excess of -45 feet MLLW, plus

(2) 50 percent of the costs attributable to dredging to a depth over -45 feet MLLW;

b. Place the estimated non-Federal sponsor's share of the monitoring and adaptive management costs (paragraph 4, j and k) in an escrow account at the time the Project Partnership Agreement is executed.

c. Provide all lands, easements, and rights-of-way (LER), including those necessary for the borrowing of material and the disposal of dredged or excavated material, and perform or assure the performance of all relocations, including utility relocations, all as determined by the Federal Government to be necessary for the construction or operation and maintenance of the GNFs;

d. Pay with interest, over a period not to exceed 30 years following completion of the period of construction of the project, an additional amount equal to 10 percent of the total cost of construction of the GNFs less the amount of credit afforded by the Government for the value of the LER and relocations, including utility relocations, provided by the non-Federal sponsor for the GNFs. If the amount of credit afforded by the Government for the value of the LER and relocations, including utility relocations, provided by the non-Federal sponsor equals or exceeds 10 percent of the total cost of construction of the GNFs, the non-Federal sponsor shall not be required to make any contribution under this paragraph, nor shall it be entitled to any refund for the value of the LER and relocations, including utility relocations, in excess of 10 percent of the total cost of construction of the GNFs;

e. Provide, operate, and maintain, at no cost to the Government, the local service facilities, 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;

f. In the case of project features greater than -45 feet MLLW in depth, provide 50 percent of the excess cost of operation and maintenance of the project over that cost which the Secretary determines would be incurred for operation and maintenance if the project had a depth of -45 feet MLLW;

g. 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 and maintaining the GNFs;

h. Hold and save the United States free from all damages arising from the construction, operation and maintenance of the project, any betterments, and the local service facilities, except for damages due to the fault or negligence of the United States or its contractors;

i. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of three years after completion of the accounting for which such books, records, documents, and other evidence are required, to the extent and in such detail as will properly reflect total cost of the project, 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 CFR Section 33.20;

j. 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), 42 U.S.C. 9601-9675, that may exist in, on, or under the LER that the Federal Government determines to be necessary for the construction or operation and maintenance of the GNFs. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigation 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;

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

l. To the maximum extent practicable, perform its obligations in a manner that will not cause liability to arise under CERCLA;

m. Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b) and Section 101(e) of WRDA 1986, Public Law 99-662, as amended (33 U.S.C. 2211(e)) which provide that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

n. Comply with the 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 necessary for construction, operation, and maintenance of the project including those necessary for relocations, the borrowing of material, or the disposal of dredged or excavated material; and inform all affected persons of applicable benefits, policies, and procedures in connection with said act;

CECW-PC
SUBJECT: Savannah Harbor Expansion Project, Georgia and South Carolina

o. Comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as 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 substantive 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));

p. Provide the non-Federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project; and

q. 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 sponsor's obligations for the project unless the Federal agency providing the Federal portion of such funds verifies in writing such funds are authorized to be used to carry out the project.

13. 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. Consequently, the recommendation may be modified before it is transmitted to Congress as a proposal for implementation funding. However, prior to transmittal to Congress, the sponsor, the State, interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

THOMAS P. BOSTICK
Lieutenant General, U.S. Army
Commanding

DEPARTMENT OF THE ARMY
CHIEF OF ENGINEERS
2600 ARMY PENTAGON
WASHINGTON, DC 20310-2600

JAN 7 2013

DAEN

SUBJECT: Freeport Harbor Channel Improvement Project, Brazoria County, Texas

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on navigation improvements for the Freeport Harbor Channel Improvement Project (FHCIP). It is accompanied by the report of the Galveston District Engineer and the Southwestern Division Engineer. The feasibility study was conducted under the authority of Section 216 of the Flood Control Act of 1970, which authorizes review of completed Corps of Engineers navigation projects when significant changes in physical or economic conditions have occurred, and the submission of a report to Congress on the advisability of modifying the project in the overall public interest. Pre-construction engineering and design activities for this proposed project, if funded, would be continued under the authority provided by the section cited above. The existing Freeport Harbor Channel was authorized by the River and Harbor Acts of May 1950 and July 1958.

2. The report recommends a project that will contribute significantly to the economic efficiency of commercial navigation in the region. The FHCIP is an improvement of the existing Freeport Harbor Channel that provides for a deep-draft waterway from the Gulf of Mexico to the City of Freeport through the original mouth of the Brazos River. A diversion dam about 7.5 miles above the original river mouth, and a diversion channel rerouting the Brazos River from the dam to an outlet into the Gulf about 6.5 miles southwest of the original mouth, now separate the Freeport Harbor Channel from the river system and make the harbor and channels an entirely tidal system. The study evaluated navigation and environmental problems and opportunities for a 70-square mile study area. The study area includes the cities of Freeport, Surfside Beach and Quintana, the Freeport Harbor Channel, the Brazos River Diversion Channel, a portion of the Gulf Intracoastal Waterway, the Gulf of Mexico shoreline on both sides of the Freeport Harbor Channel, and the offshore channel and placement areas 10 miles into the Gulf of Mexico. The entire study area is located within Brazoria County, Texas and adjacent state waters in the Gulf of Mexico.

3. The reporting officers recommend the Locally Preferred Plan (LPP) to modify the existing Freeport Harbor Channel. The LPP consists of the following improvements:

a. Deepen the Outer Bar Channel into the Gulf of Mexico to -58 feet mean lower low water (MLLW);

b. Deepen from the end of the jetties in the Gulf of Mexico to the Lower Turning Basin to -56 feet MLLW;

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c. Deepen from the Lower Turning Basin to Station 132+66 near the Brazosport Turning Basin to -56 feet MLLW;

d. Deepen from Station 132+66, above the Brazosport Turning Basin, through the Upper Turning Basin to -51 feet MLLW;

e. Deepen and widen the lower 3,700 feet of the Stauffer Channel to -51 feet MLLW and 300 feet wide;

f. Dredge the remainder of the Stauffer Channel to -26 feet MLLW (its previously authorized depth was -30 feet).

Dredged material placement for this project will be provided in accordance with the Dredged Material Management Plan developed during the study. Deepening of the Freeport Harbor Channel would generate approximately 17.3 million cubic yards of new work material and approximately 176 million cubic yards of maintenance over the 50-year period of economic evaluation. Material from the Channel Extension, Outer Bar Channel, and Jetty Channel would be placed offshore in the existing New Work and Maintenance Material Ocean Dredged Material Disposal Sites (ODMDSs). Material from the inland Freeport Harbor channels and basins would be placed in one existing confined upland Placement Area (PA 1), and two new Placement Areas (PA 8 and PA 9).

Mitigation features will consist of the preservation of approximately 131 acres of riparian forest under a permanent conservation easement and the improvement of its habitat value by establishing 11 acres of riparian forest in place of 11 acres of invasive tree species; the creation of three acres of wetlands and an associated one acre of riparian forest; and required monitoring of mitigation performance and impacts to wetlands and riparian forest for corrective action, if needed.

4. The recommended navigation plan is not the National Economic Development (NED) plan. The recommended LPP is shallower and will be less costly than the NED plan in the main channel portion of the FHCIP. The LPP is supported by the non-Federal, cost sharing sponsor (Port Freeport).

5. Project Cost Breakdown based on October 2012 prices.

a. Project First Cost. The estimated project first cost of constructing the FHCIP is $237,474,000 which includes the cost of constructing General Navigation Featrures (GNF) and the value of lands, easements, rights-of-way and relocations estimated as follows: $208,079,000 for channel modification and dredged material placement; $165,000 for fish and wildlife mitigation; $1,691,000 for lands, easements, and rights-of-way provided by the

non-Federal sponsor; $18,135,000 for planning, engineering and design efforts; and $9,404,000 for construction management.

b. Estimated Federal and Non-Federal Shares: The estimated Federal and non-Federal shares of the project first cost are $121,132,000 and $116,342,000, respectively, as apportioned in accordance with the cost sharing provisions of Section 101(a) of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2211(a)), as follows:

(1) The costs for deepening the Upper Stauffer Channel will be shared at the rate of 90 percent by the Government and 10 percent by the non-Federal sponsor for dredging depths between 18 and 20 feet and 75 percent by the Government and 25 percent by the non-Federal Sponsor for dredging between 20 and 26 feet. The total cost for this reach is $3,607,000 with $2,782,000 in Federal costs and $825,000 in non-Federal costs.

(2) The cost for deepening the Lower Stauffer Channel will be shared at the rate of 90 percent by the Government and 10 percent by the non-Federal sponsor for dredging depths between 18 and 20 feet and 75 percent by the Government and 25 percent by the non-Federal sponsor for dredging depths between 20 and 45 feet. Dredging depths deeper than 45 feet will be shared at the rate of 50 percent by the Government and 50 percent by the non-Federal sponsor. Costs for deepening this reach total $10,869,000 with $7,693,000 being paid by the Government and $3,176,000 being paid by the non-Federal sponsor.

(3) The costs for the deepening of the Freeport Harbor channels from the existing 46-foot depth to 56 feet (58 feet offshore) will be shared at the rate of 50 percent by the Government and 50 percent by the non-Federal sponsor. Accordingly, the Federal and non-Federal shares of the estimated $221,040,000 cost in this zone will be approximately $110,520,000 being paid by the Government and $110,520,000 being paid by the non-Federal sponsor.

(4) The costs for environmental mitigation will be shared at the prorated share rate of 51.4% by the Government and 48.6% by the non-Federal sponsor. Costs for mitigation total $267,000 with $137,000 being paid by the Government and $130,000 being paid by the non-Federal sponsor.

(5) In addition to payment by the non-Federal sponsor of its share of costs as estimated and described in sub-paragraphs b(1), b(2), b(3) and b(4) above, the estimated non-Federal share of $116,342,000 includes $1,691,000 for the estimated value of lands, easement, and rights-of-way that it must provide pursuant to Section 101(a)(3) of WRDA 1986, as amended (33 U.S.C.2211(a)(3)).

c. Additional 10 Percent Payment. In addition to payment by the non-Federal sponsor of its share of the project first costs determined in sub-paragraphs b(1), b(2) and b(3) above, pursuant to Section 101(a)(2) of WRDA 1986, as amended (33 U.S.C. 2211(a)(2)), the non-Federal sponsor must pay an additional 10 percent of the cost of the general navigation features of the project in cash over a period not to exceed 30 years, with interest. The additional 10% payment without interest is estimated to be $23,578,000. The value of lands, easements, rights-of-way, and relocations, estimated as $1,691,000, provided by the non-Federal sponsor under Section 101(a)(3) of WRDA 1986, as amended, will be credited toward payment of this amount.

d. Operations and Maintenance Costs. The additional annual cost of operation and maintenance for this recommended plan is estimated at $11,371,000. In accordance with Section 101(b) of WRDA 1986, as amended (33 U.S.C. 2211(b)), the non-Federal sponsor will be responsible for an amount equal to 50 percent of the excess of the cost of the operation and maintenance of the project over the cost which would be incurred for operation and maintenance of the project if the project had a depth of 45 feet. The Federal Government would be responsible for $6,254,000 of the incremental operations and maintenance costs and the non-Federal sponsor would be responsible for the remaining $5,117,000.

e. Associated Costs. Estimated associated costs of $58,881,000 include $39,695,000 in non-Federal costs associated with bulkhead modifications, $18,803,000 for dredging of non-Federal berthing areas adjacent to the Federal channel and $1,383,000 for aids to navigation (a U.S. Coast Guard expense).

f. Authorized Project Cost and Section 902 Calculation. The project first cost for the purpose of calculating the maximum cost of the project pursuant to Section 902 of WRDA 1986, as amended, includes the cost of constructing the GNFs and the value of lands, easements, and rights-of-way. Accordingly, as set forth in paragraph 5.a. above,based on October 2012 prices, the total estimated project first cost for these purposes is $237,474,000 with an estimated federal share of $121,132,000 and an estimated non-Federal share of $116,342,000. Based on October 2012 price levels, a discount rate of 3.75 percent, and a 50-year period of economic analysis, the project average annual benefits and costs for the FHCIP are estimated at $48,042,000 and $25,449,000, respectively, with resulting net excess benefits of $22,593,000 and a benefit-to-cost ratio of 1.9 to 1.

7. The goals and objectives included in the Campaign Plan of the Corps have been fully integrated into the Freeport Harbor Channel study process. The recommended plan was

developed in coordination and consultation with various Federal, State and local agencies using a systematic and regional approach to formulating solutions and evaluating the benefits and impacts that would result. The feasibility study evaluated navigation and environmental problems and opportunities for the entire study area of about 70 square-miles. Risk and uncertainty were addressed during the study by sensitivity analyses that evaluated the potential impacts of sea level change and economic assumptions as well as cost risk analysis.

8. In accordance with the Corps Engineering Circular on review of decision documents, all technical, engineering, and scientific work underwent an open, dynamic, and vigorous review process to ensure technical quality. This included an Agency Technical Review (ATR), an Independent External Peer Review (IEPR), and a Corps Headquarters policy and legal review. All concerns of the ATR have been addressed and incorporated into the final report. An IEPR was completed by Battelle Memorial Institute in August 2008. A total of 22 comments were documented. The comments were related to plan formulation, vessel fleet analysis, benefits, water quality, and sensitivity analyses. An IEPR back-check was completed in June 2011, which resulted in follow-up comments related to the original 22 comments. In response, sections in the main report and EIS were expanded to include additional information. The IEPR responses were reviewed by the Deep Draft Navigation Planning Center of Expertise in June 2011 with all comments satisfactorily addressed.

9. Washington level review indicates that the plan recommended by the reporting officers is technically sound, environmentally and socially acceptable, and economically justified. The plan complies with all essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Land Related Resources Implementation Studies. The recommended plan complies with other administration and legislative policies and guidelines. The views of interested parties, including Federal, State and local agencies, have been considered. A Biological Opinion has been received from the National Marine Fisheries Service (NMFS) for potential incidental take of sea turtles during construction. The Biological Opinion has been reviewed and found acceptable.

State and agency comments received during review of the final report/environmental impact statement included comments by the U.S. Coast Guard (USCG) and the U.S. Environmental Protection Agency (USEPA). The USCG requested Corps assistance in obtaining funds for the necessary navigation aid modifications and the Corps response stated that the district would coordinate to request the necessary USCG funding in conjunction with project construction funds. The USEPA expressed concerns on a variety of topics in a letter dated October 5, 2012. The Corps response stated that expanded explanations were provided in the

report and FEIS on the rationale for plan formulation and selection, planned air pollution prevention/reduction measures during construction, dredged material placement procedures at ocean sites, and analyses of socio-economic/health and safety effects based on additional modeling and analyses. The Corps also committed to further USEPA review of sediment data collected during the pre-construction engineering and design phase and continued coordination as needed, depending upon the testing results.

10. I concur in the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that navigation improvements for the Freeport Harbor Channel be authorized in accordance with the reporting officer's recommended plan at an estimated cost of $237,474,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My recommendation is subject to cost sharing, financing, and other applicable requirements of Federal and State laws and policies, including Section 101 of WRDA 1986, as amended. This recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and policies including that the non-Federal sponsor must agree with the following requirements prior to project implementation.

a. Provide 10 percent of the total cost of construction of the general navigation features (GNF) attributable to dredging to a depth not in excess of 20 feet; plus 25 percent of the total cost of construction of the GNFs attributable to dredging to a depth in excess of 20 feet but not in excess of 45 feet; plus 50 percent of the total cost of construction of the GNFs attributable to dredging to a depth in excess of 45 feet as further specified below:

(1) Provide 25 percent of design costs allocated by the Government to commercial navigation 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 commercial navigation;

(3) Provide, during construction, any additional funds necessary to make its total contribution for commercial navigation equal to 10 percent of the total cost of construction of the GNFs attributable to dredging to a depth not in excess of 20 feet; plus 25 percent of the total cost of construction of the GNFs attributable to dredging to a depth in excess of 20 feet but not in excess of 45 feet; plus 50 percent of the total cost of construction of the GNFs attributable to dredging to a depth in excess of 45 feet;

b. Provide all lands, easement, and rights-of-way (LER), including those necessary for the borrowing of material and placement of dredged or excavated material, and perform or assure performance of all relocations, including utility relocations, all as determined by the Government to be necessary for the construction or operation and maintenance of the GNFs;

c. Pay with interest, over a period not to exceed 30 years following completion of the period of construction of the GNFs, an additional amount equal to 10 percent of the total cost of construction of GNFs less the amount of credit afforded by the Government for the value of the LER and relocations, including utility relocations, provided by the non-Federal sponsor for the GNFs. If the amount of credit afforded by the Government for the value of LER, and relocations, including utility relocations, provided by the non-Federal sponsor equals or exceeds 10 percent of the total cost of construction of the GNFs, the non-Federal sponsor shall not be required to make any contribution under this paragraph, nor shall it be entitled to any refund for the value of LER and relocations, including utility relocations, in excess of 10 percent of the total costs of construction of the GNFs;

d. Provide, operate, and maintain, at no cost to the Government, the local service facilities 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 Government;

e. Provide 50 percent of the excess cost of operation and maintenance of the project over that cost which the Government determines would be incurred for operation and maintenance if the project had a depth of 45 feet;

f. Give the 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 and maintaining the GNFs;

g. Hold and save the United States free from all damages arising from the construction or operation and maintenance of the project, any betterments, and the local service facilities, except for damages due to the fault or negligence of the United States or its contractors;

h. Keep and maintain books, records, documents, and 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, and other evidence is required, to the extent and in such detail as will properly reflect total cost of construction of the project, 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 CFR, Section 33.20;

i. Perform, or ensure performance of, any investigations for hazardous substances as are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601–9675, that may exist in, on, or under LER that the Government determines to be necessary for the construction or operation and maintenance of the GNFs. However, for lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigation unless the 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;

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

k. To the maximum extent practicable, perform its obligations in a manner that will not cause liability to arise under CERCLA;

l. Comply with Section 221 of PL 91-611, Flood Control Act of 1970, as amended, (42 U.S.C. 1962d-5b) and Section 101(e) of the WRDA 86, Public Law99-662, as amended, (33 U.S.C. 2211(e)) which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

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

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, PL 88-352 (42 USC 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 substantive changes the provision 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);

o. Provide the non-Federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation that are in excess of 1 percent of the total amount authorized to be appropriated for the project;

p. 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 sponsor's obligations for the project costs unless the Federal agency providing the Federal portion of such funds verifies in writing that such funds are authorized to be used to carry out the project; and

q. Complete the first phase of the Velasco Container Terminal (800-foot berth and 35 acres of supporting backland) on the Stauffer Channel prior to the initiation of construction of the Stauffer Channel portion of the project.

11. 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. 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 State of Texas, Port Freeport (the non-Federal sponsor), interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

THOMAS P. BOSTICK
Lieutenant General, USA
Chief of Engineers

DEPARTMENT OF THE ARMY
CHIEF OF ENGINEERS
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WASHINGTON, DC 20310-2600

DAEN

FEB 25 2013

SUBJECT: Canaveral Harbor Section 203 (WRDA 1986) Navigation Study, Brevard County, Florida

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress the final feasibility report and environmental assessment on navigation improvements for Canaveral Harbor, Brevard County, Florida. It is accompanied by the reports of the Canaveral Port Authority (CPA), and the endorsements of the Jacksonville District Engineer and the South Atlantic Division Engineer. These reports were prepared by the CPA under the authority granted by Section 203 of Water Resources Development Act (WRDA) of 1986 (P.L. 99-662), which allows non-Federal interests, such as the CPA, to undertake feasibility studies of proposed harbor projects and submit them to the Secretary of the Army. This report constitutes the final report submitted to the Secretary as described in Section 203 of WRDA 1986.

2. The report recommends authorizing a project that will contribute to the economic efficiency of commercial navigation, provide greater safety for the operations of commercial and naval vessels, and increase the operational effectiveness of the national defense missions of the U.S. Army, U.S. Navy, and U.S. Air Force. The recommended plan increases the nominal depth of the federal channel to -44 feet mean lower low water (mllw) for the inner channel and -46 feet mllw for the outer channel (middle and outer reach), widens the federal channel to a width of 500 feet, increases the diameters of two turning circles, and widens the bend widener in the entrance channel. Widening the federal channel requires removal of 8 acres of U. S. Air Force property. The U. S. Air Force concurs with this action. Environmental impacts of the recommended plan are minor, short-term impacts, which, in coordination with the appropriate resource agencies, do not require mitigation. Effects on Threatened and Endangered species have been addressed through special measures and conditions. A portion of the material excavated for the project will be beneficially used as fill or for containment dike improvements. The remaining dredged material is suitable for placement in the U. S. Environmental Protection Agency designated Canaveral Ocean Dredged Material Disposal Site (ODMDS).

3. The reporting officers recommend the most economical plan analyzed, which is the plan that has the greatest net economic benefits of all plans considered. At the request of the non-Federal sponsor, plans greater in depth and width were not analyzed due to financial and logistical constraints[1]. The recommended plan is described in terms of outer, middle, and inner reaches, the Middle Turning Basin and west access channels, and the West Turning Basin. The outer reach is oriented on roughly a northwest-southeast alignment. The remainder of the channels is oriented in a generally east-west alignment. Various cuts comprise the outer, middle, and inner reaches. The recommended plan consists of widening the main ship channel from the harbor entrance inland to the West Turning Basin and West Access Channel, from its current authorized

[1] This plan is recommended under the Categorical Exemption to the NED Plan provision of ER 1105-2-100 (Paragraph 3-2.b.(10)).

width of 400 feet to 500 feet. In addition to widening, deepening of the existing Federal project and expansion of turning basins is recommended in the following reaches (all depths mllw):

a. Outer Reach, Cut 1A: deepen from -44' to -46' for a length of 11,000';

b. Outer Reach, Cut1B: deepen from -44' to -46' depth for a length of 5,500';

c. Outer Reach, Cut 1: deepen from -44' to -46' for the 5,300' long portion of Cut 1 that is seaward of buoys 7/8 (Station 0+00 to Station 53+00). The remainder of Cut 1 from buoys 7/8 to the apex of the channel turn, a length of 7,200', would also be deepened from -44' to -46';

d. New 203 Turn Widener: deepen to -46' X 23.1 acres (irregular shaped area) bounded to the north and northeast by the Civil Turn Widener and Outer Reach, Cut1;

e. US Navy Turn Widener: deepen from -44' to -46' X 7.7 acres (triangular shaped area) bounded by outer and middle reaches to the north and northeast and the Civil Turn Widener to the southwest;

f. Civil Turn Widener: deepen from -41' to -46' X 15.6 acres (irregular shaped area) bounded to the north and northeast by the middle reach and the US Navy Turn Widener;

g. Middle Reach: deepen from -44' to -46' for a length of 5,658'. The middle reach extends from the apex of the channel turn westward to the western boundary of the Trident access channel;

h. Inner Reach, Cut 2 and Cut 3: deepen from -40' to -44' for a length of 3,344';

i. Middle Turning Basin: expand and deepen to encompass 68.9 acres to a project depth of -43' and a turning circle diameter of 1422';

j. West Access Channel (east of Station 260+00): deepen from -39' to -43' for a length of 1,840'; and

k. West Turning Basin and West Access Channel (west of Station 260+00): expand the turning circle diameter from 1,400' to 1,725' X 141 acres at a depth of -35'.

4. Project Cost Breakdown Based on October 2012 Prices.

a. Project First Cost. The estimated project first cost is $40,240,000, which includes the cost of constructing the general navigation features and the value of lands, easements, rights-of-way and relocations (LERR) estimated as follows: $40,136,000 for channel modifications and

dredged material placement and $104,000 for the administrative costs of obtaining LERRs. There is no environmental mitigation required due to short term impacts.

b. Estimated Federal and non-Federal Shares. The estimated Federal and non-Federal shares of the project first cost are $28,652,000 and $11,588,000, respectively, as apportioned in accordance with the cost sharing provisions of Section 101 of WRDA 1986, as amended (33 U.S.C. 2211), as follows:

(1) The cost for dredging to a depth in excess of 20 feet, but not in excess of 45 feet will be shared at a rate of 75 percent by the Government and 25 percent by the non-Federal sponsor. Accordingly, the Federal and non-Federal shares of the costs in this zone are estimated to be $25,783,000 and $8,615,000, respectively. The cost for dredging in excess of 45 feet will be shared at a rate of 50 percent by the Government and 50 percent by the non-Federal sponsor. Accordingly, the Federal and non-Federal shares of the costs in this zone are estimated to be $2,870,000 and $2,870,000, respectively.

(2) In addition to the costs outlined in sub-paragraph (1) above, the project first cost includes administrative costs for LERR estimated at $104,000. The administrative costs include project real estate planning, review, and incidental costs between the U.S. Air Force and the U.S. Army Corps of Engineers (USACE). This cost will be a non-Federal cost. Credit is given for the incidental costs borne by the non-federal sponsor for LERR per Section 101 of WRDA 1986.

c. Additional 10 Percent Payment. In addition to the non-Federal sponsor's estimated share of the total first cost of constructing the project in the amount of $11,588,000, pursuant to Section 101(a)(2) of WRDA 1986, as amended, the non-Federal sponsor must pay an additional 10% of the costs of general navigation features of the project, $4,013,700, in cash over a period not to exceed 30 years, with interest. The value of the administrative costs for lands, easements, rights-of-way and relocations provided by the Federal sponsor under Section 101(a)(3) of WRDA 1986 as amended ($103,300) will be credited toward this payment, which results in a net 10% General Navigation Features (GNF) requirement of $3,910,400.

d. Operations and Maintenance Costs. Additional costs of operation and maintenance for this recommended plan, over and above the costs to operate and maintain the existing Federal project, are estimated to be $633,000 annually. In accordance with Section 101(b)(1) of WRDA 1986, as amended (33 U.S.C. 2211(b)(1))), the non-Federal sponsor will be responsible for an amount equal to 50 percent of the excess of the cost of operation and maintenance of the project over the cost of which would be incurred for operation and maintenance for the depth in excess of 45 feet. The excess annual cost attributable to operation and maintenance for the depth in excess of 45 feet is $364,000, with the non-Federal sponsor responsible for $182,000. Therefore the Federal share of the incremental annual maintenance cost is estimated to be $451,000.

e. Associated Costs. Estimated associated costs of $3,251,000 include $364,000 in non-Federal costs associated with development of local service facilities (including dredging of berthing areas) and $2,886,000 for navigation aids (a U.S. Coast Guard expense).

f. Authorized Project Cost and Section 902 Calculation. The project first cost, for the purposes of authorization and calculating the maximum cost of the project pursuant to Section 902 of WRDA 1986, as amended, includes the cost of constructing the (GNF) construction costs and the value of LERRs provided under Section 101(a)(3) of WRDA 1986, as amended (33 U.S.C. 221(A)(3)). Accordingly, as set forth in paragraph 4.a. above, based on October 2012 prices, the estimated project first cost for these purposes is $40,240,000 with a Federal share of $28,652,000 and a non-Federal share of $11,588,000.

5. Based on October 2012 price levels, a 3.75-percent discount rate, and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated to be $2,647,000. The average annual equivalent benefits are estimated to be $5,393,000. The average annual net benefits are $2,747,000. The benefit-to-cost ratio for the recommended plan is 2.0.

6. In accordance with the Corps Engineering Circular EC 1165-2-212 on sea level change, the study performed an analysis of three Sea Level Rise (SLR) rates, a baseline estimate representing the minimum expected sea level change, an intermediate estimate, and a high estimate representing the maximum expected sea level change. The results of calculations from the project completion in 2014 through 2064 indicate that sea-level change estimates over a 50-year life of the project range from 0.120 meters (0.39 ft) for the low rate of change scenario, to 0.245 m (0.80 ft) for the intermediate rate scenario, and 0.653 m (2.14 ft) for the high rate scenario. Sea-level rise at these rates will have little or no impacts related to the proposed navigation improvements.

In accordance with the Corps Engineering Circular EC 1165-2-209 on review of decision documents, all technical, engineering and scientific work underwent an open, dynamic and vigorous review process to ensure technical quality. This included District Quality Control (DQC), Agency Technical Review (ATR), Policy and Legal Compliance Review, Cost Engineering Directory of Expertise (DX) Review and Certification, and Model Review and Approval. Given the project uses standard economic analyses, has a cost estimate of less than $45 million; does not represent a threat to health and safety; is not controversial; and has not had a request for Independent External Peer Review (IEPR) from a Governor or the head of a Federal or State agency, I have granted an exclusion from the requirement to conduct a Type I IEPR.

7. Washington level review indicates that the plan recommended by the reporting officers is technically sound, environmentally and socially acceptable, and on the basis of congressional directives, economically justified. The plan complies with all essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Land Related Resources Implementation Studies. The recommended plan complies with other administration and legislative policies and guidelines. The views of interested parties, including Federal, State and local agencies, have been considered.

8. I concur in the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that navigation improvements for Canaveral Harbor be authorized in

accordance with the reporting officer's recommended plan at an estimated cost of $40,240,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My recommendation is subject to cost sharing, financing, and other applicable requirements of Federal and State laws and policies, including Section 101 of WRDA 1986, as amended. This recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and policies including that the non-Federal sponsor must agree with the following requirements prior to project implementation.

The CPA will:

a. 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;

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

c. Provide, during the period of construction, a cash contribution equal to the following percentages of the total cost of construction of the general navigation features:

i. Twenty-five percent of the costs attributable to dredging to a depth in excess of 20 feet, but not in excess of 45 feet; plus

ii. Fifty percent of the costs attributable to dredging to a depth in excess of 45 feet;

d. Provide 50 percent of the excess cost of operation and maintenance of the project over that cost which the Federal Government determines would be incurred for operation and maintenance for depths deeper than 45 feet;

e. Pay with interest, over a period not to exceed 30 years following completion of the period of construction of the project, up to an additional 10 percent of the total cost of construction of GNFs. The value of LERRs and deep-draft utility relocations provided by the Sponsor for the GNFs, described below, may be credited toward this required payment. The value of deep-draft utility relocations for which credit may be afforded shall be that portion borne by the Sponsor, but not to exceed 50 percent, of deep-draft utility relocation costs;

f. If the amount of credit equals or exceeds 10 percent of the total cost of construction of the general navigation features, the Sponsor shall not be required to make any contribution under this paragraph, nor shall it be entitled to any refund for the value of LERRs and deep-draft utility relocations in excess of 10 percent of the total cost of construction of the general navigation features;

g. Provide all LERRs and perform or ensure the performance of all relocations and deep-draft utility relocations determined by the Federal Government to be necessary for the construction, operation, maintenance, repair, replacement, and rehabilitation of the general

navigation features (including all LERRs, and deep-draft utility relocations necessary for the dredged material disposal facilities);

h. Provide, operate, maintain, repair, replace, and rehabilitate, at its own expense, the local service facilities 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;

i. Accomplish all removals determined necessary by the Federal Government other than those removals specifically assigned to the Federal Government;

j. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Sponsor owns or controls for access to the project for the purpose of operating, maintaining, repairing, replacing, and rehabilitating the general navigation features;

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

l. Keep, and maintain books, records, documents, and 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, and other evidence is required, to the extent and in such detail as will properly reflect total cost of construction of the general navigation features, 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 CFR, Section 33.20;

m. Perform, or cause to be performed, any investigations for hazardous substances as are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 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 necessary for construction, operation, maintenance, repair, replacement, or rehabilitation of the general navigation features. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigation unless the Federal Government provides the Sponsor with prior specific written direction, in which case, the Sponsor shall perform such investigations in accordance with such written direction;

n. Assume complete financial responsibility, as between the Federal Government and the Sponsor, for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights of way that the Federal Government determines to be necessary for the construction, operation, maintenance, repair, replacement, and rehabilitation of the project;

o. To the maximum extent practicable, perform its obligations in a manner that will not cause liability to arise under CERCLA;

p. Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the Sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

q. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, required for construction, operation, maintenance, repair, replacement, and rehabilitation of the general navigation features, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act;

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, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army." The State is also required to comply with all applicable Federal labor standards requirements including, but not limited to, the Davis-Bacon Act (40 USC 3144 et seq.), the Contract Work Hours and Safety Standards Act (40 USC 3701 et seq.), and the Copeland Anti-Kickback Act (40 USC 3145 et seq.);

s. Provide the non-Federal share that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project, in accordance with the cost sharing provisions of the agreement;

t. Prevent obstructions of or encroachments on the project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) which might reduce the ecosystem restoration, hinder its operation and maintenance, or interfere with its proper function, such as any new development on project lands or the addition of facilities which would degrade the benefits of the project;

u. Do not use Federal funds to meet the Sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds in authorized;

v. Provide a cash contribution equal to the non-Federal cost share of the project's total historic preservation mitigation and data recovery costs attributable to commercial navigation

that are in excess of 1 percent of the total amount authorized to be appropriated for commercial navigation; and

w. In the case of a deep-draft harbor, provide 50 percent of the excess cost of operation and maintenance of the project over that cost which the Secretary determines would be incurred for operation and maintenance if the project had a depth of 45 feet.

9. 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. 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 State of Florida, the CPA (the non-Federal sponsor), interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

THOMAS P. BOSTICK
Lieutenant General, USA
Chief of Engineers

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

REPLY TO
ATTENTION OF:

CECW-PC (1105-2-10a)

AUG 24 2009

SUBJECT: Topeka Flood Risk Management Project, Topeka, Kansas

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on flood risk management improvements on the Kansas River in the vicinity of Topeka, Kansas. It is accompanied by the report of the district and division engineer. These reports are submitted pursuant to Section 216 of the Flood Control Act of 1970, authorizing me to determine whether any modifications to the local flood risk management projects are advisable in order to improve the reliability and performance of the existing levee system. The existing units were originally authorized by the Flood Control Acts of 1936 and 1954. Project construction of the levee system was completed in 1974. The study was requested by the local sponsors and the Congress of the United States. Preconstruction engineering and design activities, if funded, would be continued under the authority provided by the act cited above.

2. The reporting officers recommend authorizing a plan to reduce flood damages by construction of modifications to significantly improve reliability and performance of the levee system in the vicinity of Topeka, Kansas. The recommendation is supported by the non-Federal Sponsors, the City of Topeka, Kansas, and the North Topeka Drainage District. The recommended plan is the National Economic Development (NED) plan. All features are located in the State of Kansas. The plan includes recommendations for modifications to four existing levee units within the Topeka Flood Risk Management Project: the South Topeka Unit, the Oakland Unit, the North Topeka Unit, and the Waterworks Unit.

a. South Topeka Unit. Levee under-seepage concerns will be addressed by installation of a control berm. Structural strength and uplift concerns will be improved by modifications of the Kansas Avenue Pump Station and three manholes. Approximately 2,000 linear feet of existing concrete floodwall on timber-pile foundations will be removed and replaced with a new floodwall on concrete piles following the same alignment and to the same height as the existing floodwall. The work in this unit will result in the removal of 7.5 acres of woodland habitat and appropriate mitigation measures are included in the Recommended Plan.

b. Oakland Unit. An area of under-seepage concern will be controlled with a berm and a stability berm will be installed to improve the stability factor of safety of the existing floodwall. Structural modification of the East Oakland Pump Station will be implemented to address uplift failure concerns.

c. North Topeka Unit: Two areas of low under-seepage reliability will be improved by installation of an under-seepage control berm and a series of pumped relief wells, respectively. One pump station that is no longer required, and currently poses an uplift failure risk, will be removed.

d. Waterworks Unit: Landside stability berms will be installed to increase the reliability of an existing concrete floodwall protecting the primary water source for the City of Topeka and surrounding communities.

3. Project costs are allocated to the Flood Risk Management purpose. Based on the October 2008 price levels, the estimated first cost to the plan is $21,157,000. In accordance with the cost sharing provisions of Section 103 of the Water Resources Development Act (WRDA) of 1986, as amended by Section 202 of WRDA 1996, the Federal share of the total project cost would be $13,752,000 (65 percent) and the non-Federal share would be $7,405,000. The non-Federal costs include the costs of lands, easements, rights-of-way, relocations, and dredged (LERRD) or excavated material disposal areas, estimated at $1,279,000.

4. Based on a 4.625 percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project, including operation, maintenance, repair, replacement, and rehabilitation (OMRR&R), are estimated to be $1,168,000. The selected plan is estimated to be approximately 95 percent reliable in protecting the study area from the flood with a one percent chance of occurrence in any year (formerly referred to as the "100-year flood"). The selected plan would reduce average annual flood damages by about 67 percent and would leave average annual residual damages estimated at $7,438,000. Annual average economic benefits are estimated to be $15,428,000; net average annual benefits are $14,260,000. The system-wide benefit-to-cost ratio is 13.2 to 1. The selected plan is composed of three separable elements: South Topeka/Oakland, North Topeka, and Waterworks Units. Although South Topeka and Oakland are separate units, they are linked hydrologically and therefore combine to form a single, separable element. The South Topeka/Oakland Units would provide $4,014,000 in annual benefits with an annual cost of $996,000 for a benefit-to-cost ratio of 4.0. The North Topeka Unit would provide $11,408,000 in annual benefits with an annual cost of $169,000 for a benefit-to-cost ratio of 67.4. The Waterworks Unit would provide $6,000 in annual benefits with an annual cost of $3,000 for a benefit-to-cost ratio of 2.0.

5. The goals and objectives included in the Campaign Plan of the U.S. Army Corps of Engineers have been full integrated into the study process. The project effectively implements a comprehensive systems approach with full stakeholder participation. The project study has undergone rigorous quality control reviews in accordance with recent USACE guidance. These reviews included technical review of the engineering, economic, and environmental analyses by another USACE district. These reviews strengthened the recommendations of the reporting officers. The study report describes existing risks to the community, risks that will be reduced by the Recommended Plan, and residual risks that will remain from large, infrequent, flood events. In accordance with EC 1105-2-410, Appendix D, and future guidance that may be developed, a Safety Assurance Review (SAR) will be conducted prior to initiation of physical construction and periodically thereafter until construction activities are completed. The SAR

will be conducted by an independent (outside of the Corps of Engineers) panel. Establishment of the panel will be in accordance with applicable guidance at the time of project construction.

6. The levee system consist of six separately authorized units and is a component of a larger system of levees and reservoirs that provides flood damage reduction benefits to the Kansas River basin. There are no significant direct or cumulative environmental impacts associated with the recommended plan, primarily because it sustains the existing levee rather than encumbering additional resources for a "new" project. The long-term environmental and cultural consequences of plan implementation are positive as the increased reliability of the units act to guard the social and environmental fabric that has developed within the study area. The plan also contributes to regional economic development.

7. Washington level review indicates that the project recommended by the reporting officers is technically sound, environmentally and socially acceptable, and economically justified. The plan complies with all essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Land Related 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. Agency Technical Review was conducted for the study and all issues were satisfactorily resolved. This study was not required to conduct an Independent External Peer Review (IEPR). A safety assurance review (TYPE II IEPR) will be conducted during the design phase of the project.

8. I generally concur in the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the plan to reduce flood damages for Topeka, Kansas, is authorized in accordance with the reporting officers' recommended plan at an estimated cost of $21,157,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My 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, and in accordance with the following required items of cooperation that the non-Federal sponsor shall, prior to project implementation, agree to perform:

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. 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;

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

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

e. 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;

f. 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;

g. 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;

h. 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;

i. 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;

j. 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;

k. 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;

l. 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;

m. 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.*);

n. 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;

o. 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;

p. 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

q. 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.

9. 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. Consequently, the recommendation may be modified before they are transmitted to the Congress as proposals for authorization and implementation funding. However, prior to transmittal to the Congress, the sponsors, the State, interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

R. L. VAN ANTWERP
Lieutenant General, US Army
Chief of Engineers

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, DC 20314-1000

REPLY TO
ATTENTION OF
CEMP-SPD (1105-2-10a)

DEC 30 2010

SUBJECT: American River Watershed (Common Features) Project, Natomas Basin, Sacramento and Sutter Counties, California

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on flood risk management for the Natomas Basin portion of the American River Watershed in the vicinity of Sacramento, California. It is accompanied by the report of the Sacramento District Engineer and the South Pacific Division Engineer. These reports supplement the 29 June 1992 and 27 June 1996 reports of the Chief of Engineers, and the March 2002 (revised July 2002) Post-Authorization Change Report, and were prepared as an interim general reevaluation study of the American River Common Features Project. The present study was conducted specifically to determine if there is a Federal interest in modifying the current authorized project features to address flood risk management issues related to levee seepage and stability in the Natomas Basin portion of the Common Features project area. The Common Features Project was authorized by Section 101(a)(1) of the Water Resources Development Act (WRDA) of 1996 (Public Law 104-303), as modified by Section 366 of WRDA 1999 (Public Law 106-53) and as further modified by Section 129 of the Energy and Water Development Appropriations Act, 2004 (Public Law 108-137); and as amended by Section 130 the Energy and Water Development and Related Agencies Appropriations Act, 2008 (Division C of Public Law 110-161).

2. The reporting officers recommend modifying the authorized Common Features project to include a comprehensive plan to reduce the systemic risk associated with seepage and stability for the ring levee system surrounding the Natomas Basin. The recommendation is supported by the non-Federal sponsors, the State of California and the Sacramento Area Flood Control Agency. The principal features of the recommended modifications include widening of about 41.9 miles of existing levee, installation of about 34.8 miles of soil bentonite cutoff wall and about 8.3 miles of seepage berms, and bridge remediation at State Route 99. In addition, mitigation features pursuant to the Endangered Species Act are recommended, including creation of 75 acres of canal habitat and up to 200 acres of marsh habitat, creation of up to 60 acres of landside woodlands, creation of 1,600 linear feet of tree plantings, and establishment of a monitoring program for assessing mitigation performance.

3. Based on October 2010 price levels, the estimated first cost of the recommended modifications for the Natomas Basin is $1,111,600,000. Adding these improvements to the currently authorized Common Feature project cost of $277,900,000 increases the estimated first cost of the total Common Features project to $1,389,500,000. The Federal share of the total

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project cost would be about $921,200,000 and the non-Federal share would be about $468,300,000. All project costs are allocated to the Flood Risk Management purpose.

4. In accordance with the cost sharing provisions of Section 103(a) of WRDA 1986 (Public Law 99-662), as amended by Section 202(a) of WRDA 1996, and of Section 366(c) of WRDA 1999, the Federal share of the first costs of the flood damage reduction features would be about $921,200,000 and the non-Federal share would be about $468,300,000. The cost of lands, easements, rights-of-way, relocations, and dredged or excavated material disposal areas is estimated at $352,200,000. The State of California would be responsible for the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the project after construction, a cost currently estimated at about $5,300,000 per year.

5. Based on a 4.375-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated to be $82,500,000, including operation, maintenance, repair, replacement, and rehabilitation (OMRR&R). The selected plan is estimated to be 81 percent reliable in providing flood risk management for the study area from the one-percent flood event. The selected plan would reduce average annual flood damages by about 96 percent and would leave average annual residual damages estimated at $19,000,000. Average annual economic benefits are estimated to be $502,500,000; net average annual benefits are $420,000,000. The benefit-to-cost ratio is 6 to 1.

6. In accordance with the provisions of Section 104 of WRDA 1986, the reporting officers recommend the non-Federal sponsor receive credit for work carried out which is compatible with the plan recommended for authorization, an amount currently estimated to be $519,230,000. This credit eligibility was approved in concept by the Assistant Secretary of the Army for Civil Works on 19 July 2007, 7 April 2009, 4 May 2010, and 10 November 2010, contingent upon the determination of the actual elements of such non-Federal work requiring authorization as features of the new Federal improvements, and inclusion of these elements in the plan recommended by this reevaluation report. Section 104 credit does not relieve the non-Federal sponsor of the requirement to pay five percent of the project costs in cash during construction of the remainder of the project. No Section 104 credit is available for non-Federal work commenced after project authorization. The non-Federal features of the plan constructed or being constructed that are recommended under the above criteria include the following:

a. Strengthen approximately 5.5 miles of the Natomas Cross Canal south levee by flattening the landside levee slope and installing seepage cut-off walls.

b. Strengthen approximately 4.9 miles of the Sacramento River east levee from Verona to Elverta Road by constructing a landside adjacent levee and installing seepage cut-off walls and landside seepage berms.

c. Strengthen approximately 4.0 miles of the Sacramento River east levee from Elverta Road past Interstate Highway 5 by constructing a landside adjacent levee and installing seepage cut-off walls and landside seepage berms.

d. Strengthen approximately 3.7 miles of the Sacramento River east levee from just downstream of Interstate Highway 5 to just past Powerline Road.

7. The goals and objectives included in the Campaign Plan of the U.S. Army Corps of Engineers (USACE) have been fully integrated into the Natomas Basin study process. The recommended plan was developed utilizing a systems approach in formulating flood risk management solutions and in evaluating the impacts and benefits of those solutions. The levee system was viewed in context with the overall Sacramento River Flood Control Project to ensure that the recommended plan complemented the goals of the larger system and did not induce any negative impacts to other system components. A collaborative approach to solving water resource problems was implemented that included engagement of the project sponsors throughout the feasibility process, integration of the recommended plan with the sponsors' Natomas Levee Improvement Program, coordination with State and Federal resource agencies during National Environmental Policy Act (NEPA) compliance document preparation, and incorporation of the agencies' draft report comments into the final report.

8. In accordance with the Corps Engineering Circular EC 1165-2-209 on review of decision documents, all technical, engineering and scientific work underwent an open, dynamic and vigorous review process to ensure technical quality. This included an independent Agency Technical Review (ATR), an independent External Peer Review (IEPR), and a USACE Headquarters policy and legal review. The ATR resulted in comments on levee performance curves, the plan formulation process, appropriate cost sharing percentages, issues related to levee vegetation, and historic versus modeled flood damage comparison. Consensus and resolution was reached on all ATR comments. The IEPR was managed by an outside eligible organization (Battelle Memorial Institute) that assembled a panel of six experts with combined expertise in the fields of geotechnical, hydraulic engineering, economics, and environmental/NEPA. Ultimately, the panel identified and documented 35 comments. Six of the panel comments were classified as having high significance. These comments were related to the plan formulation process and the without project conditions, additional clarification of the discussion on induced floodplain development as related to Executive Order (EO) 11988, and clarification of including Native American residents in the discussion of EO 12898. An additional comment requested

clarification on the order of implementation for levee fixes. In response, sections in the main report and Economics Appendix were expanded to include additional information on the plan formulation and economic analysis process, including a reach-by-reach description of the problems and solutions that were considered in developing the system-wide alternatives. The rationale for the project not inducing growth was provided and the report was revised to clarify the discussion on EO 11988, and sections of the report were revised to indicate compliance with EO 12898 in that no Native American tribes currently reside in the project area as a distinct population group. Level II IEPR for Safety Assurance will be conducted in accordance with EC 1165-2-209 during the implementation of the Project Engineering and Design phase. The IEPR panel has concurred with all of the USACE responses and this process has led to improved report quality.

9. The USACE Headquarters review indicates that the project recommended by the reporting officers is technically sound, environmentally and socially acceptable, and economically justified. The goal to reduce loss of life is incorporated into this project but it is a shared responsibility that can never be completely mitigated by structural solutions. Discussion in the report states that residual risk will remain with this plan in place and emphasizes the roles of all partners in addressing and communicating residual risk, including the need for a well coordinated flood evacuation plan and implementation of local measures to mitigate residual risk through prudent land use planning. The plan complies with all essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Land Related Resources implementation studies and complies with other administrative and legislative policies and guidelines.

10. I concur in the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the Common Features project be modified to reduce flood risk for the Natomas Basin portion of the American River Watershed in the vicinity of Sacramento, California, in accordance with the reporting officers' recommended plan, at an estimated cost of $1,389,500,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My 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, and in accordance with the required items of cooperation that the non-Federal sponsor shall agree to perform:

a. Provide a minimum of at least 25 percent of total project costs for the lower American River portion of the project and at least 35 percent for the Natomas Basin portion of the project but not to exceed 50 percent of total project costs as further specified below:

(1) Provide a cash contribution equal to five percent of total project costs;

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

(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 project;

(4) Provide, during construction, any additional funds necessary to make its total contribution equal to at least 25 percent of total project costs for the lower American River portion of the project and at least 35 percent for the Natomas Basin portion of the project;

b. Provide 100 percent of all costs for local betterments.

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 flood risk management 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;

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 flood risk managment 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 flood risk managment 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 three 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;

n. Comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 106 of the National Historic Preservation Act of 1966, 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.

11. 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

CEMP-SPD (1105-2-10a)
SUBJECT: SUBJECT: American River Watershed (Common Features) Project, Natomas Basin, Sacramento and Sutter Counties, California

construction program or the perspective of higher review levels within the executive branch. 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 Congress, the sponsor, the State, interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

R. L. VAN ANTWERP
Lieutenant General, US Army
Chief of Engineers

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

REPLY TO
ATTENTION OF

CECW-MVD (1105-2-10a)

JAN 27 2011

SUBJECT: Cedar River, Cedar Rapids, Iowa

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on flood risk management along the Cedar River in Cedar Rapids, Iowa. It is accompanied by the report of the district and division engineers. These reports are in response to a House Resolution adopted April 5, 2006, by the Committee on Transportation and Infrastructure, and Senate Resolution adopted May 23, 2006, by the Committee on Environment and Public Works. Both resolutions "requested the review of past pertinent reports to determine whether any modifications to the recommendations are advisable in the interest of flood risk management, ecosystem restoration, recreation, and related purposes along the Cedar River in Cedar Rapids, Iowa." Preconstruction engineering and design activities for the Cedar River project will continue under the authority provided by the resolutions cited above.

2. The reporting officers recommend authorization of a plan to reduce flood risk along the east bank of the Cedar River in the City of Cedar Rapids. The recommended plan consists of 2.2 miles of floodwall and 0.8 miles of earthen levee with a height of approximately 14 feet, 15 closure structures, and six pumping stations constructed on the east bank of the Cedar River. Recreation or ecosystem restoration measures were found to be not justified and are therefore not part of the recommended plan. The project does not require any separable mitigation as the project has been design to offset any adverse impacts which may occur. The recommended plan is the National Economic Development (NED) plan.

3. Based on an October 2010 price level, the estimated total first cost of the recommended plan is $99,000,000. In accordance with the cost sharing provisions of the Section 103 of the Water Resources Development Act of 1986 (WRDA 1986), as amended by Section 202 of WRDA 1996, the Federal share of the total project cost is estimated at $64,350,000 (65 percent) and the non-Federal share is estimated at $34,650,000 (35 percent). The cost of lands, easements, rights-of-way, relocations, and excavated material disposal areas is estimated at $11,700,000. The City of Cedar Rapids, Iowa is the non-Federal cost sharing sponsor for the recommended plan. The City of Cedar Rapids would be responsible for the operation, maintenance, repair, replacement,

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and rehabilitation (OMRR&R) of the project after construction, a cost currently estimated at $18,000 per year.

4. Based on a 4.125-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project, including OMRR&R, are estimated to be $5,125,000. The equivalent average annual benefits are estimated to be $6,144,000 with net average annual benefits of $1,019,000. The benefit-cost ratio is approximately 1.2 to 1. The reporting officers estimate that the recommended plan has a 99.99 percent chance of containing a 1 percent flood event and a 91.24 percent chance of containing a 0.2 percent flood event. The recommended plan would reduce expected annual flood damages to the east bank area by about 84 percent.

5. The goals and objectives included in the Campaign Plan of the U.S. Army Corps of Engineers have been fully integrated into the Cedar Rapids study process. As part of an Integrated Water Resources Management Plan (IWRMP), the recommended plan was developed in coordination and consultation with various Federal, State and local agencies using a systems approach in formulating flood risk management solutions and in evaluating the impacts and benefits of those solutions. Study formulation looked at a wide range of non-structural and structural alternatives with only the downtown east bank being justified for structural flood risk reduction measures under Corps policy and guidelines. Alternative formulation optimized the costs and benefits of an array of design heights based on various flood event risks. Floodwall and levee components incorporate robust, sustainable designs like a T-wall atop a sheetpile curtain, and a clay levee with a 10-foot top width and 3 on 1 horizontal to vertical side slopes. In addition, the levee system was viewed in context with the sponsor's Preferred Flood Management System to ensure that the recommended plan complemented the goals of the larger system and did not induce any negative impacts to other system components. Since the record flood event in June 2008 flood (which exceeded the 0.2 percent flood), the District has participated in four meetings, multiple workshops and town halls hosted by the sponsor involving over 2,600 citizens. As part of the IWRMP, the non-Federal sponsor developed the locally Preferred Flood Management System in which providing a structural flood risk management alternative for both sides of the floodplain was viewed as critical. As the first phase of executing the IWRMP (which includes the Corps' east side plan), the non-Federal sponsor, Linn County, and private property owners are implementing non-structural measures using FEMA, HUD, and Local Option Sales Tax programs. This approach allows each agency's programs to provide funding targeted at reducing the risk to the west side floodplain and other areas within the City. Finally, the IWRMP includes the development of the overarching Iowa-Cedar River Comprehensive Plan which will work to formulate a comprehensive watershed plan and process for interagency collaboration to address water resource and related land resource problems and opportunities within the watershed. The development of this collaborative approach to solving water resource problems engaged the non-Federal sponsor throughout the feasibility process leading to the development of an overall

Integrated Water Resources Management Plan through integration of the recommended plan with the non-Federal sponsor's Preferred Flood Management System.

6. The non-Federal sponsor wishes to perform design and construction of structural flood risk management measures that are elements of the recommended plan. The non-Federal sponsor intends to design and construct a segment of floodwall on the east side of the Cedar River upstream of Interstate 380, from approximately station 165+00 to approximately station 186+00. This approximately 2,100-foot segment of floodwall would effectively reduce flood risk for the 1% flood event to industrial properties in this area. Pursuant to Section 221 of the Flood Control Act of 1970 as amended, the non-Federal sponsor will be eligible to receive credit for the work, subject to a determination by the Secretary of the Army that the work is integral to the project and execution of an agreement covering the work that is executed by the Corps and the non-Federal sponsor prior to work being carried out.

7. In accordance with the Corps Engineering Circular on review of decision documents, all technical, engineering and scientific work underwent an open, dynamic and vigorous review process to ensure technical quality. This included an independent Agency Technical Review (ATR), an Independent External Peer Review (IEPR), and a Corps Headquarters policy and legal review. All concerns of the ATR have been addressed and incorporated into the final report. The IEPR report was completed by Battelle Memorial Institute and provided to the Rock Island District in 2010. A total of 12 comments were received, of which two were deemed significant regarding (a) the potential for additional sponsor costs for the ongoing Phase 1 Archeological and Architectural Survey and (b) the potential for the 2008 flood event to create additional economic uncertainties related to the existing and future project damage estimates. In response, sections in the district's main report and Economics Appendix were expanded to include additional information. All comments from the above referenced reviews have been addressed and incorporated into the final project documents and recommendation as appropriate. Level II IEPR for Safety Assurance will be conducted in accordance with EC 1165-2-209 during the implementation of the Preconstruction Engineering and Design phase. Overall the reviews have resulted in the improvement in the technical quality of the report.

8. The Washington level review indicates that the plan recommended by the reporting officers is technically sound, economically justified, and environmentally and socially acceptable. As the report discusses, residual risk will remain with this plan in place and emphasizes the role of the non-Federal sponsor in addressing and communicating residual risk. The plan complies with essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Land Related 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.

9. I concur with the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the Cedar Rapids project be authorized in accordance with the reporting officer's recommended plan at a total estimated cost of $99,000,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My 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 by Section 202 of WRDA 1996. Accordingly, the non-Federal sponsor must agree with the following requirements prior to project implementation.

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

(1) Provide 25 percent of design costs allocated by the Federal Government to flood risk management in accordance with the terms of a design agreement entered into prior to commencement of design work for the flood risk management features;

(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 Federal Government to flood risk management;

(3) Provide, during construction, a contribution of funds equal to 5 percent of total flood risk management 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 Federal Government to be required or to be necessary for the construction, operation, and maintenance of the flood risk management features;

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

b. Not use funds from other Federal programs, including any non-Federal contribution required as a matching share therefore, to meet any of the City obligations for the project unless the Federal agency providing the Federal portion of such funds verifies in writing that such funds are authorized to be used to carry out the project;

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

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

e. Comply with Section 402 of the WRDA 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 risk management features;

f. 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 degrees of flood risk management provided by the flood risk management features;

g. 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 risk management features afford, hinder operation and maintenance of the project, or interfere with the project's proper function;

h. 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;

i. 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;

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

k. 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;

l. Keep and maintain books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of three 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 Section 33.20;

m. 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.*);

n. 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 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 City with prior specific written direction, in which case the City shall perform such investigations in accordance with such written direction;

o. Assume, as between the Federal Government and the City, 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;

p. Agree, as between the Federal Government and the City, that the City 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

q. 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 WRDA 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 the City has entered into a written agreement to furnish its required cooperation for the project or separable element.

r. Provide the non-Federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of one percent of the total amount authorized to be appropriated for the project.

s. Provide the non-Federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of one percent of the total amount authorized to be appropriated for the project.

10. 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. 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 Congress, the non-Federal sponsor, the State, interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

R. L. VAN ANTWERP
Lieutenant General, US Army
Chief of Engineers

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

REPLY TO
ATTENTION OF

CECW-MVD (1105-2-10a)

DEC 19 2011

SUBJECT: Fargo-Moorhead Metropolitan Area Flood Risk Management Project, North Dakota and Minnesota

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on flood risk management in the Fargo-Moorhead metropolitan area of North Dakota and Minnesota. It is accompanied by the report of the district and division engineers. These reports are in response to a resolution of the Senate Committee on Public Works, adopted 30 September 1974. The resolution requested the review of "reports on the Red River of the North Drainage Basin, Minnesota, South Dakota and North Dakota, submitted in House Document Numbered 185, 81st Congress, 1st Session, and prior reports, with a view to determining if the recommendations contained therein should be modified at this time, with particular reference to flood control, water supply, wastewater management and allied purposes." Preconstruction engineering and design activities will be continued under the authority provided by the resolution cited above.

2. The reporting officers recommend authorization of a plan to reduce flood risk in the Fargo-Moorhead metropolitan area by constructing a diversion channel within North Dakota combined with upstream floodwater staging and storage. The recommended plan consists of a 36 mile 20,000 cubic feet per second (cfs) diversion channel that would start approximately four miles south of the confluence of the Red and Wild Rice rivers and extend west and north around the North Dakota cities of Horace, Fargo, West Fargo and Harwood and ultimately re-enter the Red River of the North downstream of the confluence of the Red and Sheyenne rivers near Georgetown, Minnesota. The diversion channel would cross the Wild Rice, Sheyenne, Maple, Lower Rush and Rush rivers and incorporate the existing Horace to West Fargo Sheyenne River diversion channel. The main line of protection at the south end of the project includes the embankments adjacent to the diversion channel, floodwater Storage Area 1 embankments, and two tie-back levees. Project features would be located in both North Dakota and Minnesota. Unavoidable environmental impacts would be mitigated for with construction of fish passage structures along the Red and Wild Rice rivers; construction of additional fish passage projects in the Red River basin; stream restorations on tributaries near the project; conversion of floodplain agricultural land to floodplain forest; and creating wetlands within the diversion channel footprint. These mitigation features along with adaptive management would be monitored for up

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to twenty years to ensure their performance. This would include pre- and post-project monitoring. The recommended plan is a deviation from the national economic development (NED) plan and is the locally preferred plan (LPP).

3. The currently identified NED Plan is a diversion channel located east of Moorhead, MN with a capacity of 40,000 cfs. The NED Plan diversion channel would be approximately 25 miles long with approximately 10 miles of tie-back levees and includes a large control structure on the Red River of the North. The NED Plan would reduce the stage from the 0.2 percent flood event from approximately 46.7 to 37.6 feet on the Fargo gage.

4. The recommended LPP (following an alignment in North Dakota) would reduce flood stages on the Red River to a lesser degree than the NED plan (following an alignment in Minnesota); the LPP would reduce the stage from the 0.2 percent flood event from approximately 46.7 to 40.0 on the Fargo gage. But the LPP would benefit a larger geographic area and address flooding on four tributaries to the Red River that are not addressed by the NED plan. The LPP provides approximately $6,000,000 less in average annual flood risk management benefits than the NED plan. Since the LPP provides fewer average annual benefits than the NED plan, a comparable smaller scale plan with similar outputs to the LPP was identified along the NED alignment to set the Federal cost share. This plan was identified as the Federally Comparable Plan (FCP) and serves as the basis to determine the project cost sharing apportionment. Federal investment in the flood risk management features of the LPP is capped at the investment that would have been made for the FCP. Based on October 2011 price levels, the estimated first cost of the FCP flood risk management features is $1,205,207,000. In accordance with the cost sharing provisions of Section 103 of the Water Resources Development Act (WRDA) of 1986, as amended, the Federal share of the first cost of the FCP flood risk management features is estimated at $783,384,000 (65 percent).

5. Based on October 2011 price levels, the estimated first cost of the recommended LPP is $1,781,348,000. The first cost of the recommended LPP includes approximately $1,745,033,000 for flood risk reduction and approximately $36,315,000 for recreation. In accordance with Section 103 of WRDA 1986, as amended, recreation features would be shared 50 percent Federal and 50 percent non-Federal. Federal cost sharing in the recommended LPP is limited to the Federal share of the FCP and the non-Federal sponsor would be required to provide 100 percent of the additional costs associated with design and construction of the LPP. The flood risk management features have an estimated first cost of $1,745,033,000, with the Federal and non-Federal shares estimated at $783,384,000 and $961,649,000, respectively. The recreation features have an estimated first cost of $36,315,000, with the Federal and non-Federal shares estimated at $18,157,500 and $18,157,500 respectively. Thus, the overall Federal share of the first costs of the LPP, including recreation, is estimated at $801,542,000, and the non-Federal share is estimated at $979,806,000. The cost includes $17,600,000 for environmental monitoring and adaptive management. The cities of Fargo, North Dakota and Moorhead, Minnesota are the

non-Federal cost sharing sponsors for the recommended plan. The cities of Fargo and Moorhead would be responsible for the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the project after construction, a cost currently estimated at $3,631,000 per year. The OMRR&R estimate includes $527,135 for monitoring and adaptive management beyond the construction phase.

6. Based on a 4.0-percent discount rate, October 2011 price levels and a 50-year period of analysis, the total equivalent average annual costs of the recommended LPP, including OMRR&R, are estimated to be $99,952,000, including $98,098,000 for flood risk management and $1,854,000 for recreation. The recommended LPP would significantly reduce risk to the Fargo-Moorhead metropolitan area from a flood which has a 1-percent chance of occurrence in any year; the 1-percent chance stage would be reduced from approximately 42.4 feet to 30.6 feet on the Fargo gage, which would require only minimal emergency measures to pass safely. The recommended LPP would leave average annual residual damages estimated at $32,000,000. The equivalent average annual benefits are estimated to be $174,617,000 for flood risk management and $5,130,000 for recreation, respectively. The net average annual benefits would be $76,519,000 for flood risk management and $3,276,000 for recreation, respectively. The benefit-to-cost ratio for flood risk reduction is 1.78 to 1; and the benefit- to-cost ratio for recreation is 2.77 to 1; and the overall project benefit-to-cost ratio is 1.8 to 1.

7. The project would modify three existing Federal projects: the Rush River Channel Improvement project authorized by the Flood Control Acts of 1948 and 1950; the Lower Rush River Channel Improvement project authorized under provisions of Section 205 of the 1948 Flood Control Act; and the Sheyenne River project authorized by the 1986 Water Resources Development Act. The modifications to these projects will not impact the purposes for which they were authorized or the benefits they currently provide, and in some cases will curtail or eliminate the need for their continued operation and maintenance. All modifications will be carried out in a manner that fulfills the authorized purposes and provides the intended benefits of existing projects as well as the recommended plan. For example, approximately 2.1 miles of the Rush River project and 3.4 miles of the Lower Rush River project between the diversion channel and their respective confluences with the Sheyenne River, while no longer necessary to reduce flood risk in the same manner as when they were originally constructed, would continue to convey local drainage and need some measure of maintenance. The Horace to West Fargo portion of the existing Sheyenne River Diversion project would be incorporated into the LPP.

8. The recommended LPP was developed in coordination and consultation with various Federal, State and local agencies using a systems approach in formulating flood risk management solutions and in evaluating the impacts and benefits of those solutions. Study formulation looked at a wide range of structural and non-structural alternatives.

9. The non-Federal sponsors wish to perform design and construction of structural flood risk management measures that are elements of the recommended plan. Pursuant to Section 221 of the Flood Control Act of 1970 as amended, and in accordance with existing guidance governing in-kind contribution credit, the non-Federal sponsors will be eligible to receive credit for the work, not to exceed their share, subject to a determination by the Secretary of the Army that the work is integral to the project. Prior to the work being carried out by the non-Federal sponsors, an In-Kind Memorandum of Understanding must be executed between the Corps and the non-Federal sponsors.

10. In accordance with the Engineering Circular on review of decision documents, all technical, engineering and scientific work underwent an open, dynamic and rigorous review process to ensure technical quality. This included an independent Agency Technical Review (ATR), an Independent External Peer Review (IEPR), and a Corps Headquarters policy and legal review. All concerns of the ATR have been addressed and incorporated into the report. The IEPR was conducted by the Battelle Memorial Institute. IEPR of the draft report was completed on July 6, 2010. A total of 23 comments were generated; all were resolved to the satisfaction of the IEPR panel. A second IEPR review began on April 21, 2011 to assess the Supplemental Draft Feasibility Report and EIS and supporting analyses. The IEPR report was completed in July 2011. A total of 16 comments were documented, one was flagged as high, eleven were flagged as medium, and four were flagged as low significance. The comment of high significance addressed the potential risks associated with the operation of the gates at the diversion control structures and the need for redundancy. In response, the Corps will conduct additional hydraulic modeling in the design phase to address the issue and ensure that all structures are designed to be safe and meet all Corps criteria. All other comments from this review have been addressed and incorporated into the final project documents and recommendation as appropriate. Type II IEPR for Safety Assurance will be conducted during the Preconstruction Engineering and Design phase and throughout implementation.

11. I concur with the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the Fargo-Moorhead project be authorized in accordance with the reporting officers' recommended plan at an estimated flood risk management cost of $1,745,033,000 and estimated recreation cost of $36,315,000 for an overall cost of $1,781,348,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My 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 by Section 202 of WRDA 1996. Accordingly, the non-Federal sponsors must agree with the following requirements prior to project implementation.

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

(1) Provide the non-Federal share of design costs allocated by the Government to flood risk management in accordance with the terms of a design agreement entered into prior to commencement of design work for the flood risk management features;

(2) Provide, during construction, a contribution of funds equal to 5 percent of total FCP flood risk management costs;

(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 flood risk management features;

(4) Provide, during construction, any additional funds necessary to make its total contribution for flood risk management equal to at least 35 percent of total FCP flood risk management costs;

(5) Provide 100 percent of all incremental costs of the Locally Preferred Plan.

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

(1) Provide the non-Federal share 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 recreation features;

(2) 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;

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

(4) Provide, during construction, 100 percent of the total recreation costs that exceed an amount equal to 10 percent of the Federal share of total FCP flood risk management costs;

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 flood risk management features;

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 flood risk management features;

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 flood risk management features;

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 flood risk management features afford, hinder operation and maintenance of the project, or interfere with the project's proper function;

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

j. 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;

k. 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;

l. 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;

m. 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;

n. 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;

o. 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.*);

p. 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

sponsors with prior specific written direction, in which case the non-Federal sponsors shall perform such investigations in accordance with such written direction;

q. Assume, as between the Federal Government and the non-Federal sponsors, 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;

r. Agree, as between the Federal Government and the non-Federal sponsors, that the non-federal sponsors 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

s. 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.

12. 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. 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 Congress, the sponsors, the States, interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

MERDITH W. B. TEMPLE
Major General, U.S. Army
Acting Chief of Engineers

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

REPLY TO
ATTENTION OF

CECW-LRD (1105-2-10a) MAY 16 2012

SUBJECT: Ohio River Shoreline, Paducah, Kentucky Reconstruction

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on flood risk management along the left bank of the Ohio River at Paducah, Kentucky. It is accompanied by the report of the district and division engineers. This report responds to Section 5077 of the Water Resources Development Act (WRDA) 2007 which directs the Secretary to complete a feasibility report for rehabilitation (reconstruction) of the existing flood damage reduction project at Paducah, Kentucky (Paducah, Kentucky Local Flood Protection Project) authorized by Section 4 of the Flood Control Act of June 28, 1938. Further, Section 5077 authorizes the Secretary to carry out the project, if determined feasible, at a total cost of $3,000,000. The reconstruction project, as currently proposed, exceeds the amount authorized by Section 5077. Preconstruction engineering and design activities for the Ohio River Shoreline, Paducah, Kentucky Reconstruction project will continue under the authority provided by Section 5077 of WRDA 2007.

2. The existing Paducah, Kentucky, Local Flood Protection Project is a 12.2 mile-long levee and floodwall system completed in 1949. The project consists of about 9.2 miles of earthen levee and 3 miles of floodwalls and includes 12 floodwater pumping stations, and other interior drainage facilities. There are 47 movable closure and service openings in the floodwall system that must be manually secured in advance of flooding.

3. The reporting officers recommend authorizing a flood risk management plan to significantly improve reliability and restore system performance of the more than 60 year-old project at Paducah, Kentucky, by reconstructing certain features of the project. The proposed reconstruction work will extend functionality of, and update to modern design and safety standards, deteriorated mechanical, electrical, and structural components that have exceeded their design service lives. Additionally, the proposed plan provides for construction of one new floodwater pumping plant to address changes in interior flooding. The addition of this new pump plant will increase project efficiency and bring the reconstructed project features up to current design standards. Reconstruction items will generally consist of the following:

(a) Recondition pumps, motors and motor control systems, major pump plant components and other miscellaneous items at each of the 12 existing pumping plants;
(b) Construct a new pumping plant at Station 111+67A;
(c) Slip-line 37 existing deteriorated corrugated metal pipes;

(d) Stabilize diversion channel banks;
(e) Replace floodwall water stop joints;
(f) Plug and / or replace existing deteriorated toe drains;
(g) Replace existing drainage inlet structures (two new gatewell structures) at Bee Branch -at approximate stations 32+12C and 32+38C;
(h) Construct new gate well structures at stations 111+67A (at proposed pump plant #14) and 19+11 section B;
(i) Permanently close 8 existing floodwall closures and raise an existing closure sill;
(j) Install scour erosion control pad at Wall/Levee transitions; and
(k) Provide other miscellaneous items

The proposed project does not require separable mitigation. The report includes an Environmental Assessment and finding of no significant impact on the quality of the environment. The recommended plan is the national economic development (NED) plan.

4. The estimated total first cost of the recommended plan is $19,500,000 at the October 2011 price level. In accordance with the cost sharing provisions of the Section 103(a) of Public Law 99-662, as amended by Section 202 of WRDA 1996, the Federal share of the total cost of this project is estimated at $12,675,000 (65 percent) and the non-Federal share is estimated at $6,825,000 (35 percent), which includes $436,000 for the estimated value of lands, easements, rights-of-way, relocations, and disposal areas. The city of Paducah, Kentucky is the non-Federal cost sharing sponsor for the recommended plan. The city of Paducah would be responsible for the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the project after construction, a cost currently estimated at $636,000 per year.

5. Based on a 4.0-percent discount rate and a 50-year period of economic analysis, the total equivalent average annual costs of the project, including OMRR&R, are estimated to be $1,599,000. The equivalent average annual benefits are estimated to be $7,349,000. Net average annual benefits are estimated as $5,750,000. The benefit-to-cost ratio is approximately 4.6 to 1.

6. Implementation of the proposed reconstruction project would reduce expected equivalent annual flood damages in the project area by about 85 percent, from $8,174,000 to $1,257,000. The reporting officers estimate that the recommended plan has a 99.9 percent probability of containing a flood that has a 1-percent chance of happening in any year and a 99.6-percent probability of containing a flood that has a 0.2-percent chance of occurring in any year.

7. In accordance with implementation guidance on the in-kind contribution provisions of Section 221 of the Flood Control Act of 1970, as amended by Section 2003 of WRDA 2007, the reporting officers recommend that the non-Federal sponsor receive credit, currently estimated to be $2,100,000, for completed reconstruction of drainage structures, including corrugated metal pipes, at the Paducah, Kentucky Local Flood Protection Project. Crediting is subject to the Secretary's determination that such work is integral to the proposed project. This credit

eligibility was approved in concept by the Assistant Secretary of the Army for Civil Works on November 14, 2008. Affording this credit would not relieve the non-Federal sponsor of the requirement to pay 5 percent of the total project costs in cash during construction of the remainder of the proposed project.

8. All technical, engineering and scientific work underwent an open, dynamic and vigorous review process to ensure technical quality. This included an independent Agency Technical Review (ATR) and a Headquarters, USACE policy and legal review. All concerns of the ATR and policy and legal reviews have been addressed and incorporated into the final report. Given the nature of reconstructing an existing project in the original project footprint, I have granted an exclusion from the requirement to conduct a Type I Independent External Peer Review.

9. I concur with the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the Ohio River Shoreline, Paducah, Kentucky Reconstruction project be authorized in accordance with the reporting officer's recommended plan with such modifications as may be advisable in the discretion of the Chief of Engineers. My 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 by Section 202 of WRDA 1996. Accordingly, the non-Federal sponsor must agree with the following requirements prior to project implementation:

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

(1) Provide 35 percent of design costs in accordance with the terms of a design agreement entered into prior to commencement of design work for project;

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

(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 Federal Government to be required or to be necessary for the construction, operation, and maintenance of the project;

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

b. Not use funds from other Federal programs, including any non-Federal contribution required as a matching share for that other program, to meet any of its obligations for the project

unless the Federal agency providing the Federal portion of such funds verifies in writing that such funds are authorized to be used to carry out the project;

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

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

e. Comply with Section 402 of WRDA 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 risk management features;

f. 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 degrees of flood risk management provided by the flood risk management features;

g. 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 risk management features afford, hinder operation and maintenance of the project, or interfere with the project's proper function;

h. 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;

i. 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;

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

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

l. Keep and maintain books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of three 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 Section 33.20;

m. 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.);*

n. 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 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 City with prior specific written direction, in which case the City shall perform such investigations in accordance with such written direction;

o. Assume, as between the Federal Government and the City, 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;

p. Agree, as between the Federal Government and the City, that the City 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

q. Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), and Section 1030) of WRDA 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 the City has entered into a written agreement to furnish its required cooperation for the project or separable element.

r. Provide the non-Federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of one percent of the total amount authorized to be appropriated for the project.

10. 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. 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 Congress, the sponsor, the State, interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

MERDITH W. B. TEMPLE
Major General, U.S. Army
Acting Commander

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
441 G Street N.W.
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

SEP 28 2009

CECW-SAD (1105-2-10a)

SUBJECT: West Onslow Beach and New River Inlet (Topsail Beach), North Carolina

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on hurricane and storm damage reduction along a 5-mile reach of Atlantic Ocean shoreline at Topsail Beach, North Carolina. It is accompanied by the report of the district and division engineers. These reports are in final response to the Energy and Water Development Appropriations Act for Fiscal Year 2001, Public Law 106-377, which included funds for the U.S. Army Corps of Engineers to initiate a General Reevaluation Report (GRR) of the West Onslow Beach and New River Inlet (Topsail Beach) Shore Protection Project, and the remaining shoreline at Topsail Beach. The original project was authorized in Section 101(15) of the Water Resources Development Act (WRDA) of 1992 at a total cost of $14,100,000, with an estimated Federal cost of $7,600,000, and an estimated non-Federal cost of $6,500,000. The authorized project was never constructed. Several recent coastal storms and hurricanes along many portions of North Carolina's shoreline and increasing threats to existing and new development within the Town of Topsail Beach led to initiation of this post-authorization investigation. Preconstruction engineering and design activities for Topsail Beach will be continued under the authorities above.

2. The reporting officers recommend a new authorization for a locally preferred plan (LPP) to reduce hurricane and storm damages by construction of a sand dune and berm along the Topsail Beach shoreline. The recommended plan includes a 26,200-foot long dune and berm system to be constructed to an elevation of 12 feet National Geodetic Vertical Datum (NGVD) fronted by a 50-foot wide berm at an elevation of 7-foot NGVD, with a main fill length of 23,200 feet and a 2,000-foot transition length on the north end into the Town of Surf City and a 1,000-foot transition on the south end. The recommended plan also includes periodic nourishment at four-year intervals. Other associated features of the project are dune vegetation and construction of 23 dune walkover structures for public access. The estimated in-place volume of fill for the initial project construction is 2,387,000 cubic yards, which does not include placement of 690,000 cubic yards for the first nourishment. Fill material for the sand dune and berm construction and nourishment will be dredged from offshore borrow sites identified off the coast of Topsail Beach. The recommended plan also includes post-construction monitoring over the life of the project to ensure project performance. Since the recommended plan does not have any significant adverse effects, no mitigation measures (beyond management practices and avoidance) or compensation measures are required. Compared to the National Economic Development (NED) Plan, the LPP has a dune three feet lower and extends the main fill protection 400-feet southwest to include properties south of Godwin Avenue that are vulnerable

to coastal storm damage. The Assistant Secretary of the Army (Civil Works) approved a policy exception allowing the Corps of Engineers to recommend the LPP by letter dated May 8, 2008. The 400-foot project extension costs an additional $320,000, and is not economically justified. The extension will therefore be funded entirely by the non-Federal sponsor. All features are located in North Carolina.

3. Based on October 2008 price levels the estimated total first cost of the NED plan is $50,332,000, of which $32,712,000 (65 percent) is Federal and $17,620,000 (35 percent) is non-Federal. The estimated first cost of the LPP is $37,712,000. The total initial cost of the recommended plan, including sunk preconstruction engineering and design (PED) costs from project authorization in 1992 through completion of this GRR and Environmental Impact Statement (EIS), is $42,558,000. These sunk PED costs include initial project PED costs of $616,000 and the GRR and EIS cost of $4,230,000, for a total of $4,846,000. The sunk PED costs for the original project are cost shared 75 percent Federal and 25 percent non-Federal and the expanded portion of the project is cost shared 50 percent Federal and 50 percent non-Federal. The total initial project construction cost is composed of both the total first cost of the LPP plus sunk PED costs. Cost sharing for the construction of the project is applied in accordance with the provisions of Section 103 of WRDA 1986, as amended by Section 215 of WRDA 1999. The Federal share of the total cost for the LPP is estimated to be $27,455,000 and the non-Federal share is estimated to be $15,103,000, but will be based upon conditions of public ownership and use of the shore when the Project Partnership Agreement is signed. The non-Federal share includes $320,000 for the incremental cost of the 400-foot berm and dune extension. The estimated cost of lands, easements, rights-of-way, relocations, and dredged or excavated material disposal areas (LERRD) is $ 1,654,000, of which $1,481,000 is estimated to be creditable to the non-Federal sponsor's share.

4. Total periodic nourishment costs for the LPP are estimated to be $113,904,000 (October 2008 price level) over the 50-year period following initiation of construction. These costs are based on an estimated cost for each periodic nourishment of $9,492,000 occurring at four year intervals subsequent to completion of the initial construction (year zero) and include engineering and design and monitoring. The ultimate project cost, which includes initial construction, project monitoring, and periodic nourishment is estimated to be $170,032,000 (October 2008 price level). The equivalent annual cost of periodic nourishment is estimated to be $2,190,000, based on a Federal discount rate of 4.625 percent and a 50-year period of analysis. Based on WRDA 1996, as amended, subject to the availability of funds, periodic nourishment is cost-shared 50 percent Federal and 50 percent non-Federal, based upon conditions of public ownership and use of the shore. The Federal share of each periodic nourishment cost is estimated to be $4,746,000 (50 percent) and the non-Federal share is estimated to be $4,746,000 (50 percent). The project includes beach fill and environmental monitoring costs estimated at $269,000. Annual beach fill monitoring includes semi-annual beach profile surveys ($137,000), annual hydrographic surveys of New Topsail Inlet ($6,000), annual aerial photography of the inlet and beach (cost included in inlet hydrographic survey), an annual monitoring report ($93,000), and monitoring program coordination ($15,000). Annual environmental monitoring includes sea turtle nesting ($17,000) and sea beach amaranth surveys ($1,000), and a one-time cost for benthic invertebrate monitoring ($120,000). The estimated Federal share of annual monitoring costs is $134,500 (50 percent) and the estimated non-Federal share is $134,500 (50 percent). The estimated

Federal share of the one-time benthic invertebrate monitoring is $60,000 (50 percent) and the estimated non-Federal share is $60,000 (50 percent). The Town of Topsail Beach is the non-Federal cost-sharing sponsor for all features and is responsible for the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the project after construction, a cost currently estimated at about $22,000 per year.

5. Based on a 4.625-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated to be $4,450,000, including monitoring and OMRR&R. The equivalent average annual benefits are estimated to be $13,328,000 with net average annual benefits of $8,878,000. The benefit-cost ratio is three to one.

6. The goals and objectives included in the Campaign Plan of the U.S. Army Corps of Engineers have been fully integrated into the Topsail Beach study process. From inception, the district has implemented an effective comprehensive systems approach with full stakeholder participation. The study included an integrated analysis of the Topsail Beach shoreline system and cumulative environmental effects. A statistical, risk based model was used to formulate and evaluate the project. The study report describes risks associated with residual coastal storm damages and risks that will not be reduced such as sound side flooding and wind damages. Loss of life is prevented by the existing procedure of evacuating the barrier island completely well before expected hurricane landfall, removing people from harm's way. The study recommends continuation of the evacuation policy both with and without the project. The selected plan would reduce average annual coastal storm damages by about 84 percent and would leave average annual residual damages estimated at $1,543,000. Additional institutional nonstructural measures to be implemented by the local government are contained in the study report recommendation. The project contains adaptive management measures through the development of borrow area contingency plans to be applied during construction and by an annual project monitoring program to reevaluate and adjust the periodic renourishment actions. The project monitoring program will be a useful research tool for other beach and shoreline studies.

7. I concur with the findings, conclusions, and recommendations of the reporting officers. The plan developed is technically sound, economically justified, and environmentally and socially acceptable. The plan conforms to essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and complies with other administrative and legislative policies and guidelines. Also, the views of interested parties, including Federal, State, and local agencies have been considered. Substantive comments concerned borrow material compatibility, potential existence of near shore hard bottom areas, and avoiding impacts to sea turtles and piping plover. The comments resulted in some changes to the text of the GRR and EIS, but did not change the design of the recommended plan. Independent external peer review (IEPR) was not undertaken for this project, since it was not considered to be unusually complex, novel approaches or methods were not employed, there is no significant threat to public safety from project failure, and it was not controversial. Additionally, the project did not generate significant interagency interest, and only negligible adverse impacts would result.

8. Accordingly, I recommend that the plan to reduce hurricane and storm damages at Topsail Beach, North Carolina be authorized in accordance with the reporting officers' recommended

plan at an October 2008 estimated cost of $42,558,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My 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 by Section 215 of WRDA 1999. The non-Federal sponsor would provide the non-Federal cost share and all LERRD. Further, the non-Federal sponsor would be responsible for all OMRR&R. This recommendation is subject to the non-Federal sponsors agreeing to comply with all applicable Federal laws and policies.

9. I further recommend that construction of the proposed project be contingent on the project sponsor giving written assurances satisfactory to the Secretary of the Army that it will:

a. Provide 35 percent of initial construction costs assigned to hurricane and storm damage reduction plus 100 percent of initial construction costs assigned to protecting privately owned shores where use is limited to private interests, and 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 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; and

4. Provide, during initial construction, any additional funds necessary to make its total contribution equal to 35 percent of project costs assigned to hurricane and storm damage reduction plus 100 percent of costs assigned to protecting privately owned shores where use is limited to private interests.

b. Provide during the periodic nourishment period, 50 percent of periodic nourishment costs and 50 percent of monitoring costs assigned to hurricane and storm damage reduction plus 100 percent of periodic nourishment costs and 100 percent of monitoring assigned to protecting privately owned shores where use is limited to private interests.

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. 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 outputs produced by the project, hinder operation and maintenance of the project, or interfere with the project's proper function;

e. 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;

f. 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;

g. 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;

h. Hold and save the United States free from all damages arising from the construction, periodic nourishment, 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;

i. Keep and maintain books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of three 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;

j. 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.*);

k. 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;

l. 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;

m. 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;

n. 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;

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

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

q. 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 from signing a project partnership agreement., and to implement such plan not later than one year after completion of construction of the project;

r. 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;

s. For so long as the project remains authorized, the non-Federal Sponsor shall ensure continued conditions of public ownership, access, and use of the shore upon which the amount of Federal participation is based;

t. Provide and maintain necessary access roads, parking areas, and other public use facilities , open and available to all on equal terms; and

u. At least twice annually at no cost to the Federal Government, perform surveillance of the beach to determine losses of nourishment material from the project design section and provide the results of such surveillance to the Federal Government.

10. 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. 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 Congress, the sponsor, the State of North Carolina, interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

Vr,

R. L. VAN ANTWERP
Lieutenant General, US Army
Chief of Engineers

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

CECW-SAD (1105-2-10a) DEC 30 2010

SUBJECT: Surf City and North Topsail Beach, North Carolina Coastal Storm Damage Reduction Report

THE SECRETARY OF THE ARMY

1. I submit for transmission my report on coastal storm damage reduction along the Atlantic Ocean shoreline of the towns of Surf City and North Topsail Beach, North Carolina. It is accompanied by the report of the district and division engineers. These reports are in response to two resolutions by the Committee on Transportation and Infrastructure of the House of Representatives, adopted on February 16, 2000 and April 11, 2000. The resolutions requested a review of the report of the Chief of Engineers on West Onslow Beach and New River Inlet, North Carolina, and other pertinent reports, to determine whether any modifications of the recommendations contained therein are advisable at the present time in the interest of shore protection and related purposes for Surf City and North Topsail Beach, North Carolina. Preconstruction engineering and design activities for this project will be continued under the authority provided by the resolutions cited above.

2. The reporting officers recommend authorization for a plan to reduce coastal storm damages by construction of a berm and dune along the Surf City and North Topsail Beach shorelines. The recommended plan includes a 52,150-foot long dune and berm system to be constructed to an elevation of 15 feet National Geodetic Vertical Datum (NGVD) fronted by a seven-foot NGVD (50-foot wide) beach berm with a main fill length of 52,150 feet, extending from the boundary between Topsail Beach and Surf City to the southern edge of the Coastal Barrier Resources Act (CBRA) Zone in North Topsail Beach. The recommended plan also includes renourishment at six-year intervals. Other associated features of the project are dune vegetation and construction of 60 dune walkover structures. Material for the dune and berm construction and renourishment will be dredged from borrow sites identified between one to six miles off the coast of Topsail Island. The recommended plan also includes post-construction monitoring over the period of Federal participation to ensure project performance and adjust renourishment plans as needed. Since the recommended plan would not have any significant adverse effects, no mitigation measures (beyond management practices and avoidance) or compensation measures would be required. The recommended plan is the National Economic Development (NED) Plan for coastal storm damage reduction.

3. The Towns of Surf City and North Topsail Beach are the non-Federal cost-sharing sponsors for all features. Based on October 2010 price levels the estimated total first cost of the plan is

$123,135,000. Renourishment is planned at six-year intervals. There will be seven renourishments with a total cost estimated at October 2010 price levels to be $205,539,000. The ultimate project cost, which includes initial construction, monitoring, and periodic renourishment is estimated to be $353,924,000. Cost sharing is applied in accordance with the provisions of Section 103 of the Water Resources Development Act (WRDA) of 1986, as amended by Section 215 of WRDA 1999. Additional access points and nearby public parking will be necessary to meet the requirements for federal cost sharing; the sponsors anticipate no obstacles to develop such additional access and parking. The Federal and non-Federal shares shown below reflect anticipated development and satisfaction of access and parking requirements, but the final cost-share amounts will be based upon the conditions of public access, parking, development and use of the shore at the time when the Project Partnership Agreement (PPA) is signed.

a. The Federal share of the total first cost would be about $80,038,000 (65 percent) and the non-Federal share would be about $43,097,000 (35 percent).

b. The cost of lands, easements, rights-of-way, relocations, and dredged or excavated material disposal areas (LERRD) is estimated at $4,814,000, all of which is eligible for LERRD credit.

c. The Federal share of the total renourishment cost would be about $102,769,500 (50 percent) and the non-Federal share would be about $102,769,500 (50 percent).

4. Based on a 4.125 percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated to be $10,702,000, including monitoring and OMRR&R. All project costs are allocated to the authorized purpose of coastal storm damage reduction. The equivalent average annual benefits, which include recreation benefits, are estimated to be $40,129,000 with net average annual benefits of $29,427,000. The benefit cost ratio is approximately 3.7 to 1.

5. The goals and objectives included in the Campaign Plan of the U.S. Army Corps of Engineers have been fully integrated into the Surf City and North Topsail Beach study process. The project contains adaptive management measures through an annual project monitoring program in order to be able to reevaluate and adjust the periodic renourishment actions. The study was conducted using a systems perspective that considered the effects of other Federal (West Onslow and New River Inlet [Topsail Beach] Coastal Storm Damage Reduction study, New River and New Topsail Inlet Navigation features) and non-Federal projects in the area, particularly as related to borrow volume availability. A statistical, risk based model was used to formulate and evaluate the project. The study report fully describes risks associated with residual coastal storm damages and risks that will not be reduced, such as sound side flooding and wind damages. The project is intended to address erosion and prevent damages to structures and contents; it is not intended to

nor will it reduce the risk to loss of life during major storm events. Loss of life can only be prevented by the existing procedure of evacuating the barrier island completely well before expected hurricane landfall, thus removing people from harm's way. This study recommends continuation of the evacuation policy both with and without the project. Additional institutional nonstructural measures to be implemented by the local governments are contained in the study report recommendation. The selected plan would reduce average annual coastal storm damages by about 88 percent and would leave average annual damages estimated at $2,241,000. These residual risks have been communicated to both the Towns of Surf City and North Topsail Beach.

6. In accordance with the Corps Engineering Circular EC 1165-2-211 on sea level change, the study performed a sensitivity analysis to look at the economic effects that different rates of accelerated sea level rise could have on the recommended plan. The plan was formulated using a historical or low rate of sea level rise, and the sensitivity analysis used additional accelerated rates, which includes what the EC defines as medium and high rates. The sensitivity analysis indicates that at higher rates of sea level rise, the project costs increase; the project benefits however, increase even more.

7. In accordance with the Corps Engineering Circular EC 1165-2-209 on review of decision documents, all technical, engineering and scientific work underwent an open, dynamic and vigorous review process to ensure technical quality. This included an independent Agency Technical Review (ATR) and an Independent External Peer Review (IEPR). The IEPR was managed by an outside eligible organization (Battelle) that assembled a panel of five experts with combined expertise in the fields of geotechnical and coastal engineering, plan formulation, environment/biology, economics, and recreation analysis. Ultimately, the panel identified and documented sixteen comments. Eight of the panel comments were classified as having high significance. These comments raised questions regarding various aspects of the coastal and non-structural analysis in the report, the availability of sufficient borrow material for the life of the project, and the methods used to determine property values in the economic analysis. Based on these comments, the report's coastal appendix was greatly expanded. To address the concern regarding borrow volume availability, additional analysis was conducted and the discussion in the report regarding risks and uncertainty in borrow availability was expanded. Also information regarding the economic feasibility of obtaining additional borrow material if the currently identified borrow sites were to be depleted in the latter years of the project was added. The panel did not concur with this last response and maintained that the plan formulation should still have been constrained by borrow availability due to uncertainty. I have considered the borrow availability issue and concluded it has been appropriately addressed in the project's risk management plan through the identification of additional sites with similar borrow cost and volume to mitigate the uncertainty. Even though uncertainty remains regarding utilization of specific borrow sites, the recommendation is viable and economically justifiable. Overall the reviews have resulted in the improvement of the technical quality of the report including the enhanced communication of risk and uncertainty.

8. The United States Army Corps of Engineers Headquarters review indicates that the project recommended by the reporting officers is technically sound, environmentally and socially acceptable, and economically justified. The goal to reduce loss of life is incorporated into this project but it is a shared responsibility that can never be completely mitigated by structural solutions. Discussion in the report emphasizes that residual risk will remain after this project is executed; it also, emphasizes the roles of all partners in addressing and communicating residual risk to the public, including the need for a well coordinated hurricane storm warning and evacuation plan. The plan complies with all essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Land Related Resources implementation studies and complies with other administrative and legislative policies and guidelines.

9. I concur in the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the plan to reduce coastal storm damages for Surf City and North Topsail Beach, North Carolina be authorized in accordance with the reporting officers recommended plan at an October 2010 estimated initial cost of $123,135,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My recommendation is subject to cost sharing, financing, and other applicable requirements of Federal and State laws and policies, including Section 103 of the Water Resources Development Act (WRDA) of 1986, as amended by Section 215 of WRDA 1999. The non-Federal sponsors would provide the non-Federal cost share and all LERRD. Further, the non-Federal sponsors would be responsible for all Operation and Maintenance, Repair, Replacement and Rehabilitation (OMRR&R). This recommendation is subject to the non-Federal sponsors agreeing to comply with all applicable Federal laws and policies and in accordance with the required items of cooperation, and agreeing prior to project implementation, to perform as follows:

a. Provide 35 percent of initial project costs assigned to coastal storm damage reduction, plus 50 percent of initial project costs assigned to reducing damages to undeveloped public lands, plus 50 percent of initial project costs assigned to recreation, plus 100 percent of initial project costs assigned to reducing damages to undeveloped private lands and other private shores that do not provide public benefits; and 50 percent of periodic nourishment costs assigned to hurricane and storm damage reduction, plus 100 percent of periodic nourishment costs assigned to reducing damages to undeveloped private lands and other private shores that do not provide public benefits and 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 needed to cover the non-Federal share of design costs.

(3) Provide all lands, easements, and rights-of-way, and perform or ensure the performance of all relocations determined by the Federal Government to be necessary for the initial construction, periodic nourishment, operation, and maintenance of the project.

(4) Provide, during construction, any additional amounts as are necessary to make it total contribution equal to 35 percent of initial project costs assigned to coastal storm damage reduction, plus 50 percent of initial project costs assigned to reducing damages to undeveloped public lands, plus 50 percent of initial project costs assigned to recreation, plus 100 percent of initial project costs assigned to reducing damages to undeveloped private lands and other private shores that do not provide public benefits; and 50 percent of periodic nourishment costs assigned to hurricane and storm damage reduction, plus 100 percent of periodic nourishment costs assigned to reducing damages to undeveloped private lands and other private shores that do not provide public benefits.

b. Operate, maintain, repair, rehabilitate and replace the completed project, or functional portion of the project, 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.

c. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, on property that the non-Federal sponsors, now or hereafter, owns or controls for access to the project for the purpose of inspecting, operating, maintaining, repairing, replacing, rehabilitating, or completing the project. OMRR&R by the Federal Government will not relieve the non-Federal sponsors of responsibility to meet the non-Federal sponsors' obligations, or to preclude the Federal Government from pursuing any other remedy at law or equity to ensure faithful performance.

d. Hold and save the United States free from all damages arising from the initial construction, periodic nourishment, OMRR&R of the project and any project related betterments, except for damages due to the fault or negligence of the United States or its contractors.

e. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of three years after completion of the accounting for which such books, records, documents, and other evidence is required, to the extent and in such detail as will properly reflect total costs of construction of the project, 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 CFR 33.20.

f. Perform, or cause to be performed, 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), P.L. 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 the initial construction, periodic nourishment, 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 will perform such investigations unless the Federal Government provides the non-Federal sponsors with prior specific written direction, in which case, the non-Federal sponsors will perform such investigations in accordance with such written direction.

g. Assume, as between the Federal Government and the non-Federal sponsors, complete financial responsibility for all necessary cleanup and response costs of any CERCLA-regulated materials in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be necessary for the initial construction, periodic nourishment, operation, or maintenance of the project.

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

i. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended by (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 the initial construction, periodic nourishment, operation, and maintenance of the project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and inform all affected persons of applicable benefits, policies, and procedures in connection with that Act.

j. Comply with all applicable Federal and State laws and regulations, including section 601 of the Civil Rights Act of 1964, P.L. 88-352 (42 U.S.C. 2000d), Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, titled *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 and requirements, including, 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.*).

k. Comply with section 402 of the WRDA of 1986, as amended (33 U.S.C. 701b-12), which requires the non-Federal interest to participate in and comply with applicable Federal floodplain management and flood insurance programs, prepare a floodplain management plan within one year after the date of signing a PPA, and implement the plan no later than one year after project construction is complete.

l. Provide the non-Federal share of that portion of the costs of data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project, in accordance with the cost-sharing provisions of the agreement.

m. Participate in and comply with applicable Federal floodplain management and flood insurance programs.

n. Do not use Federal funds to meet the non-Federal sponsors' share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized.

o. Prevent obstructions of or encroachment on the project (including prescribing and enforcing regulations to prevent such obstructions or encroachments), which might reduce the level of damage reduction it affords, hinder operation and maintenance or future periodic nourishment, or interfere with its proper function, such as any new developments on project lands or the addition of facilities that would degrade the benefits of the project.

p. Not less than once each year, inform affected interests of the extent of damage reduction afforded by the project.

q. Publicize floodplain information in the area concerned and provide such information to zoning and other regulatory agencies for their use in preventing unwise future development in the floodplain and in adopting such regulations as might be necessary to prevent unwise future development and to ensure compatibility with damage reduction levels provided by the project.

r. For so long as the project remains authorized, the non-Federal sponsors must ensure continued conditions of public ownership, access, and use of the shore on which the amount of Federal participation is based.

s. Provide and maintain necessary access roads, parking areas, and other public use facilities, open and available to all on equal terms.

CECW-SAD (1105-2-10a)
SUBJECT: Surf City and North Topsail Beach, North Carolina Coastal Storm Damage Reduction Report

t. At least twice annually and after storm events, perform surveillance of the beach to determine losses of nourishment material from the project design section and provide the results of such surveillance to the Federal Government.

u. Comply with section 221 of P.L. 91-611, Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), and section 103(j) of the WRDA of 1986, P.L. 99-662, as amended (33 U.S.C. 2213(j)), which provides that the Secretary of the Army must not commence the construction of any water resources project or separable element thereof, until the non-Federal interests have entered into a written agreement to furnish its required cooperation for the project or separable element.

10. 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. 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 Congress, the sponsors, the State, interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

R. L. VAN ANTWERP
Lieutenant General, US Army
Chief of Engineers

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

CEMP-SPD (1105-2-10a) APR 15 2012

SUBJECT: San Clemente Shoreline, Orange County, California

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on coastal storm damage reduction along the Pacific Ocean shoreline in San Clemente, California. It is accompanied by the report of the Los Angeles District Engineer and the South Pacific Division Engineer. These reports are in partial response to the authority contained in Section 208 of the Flood Control Act of 1965 (Title II of P.L. 89-298), which provides for studies to determine the advisability of protection work against storm and tidal waves along the coasts of Washington, Oregon, and California. The Energy and Water Development Appropriations Act of 2000, P.L. 106-60, appropriated the funds for a reconnaissance study to investigate shoreline protection alternatives for San Clemente Shoreline, California. Preconstruction engineering and design activities for this project will be continued under the authority provided by the resolutions cited above.

2. The reporting officers recommend authorization for a plan to reduce coastal storm damages by constructing a beach fill/berm along the San Clemente shoreline. The recommended plan for coastal storm damage reduction includes construction of a 50-foot-wide beach nourishment project along a 3,412-foot-long stretch of shoreline using 251,000 cubic yards of compatible sediment, with renourishment on the average of every 6 years over a 50-year period of Federal participation, for a total of eight additional nourishments. The design berm will be constructed to an elevation of 17 feet MLLW with foreshore slope of 8H:1V (at equilibrium). Material for the beach fill will be dredged from a borrow site identified off the coast of San Diego County. Physical monitoring of the performance of the project will be required annually throughout the 50-year period of Federal participation. The recommended plan would provide coastal storm damage reduction throughout the project reach and would maintain the existing recreational beach. Monitoring of the environmental resources will be required for each construction event. The project is expected to have minimal impacts to environmental resources. A comprehensive monitoring and mitigation plan has been incorporated in the project in the event that impacts to habitat result. The recommended plan is the national economic development (NED) plan for coastal storm damage reduction.

3. The City of San Clemente is the non-Federal cost-sharing sponsor for all features. Based on October 2011 price levels, the estimated total nourishment cost of the plan is $98,100,000, which includes the project first cost of initial construction of $11,300,000 and a total of 8 periodic renourishments at a total cost of $86,800,000. Periodic renourishments are planned at 6-year

[1] This report contains the proposed recommendation of the Chief of Engineers. The recommendation is subject to change to reflect Washington level review and comments from Federal and State agencies.

intervals. In accordance with the cost share provisions in Section 103 of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2213), the Federal and non-Federal shares are as follows:

a. The Federal share of the project first cost would be $7,350,000 and the non-Federal share would be $3,960,000, which equates to 65 percent Federal and 35 percent non-Federal. The cost of lands, easements, rights-of-way, relocations, and dredged or excavated material disposal areas (LERRD) is estimated at $11,000, all of which is eligible for LERRD credit.

b. The Federal share of the total renourishment cost would be $43,400,000 and the non-Federal share would be $43,400,000, which equates to 50 percent Federal and 50 percent non-Federal.

c. The total nourishment cost includes $4,460,000 for environmental monitoring, and $8,550,000 for physical monitoring over the life of the project.

d. The City of San Clemente would be responsible for the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the project after construction. The project is not currently estimated to result in a significant incremental increase over the sponsor's existing beach maintenance activities and costs.

4. Based on a 4-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated to be $2,180,000, including monitoring. All project costs are allocated to the authorized purpose of coastal storm damage reduction. The selected plan would reduce average annual coastal storm damages by about 97 percent and would leave average annual damages estimated at $36,900. The equivalent average annual benefits, which include recreational benefits, are estimated to be $3,160,000, with net average annual benefits of $978,000. The benefit-cost ratio is approximately 1.4 to 1.

5. The goals and objectives included in the Campaign Plan of the U.S. Army Corps of Engineers have been fully integrated into the San Clemente Shoreline study process. The project includes an annual project monitoring program to reevaluate and adjust the periodic renourishment actions. The study was conducted using a watershed perspective to examine sediment supply changes within the San Juan Creek Watershed. A statistical, risk based model was used to formulate and evaluate the project. The project is intended to address erosion and prevent damages to structures and contents; it is not intended to, nor will it, reduce the risk to loss of life during major storm events. The study report fully describes risks associated with residual coastal storm damages and risks that will not be reduced. These residual risks have been communicated to the City of San Clemente.

6. Along the shoreline of San Clemente, a lack of sediment supply to the shoreline has resulted in chronic, mild, and long-term erosion. Without a coastal storm damage reduction project public properties and structures will continue to be susceptible to damages caused by erosion (including land loss and undermining of structures), inundation (structures), and wave attack (structures, railroad). The project area includes the LOSSAN (Los Angeles to San Diego)

railroad corridor which is a vital link for passenger and freight service and has been designated as a Strategic Rail Corridor by the Department of Defense. As the protective beach lessens over time and is eventually lost, it is expected that storm waves will act directly upon the railroad ballast, significantly threatening the operation of the LOSSAN railroad line. The narrowing beaches are also expected to subject ancillary beachfront public facilities to storm wave-induced damages, and further reduce recreational space on an already space-limited beach. The recommended plan was formulated to maximize coastal storm damage reduction, address potential environmental affects, and minimize cost.

7. In accordance with the Corps Engineering Circular (EC 1165-2-211) on sea level change, the study performed a sensitivity analysis to investigate the economic effects that different rates of accelerated sea level rise could have on the recommended plan. The plan was formulated using a historical or low rate of sea level rise, and the sensitivity analysis used additional accelerated rates, which includes what the EC defines as medium and high rates. The sensitivity analysis indicates that at higher rates of sea level rise, renourishment intervals increase and the reduction of storm damages decreases, but the plans are still justified.

8. In accordance with the Corps Engineering Circular (EC 1165-2-209) on review of decision documents, all technical, engineering and scientific work underwent an open, dynamic and vigorous review process to ensure technical quality. This included an Agency Technical Review (ATR), an Independent External Peer Review (IEPR) (Type I), and a Corps Headquarters policy and legal review. All concerns of the ATR have been addressed and incorporated into the final report. The IEPR was completed by Battelle Memorial Institute. A total of 24 comments were documented. The IEPR comments identified significant concerns in areas of the plan formulation and engineering assumptions that are needed to support the decision-making process and plan selection. This resulted in expanded narratives throughout the report to support the decision-making process and justify the recommended plan. A safety assurance review (Type II IEPR) will be conducted during the design phase of the project. All comments from the above referenced reviews have been addressed and incorporated into the final documents. Overall the reviews resulted in improvements to the technical quality of the report.

9. Washington level review indicates that the project recommended by the reporting officers is technically sound, environmentally and socially acceptable, and economically justified. The plan complies with all essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Land related resources implementation studies and complies with other administrative and legislative policies and guidelines. Also the views of interested parties, including Federal, State and local agencies have been considered.

10. I concur in the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the plan to reduce coastal storm damages for the San Clemente, California shoreline be authorized in accordance with the reporting officers' recommended plan at an estimated project first cost of $11,300,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My 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 by Section 215 of WRDA 1999. The non-Federal

sponsor would provide the non-Federal cost share and all LERRD. Further the non-Federal sponsor would be responsible for all OMRR&R. This recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and policies.

a. Provide a minimum of at least 35 percent of initial project costs assigned to coastal storm damage reduction, plus 50 percent of initial project costs assigned to reducing damages to undeveloped public lands, plus 50 percent of initial project costs assigned to recreation, plus 100 percent of initial project costs assigned to reducing damages to undeveloped private lands and other private shores that do not provide public benefits; and 50 percent of periodic nourishment costs assigned to hurricane and storm damage reduction, plus 100 percent of periodic nourishment costs assigned to reducing damages to undeveloped private lands and other private shores that do not provide public benefits and 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 all lands, easements, and rights-of-way, and perform or ensure the performance of all relocations determined by the Federal Government to be necessary for the initial construction, periodic nourishment, operation, and maintenance of the project.

(4) Provide, during construction, any additional amounts as are necessary to make the total contribution equal to 35 percent of initial project costs assigned to coastal storm damage reduction, plus 50 percent of initial project costs assigned to reducing damages to undeveloped public lands, plus 50 percent of initial project costs assigned to recreation, plus 100 percent of initial project costs assigned to reducing damages to undeveloped private lands and other private shores that do not provide public benefits; and 50 percent of periodic nourishment costs assigned to hurricane and storm damage reduction, plus 100 percent of periodic nourishment costs assigned to reducing damages to undeveloped private lands and other private shores that do not provide public benefits.

b. For so long as the project remains authorized, operate, maintain, repair, rehabilitate, and replace the project, or functional portion of the project, 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.

c. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal Sponsor, now or hereafter, owns or controls for access to the project for the purpose of inspecting, operating, maintaining, repairing, replacing, rehabilitating, or completing the project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Federal Government shall relieve the non-Federal Sponsor

of responsibility to meet the non-Federal Sponsor's obligations, or to preclude the Federal Government from pursuing any other remedy at law or equity to ensure faithful performance.

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

e. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project 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.

f. Perform, or cause to be performed, 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 the initial construction, periodic nourishment, 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.

g. Assume, as between the Federal Government and the Non-Federal Sponsor, complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be necessary for the initial construction, periodic nourishment, operation, or maintenance of the project.

h. 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, and repair the project in a manner that will not cause liability to arise under CERCLA.

i. If applicable, comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way, required for the initial construction, periodic nourishment, operation, and maintenance of the project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

j. 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"; Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring non-Federal preparation and implementation of floodplain management plans; 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 substantive 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)).".

k. Comply with section 402 of the WRDA of 1986, as amended (33 U.S.C. 701b-12), which requires the non-Federal interest to participate in and comply with applicable Federal floodplain management and flood insurance programs, prepare a floodplain management plan within one year after the date of signing a Project Partnership Agreement (PPA), and implement the plan no later than one year after project construction is complete.

l. Provide the non-Federal share of that portion of the costs of data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project, in accordance with the cost sharing provisions of the agreement.

m. Participate in and comply with applicable Federal floodplain management and flood insurance programs.

n. Do not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized.

o. Prescribe and enforce regulations to prevent obstruction of or encroachment on the project that would reduce the level of protection it affords or that would hinder future periodic nourishment and/or the operation and maintenance of the project.

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

q. Publicize floodplain information in the area concerned and provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the floodplain, and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the project.

CEMP-SPD
SUBJECT: San Clemente Shoreline, Orange County, California

r. For so long as the project remains authorized, the non-Federal Sponsor shall ensure continued conditions of public ownership and use of the shore upon which the amount of Federal participation is based;

s. Provide and maintain necessary access roads, parking areas, and other public use facilities, open and available to all on equal terms;

t. At least twice annually and after storm events, perform surveillance of the beach to determine losses of nourishment material from the project design section and provide the results of such surveillance to the Federal Government;

u. 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.

11. 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. 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 Congress, the sponsor, the State, interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

MERDITH W. B. TEMPLE
Major General, U.S. Army
Acting Commander

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, DC 20314-1000

REPLY TO
ATTENTION OF
CECW-SAD

15 SEP 2009

SUBJECT: Mississippi Coastal Improvements Program, Hancock, Harrison, and Jackson Counties, Mississippi, Comprehensive Plan Report

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my final report on water resources improvements associated with hurricane and storm damage risk reduction and ecosystem restoration in the coastal counties of Hancock, Harrison, and Jackson, Mississippi. It is accompanied by the report of the district and division engineers. These reports are a final response to authorizing legislation contained in the Department of Defense Appropriation Act of 2006 (P.L. 109-148), dated 30 December 2005. The study authorization states, in part, the following:

> *"... the Secretary shall conduct an analysis and design for comprehensive improvements or modifications to existing improvements in the coastal area of Mississippi in the interest of hurricane and storm damage reduction, prevention of saltwater intrusion, preservation of fish and wildlife, prevention of erosion, and other related water resource purposes at full Federal expense; Provided further, that the Secretary shall recommend a cost-effective project, but shall not perform an incremental benefit-cost analysis to identify the recommended project, and shall not make project recommendations based upon maximizing net national economic development benefits; Provided further, that interim recommendations for near term improvements shall be provided within 6 months of enactment of this act with final recommendations within 24 months of this enactment."*

Pre-construction engineering and design and additional studies will be initiated upon Congressional authorization.

2. The Mississippi Coastal Improvements Program Comprehensive Plan, hereinafter referred to as the MsCIP Comprehensive Plan, is a systemwide approach linking structural and nonstructural hurricane and storm damage risk reduction elements with ecosystem restoration elements, all with the goal of providing for a coastal community that is more resilient to hurricanes and storms. The MsCIP Comprehensive Plan for hurricane and storm damage risk reduction in coastal Mississippi was developed using a multiple lines-of-defense approach focusing on reducing hurricane and storm damages through barrier islands restoration, and employing beachfront protection, wetland restoration, and floodplain evacuation concepts of the MsCIP Comprehensive Plan. The reporting officers identify 12 elements to aid recovery of coastal Mississippi that was severely damaged by the hurricanes of 2005. Structural elements include restoring protective beaches and systems, restoring native habitats, and raising an

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existing levee. Non-structural elements include removing structures from floodplains or raising structures that are highly vulnerable to storm damage. The hurricanes of 2005 severely taxed the resources of local governments and institutions, making it unlikely that those resources could be employed to implement these proposed recovery actions without Federal assistance. Thus, this package of 12 elements and the identified further feasibility studies will help the people of coastal Mississippi in their recovery. Implementation of the 12 elements would provide for the restoration of over 3,000 acres of coastal forest and wetlands, approximately 30 miles of beach and dune restoration, and floodproofing or acquisition of approximately 2,000 tracts within the 100-year floodplain.

3. The MsCIP Comprehensive Plan also includes recommendations for additional studies to address the longer term needs over the next 30-40 years. These studies would evaluate the restoration of over 30,000 acres of coastal forest, wetlands, beaches and dunes; sustainable restoration of the barrier islands; structural measures; and floodproofing or acquisition of over 58,000 tracts within the 100-year floodplain.

4. The reporting officers developed the recommended 12 elements for coastal Mississippi consistent with the direction provided in the Department of Defense Appropriations Act of 2006 (P.L. 109-148), dated 30 December 2005. In accordance with P.L. 109-148, the reporting officers found each of the 12 elements to be cost-effective, technically sound, and environmentally and socially acceptable. These 12 elements are described below and include two non-structural hurricane storm risk reduction elements, one structural hurricane and storm damage risk reduction element, seven ecosystem restoration elements, and two coastal ecosystem restoration elements. The additional studies that are part of the MsCIP Comprehensive Plan could provide further improvements in the coastal area of Mississippi if implemented. Discussion of these studies is included in paragraphs 5 and 6.

a. High Hazard Area Risk Reduction Program (HARP). This project element consists of acquisition of approximately 2,000 tracts which are at the highest risk of being damaged by storm surge, demolition of existing structures, and retention of acquired tracts in an open space condition. The number of tracts was based on an estimate of what could be acquired during a five year period following the execution of the Project Partnership Agreement for implementation of this element. To the extent practicable, acquisition would be on a willing seller basis, but eminent domain could be utilized when determined to be warranted. As described in the report, acquisition will be in compliance with the provisions of the Uniform Relocations Assistance and Real Property Acquisition Policies Act (P.L. 91-646), as amended, and the uniform regulations contained in 49 CFR, Part 24 including the provision of payment of relocation assistance benefits to eligible recipients. The tracts would include residential, commercial and unimproved tracts. In addition, buildings owned by the City of Moss Point that are used for municipal purposes will be replaced with buildings out of the Federal Emergency Management Agency (FEMA) designated Velocity Zone. Benefits of the HARP include approximately $22,000,000 – $33,000,000 in average annual hurricane and storm damage risk

reduction benefits, depending on the specific tracts acquired. At October 2008 price levels, the estimated first cost of this element is $407,860,000. The cost of this non-structural project element is allocated to hurricane and storm damage risk reduction. In accordance with the provisions of the Water Resources Development Act of 1986 (WRDA 1986), as amended, cost sharing would be 65-percent Federal and 35-percent non-Federal. The Federal share of the estimated first cost of this element would be $265,110,000 and the non-Federal share would be $142,750,000. The estimated annual cost for operation, maintenance, repair, replacement and rehabilitation of this project element is $75,000 and is a 100-percent non-Federal responsibility.

b. Waveland Floodproofing. This project element consists of elevating approximately 25 residential structures in the City of Waveland, Mississippi that are determined to be eligible for floodproofing by elevation out of the 1-percent chance storm event inundation level. Benefits of the Waveland Floodproofing include $224,000 in average annual hurricane and storm damage risk reduction benefits. At October 2008 price levels, the estimated first cost of this element is $4,450,000. The cost of this element is allocated to hurricane and storm damage risk reduction. In accordance with the provisions of WRDA 1986, as amended, cost sharing would be 65-percent Federal and 35-percent non-Federal. The Federal share of the estimated first cost of this project element is $2,890,000 and the non-Federal share is $1,560,000. Due to the non-structural nature of this element, the estimated annual costs for operation, maintenance, repair, replacement and rehabilitation are expected to be nominal. However any operation, maintenance, repair, replacement and rehabilitation that would be needed is a 100-percent non-Federal responsibility.

c. Forrest (Forest) Heights Levee. This project element for the Forrest Heights community in the Turkey Creek watershed of Gulfport, Mississippi consists of raising approximately 6,500 linear feet of an existing non-Federal levee to a levee crest elevation of 21 feet North Atlantic Vertical Datum of 1988 (NAVD-88). An existing publicly owned park with a surface elevation of 12 to 14 feet NAVD-88 would be included in the plan to serve as a water detention area for temporary containment of rainfall during storm events. This recommended project element will require the acquisition of two residential properties within the existing community. Unavoidable adverse environmental impacts have been identified and the cost of acquisition and restoration of approximately 3 acres of mitigation is included in total estimated cost of this element. Hurricane and storm damage risk reduction benefits are estimated at $101,000 to a historically significant minority community. In addition to these benefits, the levee would maintain cohesiveness of the historically significant community, and preserve the culture and heritage of its predominantly minority residential population. At October 2008 price levels, the estimated first cost of this element is $14,070,000. The cost of this element is allocated to hurricane and storm damage risk reduction. In accordance with the provisions of WRDA 1986, as amended, cost sharing would be 65-percent Federal and 35-percent non-Federal. The Federal share of the estimated first cost of this project element is $9,150,000 and the non-Federal share is $4,920,000. The estimated annual cost for operation, maintenance, repair, replacement, and rehabilitation of this project element is $114,000 and is a 100-percent non-Federal responsibility.

d. Turkey Creek Ecosystem Restoration. This project element consists of the restoration of 689 acres of an undeveloped site of degraded wet pine savannah habitat. Restoration of this area would provide an increase of 1,565 average annual functional habitat units. These habitats have been identified by the U.S. Fish and Wildlife Service as habitats of high value for native species and as relatively scarce or becoming scarce on a national basis or in the ecoregion. Measures required to restore hydrology and natural vegetation on the site include filling drainage ditches, road removal, and controlled burning. Rare and threatened and endangered birds that are expected to utilize the areas following burning and regrowth include Henslow's sparrow, Bachman's sparrow, red-cockaded woodpecker, and Mississippi Sandhill Crane. This restored ecosystem also may benefit the Mississippi Gopher frog and, in drier areas along ridges, the black pine snake and the gopher tortoise. At October 2008 price levels, the estimated first cost of this element is $6,840,000. The cost of this project is allocated to ecosystem restoration. In accordance with the provisions of WRDA 1986, as amended, cost sharing would be 65-percent Federal and 35-percent non-Federal. The Federal share of the estimated first cost of this project element is $4,450,000 and the non-Federal share is $2,390,000. The estimated annual cost for operation, maintenance, repair, replacement, and rehabilitation of this project element is $47,000 and is a 100-percent non-Federal responsibility. Post-implementation monitoring of this ecosystem restoration element is projected to be conducted for no more than five years at a cost of less than 1-percent of the total first cost of the ecosystem restoration elements. Adaptive management of ecosystem restoration element is expected to cost no more than 3-percent of the total first cost of the ecosystem restoration element. The cost of monitoring and adaptive management is included in the total estimated first cost of this element.

e. Dantzler Ecosystem Restoration. This project element consists of restoration of 385 acres of severely degraded wet pine savannah owned by the State of Mississippi. Measures required to restore hydrology and natural vegetative habitat to the site include removal of existing hurricane debris and sedimentation, filling drainage ditches, road removal, control of non-native species, and controlled burning. The proposed element would provide an increase of 1,244 average annual functional habitat units and restore the natural hydrologic character of the area. The site's location in proximity to the Pascagoula River delta, a Gulf Ecological Management Site, increases the value of this restoration element by minimizing the fracturing of biodiversity. At October 2008 price levels, the estimated first cost of this element is $2,210,000. The cost of this project is allocated to ecosystem restoration. In accordance with the provisions of WRDA 1986, as amended, cost sharing would be 65-percent Federal and 35-percent non-Federal. The Federal share of the estimated first cost of this project element is $1,440,000 and the non-Federal share is $770,000. The estimated annual cost for operation, maintenance, repair, replacement, and rehabilitation of this project element is $26,000 and is a 100-percent non-Federal responsibility. Post-implementation monitoring of this ecosystem restoration element is projected to be conducted for no more than five years at a cost of less than 1-percent of the total first cost of the ecosystem restoration elements. Adaptive management of ecosystem restoration element is expected to cost no more than 3-percent of the total first cost of the ecosystem restoration element. The cost of monitoring and adaptive management is included in the total estimated first cost of this element.

f. Franklin Creek Ecosystem Restoration. This project element includes restoration of hydrology and native habitats by removing ditches, excavating and removing existing roadbeds, installing culverts under U.S. Highway 90, control of non-native species, and controlled burning to restore 149 acres located north and south of U.S. Highway 90 with critical wet pine savannah habitat. This area routinely floods with only a slight rainfall; thus, this would also provide additional flood storage capacity by restoring the natural habitat. Pine savannah wetlands provide floodwater retention, groundwater recharge, and water purification. This habitat is becoming fragmented and with the increased development, fire maintenance is increasingly harder to perform. The proposed element would provide an increase of 516 average annual functional habitat units and restore the natural hydrology of the area. In addition, restoration of this area would provide for additional flood storage capacity within the Grand Bay area reducing flooding severity within the adjacent communities of Orange Grove and Pecan in Jackson County. The site's location in proximity to the Grand Bay National Wildlife Refuge (NWR) and the Grand Bay National Estuarine Research Reserve (NERR) increases the value of this restoration element by minimizing the fracturing of biodiversity. Incidental hurricane and storm damage risk reduction benefits would be realized from the removal of approximately 30 residential structures from the floodplain. At October 2008 price levels, the estimated first cost of this element is $1,860,000. The cost of this project is allocated to ecosystem restoration. In accordance with the provisions of WRDA 1986, as amended, cost sharing would be 65-percent Federal and 35-percent non Federal. The Federal share of the estimated first cost of this project element is $1,210,000 and the non-Federal share is $650,000. The estimated annual cost for operation, maintenance, repair, replacement, and rehabilitation of this project element is $11,000 and is a 100-percent non-Federal responsibility. Post-implementation monitoring of this ecosystem restoration element is projected to be conducted for no more than five years at a cost of less than 1-percent of the total first cost of the ecosystem restoration elements. Adaptive management of ecosystem restoration element is expected to cost no more than 3-percent of the total first cost of the ecosystem restoration element. The cost of monitoring and adaptive management is included in the total estimated first cost of this element.

g. Bayou Cumbest Ecosystem Restoration. This project element includes the acquisition of approximately 61 tracts, removal of 19 structures, excavation and removal of fill material from former home sites and adjacent lands, filling drainage ditches, control of non-native species, and planting with native emergent wetland species. Following acquisition of these tracts, 148 acres would be restored to emergent wetland (110 acres) and coastal scrub shrub habitat (38 acres). The estuarine wetland habitats provide nursery and foraging habitat that supports various species including economically-important marine fishery species, such as black drum, spotted seatrout, southern flounder, Gulf menhaden, bluefish, croaker, mullet, and blue crab. The proposed element would provide an increase of 637 average annual functional habitat units. The site's proximity to Franklin Creek, Grand Bay NWR and Grand Bay NERR increases the value of this project element by minimizing the fracturing of biodiversity. At October 2008 price levels, the estimated first cost of this element is $25,530,000. The cost of this project is allocated to ecosystem restoration. In accordance with the provisions of WRDA 1986, as amended, cost sharing would be 65-percent Federal and 35-percent non-Federal. The Federal share of the estimated first cost of this project

element is $16,590,000 and the non-Federal share is $8,940,000. The current estimated annual cost for operation, maintenance, repair, replacement, and rehabilitation of this project element is $114,000 and is a 100-percent non-Federal responsibility. Post-implementation monitoring of this ecosystem restoration element is projected to be conducted for no more than five years at a cost of less than 1-percent of the total first cost of the ecosystem restoration elements. Adaptive management of ecosystem restoration element is expected to cost no more than 3-percent of the total first cost of the ecosystem restoration element. The cost of monitoring and adaptive management is included in the total estimated first cost of this element.

h. Admiral Island Ecosystem Restoration. This project element consists of restoration of a severely degraded 123-acre tidal wetland area owned by the State of Mississippi. Measures required to restore hydrology and native habitat to the area include excavating fill material, filling ditches, control of non-native species and planting native tidal emergent species. The proposed element would provide an increase of 108 average annual functional habitat units. At October 2008 price levels, the estimated first cost of this element is $21,810,000. The cost of this project is allocated to ecosystem restoration. In accordance with the provisions of WRDA 1986, as amended, cost sharing would be 65-percent Federal and 35-percent non-Federal. The Federal share of the estimated first cost of this project element is $14,180,000 and the non-Federal share is $7,630,000. The current estimated annual cost for operation, maintenance, repair, replacement, and rehabilitation of this project element is $58,000 and is a 100-percent non-Federal responsibility. Post-implementation monitoring of this ecosystem restoration element is projected to be conducted for no more than five years at a cost of less than 1-percent of the total first cost of the ecosystem restoration elements. Adaptive management of ecosystem restoration element is expected to cost no more than 3-percent of the total first cost of the ecosystem restoration element. The cost of monitoring and adaptive management is included in the total estimated first cost of this element.

i. Deer Island Ecosystem Restoration. This project element includes actions that will complement existing Federal restoration projects by minimizing the fracturing of biodiversity. Measures include restoration of a portion of the northern and southern shorelines of the island, and new stone training dikes to prevent future erosion. The proposed element would provide an additional 400 acres of highly productive estuarine wetlands, restore beach and dune habitat, create hard bottom habitat, reduce coastal erosion, and restore the coastal maritime forest. This element would produce an increase of 2,125 average annual functional habitat units. In addition, the restoration of Deer Island provides incidental hurricane and storm damage risk reduction benefits to the developed mainland Biloxi area. At October 2008 price levels, the estimated first cost of this element is $21,520,000. The cost of this project is allocated to ecosystem restoration. In accordance with the provisions of WRDA 1986, as amended, cost sharing would be 65-percent Federal and 35-percent non-Federal. The Federal share of the estimated first cost of this project element is $13,990,000 and the non-Federal share is $7,530,000. All costs for operation, maintenance, repair, replacement and rehabilitation are a 100-percent non-Federal responsibility. Post-implementation monitoring of this ecosystem restoration element is projected to be conducted for no more than five years at a cost of less than 1-percent of the total first cost of the ecosystem

restoration elements. Adaptive management of ecosystem restoration element is expected to cost no more than 3-percent of the total first cost of the ecosystem restoration element. The cost of monitoring and adaptive management is included in the total estimated first cost of this element.

j. Submerged Aquatic Vegetation Element. This element consists of measures designed to evaluate techniques for restoring submerged aquatic vegetation (SAV), an essential component of an estuarine ecosystem. Specifically, five acres of SAVs in the Grand Bay National Estuarine Research Reserve (NERR) area that were destroyed by Hurricane Katrina will be restored using different techniques. The results will be used to guide and develop other SAV restoration projects that would be undertaken as future authorized elements of the overall Comprehensive Plan. At October 2008 price levels, the estimated first cost of this element is $900,000. Cost sharing would be 65-percent Federal and 35-percent non-Federal. The Federal share of the estimated first cost of this measure is $590,000 and the non-Federal share is $310,000.

k. Coast-wide Beach and Dune Ecosystem Restoration. This project element consists of beach and dune improvements to approximately 30 miles of the 60 miles of existing beaches on the mainland coast. These improvements would include construction of 60-foot wide vegetated dune fields approximately 50 feet seaward of the existing seawalls. The element would provide 248 average annual functional habitat units. These beach and dune areas are critical to nesting and resting shorebirds such as the State listed least tern and the threatened piping plover. In addition to the ecological benefits, the dunes would provide incidental hurricane and storm damage risk reduction benefits particularly during smaller storm events, tropical storms, and lower energy hurricanes. At October 2008 price levels, the estimated first cost of this element is $23,320,000. The cost of this project is allocated to ecosystem restoration. In accordance with the provisions of WRDA 1986, as amended, cost sharing would be 65-percent Federal and 35-percent non-Federal. The Federal share of the estimated first cost of this project element is $15,160,000 and the non-Federal share is $8,160,000. All costs for operation, maintenance, repair, replacement and rehabilitation are a 100-percent non-Federal responsibility. Post-implementation monitoring of this ecosystem restoration element is projected to be conducted for no more than five years at a cost of less than 1-percent of the total first cost of the ecosystem restoration elements. Adaptive management of ecosystem restoration element is expected to cost no more than 3-percent of the total first cost of the ecosystem restoration element. The cost of monitoring and adaptive management is included in the total estimated first cost of this element.

l. Barrier Island Restoration. This project element consists of the placement of approximately 22 million cubic yards of sand within the National Park Service's Gulf Islands National Seashore, Mississippi unit. Approximately 13 million cubic yards of sand would be used to close a gap between East Ship Island and West Ship Island, originally opened by Hurricane Camille, through the construction of a low level dune system. The remaining 9 million cubic yards of sand would be placed in the littoral zones at the eastern ends of Ship and Petit Bois Islands. This would result in the restoration of 1,150 acres of critical coastal zone habitats. In accordance with the requests of the National Park Service, the closure of the Ship Island gap and placement of sand into the littoral zones would be undertaken only once, and would not be nourished or otherwise maintained in the

future. The restoration of Ship Island would provide over 400 average annual functional habitat units and help to ensure the sustainability of the Mississippi Sound ecosystem by maintaining salinity inflows from the Gulf of Mexico. The estuarine habitats provide nursery and foraging habitat that supports various species including economically-important marine fishery species, such as black drum, spotted seatrout, southern flounder, Gulf menhaden, bluefish, croaker, mullet, and blue crab. These estuarine-dependent organisms serve as prey for other important fisheries, such as mackerels, snappers, and groupers, and highly migratory species, such as billfishes and sharks. Incidental benefits associated with this element include average annual hurricane and storm damage risk reduction benefits of $20,000,000 to mainland Mississippi, $470,000 in average annual recreation benefits, and $43,000,000 in average annual fishery benefits to Mississippi Sound. The placement of sand would also provide incidental protection to two cultural sites listed on the National Register of Historic Places. At October 2008 price levels, the estimated cost of this element is $479,710,000. The cost of this element is allocated to ecosystem restoration. Cost sharing would be 65-percent Federal and 35-percent non-Federal. The Federal share of the estimated cost of this project element is $311,810,000 and the non-Federal share is $167,900,000.

5. Further Detailed Investigations of Remaining Elements of the Comprehensive Plan. The MsCIP Comprehensive Plan describes a number of additional components that could provide further improvements in the coastal area of Mississippi if implemented. However, these components are not recommended for authorization for construction at this time because further feasibility level analysis under additional study authority would be required to support a recommendation for construction authorization. Consequently, the reporting officers recommended additional feasibility level studies as part of the MsCIP Comprehensive Plan. These follow-on feasibility studies would evaluate the potential for restoration of over 30,000 acres of coastal forest, wetlands, beaches and dunes; restoration of barrier islands; structural measures; and floodproofing of structures on, or acquisition of, over 58,000 tracts within the 100 year floodplain. The reporting officers worked closely with other Federal agencies, the State of Mississippi, environmental groups, stakeholders, and interested parties to ensure that the program recommended for implementation best meets the goals and objectives of the MsCIP Comprehensive Plan consistent with the Congressional authorization. The total study cost of the recommended follow-on feasibility level studies is estimated to be $143,200,000, which would be cost shared on a 50-percent Federal and 50-percent non-Federal basis consistent with cost sharing provisions of Section 105 of WRDA 86, as amended. Follow-on analysis would include:

- 6 additional ecosystem restoration studies to restore the hydrology and native habitat on undeveloped state owned property.
- Long-term High Hazard Area Risk Reduction Program element to evaluate the further acquisition of high risk properties.
- Escatawpa River Freshwater Diversion to evaluate a variety of freshwater diversion scenarios to restore wet pine savannah habitat and reduce salinities in Grand Bay.

- 30 long-term ecosystem restoration and hurricane and storm damage risk reduction studies to restore the hydrology and natural habitat and reduce storm damages in developed residential areas.
- 7 hurricane and storm damage risk reduction studies to evaluate additional hurricane and storm damage risk reduction opportunities in high density land use areas.

6. At October 2008 price levels, the estimated first cost of the 12 elements of the MsCIP Comprehensive Plan recommended for authorization is $1,010,080,000, of which $656,550,000 would be Federal and $353,530,000 would be non-Federal. The estimated first cost of the individual elements recommended for authorization is summarized below in Table 1. The first cost of the recommended feasibility studies is estimated at $143,200,000. The estimated first cost of the individual studies recommended are summarized below in Table 2.

Table 1
Mississippi Coastal Improvements Program
Cost Sharing (October 2008 Price Level)

Phase I Recommended Plan Element	Total First Cost	Federal Cost	Non-Federal Cost
Phase I High Hazard Area Risk Reduction Plan	$407,860,000	$265,110,000	$142,750,000
Waveland Floodproofing	$4,450,000	$2,890,000	$1,560,000
Forrest Heights Levee	$14,070,000	$9,150,000	$4,920,000
Turkey Creek Ecosystem Restoration	$6,840,000	$4,450,000	$2,390,000
Dantzler Ecosystem Restoration	$2,210,000	$1,440,000	$770,000
Franklin Creek Ecosystem Restoration	$1,860,000	$1,210,000	$650,000
Bayou Cumbest Ecosystem Restoration & Hurricane & Storm Damage Reduction	$25,530,000	$16,590,000	$8,940,000
Admiral Island Ecosystem Restoration	$21,810,000	$14,180,000	$7,630,000
Deer Island Ecosystem Restoration	$21,520,000	$13,990,000	$7,530,000
Submerged Aquatic Vegetation Pilot Program	$900,000	$590,000	$310,000
Coast-wide Beach and Dune Ecosystem Restoration	$23,320,000	$15,160,000	$8,160,000
Comprehensive Barrier Island Restoration	$479,710,000	$311,810,000	$167,900,000
Total MsCIP Authorization Request	$1,010,080,000	$656,550,000	$353,530,000

Table 2
Mississippi Coastal Improvements Program
Cost Sharing (October 2008 Price Level)

Feasibility Studies	Estimated Study Cost	Federal Cost	Non-Federal Cost
Long-term High Hazard Area Risk Reduction	$5,000,000	$2,500,000	$2,500,000
Escatawpa River Freshwater Diversion	$3,000,000	$1,500,000	$1,500,000
Ecosystem Restoration Studies	$1,700,000	$850,000	$850,000
Long-term Ecosystem Restoration and Hurricane and Storm Damage Risk Reduction	$48,500,000	$24,250,000	$24,250,000
Structural Hurricane and Storm Damage Risk Reduction	$85,000,000	$42,500,000	$42,500,000
Total First Cost of MsCIP Recommended Investigations	$143,200,000	$71,600,000	$71,600,000

7. In concert with the Corps Campaign Plan, the MsCIP Comprehensive Plan was developed utilizing a systematic and regional approach in formulating solutions and in evaluating the impacts and benefits of those solutions. All potential impacts, both adverse and beneficial, have been considered without regard to geographic boundaries. The MsCIP and Louisiana Coastal Protection and Restoration (LACPR) study teams collaborated fully their efforts on a systems scale to ensure consistency. A regional salinity and water quality model has been developed covering an area from west of Lake Pontchartrain to east of Mobile Bay and south beyond the Chandeleur Islands in the Gulf. Regional storm surge modeling has been applied to examine regional-scale changes to storm surge levels associated with several of the proposed project alternatives. A multi-disciplinary risk assessment team was assembled by the Corps to characterize the probabilities of different hurricanes that can impact the northern Gulf of Mexico region. The risk assessment team supported both the MsCIP and LACPR work and FEMA's remapping efforts, and developed a unified general coastal flooding methodology that is being applied by U.S. Army Corps of Engineers (Corps) and FEMA.

8. Independent External Peer Review (IEPR) of the MsCIP Comprehensive Plan was managed by Battelle Memorial Institute, a non-profit science and technology organization with experience in establishing and administering peer review panels for the Corps. The IEPR panel consisted of seven individuals selected by Battelle with technical expertise in engineering (civil and geotechnical); geology/geomorphology; hydrology; hydraulics; coastal environmental science, water quality/resource management; floodplain management; meteorology/hurricanes; socioeconomics; real estate; risk assessment; and modeling. The Final Report from the IEPR panel was issued November 7, 2008 and included 14 final comments. Overall, the IEPR panel found the MsCIP Comprehensive Plan is an impressive body of work that is wide-ranging in the scope of research used to inform plan selection and recommendations. However, they felt that the plan could be improved by inclusion of a concise statement of the project's long-term vision for the future coastal landscape and a figure illustrating the project in the Executive Summary. The panel also acknowledged that there has been extensive outreach and community engagement

in the scoping process. The panel encouraged continued Corps collaboration with the public, local and Federal agencies, and the inclusion of universities and research institutions to continue to inform this plan. Support of local communities and states should be fostered as it is also a critical component to project success. Of the 14 IEPR comments identified by the panel, four were classified as high significance by the panel. This first comment recommended including a refined analysis in certain areas before design and build is conducted. In response, additional clarification was added to the report to indicate that a refined analysis would be undertaken in the ensuing project phases. The second comment requested providing additional explanations on the preliminary evaluations of hurricane storm damage risk reduction, erosion control, and ecosystem restoration. In response, with assistance from recommendations in the IEPR report, the Comprehensive Plan was revised to provide further clarification in these areas. The third comment recommended that the redevelopment scenarios should include a range of possible outcomes for the economy. In response, the team provided further explanations on the preliminary analysis and possible outcomes for the redevelopment scenarios. The fourth comment recommended that adaptive management processes should be a more integral part of the Comprehensive Plan and must include a strong monitoring and feedback mechanism. In response, the adaptive management process was further integrated into the Comprehensive Plan, along with recognition that adaptive management will be developed more extensively in collaboration with others in the ensuing project phases. Eight of the IEPR panel comments were classified as medium significance by the panel. They included clarifying the extent of inclusion of public and agency engagement into plan selection; including additional information on future impacts to municipal and industrial waste facilities; including additional detail on human adaptation, as it relates to economic activities; including additional explanations on sea level rise; including a clearer description on how relative sea level rise is incorporated; providing a clearer explanation on the physics-based models; providing further descriptions on the factors in model selection; and providing further explanation on why oysters were used as an indicator species. As a result of these comments, additional discussions were added to the report to clarify these areas, including why decisions were made through the study process respective to these comments. The report was also revised to provide further explanation on the use of oysters as one of several indicator species that assisted in the identification of feasible alternatives. The final two comments from the IEPR panel were classified as low significance. They included reevaluating the goal to reduce loss of life by 100% as it is unrealistic for the project; and to clarify the process for weighting metrics, both of which were addressed with modifications to the report. While the goal to reduce loss of life by 100% remained in the study, additional discussion was added to the report to state that residual risk will remain with any type of plan in place, and to emphasize the roles of all partners in addressing and communicating residual risk, including the need for a well coordinated hurricane evacuation plan.

9. Washington level review indicated that the project is technically sound, environmentally acceptable, and cost effective. The plan conforms with essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines 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.

10. One or more of the 12 elements of the MsCIP Comprehensive Plan recommended in this report to be authorized for implementation may be implementable pursuant to statutory language included in Title IV of the Supplemental Appropriations Act, 2009 (Public Law 111-32) under the heading "Flood Control and Coastal Emergencies" that was enacted on June 24, 2009 (*see* 123 Stat. 1875-1876). Analysis as to which element or elements may be implemented pursuant to that language is ongoing.

11. I find that the reporting officers have addressed the provisions of P.L. 109-148, and I generally concur in their findings, conclusions, and recommendations. Accordingly, I recommend that the 12 elements described herein be authorized for implementation in accordance with the reporting officers' plan, with such modifications as in the discretion of the Chief of Engineers may be advisable. I further recommend that the additional studies as described herein be authorized subject to cost sharing, financing, and other applicable requirements of Federal and State laws and policies, including WRDA 1986, as amended. This recommendation of authorization for implementation of the 12 elements is subject to cost sharing, financing, and other applicable requirements of Federal and State laws and policies, including WRDA 1986, as amended, and with the non-Federal sponsor agreeing to comply with applicable Federal law and policies, and with the following requirements:

a. Provide 35 percent of total project costs allocated to hurricane and storm damage risk reduction, as further specified below:

(1) Provide 25 percent of design costs allocated to hurricane and storm damage risk reduction in accordance with the terms of a design agreement entered into prior to commencement of design work for a project element for hurricane and storm damage risk reduction;

(2) Provide, during the first year of construction of a project element for hurricane and storm damage risk reduction, any additional funds necessary to pay the full non-Federal share of design costs allocated to hurricane and storm 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 a project element for hurricane and storm damage risk reduction;

(4) Provide, during construction of a project element for hurricane and storm damage risk reduction, any additional funds necessary to make its total contribution for hurricane and storm damage risk reduction equal to 35 percent of total project costs allocated to hurricane and storm damage risk reduction;

b. Provide 35 percent of total project costs allocated to ecosystem restoration, as further specified below:

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

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

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

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 a project element 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. Shall not use a project element for ecosystem restoration or lands, easements, and rights-of-way required for a project element for ecosystem restoration as a wetlands bank or mitigation credit for any other project or project element;

e. Not less than once each year, inform affected interests of the extent of protection afforded by the project elements for hurricane and storm damage risk reduction;

f. Agree to participate in and comply with applicable Federal floodplain management and flood insurance programs for project elements for hurricane and storm damage risk reduction;

g. 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 partnership agreement, and to implement such plan not later than one year after completion of construction of a project element for hurricane and storm damage risk reduction;

h. 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 a project element for hurricane and storm damage risk reduction;

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

j. 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 a project element, 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;

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

l. 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 a project element for the purpose of completing, inspecting, operating, maintaining, repairing, rehabilitating, or replacing the project element;

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

n. Keep and maintain books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to a project element, for a minimum of three 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;

o. 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.*);

p. 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 a project element. 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;

q. 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 a project element;

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

CECW-SAD
SUBJECT: Mississippi Coastal Improvements Program, Hancock, Harrison, and Jackson Counties, Mississippi, Comprehensive Plan Report

s. 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.

12. The recommendations contained herein reflect the information available at this time and current Departmental policies governing formulation of individual projects. They do not reflect program and budgeting priorities inherent in the formulation of a national Civil Works construction program nor the perspective of higher review levels within the Executive Branch. Consequently, the recommendations may be modified before they are transmitted to the Congress as proposals for authorization and implementation funding. However, prior to transmittal to the Congress, the non-Federal sponsor, the State, interested Federal agencies, and other parties will be advised of any modifications and will be afforded an opportunity to comment further.

R. L. VAN ANTWERP
Lieutenant General, US Army
Chief of Engineers

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

REPLY TO
ATTENTION OF

CEMP-NAD (1105-2-10a)

AUG 24 2009

SUBJECT: Mid-Chesapeake Bay Island Ecosystem Restoration Project, Chesapeake Bay, Dorchester County, Maryland

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on ecosystem restoration in the Middle Chesapeake Bay at James and Barren Islands. It is accompanied by the report of the Baltimore District Engineer and the North Atlantic Division Engineer. These reports are a partial response to a resolution by the Senate Committee on Environment and Public Works, adopted 5 June 1997. The resolution requested that the Secretary review the report of the Chief of Engineers on the Chesapeake Bay, Maryland and Virginia, published as House Document 176, Eighty-eighth Congress, First Session, and other pertinent reports with a view to conducting watershed management studies, in cooperation with other Federal agencies, the State of Maryland and the State of Delaware, their political subdivisions and agencies and instrumentalities thereof, of water resources improvements in the interest of navigation, flood control, hurricane protection, erosion control, environmental restoration, wetlands protection, and other allied purposes in watersheds of the Eastern Shore, Maryland and Delaware. The Eastern Shore, Maryland (MD) and Delaware (DE) Section 905(b) analysis concluded that a Federal interest existed to assess the needs and opportunities within the study area and recommended a variety of potential projects for further study. The Mid-Chesapeake Bay Island Ecosystem Restoration Study was initiated specifically to evaluate protecting and/or restoring island habitat loss because of erosion and subsidence through the beneficial use of dredged material, as recommended in the Section 905(b) analysis.

2. Land subsidence, rising sea level, and wave action are causing valuable remote island habitats to be lost throughout the Chesapeake Bay. Approximately 10,500 acres of island habitat has been lost in middle-eastern portion of Chesapeake Bay in the last 150 years, and should present island loss rates continue in the future, it is estimated that most remote island habitats will disappear from the Mid-Chesapeake Bay region within 20 years. The Mid-Chesapeake Bay Island Ecosystem Restoration Project consists of constructing environmental restoration projects at both James and Barren Islands. The reporting officers recommend authorizing a plan that will restore 2,144 acres of remote island habitat (2,072 acres at James Island and 72 acres at Barren Island), while also protecting approximately 1,325 acres of submerged aquatic vegetation (SAV) habitat adjacent to Barren Island and providing approximately 90 to 95 million cubic yards, or approximately 28 to 30 years, of dredged material placement capacity. Through the beneficial use of dredged material, the Mid-Chesapeake Bay Island Ecosystem Restoration Project would replace hundreds of acres of lost wetland and upland remote island habitat. This habitat would

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improve productivity in the surrounding area, while providing an environmentally sound method for the use of dredged material from the Chesapeake Bay approach channels to the Port of Baltimore. Cost effectiveness and incremental cost analysis techniques were used to evaluate alternative ecosystem restoration plans. Since the recommended plan would not have any significant adverse effects, no mitigation measures (beyond management practices and avoidance) or compensation measures would be required. The recommended plan is the most efficient and cost-effective of the alternatives considered and provides substantial environmental benefits. The recommended plan is the national ecosystem restoration plan (the NER plan).

3. The incremental cost of the disposal of dredged material for ecosystem restoration purposes over the least cost, environmentally acceptable method of disposal is shared in accordance with Section 210 of WRDA 1996 (PL 104-303). Project cost sharing for ecosystem restoration requires that the non-Federal sponsor provide 35 percent of the cost associated with construction of the project for the protection, restoration, and creation of aquatic and ecologically related habitats, including provision of all lands, easements, rights-of-way, and necessary relocations. Cost sharing for recreation features requires that the non-Federal sponsor provide 50 percent of the cost associated with construction cost. Recreation facilities will be constructed on existing project lands required for the environmental restoration. Further, the non-Federal project sponsor must pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation costs associated with the project.

4. The Maryland Port Administration, under the auspices of the Maryland Department of Transportation is the non-Federal sponsor for the project. The estimated total first cost including contingencies for the Mid-Chesapeake Bay Island Ecosystem Restoration Project is $1.612 billion based on October 2008 price levels. The Federal share of the total project costs would be $1.045 billion for the Federal government (65 percent) and $567 million for the non-Federal sponsor (35% percent). Operations, maintenance, repair, rehabilitation, and replacement (OMRR&R) costs for the completed project are projected to be less than 2 percent of the total project cost and would be a non-Federal responsibility. The first costs of the recommended recreation facilities are estimated at $210,000. The Federal Government and the non-Federal sponsor would each share 50 percent of the cost or $105,000. Since the recreation features are not planned to be constructed until the project is largely complete, OMRR&R costs would be incurred beyond to period of analysis for the project and so are not included in the project cost.

5. The cost of the recommended environmental restoration plan is justified by the restoration of 2,144 acres of remote island habitat (2,072 acres at James Island and 72 acres at Barren Island), the protection of approximately 1,325 acres of SAV habitat adjacent to Barren Island, and achieving habitat increases in the most cost-effective manner. The habitats constructed as part of the Mid-Bay Ecosystem Restoration Project will restore additional remote island habitat, a scarce and rapidly vanishing ecosystem niche within the Chesapeake Bay region that provide a vital

connection for avian species between open-water and mainland terrestrial habitats within the region and provide valuable nesting habitat for a variety of colonial nesting and wading bird species. Protection of the extensive SAV beds east of Barren Island will provide nursery habitat for blue crabs and many species of commercially important finfish species, while also providing foraging habitat for waterfowl. The restoration projects at James and Barren Islands would contribute to the goals of the Chesapeake Bay Program watershed partnership through its habitat and ecosystem recovery and preservation efforts. Both James and Barren Islands would contribute to the Chesapeake 2000 Agreement goals to restore tidal and non-tidal wetlands, to protect and restore submerged aquatic vegetation, and to develop strategies to address water clarity in areas of critical importance for submerged aquatic vegetation.

6. The Corps of Engineers uses a Campaign Plan to establish priorities, focus transformation initiatives, measure and guide progress, and adapt to the needs of the future. The second of four goals of the Campaign Plan is to deliver enduring and essential water resource solutions through collaboration with partners and stakeholders. In developing this project, the Corps of Engineers has focused its talents and energy on a comprehensive, sustainable and integrated solution to the one of the Chesapeake Bay's greatest water resources and related challenges, and has accomplished this through collaboration with a diverse group of organizations and individuals, ranging from large government agencies to local watermen making their living on the Chesapeake Bay in the vicinity of James and Barren Islands. They included numerous local, State, and Federal agencies; defined groups such as watermen's, fishermen's, and boating associations; and private citizens. Through this substantial network of stakeholders and the beneficial use of dredged material, this project is an integrated and holistic solution that not only sustains one of the Nation's most productive ports, but ensures that the invaluable remote island habitat that the project is restoring in the Nation's largest estuary is equally sustainable.

7. The plan as developed is technically sound, economically efficient, and environmentally and socially acceptable. The plan conforms with essential elements of the U.S. Water Resources Council's 1983 Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and complies with other administration and legislative policies and guidelines. The development of this project benefited from an extensive review process that included the District Quality Control by the Baltimore District, Agency Technical Review by the Philadelphia District, and an Independent External Peer Review. District Quality Control reviewed basic science and engineering products. The Agency Technical Review was an in-depth review by senior Corps personnel to ensure the proper application of clearly established criteria, regulations, laws, codes, principles, and professional practices. In addition, the primary benefit model, the Island Community Units Model, was reviewed by the Corps of Engineers National Ecosystem Planning Center of Expertise and the Engineer Research and Development Center. Approval of the application of the Island Community Units model was recommended for the Mid-Chesapeake Bay Island Ecosystem Restoration Project. It was also determined that

use of the model for future projects would require additional documentation supporting model assumptions, justification of guild weightings, and a sensitivity analysis of individual guild models and guild weighting.

8. The Independent External Peer Review (IEPR) was managed by an outside eligible organization that assembled a panel of four experts in the fields of engineering, estuarine ecology, economics and plan formulation, and hydrology. Ultimately, the panel identified and documented 14 comments. Four were classified as low significance and included comments about the influence of climate change on design, the addition of figures to the main body of the report, citations for restoration literature, and clarification of the location for dredged material in the most probable future without project condition. These comments were addressed with minor modifications to the feasibility report. Eight of the comments were classified as medium significance. They included the level of rigor/review of the preferred alternative; the use of a sensitivity analysis and the documentation of risk and uncertainty; the schedule for establishment of a fully functioning marsh; further discussion of the link between the need and scale of the project with the target volume of dredged material; description of the environmental monitoring; connectivity between the salt marsh and the estuary; inclusion of climate change, sea level rise, and invasive species in the Adaptive Management Plan; and potential discounting of environmental outcomes over the project lifetime. As a result, clarification was added to the report, a cost and schedule risk assessment was conducted, and a detailed monitoring plan and Adaptive Management Plan are being developed with the assistance of the panel's recommendations. The remaining two panel comments were determined to be of high significance. One concern was that the analysis of environmental benefits was biased by the failure to subtract quantitative habitat injuries, making the selection process and justification of the preferred alignment unreliable. In response, the team worked with fishery managers to quantify adverse impacts from filling the water column and benthic habitat and provided a discussion to support the conclusions produced by the plan formulation selection process using net benefits. The second concern was that water quality impacts associated with construction and the potential negative impacts of resettled suspended sediment were not addressed. As suggested by the IEPR reviewers, the team prepared an assessment that considered sediment re-suspension, transport, and deposition, and oyster and submerged aquatic vegetation requirements to assess construction impacts for Barren and James Islands. Federal and State resource agencies were involved in the planning and assessment of impacts. The team concluded that there will be no significant turbidity or environmental impacts to the oyster bars or submerged aquatic vegetation from construction at Barren or James Islands.

9. The views of interested parties, including Federal, State and local agencies, have been considered. Specific requests have been made for additional coordination with U.S. Fish and Wildlife Service and the National Marine Fisheries Service as detailed designs proceed on the

project. USACE has agreed to continue close coordination with these agencies and other affected parties as the design and construction process continues.

10. I concur in the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend implementation of the authorized project in accordance with the reporting officers' plan with such modifications as in the discretion of the Chief of Engineers may be advisable. My recommendation is subject to cost sharing, financing, and other applicable requirements of WRDA 1986, as amended. The non-Federal sponsor would provide the non-Federal cost share and all LERRD. Further, the non-Federal sponsor would be responsible for all OMRR&R. This recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and policies, including the following requirements:

a. Provide a minimum of 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 suitable borrow, and perform or ensure the performance of all relocations determined by the Federal Government to be necessary for the construction, operation, and maintenance of the project;

4) Provide all improvements required on lands, easements, and rights-of-way to enable the proper placement of dredged or excavated material associated with the construction, operation, and maintenance of the project;

5) Provide, during construction, any additional amounts as are necessary to make its total contribution at least 35 percent of ecosystem restoration costs.

b. 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 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, and borrowing of material, and the disposal of dredged or excavated material;

perform or ensure the performance of all relocations; and construct all of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated materials 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 funds necessary to make its total contribution for recreation equal to 50 percent of the recreation costs;

5) Provide during construction, 100 percent of the total recreation costs that exceed an amount equal to 10 percent of the Federal share of total ecosystem restoration costs.

c. For so long as the project remains authorized, operate, maintain, repair, replace, and rehabilitate the project, or functional portion of the project, 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.

d. Shall not use the project or project lands, easements, and rights-of-way as a wetland bank or mitigation credit required for another project.

e. Provide and maintain recreation features and public use facilities open and available to all on equal terms.

f. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal sponsor, now or hereafter, owns or controls for access to the project for the purpose of inspection, and, if necessary after failure to perform by the non-Federal sponsor, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Federal Government shall operate to relieve the non-Federal sponsor of responsibility to meet the non-Federal sponsor's obligations, or to preclude the Federal Government from pursuing any other remedy at law or equity to ensure faithful performance.

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

h. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of three 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 CFR Section 33.20.

i. 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), PL 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 the 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.

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

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

l. Comply with the 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 the construction, operation, and maintenance of the project, including those necessary for relocations, the borrowing of materials, or the placement of dredged or excavated material, and inform all affected persons of applicable benefits, policies, and procedures under said Act.

m. Comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of -the Civil Rights Act of 1964, PL 88-352 (42 U.S.C. 2000d); Department of Defense Directive 5500.1 1 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 including,

CEMP-NAD (1105-2-10a)
SUBJECT: Mid-Chesapeake Bay Island Ecosystem Restoration Project, Chesapeake Bay, Dorchester County, Maryland

but not limited to, 40 U.S.C. 3 141 -48 and 40 U.S.C. 3701-08 (reversing, codifying, and enacting without substantial change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 267a 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.),

11. 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 nor the perspective of higher review levels within the executive branch. 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 sponsors, the State, interested Federal agencies, and other parties will be advised of any modifications and will be afforded an opportunity to comment further.

R. L. VAN ANTWERP
Lieutenant General, US Army
Chief of Engineers

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

REPLY TO
ATTENTION OF:
CECW-SAD (1105-2-10a)

MAR 11 2010

SUBJECT: Comprehensive Everglades Restoration Plan, Central and Southern Florida, Caloosahatchee River (C-43) West Basin Storage Reservoir Project, Hendry County, Florida

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on ecosystem restoration improvements for the Caloosahatchee River (C-43) West Basin Storage Reservoir project, located in Hendry County, Florida. It is accompanied by the report of the district and division engineers. These reports are in response to Section 601 of the Water Resources Development Act (WRDA) of 2000, which authorized the Comprehensive Everglades Restoration Plan (CERP) as a framework for modifications and operational changes to the Central and Southern Florida Project that are needed to restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. WRDA 2000 identified specific requirements for implementing components of the CERP, including development of a decision document known as a Project Implementation Report (PIR). The Caloosahatchee River (C-43) West Basin Storage Reservoir Project is a component of the CERP that was not specifically authorized in that Act. The authority for the preparation of the Caloosahatchee River (C-43) West Basin Storage Reservoir Project Implementation Report (PIR), one of a number of site-specific projects, is contained in Section 601(d) of WRDA 2000. Congress may authorize the project following review and approval of a PIR by the Secretary of the Army. The requirements of a PIR are addressed in this report. Preconstruction engineering and design activities for this Project will be continued under the existing CERP Design Agreement.

2. The PIR recommends a project that significantly contributes to two of the ecologic goals and objectives of the CERP: improving habitat and functional quality and improving native plant and animal species abundance and diversity. In addition, it contributes to the socioeconomic objective of providing recreational and navigation opportunities. Scientists have established that a mosaic of uplands, freshwater marsh, deep water sloughs, and estuarine habitats supporting a diverse community of fish and wildlife was one of the defining characteristics of the pre-drainage Everglades ecosystem. Currently in south Florida, habitat function and quality has significantly declined in remaining natural system areas due to water management projects and practices, resulting in a loss of suitable nesting, foraging, and fisheries habitat and a decline in native species diversity and abundance. The PIR confirms information in the CERP and provides project-level evaluation of costs and benefits associated with construction and operations of a reservoir. Constructing and operating a reservoir would reduce the extreme salinity changes in the Caloosahatchee Estuary by providing a more consistent flow of fresh water discharging at S-79 into the Caloosahatchee River Estuary. The extreme fresh water

fluctuations are due to fresh water flows from basin runoff and releases from Lake Okeechobee. Due to the advanced land acquisition activities conducted jointly by the Federal Government and the State of Florida, the Project can be implemented relatively quickly, significantly advancing the realization of project benefits in an area that has been degraded by past water management activities.

3. The reporting officers recommend implementing the Caloosahatchee River (C-43) West Basin Storage Reservoir to improve the ecological function of the Caloosahatchee Estuary by capturing and storing the excess surface water runoff from the Caloosahatchee River watershed (or C-43 Basin) and excess releases from Lake Okeechobee. Stored water will then be discharged to the estuary during the dry season to augment existing inadequate flows. The project site is located on farm land adjacent to the Caloosahatchee River (C-43) canal in Hendry County and totals approximately 10,700 acres. The reservoir will require approximately 10,480 acres of land in fee and 20 acres of perpetual channel easement. Approximately 200 additional acres will be required on a temporary basis during project construction for staging areas. Approximately 7,080 acres of project lands were acquired with a 50 percent Federal cost-share using funds appropriated via the 1996 Federal Farm Bill and the Land and Water Conservation Funds that were specifically designated for the acquisition of lands to restore the South Florida ecosystem. Major features of the reservoir include external (dam) embankments varying in height from 32-37 feet above existing grade, Soil-Bentonite slurry walls within and beneath the external embankments, an internal (dam) embankment separating the two reservoir cells with an approximate height of 31 feet above existing grade, an inflow pump station consisting of diesel-powered pumps with a total pumping capacity of 1,500 cfs, a perimeter canal, and pump station consisting of electric-powered pumps with a total pumping capacity of 195 cfs, and numerous spillways, culverts, perimeter canal structures, an internal cell balancing structure, and outlet structures. Recreational opportunities are also provided at the site within the project footprint.

4. The total first cost of the recommended plan from the Final PIR and Integrated EIS, dated September 2007, based on October 2009 price levels, is estimated to be $570,480,000. The fully funded cost, based on October 2009 price levels, is estimated to be $610,736,000. Project cost increases since the Central and Southern Florida Project Comprehensive Restudy Study Final Integrated Feasibility Report and Programmatic Environmental Impact Statement, April 1999, are primarily due to the fact that the recommended plan is a larger reservoir than originally envisioned (170,000 acre-feet of storage compared to 160,000 acre-feet in the Restudy), that design refinements were needed to incorporate current methods and criteria for addressing dam safety requirements, and that real estate costs increased. Project cost increases from the final PIR to present are due to revisions to the land valuation crediting policy for CERP.

5. In accordance with the cost-sharing requirements of Section 601(e) of the WRDA 2000, as amended, the Federal cost of the recommended plan would be $ 305,368,000 and the non-Federal cost would be $305,368,000. The estimated lands, easements, rights-of-way, and relocations costs for the recommended plan are $84,650,000 of which approximately

$27,566,500 (Rounded) has been provided to the State through the Federal Department of Interior Grant Funds. Based on October 2009 price levels, a 40-year period of economic evaluation and a 4.375 percent discount rate, the equivalent annual cost of the proposed project is estimated at $37,600,000, which includes operation, maintenance, repair, rehabilitation and replacement (OMRR&R), interest and amortization. The estimated annual costs for restoration OMRR&R are $3,100,000. The annual OMRR&R costs for recreation are estimated at $25,000. As a component of the CERP program, the interagency/interdisciplinary scientific and technical team, formed to ensure that system-wide goals are met, will participate in the annual monitoring to assess system-wide changes. In accordance with Sections 601(e)(4) and 601(e)(5)(D) of WRDA 2000 as amended, OMRR&R costs and adaptive assessment and monitoring costs will be shared equally between the Federal Government and the non-Federal sponsor. OMRR&R costs related to recreation features will be funded 100 percent by the non-Federal sponsor.

6. To ensure that an effective ecosystem restoration plan was recommended, cost effectiveness/incremental cost analysis techniques were used to evaluate alternative restoration plans. These techniques determined the selected alternative plan to be cost effective. The plan recommended for implementation is an increment of the National Ecosystem Restoration (NER) plan, it supports the adaptive management recommendations established by the National Research Council, and it meets the policy criteria established in U.S Army Corps of Engineers (USACE) guidance for planning in a collaborative environment. The recommended plan provides benefits by: 1) reducing harmful discharges to the Caloosahatchee Estuary by capturing a portion of high flow releases from Lake Okeechobee and basin runoff from the lower West Caloosahatchee River Basin during the wet season, 2) storing the water until needed in a reservoir, and 3) discharging stored water to supplement inadequate flows over S-79 to Caloosahatchee Estuary during the dry season, thereby reducing stress on the natural system. Hydrologic output comparisons were made between the flow frequency distribution of each alternative plan and the target frequency distribution for the combined monthly and weekly average freshwater inflows at S-79 for a nine year period of record. The nine years chosen out of the 36 year period of record contain three wet, three dry and three normal years. Biological outputs used to compare plans are based on several parameters that indicate the degree to which natural vegetative conditions and key indicator species are restored. The parameters for both hydrologic outputs and biological outputs are based on established peer-reviewed hydrologic and conceptual ecological models developed to guide the restoration of the South Florida ecosystem.

7. The recommended plan improves functional fish and wildlife habitat in the Caloosahatchee River Estuary. The Everglades has been designated an International Biosphere Reserve (1976) and a World Heritage Site (1979) by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) and a Wetland of International Importance (1987) in accordance with the Ramsar Convention. The portion of the Everglades ecosystem directly affected by the Caloosahatchee River (C-43) West Basin Storage Reservoir, including the project site and the Caloosahatchee River and Estuary, provides habitat for 21 federally-listed endangered or threatened species, including the Florida panther, Everglades snail kite, wood stork, manatee, eastern indigo snake, Audubon's crested caracara and five species of sea turtles. In accordance

with the WRDA 2000 Section 601(f)(2), individual CERP projects shall be justified by the environmental benefits derived by the South Florida ecosystem. Similarly, Section 385.9(a) of the CERP Programmatic Regulations (33 CFR Part 385) requires that individual projects shall be formulated, evaluated, and justified based on their ability to contribute to the goals and purposes of the Plan and on their ability to provide benefits that justify costs on a next-added increment basis. The Caloosahatchee River (C-43) West Basin Storage Reservoir Project, operating in conjunction with other projects in the comprehensive plan produces an average annual increase of 12,809 habitat units in the Caloosahatchee River Estuary. On a next-added increment (NAI) basis (meaning adding the Caloosahatchee River (C-43) West Basin Storage Reservoir as the next project to be added to a system of projects) the Caloosahatchee River (C-43) West Basin Storage Reservoir project delivers about 15,300 average annual habitat units. Based on restoration first cost and the Caloosahatchee Estuary, the cost per acre benefited is about $8,034. On a next-added increment basis, the average annual cost per average annual habitat unit is approximately $2,825. Based on these parameters, the Caloosahatchee River (C-43) West Basin Storage Reservoir project is justified by the environmental benefits derived by the South Florida ecosystem and on a next-added increment basis. All NEPA compliance requirements have been completed. Final EIS coordination began on 21 September 2007 and concluded on 22 October 2007. No significant environmental changes have occurred since the EIS coordination was finalized in 2007.

8. Section 601(e)(5)(B) of the Water Resources Development Act of 2000, as amended by Section 6004 of the Water Resources Development Act of 2007, authorizes credit toward the non-Federal share for non-Federal design and construction work completed during the period of design or construction, subject to the execution of the design or project partnership agreement, and subject to a determination by the Secretary that the work is integral to the project. This project is included in the "Expedited Projects" formerly called Acceler8. The reporting officers recommend that the non-Federal sponsor be credited for all reasonable, allowable, necessary, auditable, and allocable costs applicable to The Caloosahatchee River (C-43) West Basin Storage Reservoir Project as may be authorized by law, including those incurred in advance of executing a project partnership agreement for this project, subject to authorization of the Project by law, a determination by the Assistant Secretary of the Army (Civil Works) or his/her designee that the In-kind work is integral to the Authorized CERP Project, that the costs are reasonable, allowable, necessary, auditable, and allocable, and that the In-kind work has been implemented in accordance with Government standards and applicable Federal and State laws.

9. Credits for non-Federal design and construction will be evaluated in accordance with the terms of the Master Agreement Between the Department of the Army and South Florida Water Management District for Cooperation in Constructing and Operating, Maintaining, Repairing, Replacing, and Rehabilitating Projects Authorized to be Undertaken Pursuant to the Comprehensive Everglades Restoration Plan, executed on 13 August 2009 (hereinafter "Master Agreement"). All documentation provided by the non-Federal sponsor will be thoroughly reviewed by USACE to determine reasonable, allowable, necessary, auditable, and allocable costs. Upon completion of this review, a financial audit will be conducted prior to granting final

credit. Coordination between USACE and the Sponsor will occur throughout design and construction via the USACE Regulatory process. The credit afforded to the non-Federal sponsor will be limited to the lesser of the following: (1) actual costs that are reasonable, allowable, necessary, auditable, and allocable to the Project; or (2) the USACE estimate of the cost of the work allocable to the Project had USACE performed the work. The non-Federal sponsor intends to implement this work using its own funds and would not use funds originating from other Federal sources unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute and in accordance with Section 601 (e)(3) of WRDA 2000 as amended and the Master Agreement.

10. The plan recommended by the reporting officers is environmentally justified, technically sound, cost effective, and socially acceptable. The plan conforms to essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines 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.

State and Agency comments received during review of the Final PIR/EIS included concerns raised by the Florida Department of Agriculture and Consumer Services (FDACS) related to savings clause requirements and water reservations within the Caloosahatchee Basin. These concerns were addressed through several multi-agency meetings and ultimately resolved in a Headquarters, US Army Corps of Engineers (HQUSACE) response dated August 11, 2009. This letter stated that "all water to be protected for the natural system is a result of being able to capture and store excess Lake Okeechobee discharges to tide, and then delivering that water at the right time to meet estuary salinity targets. This project as simulated in the modeling, and as it will be operated, will not reduce the amount of water available from existing sources in the C-43 Basin or the amount available to existing legal users."

The U.S. Environmental Protection Agency, the Southwest Florida Regional Planning Council (SWFRPC), Lee County, and the City of Sanibel provided comments expressing water quality concerns associated with the construction and operations of the reservoir. In response, USACE and the non-Federal sponsor explained that the intent of this project is to focus on meeting salinity targets in the estuary. Future CERP planning efforts will focus on other problems, including water quality, identified in the Caloosahatchee River Basin. This project is permitted through the Florida Department of Environmental Protection (FDEP) and compliant with State water quality standards. The FDEP finds that there are reasonable assurances that "State water quality standards, including water quality criteria and moderating provisions, will be met." (FDEP letter to the Mayor of Sanibel dated April 30, 2007). USACE will require the permit holder to conduct limited algal monitoring. The primary purpose of monitoring for algae in the reservoir will be for the prevention of harmful algal bloom exposure to recreationists and users of the downstream potable water supply systems. This initial monitoring program will be assessed after two years to determine if modifications are needed. USACE also intends to require that the permit holder develop an Algal Monitoring and Management Plan for the

reservoir. This plan should include a long-term monitoring program as well as management plans should an algal bloom develop. Additionally, the non-Federal sponsor in conjunction with Lee County has acquired the Boma Property immediately east of S-78 along the Caloosahatchee River for the construction of a water quality treatment facility targeting nitrogen removal. Plans for this facility are being developed as part of the Northern Everglades Program, Caloosahatchee River Watershed Protection Plan, a cooperative State effort between the non-Federal sponsor, FDEP, and FDACS.

The SWFRPC additionally expressed concerns with the intended use of the Picayune Strand Restoration Project lands as mitigation for Florida panther habitat impacted by the construction and operation of the Caloosahatchee River (C-43) West Basin Storage Reservoir. In response, USACE stated that the USFWS has lead responsibility for programmatic tracking of Florida panther habitat losses and gains associated with CERP projects. Although individual projects may cause some panther habitat loss, this loss is being evaluated in the context of the conservation of the species range-wide. Acquisition of lands for this project and other CERP projects has resulted in preservation of important lands that may have otherwise been used for development. A majority of Florida panther habitat to be preserved is associated with the nearby Picayune Strand Restoration Project (PSRP), which is adjacent to other large tracts of natural and preserved lands including Fakahatchee Strand Preserve State Park and Big Cypress National Preserve. Acquisition and preservation of lands in the Caloosahatchee River (C-43) West Basin Storage Reservoir study area are consistent with the USFWS' goal to locate, preserve, and restore tracts of lands containing sufficient area and appropriate land cover types to ensure the long-term survival of the Florida panther.

11. The Project complies with the following requirements of WRDA 2000 as amended:

a. Project Implementation Report (PIR). The requirements of a PIR as defined by Section 601(h)(4)(A).

b. Water Reservations. Sections 601(h)(4)(A)(iii)(IV) and (V) require identification of the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system and the amount of water to be reserved or allocated for the natural system. Additional water delivered to and retained in natural areas was identified and will be reserved or allocated by the State of Florida.

c. Elimination or Transfer of Existing Legal Sources of Water. Section 601(h)(5)(A) states that existing legal sources of water shall not be eliminated or transferred until a new source of water supply of comparable quantity and quality is available to replace the water to be lost as a result of the Plan. Implementation of the Caloosahatchee River (C-43) West Basin Storage Reservoir project will not result in a transfer or elimination of sources of water to meet agricultural and urban demand in the Caloosahatchee River (C-43 Canal) Basin (remaining the same as before the project). Sources of water for the Seminole and Miccosukee Tribes and Everglades National Park are influenced by the regional water management system (C&SF

Project, including Lake Okeechobee), and will not be affected by this project. Therefore, there will be no elimination or transfer as a result of this project on existing legal sources of supply for: agricultural or urban water supply, allocation or entitlement to the Seminole Indian Tribe of Florida under Section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e), the Miccosukee Tribe of Florida, water supply for Everglades National Park, or water supply for fish and wildlife.

d. Maintenance of Flood Protection. Section 601 (h)(5)(B) states that CERP shall not reduce levels of service for flood protection that are in existence on the date of enactment of this Act and in accordance with applicable law. Potential effects of the storage reservoir on water levels on adjacent lands were evaluated. In response to these evaluations, the Project includes a seepage management system, consisting of a seepage cut-off wall, seepage canal, and pump to ensure that adjacent lands in the immediate vicinity of the project are not adversely affected. The operations of this project will not change the operations of the Caloosahatchee River (C-43 Canal); therefore, there will be no system-wide effects on flood protection that will impact the regional basin as a result of the Project.

12. Agency technical reviews (ATR) of the Caloosahatchee River (C-43) West Basin Storage Reservoir document were carried out through collaboration with the National Ecosystem Restoration Planning Center of Expertise (PCX) in compliance with guidance at the time of Final PIR completion (2007). Extensive external scientific peer review through the National Academy of Science (NAS) has been conducted at the CERP programmatic level and will continue throughout the planning and implementation of the CERP program through the NAS biennial reports to Congress. In particular, the NAS promoted the use of traditional water storage technologies and the use of adaptive management principles within the formulation process. Both of these comments have been integrated into the formulation and design of the C-43 project. No further IEPR was deemed necessary or recommended for the study. In addition, no further IEPR is needed in response to WRDA 2007, since C-43 studies had been initiated and alternatives identified more than two years prior to its enactment and the final report had been submitted for approval prior to its passage.

13. I generally concur with the findings, conclusions, and recommendations of the reporting officers. The Caloosahatchee River (C-43) West Basin Storage Reservoir Project requires specific authorization by Congress in accordance with Section 601(d) of the WRDA 2000. Accordingly, I recommend that the plan described herein for ecosystem restoration be authorized for implementation as a Federal Project, with such modifications as in the discretion of the Chief of Engineers may be advisable, and subject to cost-sharing, financing, and other applicable requirements of Section 601 of WRDA 2000 as amended. In addition, I recommend that the non-Federal sponsor be authorized to receive credit for work accomplished prior to the execution of a Project Partnership Agreement (PPA) for this Project, in accordance with Section 601 of WRDA 2000, as amended, and the terms of the Master Agreement.

Further, this recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and agreeing to perform the following items of local cooperation:

a. Provide 50 percent of total project costs consistent with the provisions of Section 601(e) of the Water Resources Development Act of 2000 as amended including authority to perform design and construction of project features consistent with Federal law and regulation;

b. Provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform or assure the performance of all relocations that the Government and the Non-Federal Sponsor jointly determine to be necessary for the construction, operation, maintenance, repair, replacement and rehabilitation of the Project and valuation will be in accordance with the Master Agreement;

c. 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 other projects.

d. Give the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the non-Federal sponsor owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project;

e. Assume responsibility for operating, maintaining, repairing, replacing, and rehabilitating (OMRR&R) the Project or completed functional portions of the Project, including mitigation features, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws and specific directions prescribed in the OMRR&R manuals and any subsequent amendments thereto. Cost sharing for OMRR&R will be in accordance with Section 601 of WRDA 2000 as amended;

f. The non-Federal Sponsor shall operate, maintain, repair, replace and rehabilitate the recreation features of the Project with responsibility for 100 percent of the cost;

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

h. Unless otherwise provided for in the statutory authorization for this Project, comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, and Section 103 of the WRDA of 1986, Public Law 99-662, as amended, which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the Project or separable element;

i. Hold and save the Government free from all damages arising from construction, operation, maintenance, repair, replacement and rehabilitation of the Project and any project-related

betterments, except for damages due to the fault or negligence of the Government or the Government's contractors;

j. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the Project to the extent and in such detail as will properly reflect total project costs and comply with the provisions of the Master Agreement;

k. Perform, or cause to be performed, 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), 42 USC 9601-9675, that may exist in, on, or under lands, easements or rights-of-way necessary for the construction, operation, and maintenance of the Project; except that the non-Federal sponsor shall not perform such investigations on lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude without prior specific written direction by the Government;

l. Assume complete financial responsibility for all necessary cleanup and response costs of any CERCLA-regulated materials located in, on, or under lands, easements, or rights-of-ways that the Government determines necessary for construction, operation, maintenance, repair, replacement and rehabilitation;

m. As between the Government and the non-Federal Sponsor, the non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA;

n. 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 outputs produced by the ecosystem restoration features, hinder operation and maintenance of the project, or interfere with the project's proper function;

o. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public law 91-646, as amended by title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, operation, and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act;

p. 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 substantive 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)];

q. Comply with Section 106 of the National Historic Preservation Act in completion of all consultation with the Florida State Historic Preservation Officer, and as necessary, the Advisory Council on Historic Preservation, prior to construction as part of the preconstruction engineering and design phase of the project;

r. Provide 50 percent of that portion of total cultural resource preservation mitigation and data recovery costs attributable to the Project that are in excess of one percent of the total amount authorized to be appropriated for the Project;

s. Do not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized and in accordance with Section 601 (e)(3) of the WRDA of 2000, as amended, and in accordance with the Master Agreement;

t. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs consistent with its statutory authority.

(1) Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the Project.

(2) The Non-Federal Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

(3) The Non-Federal Sponsor shall comply with Section 402 of WRDA 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to have prepared, within one year after the date of signing a PPA for the Project, a floodplain management plan. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by the Project. As required by Section 402, as amended, the non-Federal interest shall implement such plan not later than one year after completion of construction of the Project. The Non-Federal Sponsor shall provide an information copy of the plan to the Government upon its preparation.

(4) The Non-Federal Sponsor shall prescribe and enforce regulations to prevent obstruction of or encroachment on the Project or on the lands, easements, and rights-of-way determined by the Government to be required for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project, that could reduce the level of protection the Project affords, hinder operation or maintenance of the Project, or interfere with the Project's proper function.

u. The overarching objective of the Plan is the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. The Federal Government and the non-Federal sponsor are committed to the protection of the appropriate quantity, quality, timing, and distribution of water to ensure the restoration, preservation, and protection of the natural system as defined in Section 601 of WRDA 2000, for so long as the project remains authorized. This quantity, quality, timing, and distribution of water shall meet applicable water quality standards and be consistent with the natural system restoration goals and objectives of the CERP, as the Plan is defined in the Programmatic Regulations. The non-Federal sponsor will protect the water for the natural system by taking the following actions to achieve the overarching natural system objectives of the Plan:

(1) Ensure, through appropriate and legally enforceable means under Florida law, that the quantity, quality, timing, and distribution of existing water that the Federal Government and the non-Federal sponsor have determined in this Project Implementation Report is available and beneficial to the natural system, will be available at the time the Project Partnership Agreement for the project is executed and will remain available for so long as the Project remains authorized.

(a) Prior to the execution of the Project Partnership Agreement, reserve or allocate for the natural system the necessary amount of water that will be made available by the project that the Federal Government and the non-Federal sponsor have determined in this Project Implementation Report.

(b) After the Project Partnership Agreement is signed and the project becomes operational, make such revisions under Florida law to this reservation or allocation of water that the non-Federal sponsor determines, as a result of changed circumstances or new information, is necessary for the natural system.

(2) For so long as the Project remains authorized, notify and consult with the Secretary of the Army should any revision in the reservation of water or other legally enforceable means of protecting water be proposed by the non-Federal sponsor, so that the Federal Government can assure itself that the changed reservation or legally enforceable means of protecting water conform with the non-Federal sponsor's commitments under paragraphs 1 and 2. Any change to

a reservation of water made available by the project shall require an amendment to the Project Partnership Agreement.

14. 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 in the formulation of a national Civil Works construction program or the perspective of higher review levels within the executive branch. Consequently, the recommendation may be modified before it is transmitted to the Congress as a proposal for authorization and implementation funding.

R. L. VAN ANTWERP
Lieutenant General, US Army
Chief of Engineers

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

JAN 0 6 2011

CECW-SAD (1105-2-10a)

SUBJECT: Comprehensive Everglades Restoration Plan, Central and Southern Florida, Caloosahatchee River (C-43) West Basin Storage Reservoir Project, Hendry County, Florida - Supplemental

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress this supplement to my report on ecosystem restoration and recreation for the Caloosahatchee River (C 43) West Basin Storage Reservoir project, located in Hendry County, Florida, dated March 11, 2010. The purpose of this supplement is to clarify the authority for cost sharing of the recreational features recommended for the project.

2. In accordance with the Federal Water Project Recreation Act of 1965, full consideration was given to opportunities the project affords for recreation. The recommended C-43 West Basin Storage Reservoir project contains approximately $3,000,000 of recreation features, including a 12-mile multi-purpose trail and associated parking and toilet facilities, information kiosk, canoe/kayak launch facility, a shade structure, traffic control fencing, and a pedestrian footbridge to provide public access to the reservoir. These recreation features have been justified in accordance with policy.

3. Although cost sharing of the ecosystem restoration features for this project is governed by Section 601 of the Water Resources Development Act (WRDA) of 2000, as amended, cost sharing of the recreation features is governed by Section 103 of the WRDA 1986, as amended. In particular, in accordance with Section 103(j) of WRDA 1986, 100 percent of the cost of operation, maintenance, repair, replacement, and rehabilitation of the recreation features is the non-Federal sponsor's responsibility. In addition, Section 601(e)(5)(B) of WRDA 2000, as amended, governs credit for non-Federal sponsor design and construction work on the ecosystem restoration features of the project, whereas Section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b(a)(4)) governs credit for non-Federal sponsor design and construction work on the recreation features of the project.

4. As part of this supplement, the costs of the project have been escalated and updated to October 2010 price levels and the reporting format has been changed from fully funded costs to initial investment. The total first cost of the recommended plan from the Final Project Implementation Report and Integrated Environmental Impact Statement, dated September 2007, based on October 2010 price levels, is estimated to be $579,599,000, including $576,643,000 for ecosystem restoration and $2,956,000 for recreation. In accordance with Section 601 of the

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WRDA 2000, as amended, for the ecosystem restoration features of the recommended plan, the estimated Federal cost is $288,321,500 and the estimated non-Federal cost is $288,321,500. In accordance with Section 103(c) of the WRDA 1986, as amended, for the recreational features of the recommended plan, the estimated Federal cost of $1,478,000; and the non-Federal cost is $1,478,000. The estimated lands, easements, rights-of-way, and relocations costs for the recommended plan are $84,650,000 of which approximately $27,567,000 has been provided to the State through the Federal Department of Interior Grant Funds. Based on October 2010 price levels, a 40-year period of economic evaluation and a 4.12 percent discount rate, the equivalent annual cost of the proposed project is estimated at $35,500,000, which includes operation, maintenance, repair, rehabilitation and replacement (OMRR&R), interest and amortization. The estimated annual OMRR&R costs for ecosystem restoration are $3,160,000. The annual OMRR&R costs for recreation are estimated at $25,000. In accordance with Section 601 of WRDA 2000 as amended, OMRR&R costs and adaptive assessment and monitoring costs for ecosystem restoration will be shared equally between the Federal Government and the non-Federal sponsor. In accordance with Section 103(j) of the WRDA 1986, as amended, OMRR&R costs related to recreation features will be funded 100 percent by the non-Federal sponsor.

Respectfully,

R. L. VAN ANTWERP
Lieutenant General, US Army
Chief of Engineers

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, DC 20314-1000

REPLY TO
ATTENTION OF
CECW-MVD

DEC 30 2010

SUBJECT: Louisiana Coastal Area, Louisiana, Ecosystem Restoration, Six Projects Authorized by Section 7006(e)(3) of Water Resources Development Act of 2007

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my favorable report on ecosystem restoration for six projects in multiple locations in coastal Louisiana. It is accompanied by the report of the New Orleans District Engineer and Mississippi Valley Division Engineer. These reports are in response to the authorization contained in Section 7006(e)(3) of the Water Resources Development Act (WRDA) of 2007. Section 7006(e)(3) identifies six projects referred to in the Report of the Chief of Engineers for ecosystem restoration for the Louisiana Coastal Area dated January 31, 2005, and states, in part, as follows:

> *"The Secretary may carry out the projects under subparagraph (A) substantially in accordance with the plans and subject to the conditions, recommended in a final report of the Chief of Engineers if a favorable report of the Chief is completed by not later than December 31, 2010."*

Preconstruction engineering and design of all six projects will be undertaken under the authority provided in Section 7006(e)(3). Construction of these projects will be undertaken under the Section 7006(e)(3) authority as well, except for construction of the Medium Diversion at White Ditch and the elements of the Terrebonne Basin Barrier Shoreline Restoration beyond the Whiskey Island component.

2. The Report of the Chief of Engineers for ecosystem restoration for the Louisiana Coastal Area, dated January 31, 2005, (hereinafter referred to as the "restoration plan"), describes a program to address the most critical restoration needs to reduce the severe wetland losses occurring in Louisiana. The restoration plan includes 15 near-term ecosystem restoration features, a demonstration project program, beneficial use of dredged material program, project modifications program, and a science and technology program. These features and programs were all aimed at addressing the critical restoration needs of coastal Louisiana, with Congress authorizing the features for construction, in WRDA 2007, subject to the conditions recommended in a final report of the Chief of Engineers, if a favorable Chief's Report is completed no later than December 31, 2010. This report addresses six of the 15 near-term ecosystem restoration features described in the restoration plan.

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3. In accordance with Section 7006(e)(3), the reporting officers recommend that the Secretary carry out under the existing authorization the following five projects: Amite River Diversion Canal Modification; Convey Atchafalaya River Water to Northern Terrebonne Marshes; Multipurpose Operation of the Houma Navigation Canal Lock; Small Diversion at Convent / Blind River; and the Whiskey Island component of the Terrebonne Basin Barrier Shoreline Restoration. The recommended plans for each project contain post-construction monitoring and adaptive management for a period of no more than ten years to ensure project performance. Because the recommended plans are ecosystem restoration plans, they do not have any significant adverse effects and no mitigation measures would be required. While the reporting officers recommend that the Secretary carry out the Multipurpose Operation of the Houma Navigation Canal Lock Project, implementation of this project would be contingent on the construction of a lock at Houma under separate authority.

4. The reporting officers also recommend that the Congress raise the total project cost for the Medium Diversion at White Ditch Project and the recommended plan for the Terrebonne Basin Barrier Shoreline Restoration Project. These projects are consistent with the authorization in Section 7006(e)(3) of WRDA 2007, but modification of that authorization is required, because the total costs for these projects exceed the authorized costs as defined in Section 902 of WRDA 1986, as amended.

5. The reporting officers developed the recommended six projects for Louisiana Coastal Area consistent with the direction provided in WRDA 2007. The reporting officers found each of the six projects to be cost effective, technically sound, and environmentally and socially acceptable. Further refinement and additional analysis of these projects will be performed during preconstruction engineering and design and modifications made, as appropriate, prior to project implementation. Such analysis or modifications will continue to be coordinated with Federal, State, and local agencies and other parties. The following paragraphs describe each of the projects in greater detail.

a. Amite River Diversion Canal Modification. The LCA Amite River Diversion Canal Modification (ARDC) study area is located approximately 30 miles southeast of the City of Baton Rouge and west of Lake Maurepas within one of the largest remaining cypress swamps in coastal Louisiana. This ecosystem provides habitat to threatened and endangered species and buffers the highly developed Interstate 10 corridor between New Orleans and Baton Rouge and Lake Maurepas. The 2004 LCA report recommended several projects to address the restoration and stability of the Maurepas Swamp ecosystem including the Small Diversion at Covent / Blind River also included in this report. The ARDC study area includes portions of the Maurepas Swamp adjacent to the Amite River Diversion Canal which connects, and diverts flows from, the Amite River to the lower Blind River near Lake Maurepas. The ARDC recommended plan (Alternative 33) will restore the most degraded portion of the Maurepas Swamp within the study area by restoring the natural hydrology modified by the construction of the Amite River

Diversion Canal and from the resulting impoundment of water, lack of freshwater, sediment and nutrients, and surge-related saltwater intrusion. The recommended plan includes the creation of three gaps and delivery channels through the north bank of the Amite River Diversion Canal. The bank gaps are 70-foot wide cuts with 25-foot benches through the dredged material berm. The channel cross section is 70, 50 and 30 foot wide as it moves into the swamp. Freshwater swamp tree species will be planted on 438 acres in the swamp. One cut will also be created in the railroad grade approximately 0.9 miles north of the ARDC to improve sheetflow. The recommended plan is an implementable increment of the national ecosystem restoration (NER) plan, meets the LCA Program and project objectives, and is within the cost and scope of the authorization contained in Section 7006(e)(3) of WRDA 2007. The NER plan would create gaps on both the north and south bank of the ARDC along with deliery channels, gaps in the railroad grade and vegetative plantings benefiting 3,881 acres of swamp. The NER plan also includes all the areas addressed by the recommended plan and an additional area that is expected to need restoration in the next 20 years. The NER plan would provide 1,602 average annual habitat units (AAHUs) with a total estimated cost for construction of $15,200,000, which exceeds the current authorization. The State of Louisiana, acting as the non-Federal sponsor, supports the recommended plan. The recommended plan will improve habitat function by 679 AAHUs over the 50-year period of analysis and benefit approximately 1,602 acres of existing freshwater swamp. The estimated first cost of the recommended plan is $8,136,000 and in accordance with the cost sharing provisions of WRDA of 1986, as amended by Section 210 of WRDA 1996, the project will be cost shared 65 percent Federal and 35 percent non-Federal. The Federal share of the estimated first cost of this project is estimated at $5,288,000 and the non-Federal share is estimated at $2,848,000. The operation, maintenance, repair, replacement, and rehabilitation costs for the project are estimated at $10,000 per year and are 100-percent non-Federal responsibility. Based on a 4.375-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated at $489,000, including operation, maintenance, repair, replacement, and rehabilitation. Post-construction monitoring and adaptive management of this ecosystem restoration project is projected to be conducted for no more than 10 years at an estimated cost of $2,971,000.

b. Convey Atchafalaya River Water to Northern Terrebonne Marshes / Multipurpose Operation of the Houma Navigation Canal Lock. The LCA Convey Atchafalaya River Water to Northern Terrebonne Marshes (ARTM) / Multipurpose Operation of the Houma Navigation Lock (MOHNL) study area is located in coastal Louisiana south of Houma, between the Atchafalaya River and Bayou Lafourche. These two projects are hydrologically linked and subsequently have been analyzed and are presented as a combined feature. The ARTM/MOHNL recommended plan (Alternative 2), which is also the national ecosystem restoration plan, will reduce the current trend of marsh degradation in the project area resulting from subsidence, sea level rise, erosion, saltwater intrusion, and lack of sediment and nutrient deposition. The project proposes to accomplish this by utilizing fresh water and nutrients from the Atchafalaya River and the Gulf Intracoastal Waterway (GIWW). The recommended plan features consist of elimination of Gulf Intracoastal Waterway (GIWW) flow constrictions and construction of flow management

features in the interior portions of the Study Area. The recommended plan consists of construction of 56 structures and other water management features. The Carencro Bayou channel would be dredged to restore historic freshwater flow to southeast Penchant basin marshes. A weir would be constructed in Grand Pass to restrict saltwater intrusion into Lake Mechant and surrounding marshes. Several connections would be created between the Houma Navigation Canal and the Lake Boudreaux basin. St. Louis Canal and Grand Bayou would be enlarged to allow for increased fresh water flows into the eastern Terrebonne marshes. These new and enlarged channels would be controlled with water management features such as culverts with stop logs, gates or flap gates. Additionally, marsh berms and terracing would be constructed at strategic locations within the project area to prevent salt water intrusion and slow fresh water outflow. The recommended plan also includes the multipurpose operation of the proposed Houma Navigation Canal (HNC) Lock, if and when constructed. The lock complex would be closed and operated more frequently in order to maximize distribution of freshwater into wetlands downstream of the lock and minimizing saltwater intrusion upstream of the lock. For vessels exceeding the lock size, a traffic management system will be developed to open the sector gates to let these vessels pass. The recommended plan would improve habitat function by approximately 3,220 AAHUs, with the ARTM project providing approximately 2,977 AAHUs and the MOHNL operation providing 243 AAHUs. The project would improve habitat for fish and wildlife species including migratory birds , estuarine fish and shellfish. Benefits include the reduction of projected wetland loss by approximately 9,655 acres of existing wetlands over the 50-year period of analysis. The ARTM/MOHNL recommended plan meets the LCA Program and project objectives, is the NER Plan, and is within the cost and scope of the authorization. The State of Louisiana, acting as the non-Federal sponsor, supports the recommended plan.

The estimated total first cost of the ARTM recommended plan is $283,534,000. In accordance with the cost sharing provisions of WRDA of 1986, as amended by Section 210 of WRDA 1996, the project will be cost shared 65 percent Federal and 35 percent non-Federal. The Federal share of the estimated first cost of the ARTM project is $184,298,000 and the non-Federal share is estimated at $99,236,000. Post-construction monitoring and adaptive management of the ARTM ecosystem restoration project is projected to be conducted for no more than 10 years at an estimated cost of $21,204,000. The operation, maintenance, repair, replacement, and rehabilitation of the ARTM project is estimated at $73,000 per year and is a 100-percent non-Federal responsibility. Based on a 4.375-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the ARTM project are estimated at $15,907,000, including operation, maintenance, repair, replacement, and rehabilitation.

The estimated first cost of MOHNL project which is the incremental cost of operations of the proposed constructed lock, for ecosystem restoration is $1,496,000 and in accordance with the cost sharing provisions of WRDA of 1986, as amended by Section 210 of WRDA 1996, the project will be cost shared 65 percent Federal and 35 percent non-Federal. Federal share of the estimated first cost of the MOHNL project is $972,000 and the non-Federal share is estimated at $524,000. Post-construction monitoring and adaptive management of this ecosystem restoration

project is projected to be conducted for no more than ten years at an estimated cost of $98,000. There is no additional operation, maintenance, repair, replacement, and rehabilitation cost forecast for the modification of the lock project. However should any additional OMRR&R cost be identified in subsequent project design and operation investigations they would be a 100-percent non-Federal responsibility. Based on a 4.375-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated at $83,000, including operation, maintenance, repair, replacement, and rehabilitation. While the reporting officers recommend that the Secretary carry out the Multipurpose Operation of the Houma Navigation Canal Lock Project, this project cannot be implemented until a lock at Houma is constructed under separate authority.

c. Small Diversion at Convent / Blind River. The LCA Small Diversion at Convent/Blind River study area is located approximately equidistant between Baton Rouge and New Orleans, Louisiana within the Maurepas Swamp, one of the largest remaining cypress swamps in coastal Louisiana. The recommended plan (Alternative 2), which is also the national ecosystem restoration plan, will reintroduce the natural periodic, nearly annual flooding by the Mississippi River to the Maurepas Swamp and Blind River, that was cut off by construction of the Mississippi River and Tributaries (MR&T) flood control system. The recommended plan consists of a 3,000 cubic feet per second (cfs) capacity gated box culvert diversion on the Mississippi River with a delivery channel to be constructed in the vicinity of Romeville, Louisiana. The recommended plan has six major components: a diversion structure, a transmission canal, control structures, approximately 30 berm gaps, cross culverts at four locations along U.S. highway 61, and instrumentation to monitor and control the diversion flow rate and the water surface elevations in the diversion, transmission, and distribution system in the swamp. The recommended plan will restore freshwater, nutrients, and sediment input from the Mississippi River. It will promote water distribution in the swamp, facilitate swamp building, and establish hydrologic period fluctuation in the swamp, improving fish and wildlife habitat. The recommended plan will improve habitat function by 6,421 AAHUs over a total of 21,369 acres of bald cypress-tupelo swamp. The recommended plan would improve habitat for many fish and wildlife species including migratory birds, bald eagles, alligators, gulf sturgeon, and the manatee. The recommended plan meets the LCA program and project objectives and is within the scope of the authorization. The State of Louisiana, acting as the non-Federal sponsor, supports the recommended plan. The estimated total first cost of the recommended plan is $116,791,000 and in accordance with the cost sharing provisions of WRDA of 1986, as amended by Section 210 of WRDA 1996, the project will be cost shared 65 percent Federal and 35 percent non-Federal. The Federal share of the estimated first cost of this project is $75,914,000 and the non-Federal share is estimated at $40,877,000. Post-construction monitoring and adaptive management of this project is projected to be conducted for no more than 10 years at a cost of $6,620,000. The operation, maintenance, repair, replacement, and rehabilitation costs of the project are estimated at $2,754,000 per year and are a 100-percent non-Federal responsibility. If further analysis determines that the project increases maintenance dredging requirements for the Mississippi River, Baton Rouge to the Gulf of Mexico project by inducing shoaling, the

incremental costs of any additional maintenance dredging would also be a 100-percent non-Federal responsibility. Based on a 4.375-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated at $8,859,000, including operation, maintenance, repair, replacement, and rehabilitation.

d. Terrebonne Basin Barrier Shoreline Restoration. The LCA Terrebonne Basin Barrier Shoreline Restoration (TBBSR) study area is located in Terrebonne Parish 30 miles south of the city of Houma, Louisiana and includes the Isles Dernieres and the Timbalier Islands. The Isles Dernieres reach includes Raccoon, Whiskey, Trinity, East, and Wine Islands. The Timbalier Island reach includes Timbalier and East Timbalier Islands. These barrier islands have undergone significant reductions in size due to a number of natural processes and human actions including lack of sediment, storm-induced erosion and breaching, subsidence, sea level rise and hydrologic modifications such as navigation and oil and gas canals. These habitat losses have had a direct adverse impact on wildlife and fisheries resources including threatened and endangered species. Loss of the barrier island habitat also leaves the saline, brackish, and fresh marshes in the upper reaches of the Terrebonne Basin more vulnerable to the high energy marine coastal processes which have exacerbated wetland loss in these areas. The barrier islands also protect oil and gas infrastructure investments including hundreds of wells and pipelines which are of regional and national importance. Furthermore, numerical modeling indicates that the barrier islands reduce storm surges which can mitigate the damage associated with tropical storms on human populations and infrastructure in Terrebonne and Lafourche Parishes. The national ecosystem restoration (NER) plan (Alternative 5), will reintroduce sediment to the coastal sediment transport system. The NER plan includes the restoration of Raccoon Island with 25 years of advanced fill and construction of a terminal groin. The NER plan also includes restoration of Whiskey and Trinity Islands with five years of advanced fill and restoration of Timbalier Island with 25 years of advanced fill. The NER plan includes beach, dune, and marsh restoration and proposes dune heights ranging from +6.4 feet NAVD 88 for Whiskey Island to +7.7 feet NAVD 88 for Raccoon Island with a crest width of 100 feet to marsh heights ranging from +2.4 feet NAVD 88 on Whiskey Island to +3.2 NAVD 88 on Raccoon Island. The NER plan includes renourishment at staggered intervals to maintain the islands. Raccoon Island will be renourished at Target Year (TY) 30. Whiskey Island will require two renourishment intervals. The first will occur at TY20 and the second renourishment interval will occur at TY40 Trinity Island will be renourished at TY25. Timbalier Island will be renourished at TY30. The NER plan will restore geomorphic and hydrologic form provided by barrier island systems and restore and improve essential habitats for fish, migratory birds, and terrestrial and aquatic species. This barrier shoreline system is also a key component in regulating the hydrology, and ultimately the rate of wetland erosion, throughout the estuary. The NER plan consists of restoration of four islands (Whiskey, Raccoon, Trinity, and Timbalier) improving habitat function by 2,833 AAHUs by adding 3,283 acres to the islands for a total size of 5,840 acres. The restored acreage would include 472 acres of dune, 4,320 acres of supratidal habitat, and 1,048 acres of intertidal habitat and ensure the geomorphic and hydrologic form and ecological function of the majority of the estuary over the period of analysis. The recommended plan meets

the LCA program and project objectives and is within the scope of the authorization. However, it exceeds the authorized cost. The State of Louisiana, acting as the non-Federal sponsor, concurs with the reporting officers' recommendation that additional Congressional authorization be requested to allow implementation of the NER plan. The estimated total first cost of the NER plan is $646,931,000 and in accordance with the cost sharing provisions of WRDA of 1986, as amended by Section 210 of WRDA 1996, the project will be cost shared 65 percent Federal and 35 percent non-Federal. The Federal share of the estimated first cost of this project is $420,505,000 and the non-Federal share is estimated at $226,426,000. Post-construction monitoring and adaptive management of this ecosystem restoration project is projected to be conducted for no more than ten years at a cost estimated to be $5,280,000. The operation, maintenance, repair, replacement, and rehabilitation costs of the project, including periodic nourishment, are estimated at $9,960,000 per year and are a 100-percent non-Federal responsibility. Based on a 4.375-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated at $26,400,000, including operation, maintenance, repair, replacement, and rehabilitation.

While additional authority is needed to raise the total project cost to allow implementation of the entire NER plan, the reporting officers recommend that the Whiskey Island component (Alternative 11) of the NER plan be implemented under the existing authority provided in Section 7006(e)(3) of WRDA 2007. The Whiskey Island component includes renourishment every 20 years to maintain the constructed features. Restoration of the one island will increase habitat function by 678 AAHUs by restoring a total of 1,272 acres on the island, including 65 acres of dune, 830 acres of supratidal habitat, and 377 acres of intertidal habitat. The Whiskey Island component is an implementable increment of the NER plan, meets the LCA Program objectives, and is within the cost and scope of the current WRDA authorization. The State of Louisiana, acting as the non-Federal sponsor, supports immediate implementation of the Whiskey Island component. The estimated total first cost of the Whiskey Island component is $113,434,000 and in accordance with the cost sharing provisions of WRDA of 1986, as amended by Section 210 of WRDA 1996, the project will be cost shared 65 percent Federal and 35 percent non-Federal. The Federal share of the estimated first cost of this project is $73,732,000 and the non-Federal share is $39,702,000. Post-construction monitoring and adaptive management of this ecosystem restoration project is projected to be conducted for no more than ten years at an estimated cost of $5,820,000. The operation, maintenance, repair, replacement, and rehabilitation cost of the project, including periodic nourishment, are estimated at $6,900,000 per year and is a 100-percent non-Federal responsibility. Based on a 4.375-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated at $9,508,000, including operation, maintenance, repair, replacement, and rehabilitation.

e. Medium Diversion at White Ditch. The LCA Medium Diversion at White Ditch (MDWD) project area is located on the east bank of the Mississippi River south of New Orleans in Plaquemines Parish near the town of Phoenix, Louisiana. The area includes a portion of the Breton Sound basin framed by the Mississippi River and the River aux Chenes ridge as well as

the gulfward extent of the Breton Sound. The recommended plan, (Alternative 4), which is also the national ecosystem restoration plan, will restore the supply and distribution of freshwater and sediment disrupted by the construction of the Mississippi River and Tributaries flood control. The recommended plan includes a 35,000 cubic feet per second (cfs) capacity gated box culvert diversion on the Mississippi River with a delivery channel to be constructed in the vicinity of Phoenix, Louisiana. The structure will consist of ten 15-foot by 15-foot box culverts and an approximately 9,500 foot conveyance channel to move the diverted water into surrounding marshes. Additionally, notched weirs will be constructed at existing channel intersections to help control and direct the flow of water into the study area. Dredged material from the conveyance channel will be used beneficially to create approximately 416 acres of marsh and ridge habitat. The recommended operational plan consists of pulsing diversion flows up to 35,000 cfs through the structure during March and April and maintaining maintenance flows up to 1,000 cfs the rest of the year. The recommended plan will improve habitat function by 13,353 AAHUs by creating and nourishing approximately 20,315 acres of fresh, intermediate, brackish, and saline wetlands. This project is one of the key components to demonstrating both the ability to stem or reverse the coastal land loss trend and provide a mechanism to combat relative sea level rise in coastal Louisiana. The recommended plan meets the LCA Program objectives and is within the scope of the WRDA authorization, however, it exceeds the authorized project cost. The State of Louisiana, acting as the non-Federal sponsor, supports the reporting officers' recommendation that Congress increase the total project cost to allow implementation of the recommended plan to fully address the restoration needs of the study area identified in this report. Supplemental environmental analysis will be performed prior to construction of the recommended plan to address potential impacts on water quality and fisheries, including coordination with Federal, State, and local agencies and other interested parties as appropriate. The estimated total first cost of the recommended plan is $365,201,000 and in accordance with the cost sharing provisions of WRDA of 1986, as amended by Section 210 of WRDA 1996, the project will be cost shared 65 percent Federal and 35 percent non-Federal. The Federal share of the estimated first cost of this project is $237,381,000 and the non-Federal share is estimated at $127,820,000. Post-construction monitoring and adaptive management of this ecosystem restoration project is projected to be conducted for no more than ten years at an estimated cost of $11,143,000. The operation, maintenance, repair, replacement, and rehabilitation costs of the project are estimated at $1,468,000 per year and are a 100-percent non-Federal responsibility. If further analysis determines that the project increases maintenance dredging requirements for the Mississippi River, Baton Rouge to the Gulf of Mexico project by inducing river shoaling, the incremental costs of any additional channel maintenance dredging would also be a 100-percent non-Federal responsibility. Based on a 4.375-percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated at $21,237,000, including operation, maintenance, repair, replacement, and rehabilitation.

6. The State of Louisiana supports the recommended plans for the six projects described herein. At October 2010 price levels, the estimated total first cost for the recommended plans for the six

projects is $1,422,089,000. The estimated total first costs for each of the six projects are summarized below in Table 1.

Table 1
LCA Section 7006(e)(3) Projects
Recommended Plan Cost and Benefit Summary
(October 2010 Price Level)

Project	Alternative	Total First Cost	Impacted Acres	Average Annual Habitat Units
Amite River Diversion Canal Modification	Alt. 33	$8,136,000	1,602	679
Convey Atchafalaya River Water to Northern Terrebonne Marshes	Alt. 2	$283,534,000	9,655	3,220
Houma Navigation Control Lock	Alt. 2	$1,496,000	0***	243
Small Diversion at Convent/Blind River	Alt. 2	$116,791,000	21,369	6,421
Terrebonne Basin Barrier Shoreline Restoration	Alt. 11*	$646,931,000	5,840	2,063
	(Alt. 5)**	($113,434,000)	(1,272)	(379)
Medium Diversion at White Ditch	Alt. 4*	$365,201,000	35,146	13,353
Total		**$1,422,089,000**	**73,612**	**25,979**

* Implementation of the recommended plan to fully address the restoration needs of the study area identified in this report requires additional authorization by Congress by raising the total project cost.
** Alternative 5 (Whiskey Island) is an increment of Alternative 11 (the recommended plan).
*** Impacted acres overlap with Convey Atchafalaya River Water to Northern Terrebonne Marshes

7. In accordance with the cost sharing provisions of WRDA of 1986, as amended by Section 210 of WRDA 1996, the Federal share of the first cost of the six projects is estimated at $924,358,000 (65 percent) and the non-Federal share is estimated at $497,731,000 (35 percent). The cost of lands, easements, rights-of-way, relocations, and dredged or excavated material disposal areas is estimated at $13,454,000. The total cost includes an estimated $47,856,000 for environmental monitoring, and adaptive management. The State of Louisiana, the non-Federal sponsor, would be responsible for the OMRR&R of the projects after construction, a cost currently estimated at about $15,605,000 per year.

Table 2 shows the Federal and non Federal cost of the projects.

Table 2
LCA Section 7006(e)(3) Projects
Cost Apportionment (October 2010 Price Level)

Project	Total First Cost	Federal Cost (65%)	Non-Federal Cost (35%)	Total Monitoring	Total Adaptive Management	Annual OMRR&R
Amite River Diversion Canal Modification	$8,136,000	$5,288,000	$2,848,000	$2,113,000	$858,000	$10,000
Convey Atchafalaya River Water to Northern Terrebonne Marshes	$283,534,000	$184,298,000	$99,236,000	$18,874,000	$2,428,000	$73,000
Houma Navigation Control Lock*	$1,496,000	$972,000	$524,000	$98,000	$0	$0
Small Diversion at Convent/Blind River	$116,791,000	$75,914,000	$40,877,000	$4,284,000	$2,336,000	$2,754,000
Terrebonne Basin Barrier Shoreline Restoration	$646,931,000	$420,505,000	$226,426,000	$8,280,000	$1,680,000	$11,300,000
	($113,434,000)	($73,732,000)	($39,702,000)	($4,140,000)	($1,680,000)	($6,900,000)
Medium Diversion at White Ditch	$365,201,000	$237,381,000	$127,820,000	$8,807,000	$2,336,000	$1,468,000
Total LCA	**$1,422,089,000**	**$924,358,000**	**$497,731,000**	**$38,218,000**	**$9,638,000**	**$15,605,000**

8. In concert with the Corps Campaign Plan, the plans recommended in this report were developed utilizing a systematic and regional approach in formulating solutions and in evaluating the impacts and benefits of those solutions. Specifically the projects individually and collectively provide enduring and essential water resources management solutions. The plans were developed through a broad based collaborative process that resulted in wetland restoration that enhances the sustainability of, and is integrated with, the multiple socio-economic purposes supported by the coastal ecosystem. The development of these projects also demonstrates the Corps goal to cultivate competent, disciplined teams to deliver quality plans.

9. Independent External Peer Review (IEPR) of the six conditionally authorized LCA projects was coordinated through the Planning Center of Expertise for Ecosystem Restoration and performed by Battelle Corporation. Independent technical review teams were assembled for each project. The technical review considered all aspects of the project evaluations and the resulting output. The IEPR comments identified concerns in areas of the evaluations that would benefit from additional refinement. The IEPR reviews concurred with the project recommendations and all comments were satisfactorily resolved. Several significant recommendations will be further evaluated during project implementation. In concurrence with

IEPR comments, additional documentation of hydrodynamic model and land change evaluations were provided for the Amite River Diversion Canal Modification, Convey Atchafalaya River Water to Northern Terrebonne Marshes, Multipurpose Operation of the Houma Navigation Canal Lock, and Small Diversion at Convent / Blind River projects. Additional documentation to support the alternative comparison and plan selection process was provided for all the presented projects to address the comments. Other actions will be taken in response to IEPR comments during project preconstruction engineering and design (PED). For the Amite River Diversion Canal Modification project, additional model refinements will be used to improve the forecast of relative sea level rise (RSLR) effects and revise the adaptive management (AM) plan. For the Convey Atchafalaya River Water to Northern Terrebonne Marshes / Multipurpose Operation of the Houma Navigation Canal Lock Canal Lock project, additional refinements of land change, RSLR, and wetland benefit forecast tools to better correlate them to the high complexity of the project area will be undertaken. For the Convent / Blind river project, additional data collection and refinement of the hydrodynamic model will be undertaken to minimize potential local drainage effects and identify specific management actions for swamp enhancement, as well as refine the AM plan. For the Terrebonne Barrier Shoreline project, refined assessment of estuary-wide current and wave conditions and physical process modeling will be undertaken to better capture the systemic benefits and allow better coordination of project implementation and O&M. Specific construction effects will also be assessed and construction modifications applied to minimize critical habitat disruption. For the White Ditch project, a refinement of the land change evaluation, and an assessment of the effect of RSLR will be undertaken to allow a clearer understanding of potential adaptive management needs and revision of the AM plan. Finally, for the Small Diversion at Convent / Blind River and the Medium Diversion at White's Ditch projects a comprehensive assessment of cumulative diversion impacts on the Mississippi River will be undertaken prior to the initiation of construction to improve the assessments of cumulative project effects and help set operational criteria.

10. The LCA plans recommended by the reporting officers are environmentally justified, technically sound, cost-effective, and socially acceptable. The recommended plans conform to essential elements of the U.S. Water Resources Council's Economic and Environmental Studies and comply with other administration and legislative policies and guidelines. Also, the views of interested parties, including Federal, State, and local agencies have been considered.

11. I concur in the findings, conclusions, and recommendation of the reporting officers. Accordingly, I recommend implementation of these projects, in accordance with the reporting officers' recommendations with such modifications as in the discretion of the Chief of Engineers may be advisable. I further recommend, in accordance with the reporting officers recommendations, that the authorizations for Terrebonne Basin Barrier Shoreline Restoration and Medium Diversion at White Ditch be modified to raise the total project cost to allow for construction of the national ecosystem restoration plans for those projects. My recommendations are subject to cost sharing, financing, and other applicable requirements of Federal and State laws and policies, including WRDA 1986, as amended by Section 210 of

WRDA 1996. The State of Louisiana, acting as the non-Federal sponsor, would provide the non-Federal cost share and all lands, easements, relocations, right-of-ways and disposals. Further, the non-Federal sponsor would be responsible for all OMRR&R. This recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and policies, including but not limited to its agreeing to:

a. Provide a minimum of 35 percent of total project costs as further specified below:

(1) Enter into an agreement which provides, prior to execution of the project partnership agreement, 25 percent of design costs;

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

(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 improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be necessary for the construction, operation, maintenance, repair, replacement, and rehabilitation of the project;

(4) Provide, during construction, any additional funds necessary to make its total contribution equal to 35 percent of the total project costs allocated to the project;

b. Provide the non-Federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project;

c. Not use funds provided by a Federal agency under any other Federal program, to satisfy, in whole or in part, the non-Federal share of the cost of the project unless the Federal agency that provides the funds determines that the funds are authorized to be used to carry out the study or project;

d. Not use project or lands, easements, and rights-of-way required for the project as a wetlands bank or mitigation credit for any other project;

e. For as long as the project remains authorized, operate, maintain, repair, replace, and rehabilitate the project, or functional portion of the project, including mitigation, 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;

f. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal sponsor, now or hereafter, owns or controls for access to the project for the purpose of inspecting, operating, maintaining, repairing, replacing, rehabilitating, or completing the project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Federal Government shall relieve the non-Federal sponsor of responsibility to meet the non-Federal sponsor's obligations, or to preclude the Federal Government from pursuing any other remedy at law or equity to ensure faithful performance;

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

h. Perform, or cause to be performed, 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 the initial construction, periodic nourishment, 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;

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

j. Agree that, as between the Federal Government and the non-Federal sponsor, 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, and repair the project in a manner that would not cause liability to arise under CERCLA;

k. Prevent obstructions of or encroachments on the project (including prescribing and enforcing regulations to prevent such obstruction or encroachments) which might reduce ecosystem restoration benefits, hinder operation and maintenance, or interfere with the project's proper function, such as any new developments on project lands or the addition of facilities which would degrade the benefits of the project;

l. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of three years after completion of the accounting for which such books, records, documents, and other evidence is required, to the extent and in such detail as would properly reflect total costs of construction of the project, 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;

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

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, as well as 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 and 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.); and

o. 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 necessary for the initial construction, periodic nourishment, operation, and maintenance of the project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

CECW-MVD
SUBJECT: Louisiana Coastal Area, Louisiana, Ecosystem Restoration, Six Projects Authorized by Section 7006(e)(3) of Water Resources Development Act of 2007

12. The recommendations contained herein reflect the information available at this time and current departmental policies governing the formulation of individual projects. They do not reflect program and budgeting priorities inherent in the formulation of the national civil works construction program or the perspective of higher levels within the executive branch. Consequently, the recommendations may be modified before they are transmitted to Congress for authorization and/or implementation funding. However, prior to transmittal to Congress, the State of Louisiana, interested Federal agencies, and other parties will be advised of any significant modifications in the recommendations and will be afforded an opportunity to comment further.

R. L. VAN ANTWERP
Lieutenant General, US Army
Chief of Engineers

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

CECW-MVD (1105-2-10a) DEC 30 2011

SUBJECT: Minnesota River, Marsh Lake Ecosystem Restoration Project, Minnesota

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on ecosystem restoration along the Minnesota River at Marsh Lake, a part of the Lac qui Parle Reservoir, west of Appleton, Minnesota. It is accompanied by the report of the district and division engineers. These reports were completed under authorities granted by a May 10, 1962, resolution of the Committee on Public Works of the U.S. House of Representatives. This resolution requested the review of "the report of the Chief of Engineers on the Minnesota River, Minnesota, published as House Document 230, 74th Congress, First Session and other pertinent reports, with a view to determining the advisability of further improvements in the Minnesota River Basin for navigation, flood control, recreation, low flow augmentation, and other related water and land resources." Preconstruction engineering and design activities for the Marsh Lake Ecosystem Restoration Project will continue under the authority provided by the resolution above.

2. The Marsh Lake ecosystem function and connectivity has degraded over time primarily as a result of artificial changes to the hydrologic conditions at the site. The ecosystem significance of the area is demonstrated on the national, regional and local level. Marsh Lake provides critical stop-over refuge for migratory waterfowl moving through the Mississippi River flyway as well as breeding grounds for the largest white pelican population in North America. Many other fish and bird species are also dependent on the resource for life requisites including both migrating and nesting bald eagles. Ecosystem values provided by Marsh Lake have increased in importance over time as 90 percent of the wetland areas within the watershed have been drained.

3. The reporting officers recommend authorization of a plan to restore aquatic ecosystem structure and function as well as implementation of ancillary recreation features to Marsh Lake and surrounding resources in the upper portion of the Lac qui Parle reservoir. The recommended plan consists of ecosystem restoration features including returning the Pomme de Terre River to its historic channel, modifying the Marsh Lake Dam for fish passage, construction of a drawdown water control structure at the Marsh Lake Dam, installation of gated culverts at Louisburg Grade Road, and the breaching of a dike at an abandoned fish pond adjacent to the Marsh Lake Dam. The plan also contains recreation features including shoreline fishing access structures, interpretive signage, a canoe landing, benches, picnic tables, trash receptacles, toilets, and parking lot improvements. The project requires mitigation to offset adverse impacts to Marsh Lake Dam through photographic documentation of the existing site conditions prior to construction since Marsh Lake Dam was determined individually eligible to the National Register of Historic Places. The recommended plan is the National Ecosystem Restoration Plan. Implementation of the recommended plan will have a substantial beneficial impact on fish and

wildlife species in the area. While the project will not directly affect federally-listed endangered or threatened species, the reduction of the suspended sediments in the waters of Marsh Lake and improved water clarity will benefit a wide-range of fish and wildlife species including species of concern such as the bald eagle, that are known to use the Marsh Lake site.

4. Based on an October 2011 price level, the estimated project first cost is $9,967,000. The project first cost includes approximately $9,463,000 for ecosystem restoration and approximately $504,000 for recreation. In accordance with the cost sharing provisions of Section 103(c) of the Water Resources Development Act of 1986 (WRDA 1986), as amended (33 U.S.C. 2213(c)), ecosystem restoration features are cost-shared at a rate of 65 percent Federal and 35 percent non-Federal; and recreation features are cost-shared at a rate of 50 percent Federal and 50 percent non-Federal. Thus, the Federal share of the project first costs is estimated to be $6,403,000 and the non-Federal share is estimated at $3,564,000, which equate to 64 percent Federal and 36 percent non-Federal. The costs of lands, easements, rights-of-way, relocations, and excavated material disposal areas is estimated to have no cost, given the existing Federal ownership over the project area. The State of Minnesota, Department of Natural Resources is the non-Federal cost share sponsor for the recommended plan. The State of Minnesota, Department of Natural Resources would be responsible for the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the project after construction, a cost currently estimated at $35,000 per year.

5. Based on a 4.0-percent discount rate and a 50-year period of analysis, the total equivalent annual costs of the project, including OMRR&R, are estimated to be $490,000.

a. The equivalent average annual costs of ecosystem restoration features are estimated to be $464,000, including OMRR&R. The cost of the recommended aquatic ecosystem restoration features is justified by the restoration of about 8,400 average annual habitat units which includes restoration of approximately two linear miles of historic riverine habitat.

b. The equivalent average annual costs of recreation features are estimated to be $26,000, including OMRR&R. The annual benefits of the proposed recreation features are estimated at $230,000. The benefit-to-cost ratio for recreation is 8.9 to 1.

6. The recommended plan was developed in coordination and consultation with various Federal, State, and local agencies using a systems approach in formulating ecosystem restoration solutions and in evaluating the impacts and benefits of those solutions. Plan formulation evaluated a wide range of non-structural and structural alternatives under Corps policy and guidelines as well as consideration of a variety of economic, social and environmental goals. The recommended plan delivers a holistic, comprehensive approach to solve water resources challenges in a sustainable manner. The resulting recommended plan has received broad public support.

7. In accordance with EC 1165-2-209, all technical, engineering and scientific work underwent an open, dynamic and vigorous review process to ensure technical quality. This included Agency Technical Review (ATR) and a Corps Headquarters policy and legal review. All concerns of the ATR have been addressed and incorporated into the final report. An exclusion from the Independent External Peer Review (IEPR) was granted by the Director of Civil Works.

8. I concur in the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the plan to restore the ecosystem of Marsh Lake be authorized in accordance with the reporting officers' recommended plan at an estimated project first cost of $9,967,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My 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 by Section 202 of WRDA 1996, and WRDA 1986, as amended by Section 210 of WRDA 1996. Accordingly, the non-Federal sponsor must agree with the following requirements prior to project implementation.

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

1. Provide the non-Federal share 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 ecosystem restoration features;

2. 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;

3. Provide, during the design and implementation phase, any funds necessary to make its total contribution equal to 35 percent of total project costs;

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

1. Provide the non-Federal share 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 recreation features;

2. 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;

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

4. Provide, during construction, 100 percent of the total recreation costs that exceed an amount equal to 10 percent of the Federal share of total ecosystem restoration costs;

c. Provide, during the design and implementation phase, 100 percent of all costs of planning, design, and construction for the project that exceed the Federal share of the total project costs;

d. 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 by Federal law;

e. 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 outputs produced by the project, hinder operation and maintenance of the project, or interfere with the project's proper function;

f. Shall not use the project or lands, easements, and rights-of-way required for the project as a wetlands bank or mitigation credit for any other project;

g. 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 Code of Federal Regulations (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;

h. 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;

i. 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;

j. Hold and save the United States free from all damages arising from the design, 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;

k. 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 CFR Section 33.20;

l. 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.*);

m. 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;

n. 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;

o. 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;

p. Provide, during the design and implementation phase, 35 percent of all costs that exceed $50,000 for data recovery activities associated with historic preservation for the project; and

q. 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.

9. 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. 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 Congress, the sponsor, the State, interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

Merdith W. B. Temple

MERDITH W. B. TEMPLE
Major General, U.S. Army
Acting Chief of Engineers

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

CECW-SAD (1105-2-10a)

JAN 3 0 2012

SUBJECT: C-111 Spreader Canal Western Project, Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida.

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on ecosystem restoration improvements for the C-111 Spreader Canal Western Project, located in Miami-Dade County, Florida. It is accompanied by the reports of the Jacksonville District Engineer and South Atlantic Division Engineer. These reports are in response to Section 601 of the Water Resources Development Act (WRDA) of 2000, which authorized the Comprehensive Everglades Restoration Plan (CERP) as a framework for modifications and operational changes to the Central and Southern Florida Project that are needed to restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. WRDA 2000 identified specific requirements for implementing components of the CERP, including the development of a decision document known as a Project Implementation Report (PIR). The requirements of a PIR are addressed in this report and are subject to review and approval by the Secretary of the Army. Preconstruction engineering and design activities for this project will be continued under the CERP Design Agreement.

2. The proposed C-111 Spreader Canal project was conditionally authorized by Section 601(b)(2)(C)(x) of WRDA 2000, but is not being recommended for implementation under that authority. The proposed C-111 Spreader Canal project was split into Western and Eastern Projects. Due to changes in scope and intended restoration area, the C-111 Spreader Canal Western project will be recommended for new specific Congressional authorization consistent with WRDA 2000, Section 601(d), Authorization of Future Projects. The Western Project focuses on the restoration of flows to Florida Bay via Taylor Slough as well as the restoration of the Southern Glades and Model Lands. Due to numerous uncertainties associated with the actual spreader canal feature, a spreader canal design test will be implemented to gain information that will guide planning efforts for the Eastern Project. The Eastern Project will address the restoration of the remainder of the project area through such features as a spreader canal, backfilling of the C-111 Canal, etc. It is expected that the Eastern Project will also seek authorization under 601(d). The reporting officers determined that the original authority for the C-111 Spreader Canal Project contained 601(b)(2)(C)(x) of WRDA 2000 is no longer needed. As such, the reporting officers recommend that C-111 Spreader Canal authorized in 601(b)(2)(C)(x) of WRDA 2000 be deauthorized.

3. Although cost sharing of the ecosystem restoration features for this project is governed by Section 601 of WRDA 2000, as amended, cost sharing of the recreation features is governed by Section 103 of the WRDA 1986, as amended. In particular, in accordance with Section 103(j) of WRDA 1986, 100 percent of the cost of operation, maintenance, repair, replacement and rehabilitation (OMRR&R) of the recreation features is the non-Federal sponsor's responsibility. In

addition, section 601(e)(5)(B) of WRDA 2000, as amended, governs credit for non-Federal sponsor design and construction work on the ecosystem restoration features of the project, whereas section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b(a)(4)), governs credit for non-Federal sponsor design and construction work on the recreation features of the project.

4. The final PIR with integrated Environmental Impact Statement (EIS) recommends a project that contributes significantly to all of the ecological goals and objectives of the CERP: (1) increasing the spatial extent of natural areas; (2) improving habitat function and quality; and (3) improving native plant and animal abundance and diversity. In addition, it contributes to the economic values and social well being of the project area by providing recreational opportunities. Scientists have established that a mosaic of uplands, freshwater marsh, deep water sloughs, and estuarine habitats supporting a diverse community of fish and wildlife was one of the defining characteristics of the pre-drainage Everglades ecosystem. Currently in south Florida, habitat function and quality has significantly declined in remaining natural system areas due to water management projects and practices, resulting in a loss of suitable nesting, foraging, and fisheries habitat and a decline in native species diversity and abundance. The PIR confirms information in the CERP and provides project-level evaluation of costs and benefits associated with construction and operations of this ecosystem restoration project which will reverse the damaging trends and increase freshwater retention in Everglades National Park, restoring a natural deepwater slough and the surrounding freshwater marsh habitat. Water levels across the project area will be increased, boosting species abundance and diversity while providing suitable nesting and foraging areas for wading birds. Florida Bay and its estuaries will benefit from decreased salinity levels and improved health of the fisheries habitat. Overall, approximately 252,000 acres of wetlands and coastal habitat will benefit from the project. The South Florida Water Management District (SFWMD), the non-Federal sponsor, has begun land acquisition and construction of the project through its expedited construction program. As such, the C-111 Spreader Canal Western project can be implemented quickly, substantially advancing the realization of project benefits in an area that has been degraded by past water management practices.

5. The reporting officers recommend a plan for ecosystem restoration and recreation. The recommended C-111 Spreader Canal Western project would improve the ecological function of Everglades National Park by creating a hydraulic ridge that will reduce drainage of the area by the C-111 Canal. The Recommended Plan, Alternative 2DS, will consist of two above-ground detention areas, the approximately 590-acre Frog Pond Detention Area and an approximately 50-acre Aerojet Canal, which will serve to create a continuous and protective hydraulic ridge along the eastern boundary of Everglades National Park. Five additional features will be included that are intended to raise water levels in the eastern portion of the project area and restore wetlands in the Southern Glades and Model Lands. Major features of the detention areas include the construction of external levees and one approximately 225-cubic feet per second pump station for each detention area. The five additional features will include the following: incremental operational changes at existing structure S-18C; one new operable structure in the lower C-111 Canal; ten plugs in the C-110 Canal; operational changes at existing structure S-20; and, one plug in the existing L-31E Canal (near inoperable structure S-20A). Recreation components consist of a trailhead with parking, traffic controls, a shade shelter with interpretive board, and approximately 6.8 miles of multi-use levee trails atop impoundment levees. Restoration-compatible recreation includes hiking, biking, fishing, nature study, bird watching, state-managed hunts and equestrian use.

6. The cost of the initially authorized C-111 Spreader Canal component of the CERP, escalated to October 2011 (FY 12) price levels, is $143,540,000. The total first cost of the Recommended Plan

from the final PIR/EIS, based upon October 2011 price levels, is estimated at $165,098,000. Total first cost for the ecosystem restoration features is estimated to be $164,832,000 and for recreation is estimated to be $266,000. The proposed project costs have increased primarily due to the fact that the project has increased in scope to address ecological problems in Everglades National Park and Florida Bay as identified by the public and stakeholders.

7. In accordance with the cost-sharing requirements of Section 601(e) of the WRDA 2000, as amended, the Federal cost of the Recommended Plan is $82,549,000 and the non-Federal cost is $82,549,000. The estimated lands, easements, right-of-way, and relocation (LERRs) costs for the recommended plan are $68,451,000. LERRs valued at approximately $18,610,000 are already owned by the State of Florida. Based on October 2011 price levels, a 40-year period of economic evaluation and a 4.0 percent discount rate, the equivalent annual cost of the proposed project is estimated at $10,268,000, which includes OMRR&R, interest and amortization. The estimated annual costs for ecosystem restoration OMRR&R, including project monitoring costs, vegetation management, and endangered species monitoring, are $1,468,000. The estimated annual OMRR&R costs for recreation are $25,000. The project monitoring period is five years except for endangered species monitoring, which is 10 years. Any costs associated with project monitoring beyond 10 years after completion of construction of the Project (or a component of the Project) shall be a non-Federal responsibility.

8. As a component of the CERP program, the interagency/interdisciplinary scientific and technical team, formed to ensure that system-wide goals are met, will participate in the annual monitoring to assess system-wide changes. In accordance with Sections 601(e)(4) and 601(e)(5)(D) of WRDA 2000, as amended, OMRR&R costs and adaptive assessment and monitoring costs for ecosystem restoration will be shared equally between the Federal Government and the non-Federal sponsor. The Project Monitoring Plan was developed assuming that major, ongoing monitoring programs that are not funded by the Project would continue to supply data relevant to the Project. The Project Monitoring Plan shall not include items that are already required to be monitored by another Federal agency or other entity as part of their regular responsibilities or required by law. Should any of these monitoring programs (e.g. coastal water quality and seagrass monitoring) be discontinued or significantly curtailed, then monitoring priorities and funding options may be re-evaluated to ensure proper Project evaluation. In accordance with Section 103(j) of the WRDA 1986, as amended, OMRR&R costs related to recreation features will be funded 100 percent by the non-Federal sponsor.

9. To ensure that an effective ecosystem restoration plan was recommended, cost effectiveness/ incremental cost analysis techniques were used to evaluate alternative restoration plans. These techniques determined the selected alternative plan to be cost effective and incrementally justified. The hydraulic model and ecological model utilized to estimate the ecological outputs that were used in the economic analysis were both peer-reviewed and certified for use in the project. The plan recommended for implementation is the National Ecosystem Restoration (NER) plan, supports the Incremental Adaptive Restoration principles established by the National Research Council, and was prepared in a collaborative environment. The recommended plan provides benefits by: (1) restoring the quantity, timing, and distribution of water delivered to Florida Bay via Taylor Slough; (2) improving hydroperiods and hydropatterns in the Southern Glades and Model Lands; and, (3) restoring coastal zone salinities in Florida Bay and its tributaries.

10. In accordance with the WRDA 2000 Section 601(f)(2), individual CERP projects may be justified by the environmental benefits derived by the South Florida ecosystem. Similarly, Section

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385.9(a) of the CERP Programmatic Regulations (33 CFR Part 385) requires that individual projects shall be formulated, evaluated, and justified based on their ability to contribute to the goals and purposes of the CERP and on their ability to provide benefits that justify costs on a next-added increment basis. Due to the project location at the terminus of the Everglades system, the C-111 Spreader Canal Western project does not depend on any other CERP or non-CERP projects to achieve the estimated ecological benefits. As such, the Next-Added Increment (NAI) is equivalent to the total, System-Wide benefits that were calculated for the proposed project. The Recommended Plan will produce an average annual increase of 8,271 habitat units per year at an annual cost of $10,268,000. In coordination with Fish and Wildlife Service, this project could benefit threatened and endangered species and migratory birds. The average annual cost per average annual habitat unit is $1,240. Based on restoration first cost, the cost per acre benefited is approximately $654 per acre. Based on these parameters, the C-111 Spreader Canal Western project is justified by the environmental benefits derived by the South Florida ecosystem. The recreation first cost of the recommended plan is $266,000. The average annual cost for recreation is $39,000 and the average annual recreation benefits are $122,000, providing a benefit cost ratio of 3.1 to 1.

11. Of the 12,176 acres of land identified for the Project, approximately 611 acres were provided as items of local cooperation for existing Federal projects and will be used for construction of C-111 Spreader Canal Western Project. Approximately 11,565 acres of land are predicted to be impacted by the Recommended Plan: Approximately 9,688 acres will be provided in fee and have already been purchased by the non-Federal sponsor. Approximately 146 acres of impacted lands will be provided under a supplemental agreement with the State of Florida and Miami-Dade County. Approximately 955 acres will be provided by perpetual flowage/conservation easements by the Florida Power and Light Company. The planning level model predicted that the remaining 776 acres of privately-owned land identified for the Project may be affected by operation of the Project, as indicated in the PIR. WRDA 2000 requires that implementation of the CERP shall not reduce existing levels of service for flood protection. The SFWMD is constructing the majority of the project under its State expedited construction program and as part of its independent effort to implement the Project, the SFWMD will monitor the impacts of the current construction and continually adjust operations to ensure the protection of privately-owned lands. If SFWMD is able to provide new information that these operations provide anticipated ecological benefits without reducing existing levels of service for flood protection for the 776 acres, the Corps will consider this information and accordingly document any changes to its takings analysis and the continued compliance with the statutory requirements regarding maintenance of level of service for flood protection. The reassessment of effects on existing levels of service for flood protection will utilize a method similar to the original method of determination. Like the analysis in the PIR, the reassessment will be conducted in a manner consistent with the CERP Programmatic Regulations and guidance. In addition, the takings analysis will be similarly reassessed. Any reassessment done will be completed prior to the execution of a Project Partnership Agreement (PPA). The new information must document that operational adjustments implemented to avoid a reduction of the level of service for flood protection on a particular property or properties can also provide the anticipated ecological benefits. After the documentation is complete, then those operations may be made permanent and incorporated into the Final Project Operating Manual of the Federally-authorized project. Otherwise, the non-Federal sponsor will acquire the necessary interests in the lands, and will provide real estate certification of those lands to the Corps.

12. In accordance with the Corps Engineering Circular on review of decision documents, all technical, engineering, and scientific work underwent an open, dynamic, and vigorous review

process to ensure technical quality. This included Agency Technical Review (ATR), and Independent External Peer Review (IEPR), and a Corps Headquarters policy and legal review. All concerns of the ATR have been addressed and incorporated into the final report. The IEPR was completed by Battelle Memorial Institute, a non-profit science and technology organization with experience in establishing and administering peer review panels for the Corps. A total of 23 comments were documented. The comments of high significance were related to current and future conditions, assessment of secondary effects and climatic cycles, and technical sections of the document such as Real Estate and Modeling. In response, sections in the PIR/EIS and appendices were expanded to include additional information. The final IEPR Report was completed in October 2009, and certification from the IEPR Panel was issued 25 November 2009.

13. The Final PIR/EIS was published for State and Agency Review on 4 February 2011. The majority of the comments received were favorable and in support of the project. A letter from the Florida Department of Agriculture and Consumer Services (FDACS), dated 10 March 2011, stated a concern that the proposed project would result in negative impacts to privately-owned agricultural lands in the vicinity of the project. Specifically, the concern was that a rise in groundwater elevations would result in root zone flooding that would be detrimental to crops. The FDACS also expressed concern that any adverse impacts identified after project implementation would be based upon criteria not specified in the Final PIR. In a 29 July 2011 reply letter, the Corps responded to these concerns by describing the monitoring being conducted by the SFWMD as part of its expedited construction program and the Corps' consideration of additional information to reassess the takings analysis and whether the project will reduce the existing levels of service for flood protection on the 776 acres, or a portion thereof, as described previously in Paragraph 11. The final PIR was revised to clarify this position.

14. Section 601(e)(5)(B) of WRDA 2000, as amended by Section 6004 of the WRDA 2007, authorizes credit toward the non-Federal share for non-Federal design and construction work completed during the period of design or construction, subject to execution of the design or project partnership agreement and subject to a determination by the Secretary that the work is integral to the project. As part of its initiative for early implementation of certain CERP projects, the non-Federal sponsor has stated that it is constructing the C-111 Spreader Canal Western project consistent with the PIR, in advance of Congressional authorization and the signing of a project partnership agreement. As such, a separate EIS has been completed and a Department of the Army permit has been issued to the non-Federal sponsor for expedited construction of this project, and construction of the project has already begun by the State of Florida. As required by the February 2008 Implementation Guidance for Section 6004 of WRDA 2007 – CERP Work In-Kind Credits, the non-Federal sponsor entered into a Pre-Partnership Credit Agreement for the C-111 Spreader Canal Western Project on 13 August 2009. The reporting officers believe that it is in the public interest for this Project to be implemented expeditiously due to the early restoration of Federal lands in Everglades National Park and ecological benefits to the wetlands and estuaries in other portions of the South Florida ecosystem. Therefore, the reporting officers recommend that the non-Federal sponsor be credited for all reasonable, allowable, necessary, auditable, and allocable costs applicable to the C-111 Spreader Canal Western project as may be authorized by law including those incurred prior to the execution of a PPA, subject to authorization of the Project by law, a determination by the Assistant Secretary of the Army (Civil Works) or his/her designee that the In-kind work is integral to the authorized CERP Project, that the costs are reasonable, allowable, necessary, auditable, and allocable, and that the In-kind work has been implemented in accordance with government standards and applicable Federal and state laws.

15. The non-Federal Sponsor and the U.S. Department of the Army entered into an agreement known as the Master Agreement Between the Department of the Army and South Florida Water Management District for Cooperation in Constructing and Operating, Maintaining, Repairing, Replacing and Rehabilitating Projects Authorized to be Undertaken Pursuant to the Comprehensive Everglades Restoration Plan dated 13 August 2009 (hereinafter "Master Agreement"). The Master Agreement sets forth the terms of participation in the construction and OMRR&R of projects under CERP that will apply to any future project for which the non-Federal sponsor and the Government have entered into a PPA. The uniform terms of the Master Agreement will be incorporated by reference into the C-111 Spreader Canal Western Project PPA.

16. Credits for non-Federal design and construction will be evaluated in accordance with the terms of the Master Agreement. All documentation provided by the non-Federal sponsor will be thoroughly reviewed by the Corps to determine reasonable, allowable, necessary, auditable, and allocable costs. Upon completion of this review, a financial audit will be conducted prior to granting final credit. Coordination between the Corps and the Sponsor will occur throughout design and construction via the Corps' Regulatory process. The credit afforded to the non-Federal sponsor will be limited to the lesser of the following: (1) actual costs that are reasonable, allowable, necessary, auditable, and allocable to the Project; or (2) the Corps estimate of the cost of the work allocable to the Project had the Corps performed the work. The non-Federal sponsor intends to implement this work using its own funds and would not use funds originating from other Federal sources unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute and in accordance with Section 601 (e)(3) of WRDA 2000 as amended and the Master Agreement.

17. Washington level review indicates that the plan recommended by the reporting officers is environmentally justified, technically sound, cost effective, and socially acceptable. The plan conforms to essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and complies with other administration and legislative policies and guidelines. The views of interested parties, including Federal, state and local agencies have been considered.

18. The Project complies with the following requirements of the WRDA 2000, as amended:

a. Project Implementation Report (PIR). The requirements of a PIR as defined by Section 601(h)(4)(A).

b. Reservation or Allocation of Water for the Natural System. Sections 601(h)(4)(A)(iii)(IV) and (V) require identification of the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system and the amount of water to be reserved or allocated for the natural system. In accordance with the regulations, an analysis was conducted to identify water dedicated and managed for the natural system. Accordingly, the non-Federal sponsor will protect the water that was identified as necessary to achieve the benefits of the Project, using water reservation or allocation authority under Florida law.

c. Elimination or Transfer of Existing Legal Sources of Water. Section 601(h)(5)(A) states that existing legal sources of water shall not be eliminated or transferred until a new source

of water supply of comparable quantity and quality is available to replace the water to be lost as a result of the CERP. An analysis of project effects on existing legal sources of water was conducted and it was determined that implementation of the C-111 Spreader Canal Western project will not result in a transfer or elimination of existing legal sources of water.

d. Maintenance of Flood Protection. Section 601 (h)(5)(B) states that the Plan shall not reduce levels of service for flood protection that are in existence on the date of enactment of WRDA 2000 (December 2000) and in accordance with applicable law. Potential flooding effects as a result of the proposed project were analyzed and the results indicated that the proposed project would have an adverse impact on the level of service for flood protection in the project area. The analysis identified 776 acres of privately-owned lands that may be impacted as a result of the operation of the proposed project. Total impacted lands, including the 776 acres identified above, were approximately 11,565 acres. As such, the non-Federal sponsor will provide the 11,565 acres of lands either in fee, perpetual flowage easements, or by supplemental agreements, and will be responsible for those real estate interests as a project cost. Under the specific circumstances detailed in paragraph 11, the non-Federal sponsor may not be required to provide an interest in all or part of the 776 acres of privately-owned lands identified.

19. I generally concur with the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the plan described herein for ecosystem restoration and recreation be authorized for implementation as a Federal Project, with such modifications as in the discretion of the Chief of Engineers may be advisable, and subject to cost-sharing, financing, and other applicable requirements of Section 601 of WRDA 2000, as amended. In addition, I recommend that the non-Federal sponsor be authorized to receive credit for work accomplished prior to execution of a PPA for this Project, in accordance with the terms described in paragraphs 14 and 16 of this report.

Further, this recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and the following items of local cooperation:

a. Provide 50 percent of total project costs consistent with the provisions of Section 601(e) of the WRDA 2000, as amended, including authority to perform design and construction of project features consistent with Federal law and regulation.

b. Provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform or assure the performance of all relocations that the Government and the non-Federal sponsor jointly determine to be necessary for the construction and OMRR&R of the Project and valuation will be in accordance with the Master Agreement.

c. 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 other non-CERP projects.

d. Give the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the non-Federal sponsor owns or controls for access to the Project for the

purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project.

e. Assume responsibility for operating, maintaining, repairing, replacing, and rehabilitating the Project or completed functional portions of the Project in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws and specific directions prescribed in the OMRR&R manuals and any subsequent amendments thereto. Notwithstanding Section 528(e)(3) of WRDA 1996 (110 Stat. 3770), the non-Federal sponsor shall be responsible for 50 percent of the cost of OMRR&R activities authorized under this section.

f. The non-Federal sponsor shall operate, maintain, repair, replace and rehabilitate the recreational features of the Project and is responsible for 100 percent of the costs.

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

h. Unless otherwise provided for in the statutory authorization for this Project, comply with Section 221 of PL 91-611, Flood Control Act of 1970, as amended, and Section 103 of the WRDA of 1986, PL 99-662, as amended which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the Project or separable element.

i. Hold and save the Government free from all damages arising from the construction, OMRR&R of the Project, and any project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

j. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the Project to the extent and in such detail as will properly reflect total project costs and comply with the provisions of the CERP Master Agreement between the Department of Army and the South Florida Water Management District for Cooperation in Constructing and Operating, Maintaining, Repairing, Replacing, and Rehabilitating Projects Authorized to be Undertaken Pursuant to the Comprehensive Everglades Restoration Plan, executed on 13 August 2009, including Article XI Maintenance of Records and Audit.

k. Perform, or cause to be performed, 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), 42 USC 9601-9675, that may exist in, on, or under lands, easements or rights-of-way necessary for the construction and operation and maintenance (O&M) of the Project; except that the non-Federal sponsor shall not perform such investigations on lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude without prior specific written direction by the Government.

l. Assume complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on or under lands, easements, or right-of-ways

necessary for the construction and OMRR&R.

m. As between the Government and the non-Federal sponsor, the non-Federal sponsor shall be considered the operator of the Project for the purposes of CERCLA liability. To the maximum extent practicable, the non-Federal sponsor shall OMRR&R the Project in a manner that will not cause liability to arise under CERCLA.

n. Prevent obstructions of and encroachments on the Project (including prescribing and enforcing regulations to prevent such obstruction or encroachments) which might reduce ecosystem restoration benefits, hinder O&M, or interfere with the Project's proper function, such as any new developments on Project lands or the addition of facilities which would degrade the benefits of the Project.

o. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, PL 91-646, as amended by the title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (PL 100-17), and Uniform Regulations contained in 49 CFR part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, O&M of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act.

p. Comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, PL 88-352, and Department of Defense Directive 5500.11 issued pursuant thereto, as well as 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 and requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive 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]).

q. Comply with Section 106 of the National Historic Preservation Act in completion of all consultation with Florida's State Historic Preservation Office and, as necessary, the Advisory Council on Historic Preservation prior to construction as part of the Pre-construction Engineering and Design phase of the Project.

r. Provide 50 percent of that portion of total cultural resource preservation mitigation and data recovery costs attributable to the Project that are in excess of one percent of the total amount authorized to be appropriated for the Project.

s. Do not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized and in accordance with Section 601(e)(3) of WRDA 2000.

t. The non-Federal sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs consistent with its statutory authority.

(1) Not less than once each year the non-Federal sponsor shall inform affected interests of the extent of protection afforded by the Project.

(2) The non-Federal sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

(3) The non-Federal sponsor shall comply with Section 402 of WRDA 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to have prepared, within one year after the date of signing a project partnership agreement for the Project, a floodplain management plan. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by the Project. As required by Section 402, as amended, the non-Federal interest shall implement such plan not later than one year after completion of construction of the Project. The non-Federal sponsor shall provide an information copy of the plan to the Government upon its preparation.

(4) The non-Federal sponsor shall prescribe and enforce regulations to prevent obstruction of or encroachment on the Project or on the lands, easements, and rights-of-way determined by the Government to be required for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project, that could reduce the level of protection the Project affords, hinder operation or maintenance of the Project, or interfere with the Project's proper function.

u. The non-Federal Sponsor shall execute under State law the reservation or allocation of water for the natural system as identified in the PIR for this authorized CERP Project as required by Sections 601(h)(4)(B)(ii) of WRDA 2000 and the non-Federal Sponsor shall provide information to the Government regarding such execution. In compliance with 33 CFR 385, the District Engineer will verify such reservation or allocation in writing. Any change to such reservation or allocation of water shall require an amendment to the PPA after the District Engineer verifies in writing in compliance with 33 CFR 385 that the revised reservation or allocation continues to provide for an appropriate quantity, timing, and distribution of water dedicated and managed for the natural system after considering any changed circumstances or new information since completion of the PIR for the authorized CERP Project.

20. 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. Consequently, the recommendation

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may be modified before it is transmitted to the Congress as a proposal for authorization and implementation funding.

MERDITH W.B. TEMPLE
Major General, USA
Acting Chief of Engineers

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

MAY 2 2012

CECW-SAD (1105-2-10a)

SUBJECT: Biscayne Bay Coastal Wetlands Phase I Project, Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida.

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on ecosystem restoration improvements for Phase I of the Biscayne Bay Coastal Wetlands (BBCW) Project, located in Miami-Dade County, Florida. It is accompanied by the reports of the Jacksonville District Engineer and the South Atlantic Division Engineer. These reports are in response to Section 601 of the Water Resources Development Act (WRDA) of 2000, which authorized the Comprehensive Everglades Restoration Plan (CERP) as a framework for modifications and operational changes to the Central and Southern Florida project that are needed to restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. WRDA 2000 identified specific requirements for implementing components of the CERP, including the development of a decision document known as a Project Implementation Report (PIR). The requirements of a PIR are addressed in this report and are subject to review and approval by the Secretary of the Army. Preconstruction engineering and design activities for this project will be continued under the CERP Design Agreement.

2. The proposed Biscayne Bay Coastal Wetlands project was previously identified in CERP and requires specific authorization under Section 601(d) of WRDA 2000. The original scope of the project has been altered in order to better address restoration goals in the study area and the BBCW project was split into two phases. Phase I is the first step toward meeting restoration goals in the study area. By rehydrating coastal wetlands and reducing damaging point source freshwater discharge to Biscayne Bay, the Phase I Recommended Plan is integral to the health of the south Florida ecosystem. Due to changes in scope and intended restoration area, Phase I of the proposed BBCW project is recommended for specific Congressional authorization consistent with WRDA 2000, Section 601(d). The second phase of the project would consider restoration of freshwater wetlands in the Model Lands/Barnes Sound area, the southernmost portion of the study area. It is expected that the second phase will also seek authorization under Section 601(d).

3. Although cost sharing of the ecosystem restoration features for this project is governed by Section 601 of WRDA 2000, as amended, cost sharing of the recreation features is governed by Section 103 of the WRDA 1986, as amended. In particular, in accordance with Section 103(j) of WRDA 1986, 100 percent of the cost of Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) of the recreation features is the non-Federal sponsor's responsibility. In addition, section 601(e)(5)(B) of WRDA 2000, as amended, governs credit for non-Federal sponsor design and construction work on the ecosystem restoration features of the project, whereas

section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b(a)(4)), governs credit for non-Federal sponsor design and construction work on the recreation features of the project.

4. The final PIR and integrated Environmental Impact Statement (EIS) recommends a project that contributes significantly to all of the ecological goals and objectives of the CERP: (1) Increasing the spatial extent of natural areas; (2) improving habitat function and quality; and (3) improving native plant and animal abundance and diversity. In addition, it contributes to the economic values and social well being of the project area by providing recreational opportunities. The historical Everglades ecosystem was previously defined by a mosaic of uplands, freshwater marsh, deepwater sloughs, and estuarine habitats that supported a diverse community of fish and wildlife. Today nearly all aspects of south Florida's flora and fauna have been affected by development, altered hydrology, nutrient input and spread of non-native species that have resulted directly or indirectly from a century of water management for human needs. Significant areas within the project study boundary are characterized by a low-productivity dwarf mangrove forest, known as the "white zone" - due to its appearance on aerial photos - which are caused by salt deposits on the soil surface that are primarily a result of wide seasonal fluctuations in salinity and the absence of freshwater input from upstream sources. The PIR confirms information in the CERP and provides a project-level evaluation of costs and benefits associated with construction and operation of this ecosystem restoration project. The Recommended Plan will improve functional fish and wildlife habitat in Florida Bay and Biscayne Bay. The portion of the Everglades ecosystem directly affected by the BBCW project provides habitat for 21 Federally-listed endangered or threatened species, including the West Indian Manatee, Florida Panther, Cape Sable Seaside Sparrow, and the American Crocodile. Overall, approximately 11,000 acres will benefit from restored overland sheetflow. The South Florida Water Management District (SFWMD), the non-Federal sponsor, has begun land acquisition and construction of the project through its expedited construction program. As such, the BBCW Phase I project can be implemented quickly, substantially advancing the realization of project benefits in an area that has been degraded by past water management practices.

5. The reporting officers recommend a plan for ecosystem restoration and recreation. The Recommended Plan would improve the ecological function of coastal wetlands in Biscayne Bay by redirecting freshwater - currently discharged through man-made canals directly to the Bay - to coastal wetlands adjacent to the Bay. This will provide a more natural and historic flow and restore healthier salinity patterns in Biscayne Bay. Biscayne Bay is located in Miami-Dade County south of the city of Miami on the Atlantic coast and east of the city of Homestead, Florida. The Recommended Plan, Alternative O Phase I, encompasses a footprint of approximately 3,761 acres and includes features in three of the project's four sub-components (hydrologically distinct regions of the study area): Deering Estate, Cutler Wetlands, and L-31 East Flow Way. There are no features in the fourth region, Model Land Basin. A description of the features recommended for the sub-component areas is as follows:

Deering Estate: This region is in the northern part of the project area and includes an approximately 500-foot extension of the C-100A Spur Canal through the Power's Addition Parcel (Power's Parcel), construction of a freshwater wetland on the Power's Parcel and delivery of fresh water to Cutler Creek and ultimately to coastal wetlands along Biscayne Bay.

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Cutler Wetlands: Features in this region, which is in the central portion of the project area, include a pump station, a conveyance canal, a spreader canal, culverts and mosquito control ditch plugs. The pump station, located on C-1, will deliver water to a 6,900-foot lined conveyance canal that will run under SW 97th Avenue, SW 87th Avenue (L-31E Levee), and across the L-31E Borrow Canal via concrete box culverts and deliver water to the spreader canal located in the saltwater wetlands. The spreader canal is divided into four segments.

L-31 East Flow Way: Features in this region, which is in the southern portion of the project area, will isolate the L-31E Borrow Canal from the major discharge canals (C-102, Military Canal and C-103) and allow freshwater flow through the L-31E Levee to the saltwater wetlands. Gated culverts and inverted siphon structures will isolate the L-31E Borrow Canal from these canals, allowing L-31E Borrow Canal to maintain higher water levels. Two pump stations and a series of culverts will move fresh water directly to the saltwater wetlands east of L-31E. Two more pump stations and a spreader canal will deliver water to the freshwater wetlands south of C-103.

Recreational opportunities are also provided at the site within the project footprint.

Recreation Features: The recreation activities proposed include biking/walking trails, environmental interpretation, canoeing/kayaking, bank fishing, tent camping and nature study. Proposed facilities include interpretive signage, shade shelter, handicapped accessible waterless restrooms, handicapped parking, tent platforms, pedestrian bridge, benches, bike rack, trash receptacles, park security gate, trail signage, potable water source and a bird watching platform.

6. The total first cost of the Recommend Plan from the final PIR/EIS, based upon October 2011 (FY12) price levels, is estimated to be $164,070,000. The total first cost for the ecosystem restoration features is estimated to be $162,229,000 and the recreation first cost is estimated to be $1,841,000. The total project cost being sought for authorization is $192,418,000, which includes all costs for construction; lands, easements, rights-of-way, and relocations; recreation facilities; pre-construction, engineering and design (PED) and construction management costs; and sunk PIR costs ($28,348,700).

7. In accordance with the cost-sharing requirements of Section 601(e) of the WRDA 2000, as amended, the Federal cost of the Recommended Plan is $96,209,000 and the non-Federal cost is $96,209,000. The estimated lands, easements, right-of-way, and relocation (LERRs) costs for the Recommended Plan are $80,985,000. Based on FY12 price levels, a 40-year period of economic evaluation and a 4.00% discount rate, the equivalent annual cost of the proposed project is estimated to be $11,126,000, which includes OMRR&R, monitoring, interest during construction and amortization, but not sunk costs. The estimated annual costs for ecosystem restoration OMRR&R, including vegetation management, is $1,873,000. The total project monitoring cost is estimated to be $1,917,000 with an average annual cost of $193,000. The project monitoring period is five years except for endangered species monitoring, which is 10 years. Any costs associated with project monitoring beyond 10 years after completion of construction of the Project (or a component of the Project) shall be a non-Federal responsibility. The annual OMRR&R costs for recreation are estimated at $25,000.

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8. As a component of the CERP program, the interagency/interdisciplinary scientific and technical team, formed to ensure that system-wide goals are met, will participate in the annual monitoring to assess system-wide changes. In accordance with Sections 601(e)(4) and 601(e)(5)(D) of WRDA 2000, OMRR&R costs and adaptive assessment and monitoring costs for ecosystem restoration will be shared equally between the Federal Government and the non-Federal sponsor. The Project Monitoring Plan was developed assuming that major, ongoing monitoring programs that are not funded by the Project would continue to supply data relevant to the Project. The Project Monitoring Plan shall not include items that are already required to be monitored by another Federal agency or other entity as part of their regular responsibilities or required by law. Should any of these monitoring programs be discontinued or significantly curtailed, then monitoring priorities and funding options may be re-evaluated to ensure proper Project evaluation. In accordance with Section 103(j) of the WRDA 1986, as amended, OMRR&R costs related to recreation features will be funded 100 percent by the non-Federal sponsor.

9. To ensure that an effective ecosystem restoration plan was recommended, cost effectiveness/incremental cost analysis techniques were used to evaluate alternative restoration plans. These techniques determined the selected alternative plan to be cost-effective and incrementally justified. The hydraulic model and ecological model utilized to estimate the ecological outputs that were used in the economic analysis were both peer-reviewed and certified for use in the project. The plan recommended for implementation is the National Ecosystem Restoration (NER) plan, supports the Incremental Adaptive Restoration principles established by the National Research Council, and was prepared in a collaborative environment. The Recommended Plan provides benefits by: (1) restoring the quantity, timing, and distribution of water delivered to Biscayne Bay; (2) improving hydroperiods and hydropatterns in the project area; and, (3) restoring coastal zone salinities in Biscayne Bay and its tributaries. The project will restore the overland sheetflow in an approximately 11,000-acre area and improve the ecology of Biscayne Bay, including its freshwater and saltwater wetlands, nearshore bay habitat, marine nursery habitat, and the oyster reef community.

10. In accordance with the WRDA 2000 Section 601(f)(2), individual CERP projects may be justified by the environmental benefits derived by the South Florida ecosystem. Similarly, Section 385.9(a) of the CERP Programmatic Regulations (33 CFR Part 385) requires that individual projects shall be formulated, evaluated, and justified based on their ability to contribute to the goals and purposes of the Plan and on their ability to provide benefits that justify costs on a next-added increment (NAI) basis. Due to the project location at the terminus of the Everglades system, the BBCW Phase I project does not depend on any other CERP or non-CERP projects to achieve the estimated ecological benefits. The NAI analysis evaluates the effects, or outputs, of the Recommended Plan as the next project to be added to the group of already approved CERP projects. The results of the NAI analysis showed that as a stand-alone project, the BBCW Recommended Plan nearly doubles the spatial extent of the functional habitat expected to exist in the future without-project condition. The Recommended Plan will produce an average annual increase of 9,276 habitat units at an annual cost of $11,003,000 for a cost of $1,186 per habitat unit. Based on these parameters, the BBCW Phase I project is justified by the environmental benefits derived by the South Florida ecosystem. The average annual cost for recreation is $123,000 and average annual net benefits are $58,000. The benefit to cost ratio for the proposed recreation features is approximately 2.1 to 1.

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11. Of the total 3,761 acres identified for the Project, approximately 1,421 acres would be required in fee and approximately 149 acres would require perpetual easement interest. Additionally, approximately 1,254 acres would be provided through the execution of Supplemental Agreements between the SFWMD, the State of Florida and local Miami-Dade County government entities. Approximately 937 acres are currently owned by the United States; National Park Service for Biscayne National Park (BNP) which will provide a Memorandum of Agreement to the SFWMD for the use of these lands.

12. In accordance with the Corps of Engineers' (Corps) Engineering Circular on review of decision documents, all technical, engineering, and scientific work underwent an open, dynamic, and vigorous review process to ensure technical quality. This included Agency Technical Review (ATR), Independent External Peer Review (IEPR), and a Corps Headquarters policy and legal review. All concerns of the ATR have been addressed and incorporated into the final report. The IEPR was managed by Battelle Memorial Institute, a non-profit science and technology organization with experience in establishing and administering peer review panels for the Corps. A total of 19 comments were documented. Overall, the Panel found the BBCW PIR/EIS a well-written document that contained adequate information to interpret plan selection and recommendations. The panel also acknowledged the public involvement and collaborative efforts in the development of the report, and encouraged the Corps to document the usage of recent scientific data in the expansion of the project to include additional restoration opportunities. The comments of high significance included requests to expand the discussion and analysis of the future conditions relating to sea level rise and water availability. In response to these comments, the PIR was modified to include an expanded and more quantitative and graphical discussion of the potential impacts of sea level rise and clarification of the relationship between the water available for diversion and the hydrologic regimes needed to achieve the target level of wetlands area and function. The Final Report and Certification from the IEPR Panel was issued 1 December 2009.

13. The Final PIR/EIS was published for State and Agency Review on 7 January 2012. The majority of the comments received were favorable and in support of the project. In response to comments received from the Florida Department of Environmental Protection (FDEP), the Corps sent a letter in April 2012 that clarified the roles and responsibilities of the Corps and the non-Federal sponsor in addressing residual agricultural chemicals on project lands. The Corps also sent a letter in response to comments from Homestead Air Reserve Base (HARB). HARB requested additional information on the potential for bird strikes to aircraft operating from the airbase and expressed concerns regarding increases in bird populations, and specifically whether predatory birds, most implicated in aircraft strikes, would increase due to the ecological improvements. HARB requested that the Corps further research predator/prey avian relationships. The Corps has done this by soliciting information from avian experts at Everglades National Park, Biscayne Bay National Park, U.S. Fish and Wildlife Service, Audubon Florida, Fish and Wildlife Conservation Commission and the University of Florida, all of whom are familiar with the BBCW Phase I project area, the project objectives and the hydrological modeling predictions. There was agreement amongst resource agencies that there will not be an increase in predatory birds such as raptors and vultures as a result of the restoration. Specifically, wetland rehydration achieved by the BBCW Phase I project and resulting wading bird increase are not likely to serve as an additional attractant to predatory birds beyond the geographic features already serving to guide raptors and other migratory birds along Florida coasts. The Corps Jacksonville District staff met with HARB

representatives to discuss their concerns and the Recommended Plan. The Corps sent a response letter to HARB in April 2012 that provided the Corps' analysis and indicated the Corps' willingness to continue to work through the concerns of the airbase. The letter also requested that HARB continue to share information with the Corps in order to realize opportunities to minimize wildlife risks to aviation and human safety, as necessary, while protecting valuable environmental resources.

14. Section 601(e)(5)(B) of WRDA 2000, as amended by Section 6004 of the WRDA 2007, authorizes credit toward the non-Federal share for non-Federal design and construction work completed during the period of design or construction, subject to execution of the design or project partnership agreement and subject to a determination by the Secretary that the work is integral to the project. As part of its initiative for early implementation of certain CERP projects, the non-Federal sponsor has stated that it is constructing several features of Phase I of the BBCW project consistent with the PIR, in advance of Congressional authorization and the signing of a project partnership agreement. As such, a separate EIS has been completed and a Department of the Army permit has been issued to the non-Federal sponsor for expedited construction of this project; construction of the project has already begun by the State of Florida in the Deering Estates and L-31E Flow Way areas of the project. As required by the February 2008 Implementation Guidance for Section 6004 of WRDA 2007 – CERP Work In-Kind Credits, the non-Federal sponsor entered into a Pre-Partnership Credit Agreement for the BBCW project on 13 August 2009. The reporting officers believe that it is in the public interest for this Project to be implemented expeditiously due to the early restoration of Federal lands in Everglades National Park and ecological benefits to the wetlands and estuaries in other portions of the South Florida ecosystem. Therefore, the reporting officers recommend that the non-Federal sponsor be credited for all reasonable, allowable, necessary, auditable, and allocable costs applicable to the Biscayne Bay Coastal Wetlands Phase I Project, as may be authorized by law including those incurred prior to the execution of a project partnership agreement, subject to authorization of the Project by law, a determination by the Assistant Secretary of the Army (Civil Works) or his/her designee that the In-kind work is integral to the authorized CERP Project, that the costs are reasonable, allowable, necessary, auditable, and allocable, and that the In-kind work has been implemented in accordance with government standards and applicable Federal and state laws.

15. The Non-Federal Sponsor and the U.S. Department of the Army entered into an agreement known as the Master Agreement Between the Department of the Army and South Florida Water Management District for Cooperation in Constructing and Operating, Maintaining, Repairing, Replacing and Rehabilitating Projects Authorized to be Undertaken Pursuant to the Comprehensive Everglades Restoration Plan dated 13 August 2009 (hereinafter "Master Agreement"). The Master Agreement sets forth the terms of participation in the construction and OMRR&R of projects under CERP that will apply to any future project for which the non-Federal sponsor and the Government have entered into a PPA. The uniform terms of the Master Agreement will be incorporated by reference into the BBCW Project, Phase I, PPA.

16. Credits for non-Federal design and construction will be evaluated in accordance with the terms of the Master Agreement. All documentation provided by the non-Federal sponsor will be thoroughly reviewed by the Corps to determine reasonable, allowable, necessary, auditable, and allocable costs. Upon completion of this review, a financial audit will be conducted prior to

granting final credit. Coordination between Corps and the non-Federal sponsor will occur throughout design and construction via the Corps' Regulatory process. The credit afforded to the non-Federal sponsor will be limited to the lesser of the following: (1) actual costs that are reasonable, allowable, necessary, auditable, and allocable to the Project; or (2) the Corps' estimate of the cost of the work allocable to the Project had the Corps performed the work. The non-Federal sponsor intends to implement this work using its own funds and would not use funds originating from other Federal sources unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute and in accordance with Section 601 (e)(3) of WRDA 2000 as amended and the Master Agreement.

17. Washington level review indicates that the plan recommended by the reporting officers is environmentally justified, technically sound, cost effective, and socially acceptable. The plan conforms to essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines 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.

18. The Project complies with the following requirements of the WRDA 2000, as amended:

a. Project Implementation Report (PIR). The requirements of a PIR as defined by Section 601(h)(4)(A).

b. Reservation or Allocation of Water for the Natural System. Sections 601(h)(4)(A)(iii)(IV) and (V) require identification of the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system and the amount of water to be reserved or allocated for the natural system. In accordance with the regulations, an analysis was conducted to identify water dedicated and managed for the natural system. Accordingly, the non-Federal sponsor will protect the water that was identified as necessary to achieve the benefits of the Project, using water reservation or allocation authority under Florida law.

c. Elimination or Transfer of Existing Legal Sources of Water. Section 601(h)(5)(A) states that existing legal sources of water shall not be eliminated or transferred until a new source of water supply of comparable quantity and quality is available to replace the water to be lost as a result of the CERP. An analysis of project effects on existing legal sources of water was conducted and it was determined that implementation of the BBCW Phase I project will not result in a transfer or elimination of existing legal sources of water.

d. Maintenance of Flood Protection. Section 601 (h)(5)(B) states that the Plan shall not reduce levels of service for flood protection that are in existence on the date of enactment of this Act and in accordance with applicable law. Potential flooding effects as a result of the proposed project were analyzed and the results indicated that the proposed project would not have an adverse impact on the level of service for flood protection in the project area.

19. I generally concur with the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the plan described herein for ecosystem restoration and recreation be authorized for implementation as a Federal Project, with such modifications as in the

discretion of the Chief of Engineers may be advisable, and subject to cost-sharing, financing, and other applicable requirements of Section 601 of WRDA 2000, as amended. In addition, I recommend that the non-Federal sponsor be authorized to receive credit for work accomplished prior to execution of a PPA for this Project, in accordance with the terms described in paragraphs 14 and 16 of this report.

Further, this recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and the following items of local cooperation:

a. Provide 50 percent of total project costs consistent with the provisions of Section 601(e) of the WRDA 2000, as amended, including authority to perform design and construction of project features consistent with Federal law and regulation.

b. Provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform or assure the performance of all relocations that the Government and the non-Federal sponsor jointly determine to be necessary for the construction and OMRR&R of the Project and valuation will be in accordance with the Master Agreement.

c. 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 other non-CERP projects.

d. Give the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the non-Federal sponsor owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project.

e. Assume responsibility for operating, maintaining, repairing, replacing, and rehabilitating the Project or completed functional portions of the Project in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws and specific directions prescribed in the OMRR&R manuals and any subsequent amendments thereto. Notwithstanding Section 528(e)(3) of WRDA 1996 (110 Stat. 3770), the non-Federal sponsor shall be responsible for 50 percent of the cost of OMRR&R activities authorized under this section.

f. The non-Federal sponsor shall operate, maintain, repair, replace and rehabilitate the recreational features of the Project and is responsible for 100 percent of the costs.

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

h. Unless otherwise provided for in the statutory authorization for this Project, comply with Section 221 of PL 91-611, Flood Control Act of 1970, as amended, and Section 103 of the WRDA of 1986, PL 99-662, as amended which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof,

until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the Project or separable element.

i. Hold and save the Government free from all damages arising from the construction, OMRR&R of the Project, and any project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

j. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the Project to the extent and in such detail as will properly reflect total project costs and comply with the provisions of the CERP Master Agreement between the Department of Army and the South Florida Water Management District for Cooperation in Constructing and Operating, Maintaining, Repairing, Replacing, and Rehabilitating Projects Authorized to be Undertaken Pursuant to the Comprehensive Everglades Restoration Plan, executed on 13 August 2009, including Article XI Maintenance of Records and Audit.

k. Perform, or cause to be performed, 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), 42 USC 9601-9675, that may exist in, on, or under lands, easements or rights-of-way necessary for the construction and operation and maintenance (O&M) of the Project; except that the non-Federal sponsor shall not perform such investigations on lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude without prior specific written direction by the Government.

l. Assume complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on or under lands, easements, or right-of-ways necessary for the construction and OMRR&R.

m. As between the Government and the non-Federal sponsor, the non-Federal sponsor shall be considered the operator of the Project for the purposes of CERCLA liability. To the maximum extent practicable, the non-Federal sponsor shall OMRR&R the Project in a manner that will not cause liability to arise under CERCLA.

n. Prevent obstructions of and encroachments on the Project (including prescribing and enforcing regulations to prevent such obstruction or encroachments) which might reduce ecosystem restoration benefits, hinder O&M, or interfere with the Project's proper function, such as any new developments on Project lands or the addition of facilities which would degrade the benefits of the Project.

o. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, PL 91-646, as amended by the title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (PL 100-17), and Uniform Regulations contained in 49 CFR part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, O&M of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act.

p. Comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, PL 88-352, and Department of Defense Directive 5500.11 issued pursuant thereto, as well as 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 and requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive 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]).

q. Comply with Section 106 of the National Historic Preservation Act in completion of all consultation with Florida's State Historic Preservation Office and, as necessary, the Advisory Council on Historic Preservation prior to construction as part of the Pre-construction Engineering and Design phase of the Project.

r. Provide 50 percent of that portion of total cultural resource preservation mitigation and data recovery costs attributable to the Project that are in excess of one percent of the total amount authorized to be appropriated for the Project.

s. Do not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized and in accordance with Section 601(e)(3) of WRDA 2000.

t. The non-Federal sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs consistent with its statutory authority.

(1) Not less than once each year the non-Federal sponsor shall inform affected interests of the extent of protection afforded by the Project.

(2) The non-Federal sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

(3) The non-Federal sponsor shall comply with Section 402 of WRDA 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to have prepared, within one year after the date of signing a project partnership agreement for the Project, a floodplain management plan. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by the Project. As required by Section 402, as amended, the non-Federal interest shall implement such plan not later than one year after completion of construction of the Project. The non-Federal

sponsor shall provide an information copy of the plan to the Government upon its preparation.

(4) The non-Federal sponsor shall prescribe and enforce regulations to prevent obstruction of or encroachment on the Project or on the lands, easements, and rights-of-way determined by the Government to be required for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project, that could reduce the level of protection the Project affords, hinder operation or maintenance of the Project, or interfere with the Project's proper function.

u. The non-Federal sponsor shall execute under State law the reservation or allocation of water for the natural system as identified in the PIR for this authorized CERP Project as required by Sections 601(h)(4)(B)(ii) of WRDA 2000 and the non-Federal Sponsor shall provide information to the Government regarding such execution. In compliance with 33 CFR 385, the District Engineer will verify such reservation or allocation in writing. Any change to such reservation or allocation of water shall require an amendment to the PPA after the District Engineer verifies in writing in compliance with 33 CFR 385 that the revised reservation or allocation continues to provide for an appropriate quantity, timing, and distribution of water dedicated and managed for the natural system after considering any changed circumstances or new information since completion of the PIR for the authorized CERP Project.

20. 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 in the formulation of a national Civil Works construction program or the perspective of higher review levels within the executive branch. Consequently, the recommendation may be modified before it is transmitted to the Congress as a proposal for authorization and implementation funding.

Merdith W.B. Temple

MERDITH W.B. TEMPLE
Major General, USA
Acting Commander

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

CECW-SAD (1105-2-10a) MAY 2 1 2012

SUBJECT: Broward County Water Preserve Areas Project, Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Broward and Miami-Dade Counties, Florida

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on ecosystem restoration improvements for the Broward County Water Preserve Areas (BCWPA) Project, located in Broward and Miami-Dade Counties, Florida. It is accompanied by the report of the Jacksonville District Engineer and South Atlantic Division Engineer. These reports are in response to Section 601 of the Water Resources Development Act (WRDA) of 2000, which authorized the Comprehensive Everglades Restoration Plan (CERP) as a framework for modifications and operational changes to the Central and Southern Florida Project that are needed to restore, preserve and protect the south Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. WRDA 2000 identified specific requirements for implementing components of the CERP, including the development of a decision document known as a Project Implementation Report (PIR). The requirements of a PIR are addressed in this report and are subject to the review and approval by the Secretary of the Army. Preconstruction engineering and design activities for this project will be continued under the CERP Design Agreement.

2. The three components comprising the proposed BCWPA Project were conditionally authorized by Sections 601(b)(2)(C)(iv), 601(b)(2)(C)(v), and 601(b)(2)(C)(vi) of WRDA 2000, but are not being recommended for implementation under those authorities. The PIR recommends a project that combines implementation of three projects identified in the CERP. Due to changes in scope and combining of CERP components, the BCWPA Project is recommended for new specific Congressional authorization consistent with WRDA 2000, Section 601(d). The reporting officers determined that the original authorities for the individual components of the BCWPA Project contained in Sections 601(b)(2)(C)(iv), (v) and (vi) of WRDA 2000, are no longer needed. As such, the reporting officers recommend that the projects authorized in Section 601(b)(2)(C)(iv), (v) and (vi) of WRDA 2000 be deauthorized.

3. Although cost sharing of the ecosystem restoration features for the BCWPA Project is governed by Section 601 of WRDA 2000, as amended, cost sharing of recreation features is governed by Section 103 of WRDA 1986, as amended. In particular, in accordance with Section 103(j) of WRDA 1986, 100 percent of the cost of Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) of the recreation features is the non-federal sponsor's responsibility. In addition, section 601(e)(5)(B) of WRDA 2000, as amended, governs credit for non-federal sponsor design and construction work on the ecosystem restoration features of the project, whereas section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C.

1962d-5b(a)(4)), governs credit for non-federal sponsor design and construction work on the recreation features of the project.

4. The final PIR and integrated Environmental Impact Statement (EIS) recommends a project that contributes significantly to all the ecological goals and objectives of the CERP: (1) increasing spatial extent of natural areas; (2) improving habitat function and quality; and (3) improving native plant and animal abundance and diversity. In addition, it contributes to the economic values and social well being of the project area by providing recreational opportunities. The historical Everglades ecosystem was previously defined by a mosaic of uplands, freshwater marsh, deepwater sloughs, and estuarine habitats that supported a diverse community of fish and wildlife. Today nearly all aspects of south Florida's flora and fauna have been affected by development, altered hydrology, nutrient input and spread of non-native species that have resulted directly or indirectly from a century of water management for human needs. Significant areas within the project study boundary are characterized by undesirable dense cattail (Typha spp.) stands, drydowns and degraded ridge and slough habitat. The BCWPA Project addresses loss of ecosystem function within the Everglades as a result of (1) damaging discharges of runoff from developed areas in western Broward County into the Everglades (Water Conservation Area 3A); (2) excessive nutrient loading to the Everglades, and; (3) excessive seepage of water out of the Everglades to developed areas in western Broward County. The project also addresses insufficient quantities of water available in the regional water management system during dry periods to meet municipal, agricultural, and environmental water supply demands. The PIR confirms information in the CERP and provides a project-level evaluation of costs and benefits associated with construction and operation of this ecosystem restoration project. The Recommended Plan will improve functional fish and wildlife habitat in Water Conservation Areas (WCA) 3A/3B, and in Everglades National Park. The portion of the Everglades ecosystem directly affected by the project provides habitat for five federally-listed species: West Indian manatee, Florida panther, wood stork, snail kite and Eastern indigo snake. Overall, an ecological lift of approximately 166,211 average annual habitat units will occur due to improved hydroperiods and hydropatterns in the project area. Overall, approximately 563,000 acres in Water Conservation Area 3 and 200,000 acres in the greater Everglades will benefit from project implementation.

5. The reporting officers recommend a plan for ecosystem restoration and recreation. The Recommended Plan would improve the ecological function of the Everglades ecosystem by capturing and storing the excess surface water runoff from the C-11 watershed and reducing excess releases to the WCA 3A/3B, and will minimize seepage losses during dry periods. The Recommended Plan, Alternative A4, would include a footprint of approximately 7,990 acres based on the three components: C-11 Impoundment, WCA 3A/3B Seepage Management Area (SMA), and C-9 Impoundment, as well as recreation features. A description of the individual components follows:

C-11 Impoundment: The C-11 Impoundment is located in the northern part of the project area and requires 1,830 acres to construct an above-ground impoundment (interior storage of 1,068 acres). Major elements include canals, levees, water control structures and buffer marsh. Water control structures consist of pump stations, a gated spillway, gated and non-gated culverts and a non-gated fixed weir. The purpose of the C-11 Impoundment is to capture and store surface runoff from the C-11 Basin, reduce pumping of surface water into the WCA 3A/3B, and provide releases for regional benefits.

WCA 3A/3B Seepage Management Area: The WCA 3A/3B SMA makes up the western project border and requires 4,353 acres. Elements include levees, canals, pumps, bridges and water control structures. The C-502A and C-502B conveyance canals are major components that will transfer water between the C-11 and C-9 impoundments, assist with creating a hydraulic ridge, and transfer water to the southern project region for future CERP Projects. The purpose of this rain-driven component is to establish a buffer, reduce seepage to and from the WCA 3A/3B by creating a hydraulic head, and maintain the level of service flood protection.

C-9 Impoundment: The C-9 Impoundment is located north and adjacent to the Snake Creek Canal (C-9) and requires approximately 1,807 acres to construct an above-ground impoundment (storage of 1,641 acres). Elements include levees, canals, pumps, bridges and water control structures. The purpose of the C-9 Impoundment is to capture and store surface runoff from the C-9 Basin, store C-11 Impoundment overflow, assist with WCA 3A/3B seepage management, and provide releases for regional benefits.

Recreation Features: The recreation amenities proposed are ancillary, work harmoniously with the Project and are on fee owned lands. The amenities include 14 miles of improved trail surface, parking areas with ADA accessible waterless toilets, walkway to canoe launch facilities, an information kiosk, shaded benches, footbridges, trash receptacles and signage. Walking, jogging and biking are proposed on the levee crowns. Equestrian use is proposed at the levee base. Nature-based activities and fishing would be allowed.

6. The total first cost of the Recommended Plan from the final PIR/EIS, based on February 2012 price levels, is estimated at $840,657,000. Total first cost for the ecosystem restoration features is estimated to be $834,211,000, and the recreation first cost is estimated to be $6,446,000. The total project cost being sought for authorization is $866,707,000, which includes all costs for construction; lands, easements, rights-of-way and relocations; recreation facilities; pre-construction, engineering and design (PED) and construction management costs; and sunk PIR costs ($26,050,000).

7. In accordance with cost sharing requirements of Section 601(e) of the WRDA 2000, as

amended, the federal cost of the Recommended Plan is $433,353,500 and the non-federal cost is $433,353,500. The estimated lands, easements, rights-of-way and relocation (LERRs) costs for the Recommended Plan are $380,633,000. Based on FY12 price levels, a 38-year period of economic evaluation and a 4.00% discount rate, the equivalent annual cost of the proposed project is estimated at $49,415,000 which includes OMRR&R, interest during construction and amortization, but not sunk costs. The estimated annual costs for ecosystem restoration OMRR&R, including project monitoring costs, vegetation management and endangered species monitoring, are $3,510,000. The project monitoring period is five years except for endangered species monitoring, which is 10 years. Any costs associated with project monitoring beyond 10 years after completion of the construction of the Project (or a component of the Project) shall be a non-federal responsibility. The estimated annual OMRR&R cost for recreation is $412,000.

8. As a component of the CERP program, the interagency/interdisciplinary scientific and technical team, formed to ensure that the system-wide goals are met, will participate in the annual monitoring to assess system-wide changes. In accordance with Section 601(e)(4) and 601(e)(5)(D) of WRDA 2000, as amended, OMRR&R costs and adaptive assessment and monitoring costs for ecosystem restoration will be shared equally between the federal government and the non-federal sponsor. The Project Monitoring Plan was developed assuming that major, ongoing monitoring programs that are not funded by the Project would continue to supply data relevant to the Project. The Project Monitoring Plan shall not include items that are already required to be monitored by another federal agency or other entity as part of their regular responsibilities or required by law. Should any of these monitoring programs be discontinued or significantly curtailed, then monitoring priorities and funding options may be re-evaluated to ensure proper Project evaluations. In accordance with Section 103(j) of the WRDA 1986, as amended, OMRR&R costs related to recreation features will be funded 100 percent by the non-federal sponsor.

9. To ensure that an effective ecosystem restoration plan was recommended, cost effectiveness/ incremental cost analysis (CE/ICA) techniques were used to evaluate alternative restoration plans. These techniques determined the selected alternative plan to be cost effective and incrementally justified. The hydraulic model and ecological model utilized to estimate the ecological outputs that were used in the economic analysis were both peer reviewed and certified for use in the project. The plan recommended for implementation is the National Ecosystem Restoration (NER) plan, supports the Incremental Adaptive Management principles established by the National Research Council and was prepared in a collaborative environment. The Recommended Plan provides benefits by: (1) restoring quantity, timing and distribution of water for the Water Conservation Areas 3A and 3B and Everglades National Park; (2) improving hydroperiods and hydropatterns in the project area; and (3) providing water for other CERP projects within the vicinity of the project area.

10. In accordance with the WRDA 2000 Section 601(f)(2), individual CERP projects may be justified by the environmental benefits realized in the south Florida ecosystem. Similarly, Section 385.9(a) of the CERP Programmatic Regulations (33 CFR Part 385) requires that individual projects shall be formulated, evaluated, and justified based on their ability to contribute to the goals and purposes of the CERP and on their ability to provide benefits that justify costs on a next-added increment (NAI) basis. Due to the project location at the terminus of the Everglades system, the BCWPA Project does not depend on any other CERP or non-CERP projects to achieve estimated ecological benefits. The NAI analysis evaluates the effects, or outputs, of the Recommended Plan as the next project to be added to the group of already approved CERP projects. The results of the NAI analysis show that as a stand-alone project, the BCWPA Recommended Plan greatly increases the ecological function of the Everglades ecosystem in project area habitats over the expected future without project condition. The Recommended Plan will produce an average annual increase of 166,211 habitat units at an annual cost of $49,415,000, for a cost of $297.00 per habitat unit. The average annual cost for the recreation features is $748,000, the average annual benefit is $1,376,000, and the average annual net benefit of approximately $628,000. The benefit to cost ratio for the recommended recreation plan is approximately 1.8.

11. Of the total 7,990.47 acres of land identified for the Project, approximately 6,607.58 acres would be required in fee, approximately 851.39 acres owned by FPL would be required in perpetual flowage easements, 42 acres owned by FDOT would be provided by Supplemental Agreement, and 490 acres acquired as part of the original Central & Southern Florida Project would be recertified for this Project. No credit shall be afforded and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, or relocations that have been provided previously as an item of cooperation for another federal project. The Recommended Plan will result in some unavoidable impacts to existing mitigation sites required by Department of the Army (DA) Section 404 Permits that are located within both of the impoundment footprints. The Recommended Plan addresses this issue through the acquisition of mitigation bank credits from an established mitigation bank to replace established DA mitigation areas within the impoundment. However, should mitigation bank credits not be available at the time of construction, the optional FDOT wetland mitigation area described in this paragraph and further detailed in the PIR will be constructed. The original plan called for the rehydration of wetland areas on FDOT lands as mitigation to offset wetland impacts resulting from the project. Due to USFWS concerns about selenium tainted soils on the FDOT land and their ecological risk to USFWS trust species, the project will not use these lands for the purpose of wetland mitigation at this time. The current mitigation plan will avoid the FDOT lands, and calls for the purchase of wetland mitigation bank credits (estimated 54 FCUs) to offset the loss of the FDOT lands that would have been used to satisfy project wetland impacts. In order to be ecologically successful, the mitigation areas within the impoundments need additional water (above and beyond what would be provided in a rainfall driven system) which will be supplied by the BCWPA Project.

The ecological lift that would occur as a result of the replacement mitigation in the impoundments is not being counted for Project benefits. The storage provided by the replacement mitigation areas, though not used to justify federal participation in the Project, would contribute to provide downstream benefits.

12. In accordance with the Corps of Engineers' Engineering Circular on review of decision documents, all technical, engineering, and scientific work underwent an open, dynamic, and vigorous review process to ensure technical quality. This included Agency Technical Review (ATR), external scientific review of CERP through the National Academy of Science at the programmatic level, and Corps Headquarters policy and legal review. Independent External Peer Review is not required for this Project because the study was initiated and an array of alternatives was selected over two years prior to the enactment of WRDA 2007. All concerns have been addressed and incorporated into the final PIR. The final PIR/EIS was published for state and agency review on 4 May 2007. In response to comments received from the Florida Department of Environmental Protection (FDEP), the Corps sent a letter in May 2012 that clarified the roles and responsibilities of the Corps and the non-federal sponsor in addressing residual agricultural chemicals on project lands and a parcel known as the Naval Bomb Target, the same parcel is sometimes referred to as the Fort Lauderdale Bombing Target #7 (tract #W92000-001). The Corps clarified that based on past investigations, concurred in by FDEP, that there is no known contamination requiring remediation at the Naval Bomb Target. A number of interest parties commented on the mitigation plan. The Corps has revised the PIR to further clarify that in accordance with Section 2036(c) of WRDA 2007, the mitigation plan is to purchase mitigation bank credits. However, should mitigation bank credits be unavailable at the time of construction, the mitigation will be accomplished by creating the optional FDOT wetland mitigation area described in the PIR and explained in paragraph 11 of this Report. The agencies supported implementation of the recommended plan. The revised final PIR/EIS was also published in the Federal Register and sent to federal and state agencies in April 2012.

13. Section 601(e)(5)(B) of WRDA 2000, as amended by Section 6004 of WRDA 2007, authorizes credit toward the non-federal share for non-federal design and construction work completed during the period of design or construction, subject to execution of the design or project partnership agreement (PPA) and subject to a determination by the Secretary that the work is integral to the Project. As part of its initiative for early implementation of certain CERP projects, the BCWPA Project was included in the "State Expedited Projects and Program" to allow the non-federal sponsor to execute work expeditiously. The work completed by the non-federal sponsor prior to a PPA has focused on engineering and design aspects now a part of the PIR. At this time, the non-federal sponsor does expect to commence construction prior to signing a PPA. The reporting officers believe that it is in the public interest for the Project to be implemented expeditiously due to the regional restoration of federal lands in the Everglades National Park, Water Conservation Areas 3A/3B, and ecological benefits to the south Florida

ecosystems. Therefore, the reporting officers recommend that the non-federal sponsor be credited for all reasonable, allowable, necessary, auditable and allocable costs applicable to the BCWPA Project as may be authorized by law, including those incurred prior to the execution of a PPA, subject to authorization of the Project by law, a determination by the Assistant Secretary of the Army (Civil Works) or his/her designee that the in-kind work is integral to the authorized CERP project, that the costs are reasonable, allowable, necessary, auditable and allocable, and that the in-kind work has been implemented in accordance with government standards and applicable federal and state laws.

14. The non-federal sponsor and the U.S. Department of the Army entered into an agreement known as the Master Agreement Between the Department of the Army and South Florida Water Management District for Cooperation in Constructing and Operating, Maintaining, Repairing, Replacing and Rehabilitating Projects Authorized to be Undertaken Pursuant to the Comprehensive Everglades Restoration Plan, dated 13 August 2009 (hereinafter "Master Agreement"). The Master Agreement sets forth the terms of participation in the construction and OMRR&R of projects under CERP that will apply to any future project for which the non-federal sponsor and the Government have entered into a PPA. The uniform terms of the Master Agreement will be incorporated by reference into the BCWPA Project PPA.

15. Credits for the non-federal sponsor's design and construction work will be evaluated in accordance with the terms of the Master Agreement and Design Agreement. All documentation provided by the non-federal sponsor will be thoroughly reviewed by the Corps to determine reasonable, allowable, necessary, auditable, and allocable costs. Upon completion of this review, a financial audit will be conducted prior to granting final credit. The credit afforded to the non-federal sponsor will be limited to the lesser of the following: (1) actual costs that are reasonable, allowable, necessary, auditable, and allocable to the Project; or (2) the Corps estimate of the cost of the work allocable to the Project had the Corps performed the work. The non-federal sponsor has completed design work using its own funds and would not use funds originating from other federal sources unless the federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute and in accordance with Section 601(e)(3) of WRDA 2000 as amended by the Master Agreement.

16. Washington level review indicates that the plan recommended by the reporting officers is environmentally justified, technically sound, cost effective, and socially acceptable. The plan conforms to essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines 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.

17. The Project complies with the following requirements of the WRDA 2000, as amended:

a. Project Implementation Report (PIR). The requirements of a PIR as defined by Section 601(h)(4)(A).

b. Reservation or Allocation of Water for the Natural System. Sections 601(h)(4)(A)(iii)(IV) and (V) require identification of the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system and the amount of water to be reserved or allocated for the natural system. In accordance with the regulations, an analysis was conducted to identify water dedicated and managed for the natural system. Accordingly, the non-federal sponsor will protect the water that was identified as necessary to achieve the benefits of the Project, using water reservation or allocation authority under Florida law.

c. Elimination or Transfer of Existing Legal Sources of Water. Section 601(h)(5)(A) states that existing legal sources of water shall not be eliminated or transferred until a new source of water supply of comparable quantity and quality is available to replace the water to be lost as a result of the CERP. An analysis of project effects on existing legal sources of water was conducted and it was determined that implementation of the Broward County Water Preserve Areas Project will not result in a transfer or elimination of existing legal sources of water.

d. Maintenance of Flood Protection. Section 601 (h)(5)(B) states that the Plan shall not reduce levels of service for flood protection that are in existence on the date of enactment of this Act and in accordance with applicable law. Potential flooding effects as a result of the proposed project were analyzed and the results indicated that the proposed project would not have an adverse impact on the level of service for flood protection in the project area.

18. I generally concur with the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the plan described herein for ecosystem restoration and recreation be authorized for implementation as a federal project, with such modifications as in the discretion of the Chief of Engineers may be advisable, and subject to cost-sharing, financing, and other applicable requirements of Section 601 of WRDA 2000, as amended. In addition, I recommend that the non-federal sponsor be authorized to receive credit for work accomplished prior to execution of a PPA for this project, in accordance with the terms described in paragraphs 13 and 15 of this report.

Further, this recommendation is subject to the non-federal sponsor agreeing to comply with all applicable federal laws and the following items of local cooperation:

a. Provide 50 percent of total project costs consistent with the provisions of Section 601(e) of the WRDA 2000, as amended, including authority to perform design and construction of project features consistent with federal law and regulation.

b. Provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform or assure the performance of all relocations that the Government and the non-Federal sponsor jointly determine to be necessary for the construction and OMRR&R of the Project and valuation will be in accordance with the Master Agreement.

c. 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 other non-CERP projects.

d. Give the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the non-Federal sponsor owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project.

e. Assume responsibility for operating, maintaining, repairing, replacing, and rehabilitating the Project or completed functional portions of the Project, including mitigation features, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws and specific directions prescribed in the OMRR&R manuals and any subsequent amendments thereto. Notwithstanding Section 528(e)(3) of WRDA 1996 (110 Stat. 3770), the non-Federal sponsor shall be responsible for 50 percent of the cost of OMRR&R activities authorized under this section.

f. The non-Federal sponsor shall operate, maintain, repair, replace and rehabilitate the recreational features of the Project and is responsible for 100 percent of the costs.

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

h. Unless otherwise provided for in the statutory authorization for this Project, comply with Section 221 of PL 91-611, Flood Control Act of 1970, as amended, and Section 103 of the WRDA of 1986, PL 99-662, as amended which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the Project or separable element.

i. Hold and save the Government free from all damages arising from the construction, OMRR&R of the Project, and any project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

j. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the Project to the extent and in such detail as will properly reflect total project costs and comply with the provisions of the CERP Master Agreement between the Department of Army and the South Florida Water Management District for Cooperation in Constructing and Operating, Maintaining, Repairing, Replacing, and Rehabilitating Projects Authorized to be Undertaken Pursuant to the Comprehensive Everglades Restoration Plan, executed on 13 August 2009, including Article XI Maintenance of Records and Audit.

k. Perform, or cause to be performed, 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), 42 USC 9601-9675, that may exist in, on, or under lands, easements or rights-of-way necessary for the construction and operation and maintenance (O&M) of the Project; except that the non-Federal sponsor shall not perform such investigations on lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude without prior specific written direction by the Government.

l. Assume complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on or under lands, easements, or right-of-ways necessary for the construction and OMRR&R.

m. As between the Government and the non-Federal sponsor, the non-Federal sponsor shall be considered the operator of the Project for the purposes of CERCLA liability. To the maximum extent practicable, the non-Federal sponsor shall OMRR&R the Project in a manner that will not cause liability to arise under CERCLA.

n. Prevent obstructions of and encroachments on the Project (including prescribing and enforcing regulations to prevent such obstruction or encroachments) which might reduce ecosystem restoration benefits, hinder O&M, or interfere with the Project's proper function, such as any new developments on Project lands or the addition of facilities which would degrade the benefits of the Project.

o. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, PL 91-646, as amended by the title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (PL 100-17), and Uniform Regulations contained in 49 CFR part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, O&M of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act.

p. Comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, PL 88-352, and Department of Defense Directive 5500.11 issued pursuant thereto, as well as 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 and requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive 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]).

q. Comply with Section 106 of the National Historic Preservation Act in completion of all consultation with Florida's State Historic Preservation Office and, as necessary, the Advisory Council on Historic Preservation prior to construction as part of the Pre-construction Engineering and Design phase of the Project.

r. Provide 50 percent of that portion of total cultural resource preservation mitigation and data recovery costs attributable to the Project that are in excess of one percent of the total amount authorized to be appropriated for the Project.

s. Do not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized and in accordance with Section 601(e)(3) of WRDA 2000.

t. The non-Federal sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs consistent with its statutory authority.

(1) Not less than once each year the non-Federal sponsor shall inform affected interests of the extent of protection afforded by the Project.

(2) The non-Federal sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

(3) The non-Federal sponsor shall comply with Section 402 of WRDA 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to have prepared, within one year after the date of signing a project partnership agreement for the Project, a floodplain management plan. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-

Federal interests to preserve the level of flood protection provided by the Project. As required by Section 402, as amended, the non-Federal interest shall implement such plan not later than one year after completion of construction of the Project. The non-Federal sponsor shall provide an information copy of the plan to the Government upon its preparation.

(4) The non-Federal sponsor shall prescribe and enforce regulations to prevent obstruction of or encroachment on the Project or on the lands, easements, and rights-of-way determined by the Government to be required for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project, that could reduce the level of protection the Project affords, hinder operation or maintenance of the Project, or interfere with the Project's proper function.

u. The non-federal sponsor shall execute under State law the reservation or allocation of water for the natural system as identified in the PIR for this authorized CERP Project as required by Sections 601(h)(4)(B)(ii) of WRDA 2000 and the non-Federal sponsor shall provide information to the Government regarding such execution. In compliance with 33 CFR 385, the District Engineer will verify such reservation or allocation in writing. Any change to such reservation or allocation of water shall require an amendment to the PPA after the District Engineer verifies in writing in compliance with 33 CFR 385 that the revised reservation or allocation continues to provide for an appropriate quantity, timing, and distribution of water dedicated and managed for the natural system after considering any changed circumstances or new information since completion of the PIR for the authorized CERP Project.

19. 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 in the formulation of a national Civil Works construction program or the perspective of higher review levels within the executive branch. Consequently, the recommendation may be modified before it is transmitted to the Congress as a proposal for authorization and implementation funding.

MERDITH W.B. TEMPLE
Major General, USA
Acting Commander

DEPARTMENT OF THE ARMY
CHIEF OF ENGINEERS
2600 ARMY PENTAGON
WASHINGTON, DC 20310-2600

REPLY TO
ATTENTION OF

CECW-MVD (1105-2-10a)

22 JUN 2012

SUBJECT: Louisiana Coastal Area (LCA), Barataria Basin Barrier Shoreline Restoration Project, Lafourche, Jefferson, and Plaquemines Parishes, Louisiana

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on ecosystem restoration for Barataria Basin Barrier Shoreline (BBBS) in Lafourche, Jefferson, and Plaquemines Parishes, Louisiana. It is accompanied by the report of the New Orleans District Engineer and the Mississippi Valley Division Engineer. These reports are in final response to the authorization for BBBS contained in Section 7006(c)(1)(C) of the Water Resources Development Act of 2007 (WRDA 2007).

2. Section 7006(c)(1) of WRDA 2007 authorizes the Secretary to carry out five projects, including the BBBS project, substantially in accordance with the Report of the Chief of Engineers for ecosystem restoration for the Louisiana Coastal Area dated January 31, 2005. Section 7006(c)(3) states that before beginning construction of any project under Section 7006(c), the Secretary shall submit a report documenting any modifications to the project, including cost changes, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate. Section 7006(c)(4) states that notwithstanding Section 902 of the Water Resources Development Act of 1986, the cost of a project under Section 7006(c), including any modifications to the project, shall not exceed 150 percent of the cost of such project set forth in Section 7006(c)(1). Preconstruction engineering and design activities on the BBBS project will be continued under the authority provided by Section 7006(c)(1)(C). Construction of the recommended plan for BBBS will be undertaken under the Section 7006(c)(1)(C) authority as well, except for construction of the Shell Island component.

3. The Report of the Chief of Engineers for ecosystem restoration for the Louisiana Coastal Area, dated January 31, 2005, (hereinafter referred to as the LCA Chief's report), describes a plan to address the most critical restoration needs in coastal Louisiana. Congress authorized these projects for construction in WRDA 2007 Title VII. This report addresses BBBS, one of the 15 near-term ecosystem restoration features described in the LCA Chief's report.

4. In accordance with Section 7006(c)(1)(C), the reporting officers recommend that the Secretary carry out the Caminada Headland component of the recommended plan for BBBS under the existing authorization. The reporting officers also recommend that the Congress raise the total project cost for the recommended plan for BBBS. The recommended plan for BBBS is consistent

with the authorization in Section 7006(c)(1)(C) of WRDA 2007, but modification of that authorization is required because the total costs for the recommended plan for BBBS, including both the Caminada Headland component and Shell Island component, exceeds the authorized cost for the BBBS project as defined in Section 7006(c)(4) of WRDA 2007.

5. The BBBS is located approximately 55 miles south of New Orleans, Louisiana. It is a key component in regulating estuary hydrology and slowing the rate of wetland loss. Caminada Headland, forming the western portion of the barrier shoreline, has experienced some of the highest rates of shoreline retreat on the Gulf coast. Shell Island forms the eastern portion of the barrier and has disintegrated into several smaller islands and shoals and is gradually converting to a series of bays directly connected to the Gulf of Mexico. The two reaches were identified in the LCA Chief's Report as the most critical to maintaining Barataria shoreline integrity and protecting the interior coast from further degradation. The BBBS project described in the LCA Chief's report consisted of dredging and placing sediments to restore barrier dunes and marshes. At Caminada Headland, about 9-10 million cubic yards (mcy) of sand would be placed to create a dune approximately 6 feet high with a shoreward berm about 1000 feet wide and13 miles long. Approximately 6 mcy of material would be placed to create about 3,000 acres of marsh. The project would provide a net increase of 640 acres of dune/berm habitat and 1,780 acres of saline marsh habitat at Caminada Headland. Shell Island would be restored to a two-island configuration. At Shell Island (west) approximately 3.4 mcy of sand would be placed to create about 139 acres of dune and about 74 acres of marsh. Approximately 6.6 mcy of sand would be placed at Shell Island (east) to create about 223 acres of dune/berm and about 191 acres of marsh. The project would provide about 147 acres of shoreline habitat on Shell Island.

6. The reporting officers reviewed the BBBS project described in the LCA Chief's report, as well as the changed physical conditions of the shoreline. Since 2005 it has continued to degrade and has been heavily impacted by hurricanes and tropical storms. Based on this review the reporting officers developed the recommended plan presented in this report to respond to the changed conditions and to be consistent with the direction provided in WRDA 2007. As in the LCA Chief's Report, this recommended plan includes dune and marsh restoration at Caminada Headland and Shell Island, the barrier system's most critical components. The recommended plan is the National Ecosystem Restoration (NER) plan. It will restore the barrier system's geomorphic and hydrologic form. It will restore critical habitat for the threatened piping plover, as well as valuable stopover habitats for migratory birds and Essential Fish Habitats for a variety of fish and shellfish. It will protect the interior coast from further degradation, and the sediment input will supplement long shore sediment transport processes, increasing the restored area's sustainability.

7. The recommended plan consists of dredging and placing approximately 5.1 mcy of sand to restore and create about 880 acres of dune at Caminada Headland. Dune height would be + 7 feet North American Vertical Datum of 1988 (NAVD88) with a crown width of 290 feet and

slopes of 20 feet horizontal to 1 foot vertical. The proposed borrow source for Caminada dune material is Ship Shoal, located about 40 miles from the project site. Approximately 5.4 mcy of material would be placed landward of the dune to restore and create approximately 1,186 acres of marsh at an elevation of +2.0 feet NAVD88. The proposed borrow source for Caminada marsh material is located approximately 1.5 miles south of the Headland. Approximately 71,500 feet of sand fencing would be installed and a variety of native vegetation species would be planted on approximately 8 foot centers. Shell Island would be restored to its pre-Hurricane Bob (1979) single island configuration. About 5.6 mcy of sand and 23,800 feet of sand fencing would be placed to build approximately 317 acres of dunes to a height of +6 feet NAVD88 with a crown width of 189 feet and slopes of 45 feet horizontal to 1 foot vertical. The proposed borrow source for Shell Island dune material is the Mississippi River, about 11 miles north of the project site. Approximately 2.1 mcy of sediment would be placed to restore about 466 acres of marsh at an elevation of +2 feet NAVD88. The proposed borrow source for marsh material is an offshore site south of the Empire Jetties. A variety of native vegetation species would be planted on approximately 8 foot centers.

8. The recommended plan includes renourishment at staggered intervals to maintain the headland and island over time. As part of the non-Federal sponsor's Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) responsibilities, renourishment of the Caminada Headland would be implemented every 1.5 to 2 years in conjunction with Corps operation and maintenance dredging of the Bayou Lafourche, Louisiana (Belle Pass) navigation project. Shell Island would be renourished by the non-Federal sponsor 20 and 40 years after initial construction to the original construction template, as part of its OMRR&R responsibilities.

9. The recommended plan contains post-construction monitoring and adaptive management at an estimated cost of $1,300,000 to be conducted for a period of no more than ten years to ensure project performance. Monitoring may be cost-shared for a period of no more than ten years. The non-Federal sponsor is responsible for monitoring required beyond ten years. Because the recommended plan is an ecosystem restoration plan, it does not have any significant adverse effects, and no mitigation measures would be required.

10. The State of Louisiana is the non-Federal cost-sharing sponsor for all features and supports the recommended plan described herein. Based on October 2011 price levels, the estimated project first cost for the recommended plan is $428,000,000. In accordance with the cost sharing provisions in WRDA 1986, as amended by Section 210 of WRDA 1996 the Federal share of the total first cost would be about $278,000,000 (65 percent) and the non-Federal share would be about $150,000,000 (35 percent). The project first cost includes an estimated $1,300,000 for environmental monitoring and adaptive management. The State of Louisiana, acting as the non-Federal sponsor, is required to provide all lands, easements, relocations, right-of-ways and dredged or excavated material disposal areas (LERRDs), the costs of which are estimated at $3,660,000. Further, the non-Federal sponsor is responsible for OMRR&R of the project after

construction, including renourishment, currently estimated at about $6,180,000 annually. Based on a 4 percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the recommended plan are estimated to be $27,000,000 including OMRR&R.

11. The reporting officers recommend that the Caminada Headland component of the NER plan be implemented under the existing authority provided in Section 7006(c)(1)(C) of WRDA 2007. The reporting officers also recommend that the Congress increase the authorized total project cost so that the entire recommended (NER) plan can be implemented. Modification of the authorization provided by Section 7006(c)(1)(C) is required because the cost of the recommended NER plan, including both the Caminada Headland and Shell Island components, exceeds the authorized cost limit as defined in Section 7006(c)(4). Costs to accomplish the original goals of the BBBS project have increased because the shoreline system has continued to degrade since the LCA Chief's report was completed. In addition, the cost of dredging and placing material, the largest component of this project, has increased because of increases in fuel and construction costs post-hurricane Katrina. The State of Louisiana, acting as the non-Federal sponsor, supports immediate implementation of the Caminada component.

12. Based on October 2011 price levels, the estimated first cost for the Caminada Headland component is $224,000,000. In accordance with the cost sharing provisions in WRDA 1986, as amended by Section 210 of WRDA 1996, the Federal share of the first cost would be about $146,000,000 (65 percent) and the non-Federal share would be about $78,000,000 (35 percent). The first cost includes an estimated $630,000 for environmental monitoring and adaptive management. The State of Louisiana, acting as the non-Federal sponsor, is required to provide all LERRDs, the costs of which are estimated at $1,650,000. Further, the non-Federal sponsor is responsible for OMRR&R of the project after construction, including renourishment, currently estimated at about $4,250,000 annually. Based on a 4 percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the recommended plan are estimated to be $14,600,000 including OMRR&R.

13. The reporting officers found the recommended plan and each of the components to be cost effective, technically sound, and environmentally and socially acceptable. The cost of the recommended aquatic ecosystem restoration features is justified by the decrease in shoreline erosion and loss of wetlands; the restored barrier system's regulation of salinity gradients and maintenance of the estuary critical to fish and wildlife, such as white and brown shrimp; the maintenance of geomorphic form that attenuates storm surge for interior wetlands and surrounding coastal communities, including Port Fourchon, major oil and gas infrastructure and the regional hurricane evacuation route for residents of southern Lafourche Parish; and the approximately 1719 AAHUs of beach/dune and marsh habitats provided 988 AAHUs on Caminada Headland and 731 AAHUs on Shell Island. The recommended plan conforms to essential elements of the U.S. Water Resources Council's Economic and Environmental Studies and complies with other administration and legislative policies and guidelines. The

recommended plan was developed in coordination and consultation with various Federal, State and local agencies using a systems approach in formulating ecosystem restoration solutions and in evaluating the impacts and benefits of those solutions. Study formulation looked at a wide range of structural and non-structural alternatives. Further refinement and additional analysis of the project will be performed during preconstruction engineering and design, and modifications will be made, as appropriate, prior to project implementation. Such analysis or modifications will continue to be coordinated with Federal, State, and local agencies and other parties.

14. In accordance with the Engineering Circular on review of decision documents, all technical, engineering and scientific work underwent an open, dynamic and rigorous review process to ensure technical quality. This included an independent Agency Technical Review (ATR), an Independent External Peer Review (IEPR), and a Corps Headquarters policy and legal review. All concerns of the ATR have been addressed and incorporated into the report. The IEPR was conducted by the Battelle Memorial Institute. IEPR of the draft report was completed on December 2, 2011. A total of 16 comments were generated. No comments were rated high significance, 15 were rated medium, and 1 was rated low significance. All comments from this review have been addressed and incorporated into the final project documents and recommendation as appropriate.

15. I concur in the findings, conclusions, and recommendation of the reporting officers. Accordingly, I recommend project implementation, in accordance with the reporting officers' recommendations with such modifications as in the discretion of the Chief of Engineers may be advisable. I further recommend, in accordance with the reporting officers recommendations, that the authorization be modified to raise the total project cost to allow for construction of the entire NER plan. My recommendations are subject to cost sharing, financing, and other applicable requirements of Federal and State laws and policies, including WRDA 1986, as amended by Section 210 of WRDA 1996. The State of Louisiana, acting as the non-Federal sponsor, would provide the non-Federal cost share and all lands, easements, relocations, right-of-ways and disposals. Further, the non-Federal sponsor would be responsible for all OMRR&R. This recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and policies, including but not limited to its agreeing to:

a. Provide 35 percent of ecosystem restoration project costs as further specified below:

(1) Provide the non-Federal share 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 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 improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that

the Government determines to be necessary for the construction, operation, maintenance, repair, replacement, and rehabilitation of the project;

(3) Provide, during construction, any additional funds necessary to make its total contribution equal to 35 percent of the total project costs allocated to the project;

b. Provide the non-Federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project;

c. Not use funds provided by a Federal agency under any other Federal program, to satisfy, in whole or in part, the non-Federal share of the cost of the project unless the Federal agency that provides the funds determines that the funds are authorized to be used to carry out the study or project;

d. Not use the project or lands, easements, and rights-of-way required for the project as a wetlands bank or mitigation credit for any other project;

e. For as long as the project remains authorized, operate, maintain, repair, replace, and rehabilitate the project, or functional portion of the project, including mitigation, 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;

f. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal sponsor, now or hereafter, owns or controls for access to the project for the purpose of inspecting, operating, maintaining, repairing, replacing, rehabilitating, or completing the project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Federal Government shall relieve the non-Federal sponsor of responsibility to meet the non-Federal sponsor's obligations, or to preclude the Federal Government from pursuing any other remedy at law or equity to ensure faithful performance;

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

h. Perform, or cause to be performed, 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 the initial construction, periodic nourishment, 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;

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

j. Agree that, as between the Federal Government and the non-Federal sponsor, 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, and repair the project in a manner that would not cause liability to arise under CERCLA;

k. Prevent obstructions of or encroachments on the project (including prescribing and enforcing regulations to prevent such obstruction or encroachments) which might reduce ecosystem restoration benefits, hinder operation and maintenance, or interfere with the project's proper function, such as any new developments on project lands or the addition of facilities which would degrade the benefits of the project;

l. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of three years after completion of the accounting for which such books, records, documents, and other evidence is required, to the extent and in such detail as would properly reflect total costs of construction of the project, 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;

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

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, as well as 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 and 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.); and

o. 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 necessary for the initial construction, periodic nourishment, operation, and maintenance of the project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

16. The recommendations contained herein reflect the information available at this time and current departmental policies governing the formulation of individual projects. They do not reflect program and budgeting priorities inherent in the formulation of the national civil works construction program or the perspective of higher levels within the executive branch. Consequently, the recommendations may be modified before they are transmitted to Congress for additional authorization and/or implementation funding. However, prior to transmittal to Congress, the State of Louisiana, interested Federal agencies, and other parties will be advised of any significant modifications in the recommendations and will be afforded an opportunity to comment further.

THOMAS P. BOSTICK
Lieutenant General, US Army
Commanding

DEPARTMENT OF THE ARMY
CHIEF OF ENGINEERS
2600 ARMY PENTAGON
WASHINGTON, D.C. 20310-2600

DAEN

APR 2 3 2013

SUBJECT: Neuse River Basin, Ecosystem Restoration Project, North Carolina

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on ecosystem restoration in the Neuse River Basin, North Carolina. It is accompanied by the report of the district and division engineers. These reports are in final response to two resolutions by the Committee of Public Works of the United States House of Representatives, adopted April 15, 1966, and the Committee on Transportation and Infrastructure, adopted July 23, 1997. The 1966 resolution requested a review of the report of the Chief of Engineers on the Neuse River Basin, North Carolina, published as House Document Numbered 175, Eighty-ninth Congress, and other pertinent reports to determine whether any modifications to the recommendations contained in the report are advisable. The 1997 resolution further requested a review of House Document 175 to determine where modifications of the recommendations are advisable in the interest of flood control (flood risk management), environmental protection and restoration, and related purposes. Preconstruction engineering and design activities for the Neuse River Basin ecosystem restoration project will continue under the authority adopted in July 1997.

2. The Neuse River Basin, the third-largest river basin in North Carolina contains a total area of 6,234 square miles, is one of only four watersheds entirely within the state. It originates at the confluence of the Eno and Flat Rivers in north central North Carolina near the city of Durham and flows southeasterly until reaching tidal waters upstream of the city of New Bern, North Carolina where the river broadens dramatically and changes from a unidirectional freshwater regime to a mixed tidal regime of the Neuse River Estuary before flowing out into Pamlico Sound and the Atlantic Ocean. The Neuse River Basin has experienced severe flooding in the past; consequently elements of the Basin ecosystem have shown signs of significant stress and degradation.

The ecosystem significance of the area is demonstrated on the national, regional, and local level. The Neuse River Basin includes 7 essential fish habitats and 12 significant natural heritage areas. The Neuse River Basin feeds one of the nation's largest and most productive coastal estuaries (Albemarle-Pamlico Sounds). The Albemarle-Pamlico estuary system, which is in the National Estuary Program, is a nursery for 90 percent of the commercial seafood species caught in North Carolina. In 2011 the value of seafood landed in North Carolina had an estimated dockside value of $72.8 million.

The federally listed shortnosed sturgeon will directly benefit from the opening of the dam which will improve passage for migration. The Neuse River Basin is also home to 17 species of rare freshwater mussels, two of which are federally listed as endangered, and a rare snail species. The federally listed dwarf wedgemussel and Tar River spinymussel will benefit from the restoration by increasing fish host for transportation. The Neuse River basin also provides habitat for 7 other federally listed

endangered species which include, the West Indian manatee, Red-cockaded woodpecker, Leatherback sea turtle and the Kemp's Ridley sea turtle.

3. The reporting officers recommend authorization of a plan to restore four components of the Neuse River Basin ecosystem. The plan includes construction of rock sills approximately 3,500 feet long at Gum Thicket Creek and 5,200 feet long at Cedar Creek, built at distances of about 60 feet offshore; regrading a previously filled area within the Kinston East wetland complex to the approximate elevation of the adjacent bottomland hardwood forest and allowing natural revegetation of the site by bottomland hardwood species and limited planting; modifying the Low-head Dam on the Little River to allow migration of anadromous fish; and the creation of 10 acres of 4 foot-high oyster reef within an 80 acre service area. The recommended plan is the National Ecosystem Restoration Plan. Implementation of the recommended plan will have a substantial beneficial impact on biological integrity, freshwater mussel populations, anadromous fish populations, emergent wetlands, and the quantity and quality of oyster reef habitat.

4. Based on an October 2012 (FY13) price level the estimated project first cost is $35,774,000. In accordance with the cost sharing provisions contained in Section 103(c) of the Water Resources Development Act of 1986 (WRDA 1986), as amended (33 U.S.C. 2213(c)), ecosystem restoration features are cost-shared at a rate of 65 percent Federal and 35 percent non-Federal. Thus the Federal share of the project first cost is estimated to be $23,253,100 and the non-Federal share is estimated at $12,520,900, which includes the costs of lands, easements, rights-of-way, relocations, and dredged or excavated material disposal areas (LERRD) estimated at $254,000. The non-Federal will receive credit for the costs of LERRD towards the non-Federal share. The North Carolina Department of Environment and Natural Resources (NCDENR) Division of Water Resources (NCDWR) is the non-Federal cost-sharing sponsor for the recommended plan. The State of North Carolina would be responsible for the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the project after construction, an average annual cost currently estimated at $24,000.

5. Based on a 3.75 percent discount rate and a 50-year period of analysis, the total equivalent average annual costs of the project are estimated to be $1,671,000, including monitoring estimated at $312,000 and OMRR&R. All project costs are allocated to the authorized purpose of ecosystem restoration and are justified by the restoration of 241 average annual functional units in the Basin. The plan would restore the habitats in the most cost-effective manner. The restoration would include 1) creating 80 acres of oyster reef sanctuary with approximately 10 acres of reef top resulting in improved water quality and habitat for commercial and recreational seafood, 2) increasing wetland habitat by 14.5 acres of bottomland hardwoods, creating 15 acres of estuarine marsh, preventing degradation of another 60 acres of estuarine march and protecting a 240 acre wetland conservation easement area for wetland species and improved water resource function, and 3) restoring hydrologic connectivity for 46 miles of important spawning habitat for anadromous fish species.

6. The recommended plan was developed in coordination and consultation with various Federal, State, and local agencies using cost effectiveness and incremental cost analysis techniques to formulate ecosystem restoration solutions and evaluate the impacts and benefits of those solutions. Plan formulation evaluated a wide range of non-structural and structural alternatives under Corps policy and guidelines as well as consideration of a variety of economic, social and environmental

goals. The recommended plan delivers a holistic, comprehensive approach to solve water resources challenges in a sustainable manner.

7. In accordance with the Corps Engineering Circular on sea level change, the study performed an analysis of three Sea Level Rise rates, a baseline estimate representing the minimum expected sea level change, an intermediate estimate, and a high estimate representing the maximum expected sea level change. Projecting the three rates of change over a 50 year period provides a predicted low level rise of 0.42 feet (ft), an intermediate level rise of 0.85 ft and a high level rise of 2.2 ft. Accelerated sea level rise is expected to impact only one part of the recommended plan, which is the Gum Thicket/Cedar Creek site. Accelerated rates of future sea level rise may lead to drowning scenarios of North Carolinas tidal coastal wetlands. It is estimated in the without project condition, at the Gum Thicket reach up to 450 ft of erosion could occur under the historical rate of sea level rise, 671 ft of erosion could occur under the baseline estimate and up to 1,381 ft of erosion could occur under the high estimate over the 50 year period of analysis. At the Cedar Creek reach, 100 ft, 149 ft and 306 ft of erosion could occur under historical sea level rise and for baseline, intermediate and high scenarios, respectively, over the 50 year period of analysis. The environmental benefits of the recommended were based on erosion occurring at the historical rate of sea level rise, this means that the environmental benefits from the plan would actually increase with the accelerated sea level rise scenarios. Average annual habitat benefits for the recommended plan at Gum Thicket/Cedar Creek under the baseline scenario are estimated at 52.7 habitat units (a 10.0 habitat unit increase as compared to the historical sea level rate). Both the shoreline stabilization and marsh creation at Gum Thicket and Cedar Creeks would be affected by sea level rise. The project is designed based upon a historical rate of sea level rise. To reduce risks from potential accelerated sea level rise on the plantings, marsh restoration would include both low and high marshes allowing upslope mitigation of low-lying marshes. The sill design accounts for the historical rate of sea level rise applied over 50 years.

8. In accordance with Corps Engineering Circular on review of decision documents, all technical, engineering and scientific work underwent an open, dynamic and vigorous review process to ensure technical quality. This included District Quality Control, Agency Technical Review (ECO-PCX), Policy and Legal Compliance Review, Cost Engineering Directory of Expertise Review and Certification, and Model Review and Approval. Given the nature of the project, an exclusion from the requirement to conduct a Type I Independent External Peer Review was granted on 18 May 2012. Concerns expressed by the ECO-PCX team have been addressed and incorporated in the final report.

9. Washington level review indicates the plan recommended by the reporting officers is technically sound, environmentally and socially acceptable, and on the basis of Congressional directives, economically justified. The plan complies with all essential elements of the U.S. Water Resources Council's Economic and Environmental Principal and Guidelines for Water and Land Related Resources Implementation Studies. The recommended plan complies with other administration and legislative policies and guidelines. The views of interested parties including Federal, State and local agencies have been considered. State and Agency comments received during review of the final report and environmental assessment included concerns raised by the North Carolina Clearinghouse, the Environmental Protection Agency and the United States Coast Guard with design refinements for compliance with regulations and benefit improvements, as well as a request for continued coordination during the Preconstruction, Engineering and Design phase. The concerns were addressed through USACE response letters dated 7 March 2013, 12 February 2013,

and 26 February 2013, respectively.

10. I concur in the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the plan for ecosystem restoration in the Neuse River Basin, North Carolina be authorized in accordance with the reporting officers' recommended plan at an October 2012 (FY13) estimated cost of $35,774,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My recommendation is subject to cost sharing, financing, and other applicable requirements of Federal and State laws and policies, including Section 103 of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2213). Accordingly, the non-Federal sponsor must agree with the following requirements prior to project implementation.

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

(1) Provide 35 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 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;

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

b. 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 by Federal law;

c. 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 outputs produced by the project, hinder operation and maintenance of the project, or interfere with the project's proper function;

d. Shall not use the project or lands, easements, and rights-of-way required for the project as a wetlands bank or mitigation credit for any other project;

e. 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 Code of Federal Regulations (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;

f. 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;

g. 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;

h. Hold and save the United States free from all damages arising from the design, 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;

i. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of three years after completion of the accounting for which such books, records, documents, and 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 CFR Section 33.20;

j. 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 Regulations 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.*));

k. 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 the 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 investigation 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;

l. 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 or operation and maintenance of the project;

DAEN
SUBJECT: Neuse River Basin, Ecosystem Restoration Project, North Carolina

m. 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;

n. 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.

11. 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. Consequently, the recommendation may be modified before it is transmitted to Congress as a proposal for authorization and implementation funding. However, prior to transmittal to Congress, the sponsor, the State, interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

THOMAS P. BOSTICK
Lieutenant General, USA
Chief of Engineers

Section 402. Project modifications

This section modifies three previously authorized water resources projects. These project modifications were requested by the Administration when the President submitted his fiscal year 2014 budget request to Congress. Subject to section 902 of the Water Resources Development Act of 1986, project cost increases must be authorized by Congress. This provision authorizes new cost levels for the following projects: Miami Harbor, Miami-Dade County, Florida; Olmsted Lock and Dam on the Lower Ohio River, Illinois and Kentucky; and Little Calumet River Basin, Cady Marsh Ditch, Indiana. For the Miami Harbor and Little Calumet River Basin projects, the authorization level provided in this section is sufficient to complete the projects. For the Olmsted project, the provision provides sufficient funding authority for approximately 5 years of work. The Administration would need to request and justify any additional funding authority.

The Committee remains concerned over the pace of progress on the Olmsted Lock and Dam project on the Ohio River. While the Administration requested as part of their annual budget $3.1 billion in authority to complete the work, noting the history of cost-overruns and other problems with this project, the Committee was unwilling to authorize funding beyond that expected to be needed within the next 5 years. The Committee expects the Corps of Engineers to be able to justify an additional funding authorization after a period of time where tangible results can be reviewed.

ADDITIONAL MATTERS

Members of Congress have brought it to the attention of the Committee on Transportation and Infrastructure that in some instances when a non-federal interest desires to carry out what is typically a federal responsibility related to navigation modifications or improvements, the Corps of Engineers has required multiple, and at times, duplicative analyses of the same activity. Under current authorities from section 204 of the Water Resources Development Act of 1986 and section 14 of the Rivers and Harbors Act of 1899 (commonly referred to as "408"), the Corps of Engineers may have erroneously required two separate reports under two separate processes to improve or modify a federal navigation project that requires approvals under both laws.

The Water Resources Reform and Development Act of 2013 contains many reforms aimed at empowering non-federal interests. Two sections in particular, section 107, Construction of Projects by Non-Federal Interests, and section 106, Expediting Approval of Modifications of Projects by Non-Federal Interests, were included to accelerate project delivery by giving more authority to non-federal interests. Section 107 specifically repeals section 204 of the Water Resources Development Act of 1986 and replaces it with a more streamlined process; and section 106 significantly accelerates the "408" decision process.

While the Corps of Engineers has made strides in correctly delegating more of these approval activities to the District Engineer, and while the Corps is clarifying that separate and duplicative reports are not required, if the Secretary does not send clear direc-

tion to Division and District level personnel, the reforms contained in section 107 and section 106 of this Act may be slow to achieve.

The Committee is concerned with the uncertainty facing coastal communities on the availability of appropriate natural resources for high-priority, authorized coastal projects. These projects are critically important to regional safety and resiliency during natural disasters, as well as to state and local economies and jobs. With respect to at least one identified project, the Corps of Engineers has been studying the availability of such materials for over a decade, in furtherance of the authorities under section 935 of the Water Resources Development Act of 1986. In August 2013, the Corps of Engineers in cooperation with the State of Florida completed the Southeast Florida Sediment Assessment and Needs Determination (SAND) Study in furtherance of determining the availability of domestic material to meet the authorized needs of five identified Florida counties. In this study, the Corps of Engineers determined that sufficient material is available to meet the "planned, full-sized beach nourishment projects through 2062" for the identified Florida counties. In addition, the Committee understands that use of materials identified in the SAND Study will not have any impact on materials that have already been placed on coastal projects. The Committee, therefore, encourages the Corps of Engineers, the State of Florida, and the identified counties to work in coordination to meet their authorized coastal project needs.

America's engineering industry continues to provide critical technical expertise, innovation, and local knowledge to federal and state agencies in order to efficiently deliver water resource projects to the public. The Committee recognizes the valuable contributions made by the Nation's engineering industry to the work of the Corps of Engineers and urges the Corps to reinforce that partnership by taking full advantage of engineering industry capabilities to strengthen project performance, improve domestic competitiveness, and create jobs.

When identifying the costs of construction for navigation projects, the Corps of Engineers, pursuant to the Act of June 21, 1940 (more commonly known as the Truman-Hobbs Act) considers the cost of highway and railroad bridge alterations or removals as construction costs, eligible for cost share. However, for flood control projects and ecosystem restoration projects, local sponsors are currently required to pay the entire cost of a bridge alteration or removal as a non-federal responsibility to provide all lands, easements, rights-of-way, disposal areas, and relocations, pursuant to section 103(a) of the Water Resources Development Act of 1986, as amended. While that specific section is notably applicable to only flood control projects, the Corps has applied this responsibility broadly to other project purposes, such as ecosystem restoration purposes, as well.

Bridge alterations and removals can be essential components of ecosystem restoration projects, such as related to large-scale ecosystem restoration projects in the Pacific Northwest. As such, the Committee encourages the Secretary to explore whether such alterations and removals should, like navigation projects, be considered as part of the costs of construction of an ecosystem restoration project, and to report to the Committee on its findings. If the Secretary determines that such alterations and removals are integral to meeting the goals of ecosystem restoration projects, the Sec-

retary shall develop new guidance for ecosystem restoration projects that fits their unique needs.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

WATER RESOURCES DEVELOPMENT ACT OF 2000

* * * * * * *

TITLE II—GENERAL PROVISIONS

* * * * * * *

SEC. 203. TRIBAL PARTNERSHIP PROGRAM.

(a) * * *

* * * * * * *

(d) COST SHARING.—

(1) ABILITY TO PAY.—

(A) * * *

(B) USE OF PROCEDURES.—[The ability]

(i) IN GENERAL.—The ability of a non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.

(ii) DETERMINATION.—Not later than 180 days after the date of enactment of the Water Resources Reform and Development Act of 2013, the Secretary shall issue guidance on the procedures described in clause (i).

* * * * * * *

[(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (b) $5,000,000 for each of fiscal years 2002 through 2012, of which not more than $1,000,000 may be used with respect to any 1 Indian tribe.]

(e) RESTRICTIONS.—The Secretary is authorized to carry out activities under this section in fiscal years 2014 through 2023.

* * * * * * *

SEC. 214. FUNDING TO PROCESS PERMITS.

(a) IN GENERAL.—The Secretary, after public notice, may accept and expend funds contributed by a non-Federal public entity *or public-utility company (as defined in section 1262 of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451))* to expedite the evaluation of a permit of that entity *or company* related to a project or activity for a public purpose under the jurisdiction of the Department of the Army. *To the maximum extent practicable, the Secretary shall ensure that expediting the evaluation of a permit through the use of funds accepted and expended under this section does not adversely affect the timeline for evaluation (in the Corps district in which the project or activity is located) of permits under*

the jurisdiction of the Department of the Army of other entities that have not contributed funds under this section.

* * * * * * *

[(e) DURATION OF AUTHORITY.—The authority provided under this section shall be in effect from October 1, 2000, through December 31, 2016.]

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WATER RESOURCES DEVELOPMENT ACT OF 2007

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

* * * * * * *

TITLE II—GENERAL PROVISIONS

* * * * * * *

[Sec. 2045. Project streamlining.]
Sec. 2045. Streamlined project delivery.

* * * * * * *

TITLE II—GENERAL PROVISIONS

* * * * * * *

SEC. 2008. REVISION OF PROJECT PARTNERSHIP AGREEMENT; COST SHARING.

(a) FEDERAL ALLOCATION.—Upon authorization by law of an increase in the maximum amount of Federal funds that may be allocated for a water resources project or an increase in the total cost of a water resources project authorized to be carried out by the Secretary, the Secretary shall enter into a revised partnership agreement for the project to take into account the change in Federal participation in the project. *This subsection shall apply without regard to whether the original partnership agreement was entered into before, on, or after the date of enactment of this subsection.*

* * * * * * *

SEC. 2033. PLANNING.

(a) * * *

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(e) CENTERS OF SPECIALIZED PLANNING EXPERTISE.—

(1) * * *

* * * * * * *

(3) DEEP DRAFT NAVIGATION PLANNING CENTER OF EXPERTISE.—

(A) IN GENERAL.—The Secretary shall consolidate deep draft navigation expertise within the Corps of Engineers into a deep draft navigation planning center of expertise.

(B) LIST.—Not later than 60 days after the date of the consolidation required under subparagraph (A), the Sec-

retary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a list of personnel, including the grade levels and expertise of the personnel, assigned to the center described in subparagraph (A).

* * * * * * *

[SEC. 2045. PROJECT STREAMLINING.

[(a) POLICY.—The benefits of water resources projects are important to the Nation's economy and environment, and recommendations to Congress regarding such projects should not be delayed due to uncoordinated or inefficient reviews or the failure to timely resolve disputes during the development of water resources projects.

[(b) SCOPE.—This section shall apply to each study initiated after the date of enactment of this Act to develop a feasibility report under section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282), or a reevaluation report, for a water resources project if the Secretary determines that such study requires an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(c) WATER RESOURCES PROJECT REVIEW PROCESS.—The Secretary shall develop and implement a coordinated review process for the development of water resources projects.

[(d) COORDINATED REVIEWS.—The coordinated review process under this section may provide that all reviews, analyses, opinions, permits, licenses, and approvals that must be issued or made by a Federal, State, or local government agency or Indian tribe for the development of a water resources project described in subsection (b) will be conducted, to the maximum extent practicable, concurrently and completed within a time period established by the Secretary in cooperation with the agencies identified under subsection (e) with respect to the project.

[(e) IDENTIFICATION OF JURISDICTIONAL AGENCIES.—With respect to the development of each water resources project, the Secretary shall identify, as soon as practicable, all Federal, State, and local government agencies and Indian tribes that may—

[(1) have jurisdiction over the project;

[(2) be required by law to conduct or issue a review, analysis, or opinion for the project; or

[(3) be required to make a determination on issuing a permit, license, or approval for the project.

[(f) STATE AUTHORITY.—If the coordinated review process is being implemented under this section by the Secretary with respect to the development of a water resources project described in subsection (b) within the boundaries of a State, the State, consistent with State law, may choose to participate in the process and to make subject to the process all State agencies that—

[(1) have jurisdiction over the project;

[(2) are required to conduct or issue a review, analysis, or opinion for the project; or

[(3) are required to make a determination on issuing a permit, license, or approval for the project.

[(g) MEMORANDUM OF UNDERSTANDING.—The coordinated review process developed under this section may be incorporated into a memorandum of understanding for a water resources project between the Secretary, the heads of Federal, State, and local government agencies, Indian tribes identified under subsection (e), and the non-Federal interest for the project.

[(h) EFFECT OF FAILURE TO MEET DEADLINE.—

[(1) NOTIFICATION.—If the Secretary determines that a Federal, State, or local government agency, Indian tribe, or non-Federal interest that is participating in the coordinated review process under this section with respect to the development of a water resources project has not met a deadline established under subsection (d) for the project, the Secretary shall notify, within 30 days of the date of such determination, the agency, Indian tribe, or non-Federal interest about the failure to meet the deadline.

[(2) AGENCY REPORT.—Not later than 30 days after the date of receipt of a notice under paragraph (1), the Federal, State, or local government agency, Indian tribe, or non-Federal interest involved may submit a report to the Secretary, explaining why the agency, Indian tribe, or non-Federal interest did not meet the deadline and what actions it intends to take to complete or issue the required review, analysis, or opinion or determination on issuing a permit, license, or approval.

[(3) REPORT TO CONGRESS.—Not later than 30 days after the date of receipt of a report under paragraph (2), the Secretary shall compile and submit a report to the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Council on Environmental Quality, describing any deadlines identified in paragraph (1), and any information provided to the Secretary by the Federal, State, or local government agency, Indian tribe, or non-Federal interest involved under paragraph (2).

[(i) LIMITATIONS.—Nothing in this section shall preempt or interfere with—

[(1) any statutory requirement for seeking public comment;

[(2) any power, jurisdiction, or authority that a Federal, State, or local government agency, Indian tribe, or non-Federal interest has with respect to carrying out a water resources project; or

[(3) any obligation to comply with the provisions of the National Environmental Policy Act of 1969 and the regulations issued by the Council on Environmental Quality to carry out such Act.]

SEC. 2045. STREAMLINED PROJECT DELIVERY.

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) ENVIRONMENTAL IMPACT STATEMENT.—The term "environmental impact statement" means the detailed statement of environmental impacts required to be prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) ENVIRONMENTAL REVIEW PROCESS.—

(A) IN GENERAL.—The term "environmental review process" means the process of preparing an environmental im-

pact statement, environmental assessment, categorical exclusion, or other document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for a project study.

(B) INCLUSIONS.—The term "environmental review process" includes the process for and completion of any environmental permit, approval, review, or study required for a project study under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) FEDERAL JURISDICTIONAL AGENCY.—The term "Federal jurisdictional agency" means a Federal agency with jurisdiction over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a project study under applicable Federal laws, including regulations.

(4) PROJECT.—The term "project" means a Corps of Engineers water resources project.

(5) PROJECT SPONSOR.—The term "project sponsor" means the non-Federal interest as defined in section 221(b) of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b).

(6) PROJECT STUDY.—The term "project study" means a feasibility study for a project carried out pursuant to section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282).

(b) APPLICABILITY.—The procedures in this section are applicable to all project studies initiated after the date of enactment of the Water Resources Reform and Development Act of 2013 and for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and may be applied, to the extent determined appropriate by the Secretary, to other project studies initiated after such date of enactment and for which an environmental review process document is prepared under such Act.

(c) LEAD AGENCIES.—

(1) FEDERAL LEAD AGENCY.—The Corps of Engineers shall be the Federal lead agency in the environmental review process for a project study.

(2) NON-FEDERAL PROJECT SPONSOR AS JOINT LEAD AGENCY.—At the discretion of the Secretary and subject to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), a non-Federal project sponsor that is an agency defined in subsection (a)—

(A) may serve as a joint lead agency with the Corps of Engineers for purposes of preparing any environmental review process document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) may assist in the preparation of any such environmental review process document required under the National Environmental Policy Act of 1969 if the Secretary provides guidance in the preparation process, participates in preparing the document, independently evaluates that document, and approves and adopts the document before the Secretary takes any subsequent action or makes any approval based on that document.

(3) ADOPTION AND USE OF DOCUMENTS.—Any environmental review process document prepared in accordance with this sub-

section shall be adopted and used by any Federal agency in making any approval of a project subject to this section as the document required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to the same extent that the Federal agency may adopt or use a document prepared by another Federal agency under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) ROLES AND RESPONSIBILITY OF FEDERAL LEAD AGENCY.—With respect to the environmental review process for any project, the Federal lead agency shall have authority and responsibility—

(A) to take such actions as are necessary and proper, within the authority of the Federal lead agency, to facilitate the expeditious resolution of the environmental review process for the project study; and

(B) to prepare or ensure that any required environmental impact statement or other document for a project study required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is completed in accordance with this section and applicable Federal law.

(d) PARTICIPATING AND COOPERATING AGENCIES.—

(1) IDENTIFICATION.—The Federal lead agency shall identify, as early as practicable in the environmental review process for a project study, any Federal or State agency, local government, or Indian tribe that may—

(A) have jurisdiction over the project;

(B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(2) INVITATION.—

(A) IN GENERAL.—The Federal lead agency shall invite any such agency identified under paragraph (1) to become a participating or cooperating agency in the environmental review process for the project study.

(B) DEADLINE.—An invitation to participate issued under subparagraph (A) shall establish a deadline by which a response to the invitation shall be submitted, which may be extended by the Federal lead agency for good cause.

(3) FEDERAL COOPERATING AGENCY.—Any Federal agency that is invited by the Federal lead agency to participate in the environmental review process for a project study shall be designated as a cooperating agency by the Federal lead agency unless the invited agency informs the Federal lead agency, in writing, by the deadline specified in the invitation that the invited agency—

(A) has no jurisdiction or authority with respect to the project;

(B) has no expertise or information relevant to the project study; and

(C) does not intend to submit comments on the project study.

(4) EFFECT OF DESIGNATION.—

(A) REQUIREMENT.—A participating or cooperating agency shall comply with the requirements of this section and any schedule established under this section.

(B) IMPLICATION.—Designation under this subsection shall not imply that the participating or cooperating agency—

(i) supports a proposed project; or

(ii) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(5) CONCURRENT REVIEWS.—Each participating or cooperating agency shall—

(A) carry out the obligations of that agency under other applicable law concurrently and in conjunction with the required environmental review process unless doing so would prevent such agency from conducting needed analysis or otherwise carrying out their obligations under those other laws; and

(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

(e) PROGRAMMATIC COMPLIANCE.—

(1) IN GENERAL.—The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that—

(A) eliminates repetitive discussions of the same issues;

(B) focuses on the actual issues ripe for analyses at each level of review;

(C) establishes a formal process for coordinating with participating and cooperating agencies, including the creation of a list of all data that is needed to carry out the environmental review process; and

(D) complies with—

(i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) all other applicable laws.

(2) REQUIREMENTS.—In carrying out paragraph (1), the Secretary shall—

(A) as the first step in drafting guidance under that paragraph, consult with relevant Federal and State agencies, local governments, Indian tribes, and the public on the use and scope of the programmatic approaches;

(B) emphasize the importance of collaboration among relevant Federal agencies, State agencies, local governments, and Indian tribes in undertaking programmatic reviews, especially with respect to reviews with a broad geographical scope;

(C) ensure that the programmatic reviews—

(i) promote transparency, including of the analyses and data used in the environmental review process, the treatment of any deferred issues raised by a Federal or State agency, local government, Indian tribe, or the public, and the temporal and special scales to be used to analyze those issues;

(ii) use accurate and timely information in the environmental review process, including—

(I) criteria for determining the general duration of the usefulness of the review; and

(II) the timeline for updating any out-of-date review;

(iii) describe—

(I) the relationship between programmatic analysis and future tiered analysis; and

(II) the role of the public in the creation of future tiered analysis; and

(iv) are available to other relevant Federal and State agencies, local governments, Indian tribes, and the public;

(D) allow not less than 60 days of public notice and comment on any proposed guidance; and

(E) address any comments received under subparagraph (D).

(f) COORDINATED REVIEWS.—

(1) COORDINATION PLAN.—

(A) ESTABLISHMENT.—The Federal lead agency, after consultation with each participating and cooperating agency and the non-Federal project sponsor or joint lead agency, as applicable, shall establish a plan for coordinating public and agency participation in and comment on the environmental review process for a project study.

(B) INCORPORATION.—In developing the plan established under subparagraph (A), the Federal lead agency shall take under consideration the scheduling requirements under section 101 of the Water Resources Reform and Development Act of 2013.

(2) SCHEDULE.—

(A) IN GENERAL.—The Federal lead agency, after consultation with each participating and cooperating agency and the non-Federal project sponsor or joint lead agency, as applicable, shall establish, as part of the coordination plan established in paragraph (1)(A), a schedule for completion of the environmental review process for the project study. In developing the schedule, the Federal lead agency shall take under consideration the scheduling requirements under section 101 of the Water Resources Reform and Development Act of 2013.

(B) FACTORS FOR CONSIDERATION.—In establishing the schedule, the Federal lead agency shall consider factors such as—

(i) the responsibilities of participating and cooperating agencies under applicable laws;

(ii) the resources available to the participating and cooperating agencies and the non-Federal project sponsor or joint lead agency, as applicable;

(iii) the overall size and complexity of the project;

(iv) the overall schedule for and cost of the project; and

(v) the sensitivity of the natural and historic resources that may be affected by the project.

(C) CONSISTENCY WITH OTHER TIME PERIODS.—A schedule under subparagraph (A) shall be consistent with any other relevant time periods established under Federal law.

(D) MODIFICATION.—The Federal lead agency may—

(i) lengthen a schedule established under subparagraph (A) for good cause; or

(ii) shorten a schedule only with the concurrence of the affected participating and cooperating agencies and the non-Federal project sponsor or joint lead agency, as applicable.

(E) DISSEMINATION.—A copy of a schedule established under subparagraph (A) shall be—

(i) provided to each participating and cooperating agency and the non-Federal project sponsor or joint lead agency, as applicable; and

(ii) made available to the public.

(3) COMMENT DEADLINES.—The Federal lead agency shall establish the following deadlines for comment during the environmental review process for a project study:

(A) DRAFT ENVIRONMENTAL IMPACT STATEMENTS.—For comments by agencies and the public on a draft environmental impact statement, a period of not more than 60 days after such document is made publicly available, unless—

(i) a different deadline is established by agreement of the Federal lead agency, all participating and cooperating agencies, and the non-Federal project sponsor or joint lead agency, as applicable; or

(ii) the deadline is extended by the Federal lead agency for good cause.

(B) OTHER COMMENT PERIODS.—For all other comment periods established by the Federal lead agency for agency or public comments in the environmental review process, a period of not more than 30 days after the date on which the materials for which comment is requested are made available, unless—

(i) a different deadline is established by agreement of the Federal lead agency, all participating and cooperating agencies, and the non-Federal project sponsor or joint lead agency, as applicable; or

(ii) the deadline is extended by the Federal lead agency for good cause.

(4) DEADLINES FOR DECISIONS UNDER OTHER LAWS.—

(A) PRIOR APPROVAL DEADLINE.—If a participating or cooperating agency is required to make a determination regarding or otherwise approve or disapprove the project study prior to the record of decision or finding of no significant impact, such participating or cooperating agency shall make such determination or approval not later than 30 days after the Federal lead agency publishes notice of the availability of a final environmental impact statement or other final environmental document, or not later than such other date that is otherwise required by law, whichever occurs first.

(B) OTHER DEADLINES.—With regard to any determination or approval of a participating or cooperating agency that is not subject to subparagraph (A), each participating or cooperating agency shall make any required determination or otherwise approve or disapprove the project study not later than 90 days after the date that the Federal lead agency approves the record of decision or finding of no significant impact for the project study, or not later than such other date that is otherwise required by law, whichever occurs first.

(C) RECORD CLOSED.—In the event that any participating or cooperating agency fails to make a determination or approve or disapprove the project study within the applicable deadline described in subparagraph (A), the Federal lead agency may close the record and find the record sufficient for the project study as it relates to such agency determination or approval.

(g) ISSUE IDENTIFICATION AND RESOLUTION.—

(1) COOPERATION.—The Federal lead agency and participating and cooperating agencies shall work cooperatively in accordance with this section to identify and resolve issues that may delay completion of the environmental review process or result in the denial of any approval required for the project study under applicable laws.

(2) FEDERAL LEAD AGENCY RESPONSIBILITIES.—

(A) IN GENERAL.—The Federal lead agency shall make information available to the participating and cooperating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration.

(B) DATA SOURCES.—Such information under subparagraph (A) may be based on existing data sources, including geographic information systems mapping.

(3) PARTICIPATING AND COOPERATING AGENCY RESPONSIBILITIES.—Based on information received from the Federal lead agency, participating and cooperating agencies shall identify, as early as practicable, any issues of concern regarding the potential environmental or socioeconomic impacts of the project, including any issues that may substantially delay or prevent an agency from granting a permit or other approval that is needed for the project study.

(4) ACCELERATED ISSUE RESOLUTION AND ELEVATION.—

(A) IN GENERAL.—Upon the request of a participating or cooperating agency or non-Federal project sponsor, the Secretary shall convene an issue resolution meeting with the relevant participating and cooperating agencies and the non-Federal project sponsor or joint lead agency, as applicable, to resolve issues that may—

(i) delay completion of the environmental review process; or

(ii) result in denial of any approval required for the project study under applicable laws.

(B) MEETING DATE.—A meeting requested under this paragraph shall be held not later than 21 days after the

date on which the Secretary receives the request for the meeting, unless the Secretary determines that there is good cause to extend that deadline.

(C) NOTIFICATION.—Upon receipt of a request for a meeting under this paragraph, the Secretary shall notify all relevant participating and cooperating agencies of the request, including the issue to be resolved and the date for the meeting.

(D) ELEVATION OF ISSUE RESOLUTION.—If a resolution cannot be achieved within 30 days after a meeting under this paragraph and a determination is made by the Secretary that all information necessary to resolve the issue has been obtained, the Secretary shall forward the dispute to the heads of the relevant agencies for resolution.

(E) CONVENTION BY SECRETARY.—The Secretary may convene an issue resolution meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under subparagraph (A).

(h) STREAMLINED DOCUMENTATION AND DECISIONMAKING.—

(1) IN GENERAL.—The Federal lead agency in the environmental review process for a project study, in order to reduce paperwork and expedite decisionmaking, shall prepare a condensed final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) CONDENSED FORMAT.—A condensed final environmental impact statement for a project study in the environmental review process shall consist only of—

(A) an incorporation by reference of the draft environmental impact statement;

(B) any updates to specific pages or sections of the draft environmental impact statement as appropriate; and

(C) responses to comments on the draft environmental impact statement and copies of the comments.

(3) TIMING OF DECISION.—Notwithstanding any other provision of law, in conducting the environmental review process for a project study, the Federal lead agency shall combine a final environmental impact statement and a record of decision for the project study into a single document if—

(A) the alternative approved in the record of decision is either a preferred alternative identified in the draft environmental impact statement or is a modification of such preferred alternative developed in response to comments on the draft environmental impact statement; and

(B) the Federal lead agency has a written commitment from parties responsible for implementation of the measures applicable to the approved alternative that are identified in the final environmental impact statement that they will implement those measures.

(i) LIMITATIONS.—Nothing in this section shall preempt or interfere with—

(1) any practice of seeking, considering, or responding to public comment; or

(2) any power, jurisdiction, responsibility, or authority that a Federal or State agency, local government, Indian tribe, or non-

Federal project sponsor has with respect to carrying out a project study or any other provision of law applicable to a project.

(j) TIMING OF CLAIMS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or other approval issued by a Federal agency for a project study shall be barred unless it is filed not later than 150 days after publication of a notice in the Federal Register announcing that the permit, license, or other approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law which allows judicial review. Nothing in this subsection shall create a right to judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or other approval.

(2) NEW INFORMATION.—The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under title 40, Code of Federal Regulations. The preparation of a supplemental environmental impact statement or other environmental document when required by this section shall be considered a separate final agency action and the deadline for filing a claim for judicial review of such action shall be 150 days after the date of publication of a notice in the Federal Register announcing such action.

(k) CATEGORICAL EXCLUSIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall—

(A) survey the use by the Corps of Engineers of categorical exclusions in projects;

(B) publish a review of the survey that includes a description of—

(i) the types of actions that were categorically excluded or may be the basis for developing a new categorical exclusion; and

(ii) any requests previously received by the Secretary for new categorical exclusions; and

(C) solicit requests from other Federal agencies and non-Federal project sponsors for new categorical exclusions.

(2) NEW CATEGORICAL EXCLUSIONS.—Not later than 1 year after the date of enactment of this subsection, if the Secretary identifies, based on the review under paragraph (1), a category of activities that merit establishing a categorical exclusion not in existence on the day before the date of enactment of this subsection, the Secretary shall publish a notice of proposed rulemaking to propose that new categorical exclusion, to the extent that the categorical exclusion meets the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (or successor regulation).

(l) IMPLEMENTATION GUIDANCE.—The Secretary shall prepare guidance documents that describe the processes that the Secretary will use to implement this section.

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TITLE V—MISCELLANEOUS

* * * * * * *

SEC. 5019. SUSQUEHANNA, DELAWARE, AND POTOMAC RIVER BASINS, DELAWARE, MARYLAND, PENNSYLVANIA, AND VIRGINIA.

(a) * * *

* * * * * * *

(f) REPORT.—After each fiscal year, if the Secretary did not allocate funds in accordance with subsection (b), the Secretary, in conjunction with the President's next submission to Congress of a budget under section 1105(a) of title 31, United States Code, shall submit to Congress a report that describes—

(1) the reasons why the Secretary did not allocate funds in accordance with subsection (b) during that fiscal year; and

(2) the impact, on the jurisdiction of each Commission specified in subsection (b), of not allocating the funds, including with respect to—

(A) water supply allocation;
(B) water quality protection;
(C) regulatory review and permitting;
(D) water conservation;
(E) watershed planning;
(F) drought management;
(G) flood loss reduction;
(H) recreation; and
(I) energy development.

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WATER RESOURCES DEVELOPMENT ACT OF 1986

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TITLE II—HARBOR DEVELOPMENT

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[SEC. 204. CONSTRUCTION OF PROJECTS BY NON-FEDERAL INTERESTS.

[(a) AUTHORITY.—In addition to projects undertaken pursuant to sections 201 and 202 of this title, any non-Federal interest is authorized to undertake navigational improvements in harbors or inland harbors of the United States, subject to obtaining any permits required pursuant to Federal and State laws in advance of the actual construction of such improvements.

[(b) STUDIES AND ENGINEERING.—When requested by an appropriate non-Federal interest the Secretary is authorized to undertake all necessary studies and engineering for any construction to be undertaken under the terms of subsection (a) of this section, and provide technical assistance in obtaining all necessary permits, if the non-Federal interest contracts with the Secretary to furnish the United States funds for such studies and engineering during the period that they are conducted.

[(c) COMPLETION OF STUDIES.—The Secretary is authorized to complete and transmit to the appropriate non-Federal interest any

study for improvements to harbors or inland harbors of the United States which were initiated prior to the date of enactment of this Act, or, upon the request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest. The Secretary is further authorized to complete and transmit to the appropriate non-Federal interest any study for improvement to harbors or inland harbors of the United States that is initiated pursuant to section 107 of the River and Harbor Act of 1960 or, upon request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest. Studies under this subsection shall be completed without regard to the requirements of subsection (b) of this section.

[(d) AUTHORITY TO CARRY OUT IMPROVEMENT.—Any non-Federal interest which has requested and received from the Secretary pursuant to subsection (b) or (c) of this section, the completed study and engineering for an improvement to a harbor or an inland harbor, or separable element thereof, for the purpose of constructing such improvement and for which improvement a final environmental impact statement has been filed, shall be authorized to carry out the terms of the plan for such improvement. Any plan of improvement proposed to be implemented in accordance with this subsection shall be deemed to satisfy the requirements for obtaining the appropriate permits required under the Secretary's authority and such permits shall be granted subject to the non-Federal interest's acceptance of the terms and conditions of such permits: Provided, That the Secretary determines that the applicable regulatory criteria and procedures have been satisfied. The Secretary shall monitor any project for which permits are granted under this subsection in order to ensure that such project is constructed (and, in those cases where such activities will not be the responsibility of the Secretary, operated and maintained) in accordance with the terms and conditions of such permits.

[(e) REIMBURSEMENT.—

[(1) GENERAL RULE.—Subject to the enactment of appropriation Acts, the Secretary is authorized to reimburse any non-Federal interest an amount equal to the estimate of Federal share, without interest, of the cost of any authorized harbor or inland harbor improvement, or separable element thereof, including any small navigation project approved pursuant to section 107 of the River and Harbor Act of 1960, constructed under the terms of this section if—

[(A) after authorization of the project (or, in the case of a small navigation project, after completion of a favorable project report by the Corps of Engineers) and before initiation of construction of the project or separable element—

[(i) the Secretary approves the plans of construction of such project by such non-Federal interest, and

[(ii) such non-Federal interest enters into an agreement to pay the non-Federal share, if any, of the cost of operation and maintenance of such project; and

[(B) the Secretary finds before approval of the plans of construction of the project that the project, or separable element, is economically justified and environmentally acceptable.

[(2) MATTERS TO BE CONSIDERED IN REVIEWING PLANS.—In reviewing such plans, the Secretary shall consider budgetary and programmatic priorities, potential impacts on the cost of dredging projects nationwide, and other factors that the Secretary deems appropriate.

[(3) MONITORING.—The Secretary shall regularly monitor and audit any project for a harbor or inland harbor constructed under this subsection by a non-Federal interest in order to ensure that such construction is in compliance with the plans approved by the Secretary, and that costs are reasonable. No reimbursement shall be made unless and until the Secretary has certified that the work for which reimbursement is requested has been performed in accordance with applicable permits and the approved plans.

[(f) OPERATION AND MAINTENANCE.—Whenever a non-Federal interest constructs improvements to any harbor or inland harbor, the Secretary shall be responsible for maintenance in accordance with section 101(b) if—

[(1) the Secretary determines, before construction, that the improvements, or separable elements thereof, are economically justified, environmentally acceptable, and consistent with the purposes of this title;

[(2) the Secretary certifies that the project is constructed in accordance with applicable permits and the appropriate engineering and design standards; and

[(3) the Secretary does not find that the project, or separable element thereof, is no longer economically justified or environmentally acceptable.

[(g) DEMONSTRATION OF NON-FEDERAL INTERESTS ACTING AS AGENT OF SECRETARY.—For the purpose of demonstrating the potential advantages and efficiencies of non-Federal management of projects, the Secretary may approve as many as two proposals pursuant to which the non-Federal interests will undertake part or all of a harbor project authorized by Congress as the agent of the Secretary by utilizing its own personnel or by procuring outside services, so long as the cost of doing so will not exceed the cost of the Secretary undertaking the project.]

* * * * * * *

SEC. 210. AUTHORIZATION OF APPROPRIATIONS.

(a) * * *

* * * * * * *

(c) ASSESSMENT OF OPERATION AND MAINTENANCE NEEDS.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this subsection, and biennially thereafter, the Secretary shall assess the operation and maintenance needs of the harbors referred to in subsection (a)(2).

(2) TYPES OF HARBORS.—In carrying out paragraph (1), the Secretary shall assess the operation and maintenance needs of the harbors used for—

(A) commercial navigation;

(B) commercial fishing;

(C) subsistence, including utilization by Indian tribes (as such term is defined in section 4 of the Indian Self-Deter-

mination and Education Assistance Act (25 U.S.C. 450b)) for subsistence and ceremonial purposes;

(D) use as a harbor of refuge;

(E) transportation of persons;

(F) purposes relating to domestic energy production, including the fabrication, servicing, or supply of domestic offshore energy production facilities;

(G) activities of the Secretary of the department in which the Coast Guard is operating;

(H) public health and safety related equipment for responding to coastal and inland emergencies;

(I) recreation purposes; and

(J) any other authorized purpose.

(3) REPORT TO CONGRESS.—For fiscal year 2015, and biennially thereafter, in conjunction with the President's annual budget submission to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that, with respect to harbors referred to in subsection (a)(2)—

(A) identifies the operation and maintenance costs associated with the harbors, including those costs required to achieve and maintain the authorized length, width, and depth for the harbors, on a project-by-project basis;

(B) identifies the amount of funding requested in the President's budget for the operation and maintenance costs associated with the harbors, on a project-by-project basis;

(C) identifies the unmet operation and maintenance needs associated with the harbors, on a project-by-project basis; and

(D) identifies the harbors for which the President will allocate funding over the next 5 fiscal years for operation and maintenance activities, on a project-by-project basis, including the amounts to be allocated for such purposes.

(d) OPERATION AND MAINTENANCE OF EMERGING HARBOR PROJECTS.—

(1) IN GENERAL.—To the maximum extent practicable, the Secretary shall make expenditures to pay for operation and maintenance costs of the harbors referred to in subsection (a)(2), including expenditures of funds appropriated from the Harbor Maintenance Trust Fund, based on an equitable allocation of funds among all such harbors, regardless of the size or tonnage throughput of the harbor.

(2) CRITERIA.—In determining the equitable allocation of funds under paragraph (1), the Secretary shall—

(A) utilize the information obtained in the assessment conducted under subsection (c);

(B) consider the national and regional significance of harbor operation and maintenance; and

(C) not make such allocation based solely on the tonnage transiting through a harbor.

(3) EMERGING HARBORS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), in making expenditures described in paragraph (1) for each of

fiscal years 2015 and 2016, the Secretary shall allocate not less than 10 percent of the total amount of the expenditures to pay for operation and maintenance costs of emerging harbors.

(B) EMERGING HARBOR DEFINED.—In this paragraph, the term "emerging harbor" means a harbor referred to in subsection (a)(2) that transits less than 1,000,000 tons of commerce annually.

(4) EMERGENCY EXPENDITURES.—Nothing in this subsection may be construed to prohibit the Secretary from making an expenditure to pay for the operation and maintenance costs of a specific harbor, including the transfer of funding from the operation and maintenance of a separate project, if—

(A) the Secretary determines that the action is necessary to address the navigation needs of a harbor where safe navigation has been severely restricted due to an unforeseen event; and

(B) the Secretary provides advance notice and information on the need for the action to the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives and the Committee on Environment and Public Works and the Committee on Appropriations of the Senate.

(5) MANAGEMENT OF GREAT LAKES NAVIGATION SYSTEM.—To sustain effective and efficient operation and maintenance of the Great Lakes Navigation System, including any navigation feature in the Great Lakes that is a Federal responsibility with respect to operation and maintenance, the Secretary shall manage and allocate funding for all of the individually authorized projects in the Great Lakes Navigation System as components of a single, comprehensive system, recognizing the interdependence of the projects.

* * * * * * *

TITLE III—INLAND WATERWAY TRANSPORTATION SYSTEM

* * * * * * *

SEC. 302. INLAND WATERWAYS USERS BOARD.

(a) * * *

[(b) DUTIES.—The Users Board shall meet at least semi-annually to develop and make recommendations to the Secretary regarding construction and rehabilitation priorities and spending levels on the commercial navigational features and components of the inland waterways and inland harbors of the United States for the following fiscal years. Any advice or recommendation made by the Users Board to the Secretary shall reflect the independent judgment of the Users Board. Notwithstanding section 3003 of Public Law104-66 (31 U.S.C. 1113 note; 109 Stat. 734), the Users Board shall, by December 31, 1987, and annually thereafter file such recommendations with the Secretary and with the Congress.

[(c) ADMINISTRATION.—The Users Board shall be subject to the Federal Advisory Committee Act (83 Stat. 770; 5 U.S.C. App.), other than section 14, and, with the consent of the appropriate agency head, the Users Board may use the facilities and services of any Federal agency. Non-Federal members of the Users Board

while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.]

(b) DUTIES OF USERS BOARD.—

(1) IN GENERAL.—The Users Board shall meet not less frequently than semiannually to develop and make recommendations to the Secretary and Congress regarding the inland waterways and inland harbors of the United States.

(2) ADVICE AND RECOMMENDATIONS.—For commercial navigation features and components of the inland waterways and inland harbors of the United States, the Users Board shall provide—

(A) prior to the development of the budget proposal of the President for a given fiscal year, advice and recommendations to the Secretary regarding construction and rehabilitation priorities and spending levels;

(B) advice and recommendations to Congress regarding any completed feasibility report in accordance with section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282) relating to those features and components;

(C) advice and recommendations to Congress regarding an increase in the authorized cost of those features and components;

(D) not later than 60 days after the date of the submission of the budget proposal of the President to Congress, advice and recommendations to Congress regarding construction and rehabilitation priorities and spending levels; and

(E) advice and recommendations on the development of a long-term capital investment program in accordance with subsection (d).

(3) PROJECT DEVELOPMENT TEAMS.—The chairperson of the Users Board shall appoint a representative of the Users Board to serve as an informal advisor to the project development team for a qualifying project or the study or design of a commercial navigation feature or component of the inland waterways and inland harbors of the United States.

(4) INDEPENDENT JUDGMENT.—Any advice or recommendation made by the Users Board to the Secretary shall reflect the independent judgment of the Users Board.

(c) DUTIES OF SECRETARY.—The Secretary shall—

(1) communicate not less than once each quarter to the Users Board the status of the study, design, or construction of all commercial navigation features or components of the inland waterways or inland harbors of the United States; and

(2) submit to the Users Board a courtesy copy of all completed feasibility reports relating to a commercial navigation feature or component of the inland waterways or inland harbors of the United States.

(d) CAPITAL INVESTMENT PROGRAM.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary, in coordination with the Users Board, shall develop and submit to Congress a report describing a 20-year program for making capital investments

on the inland and intracoastal waterways based on the application of objective, national project selection prioritization criteria.

(2) CONSIDERATION.—In developing the program under paragraph (1), the Secretary shall take into consideration the 20-year capital investment strategy contained in the Inland Marine Transportation System (IMTS) Capital Projects Business Model, Final Report published on April 13, 2010, as approved by the Users Board.

(3) CRITERIA.—In developing the plan and prioritization criteria under paragraph (1), the Secretary shall ensure, to the maximum extent practicable, that investments made under the 20-year program described in paragraph (1)—

(A) are made in all geographical areas of the inland waterways system; and

(B) ensure efficient funding of inland waterways projects.

(4) STRATEGIC REVIEW AND UPDATE.—Not later than 5 years after the date of enactment of this subsection, and not less frequently than once every 5 years thereafter, the Secretary, in coordination with the Users Board, shall—

(A) submit to Congress a strategic review of the 20-year program in effect under this subsection, which shall identify and explain any changes to the project-specific recommendations contained in the previous 20-year program (including any changes to the prioritization criteria used to develop the updated recommendations); and

(B) make revisions to the program, as appropriate.

(e) PROJECT MANAGEMENT PLANS.—The chairperson of the Users Board and the project development team member appointed by the chairperson under subsection (b)(3) may sign the project management plan for the qualifying project or the study or design of a commercial navigation feature or component of the inland waterways and inland harbors of the United States.

(f) ADMINISTRATION.—The Users Board shall be subject to the Federal Advisory Committee Act, other than section 14, and, with the consent of the appropriate agency head, the Users Board may use the facilities and services of any Federal agency. For the purposes of complying with such Act, the members of the Users Board shall not be considered special Government employees (as defined in section 202 of title 18, United States Code). Non-Federal members of the Users Board while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

* * * * * * *

TITLE IX—GENERAL PROVISIONS

* * * * * * *

SEC. 902. MAXIMUM COST OF PROJECTS.

[In order to insure] *(a) IN GENERAL.—In order to insure* against cost overruns, each total cost set forth with respect to a project for water resources development and conservation and related purposes authorized to be carried out by the Secretary in this Act or in a law enacted after the date of the enactment of this Act, including the Water Resources Development Act of 1988, or in an amend-

ment made by this Act or any later law with respect to such a project shall be the maximum cost of that project, except that such maximum amount—

(1) * * *

* * * * * * *

(b) CONTRIBUTIONS BY NON-FEDERAL INTERESTS.—Notwithstanding subsection (a), in accordance with section 5 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved June 22, 1936 (33 U.S.C. 701h), the Secretary may accept funds from a non-Federal interest for any authorized water resources development project that has exceeded its maximum cost under subsection (a), and use such funds to carry out such project, if the use of such funds does not increase the Federal share of the cost of such project.

* * * * * * *

SEC. 905. FEASIBILITY REPORTS.

(a) PREPARATION OF REPORTS.—

(1) IN GENERAL.—In the case of any water resources project-related study authorized to be undertaken by the Secretary that results in recommendations concerning a project or the operation of a project and that requires specific authorization by Congress in law or otherwise, the Secretary shall [perform a reconnaissance study and] prepare a feasibility report, subject to section 105 of this Act.

(2) CONTENTS OF FEASIBILITY REPORTS.—A feasibility report shall describe, with reasonable certainty, the economic, environmental, and social benefits and detriments of the recommended plan and alternative plans considered by the Secretary and the engineering features (including hydrologic and geologic information), the public acceptability, and the purposes, scope, and scale of the recommended plan. A feasibility report shall also include the views of other Federal agencies and non-Federal agencies with regard to the recommended plan, a description of a nonstructural alternative to the recommended plan when such plan does not have significant nonstructural features, and a description of the Federal and non-Federal participation in such plan, and shall demonstrate that States, other non-Federal interests, and Federal agencies have been consulted in the development of the recommended plan. *A feasibility report shall include a preliminary analysis of the Federal interest and the costs, benefits, and environmental impacts of the project.*

* * * * * * *

[(b) RECONNAISSANCE STUDIES.—Before initiating any feasibility study under subsection (a) of this section after the date of enactment of this Act, the Secretary shall first perform, at Federal expense, a reconnaissance study of the water resources problem in order to identify potential solutions to such problem in sufficient detail to enable the Secretary to determine whether or not planning to develop a project should proceed to the preparation of a feasibility report. Such reconnaissance study shall include a preliminary analysis of the Federal interest, costs, benefits, and environ-

mental impacts of such project, and an estimate of the costs of preparing the feasibility report. The duration of a reconnaissance study shall normally be no more than twelve months, but in all cases is to be limited to eighteen months.]

* * * * * * *

[SEC. 911. REVIEW OF COST EFFECTIVENESS OF DESIGN.

[During the design of each water resources project which has a total cost in excess of $10,000,000, which is authorized before, on, or after the date of enactment of this Act and undertaken by the Secretary, and on which construction has not been initiated as of the date of enactment of this Act, the Secretary shall require a review of the cost effectiveness of such design. The review shall employ cost control techniques which will ensure that such project is designed in the most cost-effective way for the life of the project.]

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TITLE XI—MISCELLANEOUS PROGRAMS AND PROJECTS

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[SEC. 1117. W.D. MAYO LOCK AND DAM.

[(a) Notwithstanding any other provision of law, the Cherokee Nation of Oklahoma is authorized to design and construct hydroelectric generating facilities at the W.D. Mayo Lock and Dam on the Arkansas River in Oklahoma, as described in the report of the Chief of Engineers dated December 23, 1981: *Provided*, That, the agreement described in subsection (d) of this section is executed by all parties described in subsection (b) of this section.

[(b)(1) Conditioned upon the parties agreeing to mutually acceptable terms and conditions, the Secretary and the Secretary of Energy, acting through the Southwestern Power Administration, may enter into a binding agreement with the Cherokee Nation of Oklahoma under which the Cherokee Nation of Oklahoma agrees—

[(A) to design and initiate construction of the generating facilities referred to in subsection (a) of this section within three years after the date of such agreement,

[(B) to reimburse the Secretary for his costs in—

[(i) approving such design and inspecting such construction, and

[(ii) providing any assistance authorized under subsection (c)(2) of this section, and

[(C) to release and indemnify the United States from any claims, causes of action, or liabilities which may arise from such design or construction.

[(2) Such agreement shall also specify—

[(A) the procedures and requirements for approval and acceptance of such design and construction are set forth,

[(B) the rights, responsibilities, and liabilities of each party to the agreement are set forth, and

[(3) the amount of the payments under subsection (f) of this section, and the procedures under which such payments are to be made, are set forth.

[(c)(1) No Federal funds may be expended for the design or construction of the generating facilities referred to in subsection (a) of

this section prior to the date on which such facilities are accepted by the Secretary under subsection (d) of this section.

[(2) Notwithstanding any other provision of law, the Secretary is authorized to provide, on a reimbursable basis, any assistance requested by the Cherokee Nation of Oklahoma in connection with the design or construction of the generating facilities referred to in subsection (a) of this section.

[(d)(1) Notwithstanding any other provision of law, upon completion of the construction of the generating facilities referred to in subsection (a) of this section, and final approval of such facilities by the Secretary—

[(A) the Cherokee Nation of Oklahoma shall transfer title to such facilities to the United States, and

[(B) the Secretary shall—

[(i) accept the transfer of title to such generating facilities on behalf of the United States, and

[(ii) operate and maintain such facilities.

[(2) The Secretary is authorized to accept title to such facilities only after certifying that the quality of the construction meets all standards established for similar facilities constructed by the Secretary.

[(e) Pursuant to any agreement under subsection (b) of this section, the Southwestern Power Administration shall market the excess power produced by the generating facilities referred to in subsection (a) of this section in accordance with section 5 of the Act of December 22, 1944 (58 Stat. 890; 16 U.S.C. 825s).

[(f) Notwithstanding any other provision of law, the Secretary of Energy, acting through the Southwestern Power Administration, is authorized to pay to the Cherokee Nation of Oklahoma, in accordance with the terms of the agreement entered into under subsection (b) of this section, out of the revenues from the sale of power produced by the generating facilities of the interconnected systems of reservoirs operated by the Secretary and marketed by the Southwestern Power Administration—

[(1) all reasonable costs incurred by the Cherokee Nation of Oklahoma in the design and construction of the generating facilities referred to in subsection (a) of this section, including the capital investment in such facilities and a reasonable rate of return on such capital investment, and

[(2) for a period not to exceed fifty years, a reasonable annual royalty for the design and construction of the generating facilities referred to in subsection (a) of this section.

[(g) Notwithstanding any other provision of law, the Secretary of Energy, acting through the Southwestern Power Administration, is authorized—

[(1) to construct such transmission facilities as necessary to market the power produced at the generating facilities referred to in subsection (a) of this section with funds contributed by non-Federal sources, and

[(2) to repay those funds, including interest and any administrative expenses, directly from the revenues from the sale of power produced by the generating facilities of the interconnected systems of reservoirs operated by the Secretary and marketed by the Southwestern Power Administration.

[(h) There are authorized to be appropriated to the Secretary for the fiscal year in which title to the generating facilities is transferred and accepted under subsection (d) of this section, and for each succeeding fiscal year, such sums as may be necessary to operate and maintain such facilities.]

SEC. 1117. W.D. MAYO LOCK AND DAM.

(a) IN GENERAL.—The Cherokee Nation of Oklahoma may—

(1) design and construct one or more hydroelectric generating facilities at the W.D. Mayo Lock and Dam on the Arkansas River, Oklahoma; and

(2) market the electricity generated from any such facility.

(b) PRECONSTRUCTION REQUIREMENTS.—

(1) PERMITS.—Before the date on which construction of a hydroelectric generating facility begins under subsection (a), the Cherokee Nation shall obtain any permit required under Federal or State law, except that the Cherokee Nation shall be exempt from licensing requirements that may otherwise apply to construction, operation, or maintenance of the facility under the Federal Power Act (16 U.S.C. 791a et seq.).

(2) REVIEW OF PLANS AND SPECIFICATIONS.—The Cherokee Nation may initiate the design or construction of a hydroelectric generating facility under subsection (a) only after the Secretary reviews and approves the plans and specifications for the design and construction.

(c) PAYMENT OF DESIGN AND CONSTRUCTION COSTS.—

(1) IN GENERAL.—The Secretary may accept funds offered by the Cherokee Nation and use such funds to carry out the design and construction of a hydroelectric generating facility under subsection (a).

(2) ALLOCATION OF COSTS.—The Cherokee Nation shall—

(A) bear all costs associated with the design and construction of a hydroelectric generating facility under subsection (a); and

(B) provide any funds necessary for the design and construction to the Secretary prior to the Secretary initiating any activities related to the design and construction.

(d) ASSUMPTION OF LIABILITY.—The Cherokee Nation shall—

(1) hold all title to a hydroelectric generating facility constructed under subsection (a) and may, subject to the approval of the Secretary, assign such title to a third party;

(2) be solely responsible for—

(A) the operation, maintenance, repair, replacement, and rehabilitation of the facility; and

(B) the marketing of the electricity generated by the facility; and

(3) release and indemnify the United States from any claims, causes of action, or liabilities that may arise out of any activity undertaken to carry out this section.

(e) ASSISTANCE AVAILABLE.—The Secretary may provide technical and construction management assistance requested by the Cherokee Nation relating to the design and construction of a hydroelectric generating facility under subsection (a).

(f) THIRD PARTY AGREEMENTS.—The Cherokee Nation may enter into agreements with the Secretary or a third party that the Cher-

okee Nation or the Secretary determines are necessary to carry out this section.

* * * * * * *

SEC. 1156. COST SHARING PROVISIONS FOR THE TERRITORIES.

[The Secretary shall waive] *(a) IN GENERAL.—The Secretary shall waive* local cost-sharing requirements up to $200,000 for all studies and projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) INFLATION ADJUSTMENT.—The Secretary shall adjust the dollar amount specified in subsection (a) for inflation for the period beginning on November 17, 1986, and ending on the date of enactment of this subsection.

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WATER RESOURCES DEVELOPMENT ACT OF 1996

* * * * * * *

TITLE II—GENERAL PROVISIONS

* * * * * * *

SEC. 211. CONSTRUCTION OF [FLOOD CONTROL] *WATER RESOURCES DEVELOPMENT* PROJECTS BY NON-FEDERAL INTERESTS.

(a) AUTHORITY.—Non-Federal interests are authorized to undertake [flood control] *water resources development* projects in the United States, subject to obtaining any permits required pursuant to Federal and State laws in advance of actual construction.

* * * * * * *

(c) COMPLETION OF STUDIES AND DESIGN ACTIVITIES.—In the case of any study or design documents for a [flood control] *water resources development* project that were initiated before the [date of the enactment of this Act] *date of enactment of the Water Resources Reform and Development Act of 2013*, the Secretary may complete and transmit to the appropriate non-Federal interests the study or design documents or, upon the request of such non-Federal interests, terminate the study or design activities and transmit the partially completed study or design documents to such non-Federal interests for completion. Studies and design documents subject to this subsection shall be completed without regard to the requirements of subsection (b).

(d) AUTHORITY TO CARRY OUT IMPROVEMENT.—

(1) IN GENERAL.—

(A) STUDIES AND DESIGN ACTIVITIES UNDER SUBSECTION (b).—

[(i) IN GENERAL.—A non-Federal interest may carry out construction for which studies and design documents are prepared under subsection (b) only if the Secretary approves the project for construction.]

(i) IN GENERAL.—A non-Federal interest may carry out construction for which studies and design documents are prepared under subsection (b) only if—

(I) the Secretary approves the project for construction; and

(II) the project is specifically authorized by Congress.

* * * * * * *

[(B) STUDIES AND DESIGN ACTIVITIES UNDER SUBSECTION (c).—Any non-Federal interest that has received from the Secretary under subsection (c) a favorable recommendation to carry out a flood control project, or separable element of a flood control project, based on the results of completed studies and design documents for the project or element may carry out the project or element if a final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been filed for the project or element.]

(B) STUDIES AND DESIGN ACTIVITIES UNDER SUBSECTION (c).—Any non-Federal interest that has received from the Secretary under subsection (c) a favorable recommendation to carry out a water resources development project, or separable element thereof, based on the results of completed studies and design documents for the project or element may carry out the project or element if—

(i) a final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been filed for the project or element; and

(ii) the project is specifically authorized by Congress.

* * * * * * *

(e) REIMBURSEMENT.—

(1) GENERAL RULE.—Subject to appropriations Acts, the Secretary may reimburse any non-Federal interest an amount equal to the estimate of the Federal share, without interest, of the cost of any authorized [flood control] *water resources development* project, or separable element of a [flood control] *water resources development* project, constructed pursuant to this section and provide credit for the non-Federal share of the project—

(A) * * *

(B) if the Secretary finds, after a review of studies and design documents prepared pursuant to this section, that construction of the project or separable element is economically justified and environmentally acceptable; [and]

(C) if the construction work is substantially in accordance with plans prepared under subsection (b)[.]*; and*

(D) if the project is specifically authorized by Congress.

* * * * * * *

(4) MONITORING.—The Secretary shall regularly monitor and audit any project for [flood control] *water resources development* approved for construction under this section by a non-Federal interest to ensure that such construction is in compliance with the plans approved by the Secretary and that the costs are reasonable.

* * * * * * *

(6) SCHEDULE AND MANNER OF REIMBURSEMENT.—

(A) * * *

[(B) COMMENCEMENT OF REIMBURSEMENTS.—Reimbursements under this section may commence on approval of a project by the Secretary.]

[(C)] *(B)* CREDIT.—[At the request] *In accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), at the request* of a non-Federal interest, the Secretary may reimburse the non-Federal interest by providing credit toward future non-Federal costs of the project*, or toward the non-Federal share of any other authorized water resources development study or project of such non-Federal interest.*

[(D)] *(C)* SCHEDULING.—Nothing in this paragraph affects the discretion of the President to schedule new construction starts.

(f) SPECIFIC PROJECTS.—For the purpose of demonstrating the potential advantages and effectiveness of non-Federal implementation of [flood control] *water resources development* projects, the Secretary shall enter into agreements pursuant to this section with non-Federal interests for development of the following [flood control] *water resources development* projects by such interests:

(1) BERRYESSA CREEK, CALIFORNIA.—The Berryessa Creek element of the project for [flood control] *water resources development*, Coyote and Berryessa Creeks, California, authorized by section 101(a)(5) of the Water Resources Development Act of 1990 (104 Stat. 4606); except that, subject to the approval of the Secretary as provided by this section, the non-Federal interest may design and construct an alternative to such element.

(2) LOS ANGELES COUNTY DRAINAGE AREA, CALIFORNIA.—The project for [flood control] *water resources development*, Los Angeles County Drainage Area, California, authorized by section 101(b) of the Water Resources Development Act of 1990 (104 Stat. 4611).

(3) STOCKTON METROPOLITAN AREA, CALIFORNIA.—The project for [flood control] *water resources development*, Stockton Metropolitan Area, California.

(4) UPPER GUADALUPE RIVER, CALIFORNIA.—The project for [flood control] *water resources development*, Upper Guadalupe River, California.

(5) FLAMINGO AND TROPICANA WASHES, NEVADA.—The project for [flood control] *water resources development*, Las Vegas Wash and Tributaries (Flamingo and Tropicana Washes), Nevada, authorized by section 101(13) of the Water Resources Development Act of 1992 (106 Stat. 4803).

(6) BRAYS BAYOU, TEXAS.—Flood control components comprising the Brays Bayou element of the project for [flood control] *water resources development*, Buffalo Bayou and tributaries, Texas, authorized by section 101(a)(21) of the Water Resources Development Act of 1990 (104 Stat. 4610); except that, subject to the approval of the Secretary as provided by this section, the non-Federal interest may design and construct an alternative to the diversion component of such element.

(7) HUNTING BAYOU, TEXAS.—The Hunting Bayou element of the project for [flood control] *water resources development*, Buffalo Bayou and tributaries, Texas, authorized by such section; except that, subject to the approval of the Secretary as provided by this section, the non-Federal interest may design and construct an alternative to such element.

(8) WHITE OAK BAYOU, TEXAS.—The project for [flood control] *water resources development*, White Oak Bayou watershed, Texas.

(12) PERRIS, CALIFORNIA.—The project for [flood control] *water resources development*, Perris, California.

(13) THORNTON RESERVOIR, COOK COUNTY, ILLINOIS.—An element of the project for [flood control] *water resources development*, Chicagoland Underflow Plan, Illinois.

(14) LAROSE TO GOLDEN MEADOW, LOUISIANA.—The project for [flood control] *water resources development*, Larose to Golden Meadow, Louisiana.

(15) BUFFALO BAYOU, TEXAS.—A project for [flood control] *water resources development*, Buffalo Bayou, Texas, to provide an alternative to the project authorized by the first section of the River and Harbor Act of June 20, 1938 (52 Stat. 804) and modified by section 3a of the Flood Control Act of August 11, 1939 (53 Stat. 1414).

(16) HALLS BAYOU, TEXAS.—A project for [flood control] *water resources development*, Halls Bayou, Texas, to provide an alternative to the project for [flood control] *water resources development*, Buffalo Bayou and tributaries, Texas, authorized by section 101(a)(21) of the Water Resources Development Act of 1990 (104 Stat. 4610).

* * * * * * *

(g) TREATMENT OF FLOOD DAMAGE PREVENTION MEASURES.—For the purposes of this section, flood damage prevention measures at or in the vicinity of Morgan City and Berwick, Louisiana, shall be treated as an authorized separable element of the Atchafalaya Basin feature of the project for [flood control] *water resources development*, Mississippi River and Tributaries.

(h) OPERATION AND MAINTENANCE OF NAVIGATION PROJECTS.—Whenever a non-Federal interest constructs improvements to a harbor or inland harbor, the Secretary shall be responsible for maintenance in accordance with section 101(b) of the Water Resources Development Act of 1986 (33 U.S.C. 2211(b)) if—

(1) the Secretary determines, before construction, that the improvements, or separable elements thereof, are economically justified and environmentally acceptable;

(2) the Secretary certifies that the project is constructed in accordance with applicable permits and the appropriate engineering and design standards;

(3) the Secretary does not find that the project, or separable element thereof, is no longer economically justified or environmentally acceptable; and

(4) the project is specifically authorized by Congress.

(i) IMPLEMENTATION.—All laws and regulations that would apply to the Secretary if the Secretary were carrying out a project shall apply to the non-Federal interest carrying out a project under this section.

(j) NOTIFICATION OF COMMITTEES.—The Secretary shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate prior to initiation of negotiations with a non-Federal interest regarding the utilization of the authorities under this section.

* * * * * * *

WATER RESOURCES DEVELOPMENT ACT OF 1992

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—

* * * * * * *

TITLE II—GENERALLY APPLICABLE PROVISIONS

* * * * * * *

[Sec. 206. Construction of shoreline protection projects by non-Federal interests.]

* * * * * * *

[Sec. 225. Challenge cost-sharing program for the management of recreation facilities.]

225. Contributions by non-Federal interests for management of Corps of Engineers facilities.

TITLE II—GENERALLY APPLICABLE PROVISIONS

* * * * * * *

SEC. 204. REGIONAL SEDIMENT MANAGEMENT.

(a) IN GENERAL.—

(1) * * *

* * * * * * *

(4) REDUCING COSTS.—To reduce or avoid Federal costs, the Secretary shall consider the beneficial use of dredged material in a manner that contributes to the maintenance of sediment resources in the nearby coastal system.

* * * * * * *

[SEC. 206. CONSTRUCTION OF SHORELINE PROTECTION PROJECTS BY NON-FEDERAL INTRESTS.

[(a) AUTHORITY.—Non-Federal interests are authorized to undertake shoreline protection projects on the coastline of the United States, subject to obtaining any permits required pursuant to Federal and State laws in advance of actual construction.

[(b) STUDIES AND ENGINEERING.—

[(1) BY NON-FEDERAL INTERESTS.—A non-Federal interest may prepare, for review and approval by the Secretary, the necessary studies and engineering for any construction to be undertaken under subsection (a).

[(2) BY SECRETARY.—Upon request of an approriate non-Federal interest, the Secretary may undertake all necessary studies and engineering for any construction to be undertaken under subsection (a) and provide technical assistance in obtain-

ing all necessary permits for such construction if the non-Federal interest contracts with the Secretary to furnish the United States funds for the studies and engineering during the period that the studies and engineering will be conducted.

[(c) COMPLETION OF STUDIES.—The Secretary is authorized to complete and transmit to the appropriate non-Federal interests any study for shoreline protection which was initiated before the date of the enactment of this Act or, upon the request of such non-Federal interest, to terminate the study and transmit the partially completed study to the non-Federal interest for completion. Studies subject to this subsection shall be completed without regard to the requirements of subsection (b).

[(d) AUTHORITY TO CARRY OUT IMPROVEMENT.—

[(1) IN GENERAL.—Any non-Federal interest which has received feom the Secretary pursuant to subsection (b) or (c)a favorable recommendation to carry out a shoreline protection project or separable element thereof, based on the results of completed studies and engineering for the project or element,may carry out the project or element if a final environmental impact statement has been filed for the project or element.

[(2) PERMITS.—Any plan of improvement proposed to be implemented in accordance with this subsection shall be deemed to satisfy the requirements for obtaining the appropriate permits required under the Secretary's authority and such permits shall be granted subject to the non-Federal interest's acceptance of the terms and conditions of such permits if the Secretary determines that the applicable regulatory criteria and procedures have been satisfied.

[(3) MONITORING.—The Secretary shall monitor any project for which permits are granted under this subsection in order to ensure that such project is constructed (and, in those cases where such activities will not be the responsibility of the Secretary,operated and maintained) in accordance with the terms and conditions of such permits.

[(e) REIMBURSEMENT.—

[(1) GENERAL RULE.—Subject to the enactment of appropriation Acts, the Secretary is authorized to reimburse any non-Federal interest an amount equal to the estimate of the Federal share, without interest, of the cost of any authorized shoreline protection project, or separable element thereof, constructed under this section—

[(A) if, after authorization and before initiation of construction of the project or separable element, the Secretary approves the plans for construction of such project by such non-Federal interest and enters into a written agreement with the non-Federal interest with respect to the project or separable element (including the terms of cooperation); and

[(B) if the Secretary finds, after a review of studies and engineering prepared pursuant to this section, that construction of the project or separable element is economically justified and environmentally acceptable.

[(2) MATTERS TO BE CONSIDERED IN REVIEWING PLANS.—In reviewing plans under this subsection, the Secretary shall con-

sider budgetary and programmatic priorities and other factors that the Secretary deems appropriate.

[(3) MONITORING.—The Secretary shall regularly monitor and audit any project for shore protection constructed under this section by a non-Federal interest in order to ensure that such construction is in compliance with the plans approved by the Secretary and that the costs are reasonable.

[(4) LIMITATION ON REIMBURSEMENTS.—No reimbursement shall be made under this section unless and until the Secretary has certified that the work for which reimbursement is requested has been performed in accordance with applicable permits or approved plans.]

* * * * * * *

[SEC. 225. CHALLENGE COST-SHARING PROGRAM FOR THE MANAGEMENT OF RECREATION FACILITIES.]

SEC. 225. CONTRIBUTIONS BY NON-FEDERAL INTERESTS FOR MANAGEMENT OF CORPS OF ENGINEERS FACILITIES.

(a) IN GENERAL.—The Secretary is authorized to develop and implement a program to share the cost of [managing recreation facilities] *operating, maintaining, and managing inland navigational facilities, recreational facilities,* and natural resources at water resource development projects under the Secretary's jurisdiction.

(b) COOPERATIVE AGREEMENTS.—To implement the program under this section, the Secretary is authorized to enter into cooperative agreements with non-Federal public and private entities to provide for operation [and management of recreation facilities]*, maintenance, and management of inland navigation facilities, recreational facilities,* and natural resources at civil works projects under the Secretary's jurisdiction where such facilities and resources are being maintained at complete Federal expense.

* * * * * * *

WATER RESOURCES DEVELOPMENT ACT OF 1990

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—

* * * * * * *

TITLE IV—MISCELLANEOUS PROVISIONS

* * * * * * *

[Sec. 404. Demonstration of construction of Federal project by non-Federal interests.]

* * * * * * *

TITLE IV—MISCELLANEOUS PROVISIONS

* * * * * * *

[SEC. 404. DEMONSTRATION OF CONSTRUCTION OF FEDERAL PROJECT BY NON-FEDERAL INTERESTS.

[(a) IN GENERAL.—For purposes of demonstrating the safety benefits and economic efficiencies which would accrue as a consequence of non-Federal management of harbor improvement projects, the Secretary shall enter into agreements with 2 non-Federal interests pursuant to which the non-Federal interests will undertake part or all of a harbor project authorized by law, by utilizing their own personnel or by procuring outside services, if the cost of doing so will not exceed the cost of the Secretary undertaking the project. If proposals for such agreements meet the criteria of section 204 of the Water Resources Development Act of 1986, the agreements shall be entered into not later than 1 year after the date of the enactment of this Act.

[(b) LIMTATION.—At least 1 project carried out pursuant to this section shall pertain to improvements to a major ship channel which carries a substantial volume of both passenger and cargo traffic.

[(c) REPORT.—The Secretary shall transmit to Congress a report regarding the safety benefits and economic efficiencies accrued from entering into agreements with non-Federal interests under this section.]

* * * * * * *

ACT OF JUNE 22, 1936

AN ACT Authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes.

* * * * * * *

FLOOD CONTROL ACT OF 1936

SEC. 5. That pursuant to the policy outlined in sections 1 and 3, the following works of improvement, for the benefit of navigation and the control of destructive flood waters and other purposes, are hereby adopted and authorized to be prosecuted, in order of their emergency as may be designated by the President, under the direction of the Secretary of War and supervision of the Chief of Engineers in accordance with the plans in the respective reports and records hereinafter designated: *Provided*, That penstocks or other similar facilities, adapted to possible future use in the development of adequate electric power may be installed in any dam herein authorized when approved by the Secretary of War upon the recommendation of the Chief of Engineers. *Provided further*, That the Secretary of War is authorized to receive [from States and political subdivisions thereof,] *from a non-Federal interest (as defined in section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b))* such funds as may be contributed by them for work[, which includes planning and design], to be expended in connection with funds appropriated by the United States for any authorized water resources development study or project*, including a project for navigation on the inland waterways,* whenever such work and expenditure may be considered by the Secretary of War, on recommendation of the Chief of Engineers, as advantageous in the public interest, and the plans for any reservoir project may, in the

discretion of the Secretary of War, on recommendation of the Chief of Engineers, be modified to provide additional storage capacity for domestic water supply or other conservation storage, on condition that the cost of such increased storage capacity is contributed by local agencies and that the local agencies agree to utilize such additional storage capacity in a manner consistent with Federal uses and purposes: *And provided further*, That when contributions made [by States and political subdivisions thereof,] *by a non-Federal interest* are in excess of the actual cost of the work contemplated and properly chargeable to such contributions, such excess contributions may, with the approval of the Secretary of War, be returned to the proper representatives of the contributing interests[: *Provided further*, That the term "States" means the several States, the District of Columbia, the commonwealths, territories, and possessions of the United States, and Federally recognized Indian tribes]*: And provided further, That the term "work" means the planning, design, or construction of an authorized water resources development study or project, or the repair, restoration, or replacement of an authorized water resources development project that has been damaged by an event or incident that results in a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)*.

* * * * * * *

ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

* * * * * * *

DIVISION B—ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2012

TITLE I—CORPS OF ENGINEERS—CIVIL

* * * * * * *

GENERAL PROVISIONS—CORPS OF ENGINEERS—CIVIL

(INCLUDING TRANSFERS OF FUNDS)

* * * * * * *

SEC. 111. (a) * * *

[(b) The Secretary shall notify the appropriate committees of Congress prior to initiation of negotiations for accepting contributed funds under 33 U.S.C. 701h.]

* * * * * * *

ACT OF MARCH 4, 1915

AN ACT Making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.

* * * * * * *

[SEC. 4. That the Secretary of War is hereby authorized to receive from private parties such funds as may be contributed by them to be expended in connection with funds appropriated by the United States for any authorized work of public improvement of rivers and harbors whenever such work and expenditure may be considered by the Chief of Engineers as advantageous to the interests of navigation: *Provided,* That when contributions heretofore or hereafter made by local interests for river and harbor improvements, in accordance with specific requirements or under general authority of Congress, are in excess of the actual cost of the work contemplated and properly chargeable to such contributions, such excess contributions may, with the approval of the Secretary of War, be returned to the proper representatives of the contributing interests, unless the provision of law under which the contribution is made requires that the entire contribution be retained by the United States.]

* * * * * * *

SECTION 221 OF THE FLOOD CONTROL ACT OF 1970

SEC. 221. WRITTEN AGREEMENT REQUIREMENT FOR WATER RESOURCES PROJECTS.

(a) COOPERATION OF NON-FEDERAL INTEREST.—

(1) * * *

* * * * * * *

(4) CREDIT FOR IN-KIND CONTRIBUTIONS.—

(A) * * *

* * * * * * *

(C) WORK PERFORMED BEFORE PARTNERSHIP AGREEMENT.—[In any case in which the non-Federal interest is to receive credit under subparagraph (A)(ii) for the cost of work carried out by the non-Federal interest and such work has not been carried out as of the date of enactment of this subparagraph, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such work, and only work carried out following the execution of the agreement shall be eligible for credit.]

(i) CONSTRUCTION.—

(I) IN GENERAL.—In any case in which the non-Federal interest is to receive credit under subparagraph (A) for the cost of construction carried out by the non-Federal interest before execution of a partnership agreement and that construction has not been carried out as of the date of enactment of this clause, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such work and

shall do so prior to the non-Federal interest initiating construction or issuing a written notice to proceed for the construction.

(II) ELIGIBILITY.—Construction that is carried out after the execution of an agreement under subclause (I) and any design activities that are required for that construction, even if the design activity is carried out prior to the execution of the agreement, shall be eligible for credit.

(ii) PLANNING.—

(I) IN GENERAL.—In any case in which the non-Federal interest is to receive credit under subparagraph (A) for the cost of planning carried out by the non-Federal interest before execution of a feasibility cost sharing agreement, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such planning and shall do so prior to the non-Federal interest initiating that planning.

(II) ELIGIBILITY.—Planning that is carried out by the non-Federal interest after the execution of an agreement under subclause (I) shall be eligible for credit.

* * * * * * *

(E) APPLICABILITY.—

(i) * * *

[(ii) LIMITATION.—In any case in which a specific provision of law provides for a non-Federal interest to receive credit toward the non-Federal share of the cost of a study for, or construction or operation and maintenance of, a water resources project, the specific provision of law shall apply instead of this paragraph.]

(ii) LIMITATION.—In any case in which a specific provision of law provides for a non-Federal interest to receive credit toward the non-Federal share of the cost of a study for, or construction or operation and maintenance of, a water resources project, the Secretary shall apply—

(I) the specific provision of law instead of this paragraph; or

(II) at the request of the non-Federal interest, the specific provision of law and such provisions of this paragraph as the non-Federal interest may request.

(iii) STATUTORY CONSTRUCTION.—Nothing in this subparagraph may be construed to affect the applicability of subparagraph (C).

[(b) DEFINITION OF NON-FEDERAL INTEREST.—]

(b) DEFINITIONS.—

(1) NON-FEDERAL INTEREST.—The term "non-Federal interest" means—

[(1)] *(A)* a legally constituted public body (including a federally recognized Indian tribe); or

[(2)] *(B)* a nonprofit entity with the consent of the affected local government,

that has full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform.

(2) WATER RESOURCES PROJECT.—The term "water resources project" includes projects studied, reviewed, designed, constructed, operated and maintained, or otherwise subject to Federal participation under the authority of the civil works program of the Secretary of the Army for the purposes of navigation, flood damage reduction, ecosystem restoration, hurricane and storm damage reduction, water supply, recreation, hydroelectric power, fish and wildlife conservation, water quality, environmental infrastructure, resource protection and development, and related purposes.

(c) Every agreement entered into pursuant to this section shall be [enforcible] *enforceable* in the appropriate district court of the United States.

* * * * * * *

NATIONAL DAM SAFETY PROGRAM ACT

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Dam Safety Program Act".

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) * * *

(2) DAM.—The term "dam"—

(A) * * *

(B) does not include—

(i) * * *

(ii) a barrier described in subparagraph (A) that—

(I) * * *

* * * * * * *

unless the barrier, because of the location of the barrier or another physical characteristic of the barrier, is likely to pose a significant threat to human life or property if the barrier fails (as determined by the [Director] *Administrator*).

(3) [DIRECTOR] *ADMINISTRATOR*.—The term "[Director] *Administrator*" means the [Director] *Administrator* of FEMA.

* * * * * * *

SEC. 3. INSPECTION OF DAMS.

(a) * * *

(b) STATE PARTICIPATION.—On request of a State dam safety agency, with respect to any dam the failure of which would affect the State, the head of a Federal agency shall—

(1) provide information to the State dam safety agency on the construction, operation, [or maintenance] *maintenance, condition, or provision for emergency operations* of the dam; or

* * * * * * *

SEC. 7. INTERAGENCY COMMITTEE ON DAM SAFETY.

(a) ESTABLISHMENT.—There is established an Interagency Committee on Dam Safety—

(1) * * *

(2) chaired by the [Director] *Administrator*.

* * * * * * *

SEC. 8. NATIONAL DAM SAFETY PROGRAM.

(a) IN GENERAL.—The [Director] *Administrator*, in consultation with ICODS and State dam safety agencies, and the Board shall establish and maintain, in accordance with this section, a coordinated national dam safety program. The Program shall—

(1) * * *

* * * * * * *

(b) DUTIES.—The [Director] *Administrator* shall prepare a strategic plan—

(1) * * *

* * * * * * *

(c) OBJECTIVES.—The objectives of the Program are to—

(1) * * *

* * * * * * *

[(4) develop and encourage public awareness projects to increase public acceptance and support of State dam safety programs;]

(4) develop and implement a comprehensive dam safety hazard education and public awareness initiative to assist the public in mitigating against, preparing for, responding to, and recovering from dam incidents;

* * * * * * *

(e) ASSISTANCE FOR STATE DAM SAFETY PROGRAMS.—

(1) IN GENERAL.—To encourage the establishment and maintenance of effective State programs intended to ensure dam safety, to protect human life and property, and to improve State dam safety programs, the [Director] *Administrator* shall provide assistance with amounts made available under section 13 to assist States in establishing, maintaining, and improving dam safety programs in accordance with the criteria specified in paragraph (2).

* * * * * * *

(3) WORK PLANS.—The [Director] *Administrator* shall enter into a agreement with each State receiving assistance under paragraph (2) to develop a work plan necessary for the State dam safety program to reach a level of program performance specified in the agreement.

(4) MAINTENANCE OF EFFORT.—Assistance may not be provided to a State under this subsection for a fiscal year unless the State enters into such agreement with the [Director] *Administrator* as the [Director] *Administrator* requires to ensure that the State will maintain the aggregate expenditures of the State from all other sources for programs to ensure dam safety for the protection of human life and property at or above a level equal to the average annual level of such expenditures for the 2 fiscal years preceding the fiscal year.

(5) APPROVAL OF PROGRAMS.—

(A) SUBMISSION.—For a State to be eligible for assistance under this subsection, a plan for a State dam safety program shall be submitted to the [Director] *Administrator* for approval.

(B) APPROVAL.—A State dam safety program shall be deemed to be approved 120 days after the date of receipt by the [Director] *Administrator* unless the [Director] *Administrator* determines within the 120-day period that the State dam safety program fails to meet the requirements of paragraphs (1) through (3).

(C) NOTIFICATION OF DISAPPROVAL.—If the [Director] *Administrator* determines that a State dam safety program does not meet the requirements for approval, the [Director] *Administrator* shall immediately notify the State in writing and provide the reasons for the determination and the changes that are necessary for the plan to be approved.

(6) REVIEW OF STATE DAM SAFETY PROGRAMS.—Using the expertise of the Board, the [Director] *Administrator* shall periodically review State dam safety programs. If the Board finds that a State dam safety program has proven inadequate to reasonably protect human life and property and the [Director] *Administrator* concurs, the [Director] *Administrator* shall revoke approval of the State dam safety program, and withhold assistance under this subsection, until the State dam safety program again meets the requirements for approval.

(f) BOARD.—

(1) ESTABLISHMENT.—The [Director] *Administrator* shall establish an advisory board to be known as the "National Dam Safety Review Board" to monitor the safety of dams in the United States, to monitor State implementation of this section, and to advise the [Director] *Administrator* on national dam safety policy.

* * * * * * *

(3) VOTING MEMBERSHIP.—The Board shall consist of 11 voting members selected by the [Director] *Administrator* for expertise in dam safety, of whom—

(A) * * *

* * * * * * *

(F) 5 members shall be selected by the [Director] *Administrator* from among State dam safety officials; and

(G) 1 member shall be selected by the [Director] *Administrator* to represent the private sector.

(4) NONVOTING MEMBERSHIP.—The [Director] *Administrator*, in consultation with the Board, may invite a representative of the National Laboratories of the Department of Energy and may invite representatives from Federal or State agencies*, representatives from nongovernmental organizations,* or dam safety experts, as needed, to participate in meetings of the Board.

* * * * * * *

(6) WORK GROUPS.—The [Director] *Administrator* may establish work groups under the Board to assist the Board in accomplishing its goals. The work groups shall consist of mem-

bers of the Board and other individuals selected by the [Director] *Administrator*.

* * * * * * *

SEC. 9. RESEARCH.

(a) IN GENERAL.—The [Director] *Administrator*, in cooperation with the Board, shall carry out a program of technical and archival research to develop and support—

(1) * * *

* * * * * * *

(b) CONSULTATION.—The [Director] *Administrator* shall provide for State participation in research under subsection (a) and periodically advise all States and Congress of the results of the research.

SEC. 10. DAM SAFETY TRAINING.

At the request of any State that has or intends to develop a State dam safety program, the [Director] *Administrator* shall provide training for State dam safety staff and inspectors.

SEC. 11. REPORTS.

Not later than 90 days after the end of each odd-numbered fiscal year, the [Director] *Administrator* shall submit a report to Congress that—

(1) * * *

* * * * * * *

(4) includes any recommendations for legislative and other action that the [Director] *Administrator* considers necessary.

* * * * * * *

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) NATIONAL DAM SAFETY PROGRAM.—

(1) * * *

(2) ALLOCATION.—

(A) * * *

* * * * * * *

(C) DETERMINATION.—The [Director] *Administrator* and the Board shall determine the amount allocated to States.

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FREEDOM TO FISH ACT

* * * * * * *

SEC. 2. RESTRICTED AREAS AT CORPS OF ENGINEERS DAMS.

(a) * * *

(b) EXISTING RESTRICTED AREA.—If the Secretary has established a restricted area or modified an existing restricted area during the period beginning on August 1, 2012, and ending on the day before the date of enactment of this Act, the Secretary shall—

(1) cease implementing and enforcing the restricted area [until the date that is 2 years after the date of enactment of this Act]; and

* * * * * * *

(c) ESTABLISHING NEW *OR MODIFIED* RESTRICTED AREA.—If, on or after the date of enactment of this Act, the Secretary establishes any *new or modified* restricted area, the Secretary shall—

(1) * * *

* * * * * * *

(3) not implement or enforce the restricted area [until the date that is 2 years after the date of enactment of this Act] *until the Secretary has complied with the provisions of this subsection*; and

* * * * * * *

WATER RESOURCES DEVELOPMENT ACT OF 1974

* * * * * * *

SEC. 22. (a) * * *

* * * * * * *

(e) LEVEE SAFETY.—

(1) IN GENERAL.—At the request of a State or political subdivision thereof, and in consultation with that State and appropriate non-Federal interests, the Secretary may provide technical assistance to a State to—

(A) encourage effective State or local programs intended to ensure levee safety to protect human life and property;

(B) assist the State or political subdivision in establishing and carrying out a levee safety program; or

(C) improve an existing State or local levee safety program.

(2) PURPOSES.—The purposes of technical assistance provided under this subsection shall be—

(A) to ensure that human lives and property that are protected by new and existing levees are safe;

(B) to encourage the use of appropriate engineering policies and procedures for levee site investigation, design, construction, operation and maintenance, and emergency preparedness;

(C) to encourage effective levee safety programs in a State;

(D) to develop and support public education and awareness projects to increase public acceptance and support of levee safety programs;

(E) to build public awareness of the residual risks associated with living in levee protected areas; and

(F) to develop technical assistance materials, seminars, and guidelines to improve the security of levees in the United States.

(3) FEDERAL GUIDELINES.—

(A) IN GENERAL.—In carrying out this subsection, the Secretary, in consultation with States and non-Federal interests, shall establish Federal guidelines relating to levee safety.

(B) INCORPORATION OF FEDERAL ACTIVITIES.—The guidelines established under subparagraph (A) shall encompass,

to the maximum extent practicable, activities and practices carried out by appropriate Federal agencies.

(C) INCORPORATION OF STATE AND LOCAL ACTIVITIES.—The guidelines established under subparagraph (A) shall encompass, to the maximum extent practicable—

(i) the activities and practices carried out by States, local governments, and the private sector to safely build, regulate, operate, and maintain levees; and

(ii) Federal activities that facilitate State efforts to develop and implement effective State programs for the safety of levees, including levee inspection, levee rehabilitation, locally developed flood plain management, and public education and training programs.

(D) REVIEW.—The Secretary shall allow States and non-Federal interests, including appropriate stakeholders, to review and comment on the guidelines established under subparagraph (A) before the guidelines are made final.

(4) ASSISTANCE FOR STATE LEVEE SAFETY PROGRAMS.—

(A) ELIGIBILITY.—To be eligible for technical assistance under this subsection, a State shall—

(i) be in the process of establishing or have in effect a State levee safety program under which a State levee safety agency, in accordance with State law, carries out the guidelines established under paragraph (3); and

(ii) allocate sufficient funds in the budget of that State to carry out such State levee safety program.

(B) WORK PLANS.—The Secretary shall enter into an agreement with each State receiving technical assistance under this subsection to develop a work plan necessary for the State levee safety program of that State to reach a level of program performance that meets the guidelines established under paragraph (3).

(C) INSPECTION PROGRAMS.—The Secretary shall work with States receiving technical assistance under this subsection to develop State technical guidelines for levee inspection programs that—

(i) address hazard classifications and technically based frameworks for levee assessment; and

(ii) are incorporated into State levee safety programs.

(D) MAINTENANCE OF EFFORT.—Technical assistance may not be provided to a State under this subsection during a fiscal year unless the State enters into an agreement with the Secretary to ensure that the State will maintain during that fiscal year aggregate expenditures for programs to ensure levee safety that are at or above the average annual level of such expenditures for the State for the 2 fiscal years preceding that fiscal year.

[(e)**]** *(f)* For the purposes of this section, the term "State" means theseveral States of the United States, Indian tribes, the Commonwealth of PuertoRico, Guam, American Samoa, the Virgin Islands, the Commonwealthof the Northern Marianas, and the Trust Territory of thePacific Islands.

RIVER AND HARBOR ACT OF 1958

TITLE I—RIVERS AND HARBORS

* * * * * * *

SEC. 104. (a) There is hereby authorized a comprehensive program to provide for control and progressive eradication of noxious aquatic plant growths *and aquatic invasive species* from the navigable waters, tributary streams, connecting channels, and other allied waters of the United States, in the combined interest of navigation, flood control, drainage, agriculture, fish and wildlife conservation, public health, and related purposes, including continued research for development of the most effective and economic control measures, to be administered by the Chief of Engineers, under the direction of the Secretary of the Army, in cooperation with other Federal and State agencies. Local interests shall agree to hold and save the United States free from claims that may occur from control operations and to participate to the extent of 30 per centum of the cost of such operations. Costs for research and planning undertaken pursuant to the authorities of this section shall be borne fully by the Federal Government.

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INTERNAL REVENUE CODE OF 1986

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Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—Establishment of Trust Funds

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SEC. 9505. HARBOR MAINTENANCE TRUST FUND.

(a) * * *

* * * * * * *

(c) EXPENDITURES FROM HARBOR MAINTENANCE TRUST FUND.—Amounts in the Harbor Maintenance Trust Fund shall be available, as provided by appropriation Acts, for making expenditures—

(1) to carry out section 210 of the Water Resources Development Act of 1986 **[**(as in effect on the date of the enactment of the Water Resources Development Act of 1996)**]**,

* * * * * * *

COMMITTEE CORRESPONDENCE

PAUL RYAN, WISCONSIN
CHAIRMAN
AUSTIN SMYTHE, STAFF DIRECTOR
(202) 226-7270

CHRIS VAN HOLLEN, RANKING MEMBER
THOMAS S. KAHN, MINORITY STAFF DIRECTOR
(202) 226-7200

U.S. House of Representatives
COMMITTEE ON THE BUDGET
Washington, DC 20515

September 27, 2013

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Shuster,

I am writing concerning H.R. 3080, the *Water Resources Reform and Development Act of 2013 (WRRDA)*, which was marked-up by the Committee on Transportation and Infrastructure on September 19, 2013.

In order to expedite House consideration of H.R. 3080, the Committee on the Budget will forgo action on the bill. This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 3080, and would ask that a copy of our exchange of letters on this matter be included in the *Congressional Record* during Floor consideration.

Sincerely,

Paul Ryan
Chairman

(202) 226-7270 207 Cannon House Office Building e-mail: budget@mail.house.gov

PRINTED ON RECYCLED PAPER

Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Nick J. Rahall, II
Ranking Member

September 30, 2013

The Honorable Paul Ryan
Chairman
Committee on the Budget
207 Cannon House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter regarding H.R 3080, the *Water Resources Reform and Development act of 2013* (WRRDA), which was ordered to be reported by the Committee on Transportation and Infrastructure on September 19, 2013. I appreciate your willingness to support expediting floor consideration of this legislation.

I acknowledge that by forgoing action on this legislation, the Committee on the Budget will not in any way be prejudiced with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I appreciate your cooperation regarding this legislation and I will include our letters on H.R. 3080 in the *Congressional Record* during floor consideration of this bill.

Sincerely,

Bill Shuster
Chairman

cc: The Honorable John Boehner
The Honorable Nick J. Rahall, II
The Honorable Chris Van Hollen
Mr. Thomas J. Wickham, Jr., Parliamentarian

DOC HASTINGS, WA
CHAIRMAN
DON YOUNG, AK
LOUIE GOHMERT, TX
ROB BISHOP, UT
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JEFF FORBES, VA
PAUL C. BROUN, GA
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SCOTT R. TIPTON, CO
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SAM ADAMS, FL
MARKWAYNE MULLIN, OK
CHRIS STEWART, UT
STEVE DAINES, MT
KEVIN CRAMER, ND
DOUG LAMBORN, CO
JASON SMITH, MO

TODD TAYLOR
CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

October 3, 2013

PETER A. DEFAZIO, OR
RANKING DEMOCRATIC MEMBER
ENI F.H. FALEOMAVAEGA, AS
FRANK PALLONE, JR., NJ
GRACE F. NAPOLITANO, CA
RUSH HOLT, NJ
RAÚL M. GRIJALVA, AZ
MADELEINE Z. BORDALLO, GU
JIM COSTA, CA
GREGORIO KILILI CAMACHO SABLAN, CNMI
NAN A.S. HAYWORTH, NY
PEDRO R. PIERLUISI, PR
COLLEEN W. HANABUSA, HI
TONY CÁRDENAS, CA
STEVEN HORSFORD, NV
JARED HUFFMAN, CA
RAÚL RUIZ, CA
CAROL SHEA-PORTER, NH
ALAN LOWENTHAL, CA
JOE GARCIA, FL
MATTHEW CARTWRIGHT, PA

PENNY DODGE
DEMOCRATIC STAFF DIRECTOR

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to review the relevant provisions of the text of H.R. 3080, the Water Resources Reform and Development Act of 2013. As you are aware, the bill was primarily referred to the Committee on Transportation and Infrastructure, while the Committee on Natural Resources received an additional referral.

I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner, and, accordingly, I agree to discharge H.R. 3080 from further consideration by the Committee on Natural Resources. I do so with the understanding that by discharging the bill, the Committee on Natural Resources does not waive any future jurisdictional claim on this or similar matters. Further, the Committee on Natural Resources reserves the right to seek the appointment of conferees, if it should become necessary.

I ask that you insert a copy of our exchange of letters into the bill report filed by the Committee on Transportation and Infrastructure, as well as in the Congressional Record during consideration of this measure on the House floor.

Thank you for your courtesy in this matter and I look forward to continued cooperation between our respective committees.

Sincerely,

Doc Hastings
Chairman

cc: The Honorable John A. Boehner, Speaker
The Honorable Peter A. DeFazio
The Honorable Nick J. Rahall, II
The Honorable Thomas J. Wickham, Parliamentarian

Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Nick J. Rahall, II
Ranking Member

October 4, 2013

The Honorable Doc Hastings
Chairman
Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter regarding H.R 3080, the *Water Resources Reform and Development Act of 2013* (WRRDA), which was ordered to be reported by the Committee on Transportation and Infrastructure on September 19, 2013. I appreciate your willingness to support expediting the consideration of this legislation on the House floor.

I acknowledge that by discharging the bill, the Committee on Natural Resources does not waive any future jurisdictional claim on this or similar matters. In addition, I recognize that the Committee on Natural Resources reserves the right to seek the appointment of conferees.

I appreciate your cooperation regarding this legislation and I will include our letters on H.R. 3080 in the bill report filed by the Committee on Transportation and Infrastructure, as well as in the *Congressional Record* during consideration of this measure on the House floor.

Sincerely,

Bill Shuster

Bill Shuster
Chairman

cc: The Honorable John Boehner
The Honorable Nick J. Rahall, II
The Honorable Peter A. DeFazio
Mr. Thomas J. Wickham, Jr., Parliamentarian

DAVE CAMP, MICHIGAN,
CHAIRMAN

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JIM RENACCI, OHIO

JENNIFER SAFAVIAN,
STAFF DIRECTOR

Congress of the United States
U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS
1102 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-3625
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JANICE MAYS,
MINORITY CHIEF COUNSEL

October 17, 2013

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Shuster,

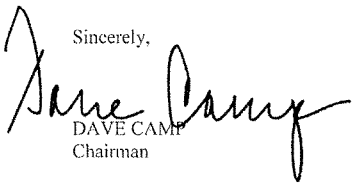
I am writing concerning H.R. 3080, the "Water Resources Reform and Development Act of 2013," which may be scheduled for floor consideration as early as next week.

As you know, the Committee on Ways and Means has jurisdiction over the Internal Revenue Code 1986. Section 201 of this bill amends the Internal Revenue Code by modifying the Harbor Maintenance Trust Fund expenditure authority. However, in order to expedite this legislation for floor consideration, the Committee will forgo action on this bill. This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 3080, and would ask that a copy of our exchange of letters on this matter be included in the

Congressional Record during floor consideration.

Sincerely,



DAVE CAMP
Chairman

cc: The Honorable John Boehner
The Honorable Eric Cantor
The Honorable Kevin McCarthy
The Honorable Nancy Pelosi
The Honorable Steny Hoyer
The Honorable Nick J. Rahall, II
The Honorable Sander M. Levin
Mr. Thomas J. Wickham, Jr., Parliamentarian

Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Nick J. Rahall, II
Ranking Member

October 18, 2013

The Honorable Dave Camp
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter regarding H.R 3080, the *Water Resources Reform and Development Act of 2013* (WRRDA), which was ordered to be reported by the Committee on Transportation and Infrastructure on September 19, 2013. I appreciate your willingness to support expediting the consideration of this legislation on the House floor.

I acknowledge that by forgoing action on this bill, the Committee on Ways and Means will not in any way be prejudiced with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I appreciate your cooperation regarding this legislation and I will include our letters on H.R. 3080 in the bill report filed by the Committee on Transportation and Infrastructure, as well as in the *Congressional Record* during consideration of this measure on the House floor.

Sincerely,

Bill Shuster
Chairman

cc: The Honorable John Boehner
The Honorable Nick J. Rahall, II
The Honorable Sander M. Levin
Mr. Thomas J. Wickham, Jr., Parliamentarian

ADDITIONAL VIEWS

H.R. 3080 is a good bill, and one that I am grateful to Chairman Shuster, Ranking Member Rahall, and Subcommittee Chairman Gibbs for the opportunity to participate in drafting. It is a bill that I supported during the Committee markup, and one that I expect to support during consideration on the House Floor.

It is not the bill that my caucus would have written on its own, and I am certain it is not the bill that others on the Committee would have independently written, either. However, H.R. 3080 does reflect the better traditions of this Committee, where members from both sides of the aisle come to the table, with a blank sheet of paper, to actively participate in the creation of legislation. That is how this Committee was so often successful in the past, and how it can be effective going forward into larger and more complex issues. The process our Chairman used in the creation of H.R. 3080 should be a model on how the rest of Congress should operate.

In addition, this bill shows that Congress still can roll-up-our-sleeves, on a bipartisan basis, and get things done when it chooses to do so.

Finally, H.R. 3080 is a bill that moves us forward to enactment of a water resources development act—something that has been lamentably absent over the past 6 years.

I am providing these supplemental views to highlight one area where, in my view, continued Congressional and administration attention needs to be placed—addressing the challenges facing the Harbor Maintenance Trust Fund and the Inland Waterways Trust Fund.

Over the past few years, the Subcommittee on Water Resources and Environment has held numerous hearings and roundtables on the challenges facing these user-funded navigation trust funds, which, ironically, are facing the exact opposite problems—one that is spending-down far less than it is collecting, growing a sizable surplus of unspent harbor maintenance revenues at the same time there is a growing backlog of unmet maintenance needs, and the other with insufficient resources to address ongoing inland waterways construction projects.

When Congress created these trust funds, it entered into an agreement with shippers and other industries that the fees and taxes collected from these interests would be used to support the nation's network of ports and inland waterways. Yet, shippers, users, and our nation's ports argue that the Federal government has not held up its end of the agreement.

Over the past few years, Federal investments in inland waterways and coastal ports, both in terms of real and inflationary-adjusted value, have declined. This lack of adequate investment has impacted the availability and reliability of domestic ports (large and small) and waterways, and is having significant short- and

long-term implications on our national, regional, and local economies and global competitiveness. On this point, I believe we all agree.

H.R. 3080 will provide *some relief* to our inland and coastal harbors; however, this legislation does not solve the challenges facing these two trust funds, and more work remains.

Specifically, H.R. 3080 includes provisions encouraging increased appropriations from the Harbor Maintenance Trust Fund for necessary operation and maintenance activities at our nation's ports—starting at 65 percent of collections in 2014 and increasing to 80 percent of collections by 2020. This is a step in the right direction, but does not accomplish the goal of full utilization of annual Harbor Maintenance Tax collections for which many members strongly advocate. Even at the upper limit of utilization in H.R. 3080, more revenues will be collected into the Harbor Maintenance Trust Fund than are expended for harbor maintenance needs.

In addition, because the mechanism in H.R. 3080 for expending additional revenues relies on the current budgetary and appropriations process, this Committee must remain vigilant that the changes proposed in this bill do not further erode the ability of the Corps to carry out construction projects, such as those necessary to deepen our nation's ports to accommodate the post-Panamax vessels that will come once the Panama Canal expansion is complete.

As a result of discretionary budget caps on appropriations bills, any increase in one account of the Corps (such as the operation and maintenance account) would cause a corresponding decrease in other Corps' accounts (including the largest remaining account of the Corps—the construction account). To address the proposed increase in Harbor Maintenance Trust Fund expenditures, H.R. 3080 includes "Sense of the Congress" language that "any increase in harbor maintenance programs . . . shall result from an overall increase in appropriations from the civil works program of the Corps of Engineers and not from similar reductions in the appropriations for other programs, projects, and activities" of the Corps. Without such protections, according to the Corps, any increase in Trust Fund expenditures "would have to be offset elsewhere, in either the Civil Works program or another program in the Energy and Water Development Appropriations Act." (*See attached letter from Assistant Secretary of the Army, Jo-Ellen Darcy, dated February 21, 2012.*)

At the Committee markup of H.R. 3080, I urged stakeholders and members, alike, to lock arms and encourage our colleagues on the Budget and Appropriations Committees to fully fund both the Corps' operation and maintenance account as well as its construction account, otherwise, members may awake to the unintended consequences of our efforts in this bill.

Yet, in the long term, rather than "robbing Peter to pay Paul," Congress should instead pursue a strategy that ensures both full-utilization of the Harbor Maintenance Trust Fund collections as well as robust appropriations for the Corps' construction account.

One way to accomplish this would be to designate some or all of the annual collections to the Fund as mandatory spending. Congress could direct the Secretary to expend Harbor Maintenance Trust Fund collections outside of the normal discretionary budget

caps, as it has for other transportation trust funds, such as the Highway Trust Fund. In practice, if Congress were to designate some portion of Harbor Maintenance Trust Fund expenditures as outside the normal discretionary budget caps, any such expenditure would not have to compete with other appropriations within the Corps' discretionary budget allocation. In essence, Congress would be using the Harbor Maintenance Trust Fund as a real trust fund, where user fees are dedicated and expended for their intended purposes.

In previous years, this Committee has reported bipartisan legislation (H.R. 842, the Truth in Budgeting Act, 104th Congress) that would have accomplished this same goal—putting the "trust" back in the transportation trust funds. What was said about that bill is equally as important today—that using the unspent Trust Fund balances to achieve savings within the overall unified budget of the United States breaks faith with the transportation users who have paid into the trust funds with the expectation that they will be used for transportation purposes.

As both Chairman Shuster and I noted during the Committee markup, taking some or all of the Harbor Maintenance Trust Fund collections off-budget will have a budgetary cost—the scope of which depends on how this is accomplished; however, if we truly want to ensure that Harbor Maintenance Trust Fund collections are used, in a timely manner, to promote efficiency at our nation's harbors, and to avoid having this occur at the expense of the Corps' construction accounts, a logical way to do this is to take all or portions of the Harbor Maintenance Trust Fund off budget.

Similarly, H.R. 3080 includes several reforms for the development and implementation of navigation projects on the inland waterways system. However, H.R. 3080 makes little headway in addressing the leading concern raised by users of the inland waterway system at multiple hearings held before the Subcommittee on Water Resources and Environment—the lack of available funding to carry out projects on the inland system.

As several witnesses before Subcommittee testified, the largest limiting factor in carrying out inland waterways projects is the lack of readily-available resources in the Inland Waterways Trust Fund to carry out the backlog of construction and rehabilitation projects. For example, when a representative of an inland waterways user group was recently asked the question of what single recommendation could be made to speed up navigation projects, his response was simple—funding.

It is without question that failure to fund projects in a sufficient and timely fashion at critical stages of development results in construct delays, inefficient utilization of resources, and increased total costs of completed projects. As Major General Michael Walsh recently testified before the Subcommittee, if Congress inefficiently provides funding to the Corps, projects take longer to complete and wind up costing more than they would if funding were provided in a more consistent manner. However, when the opposite is true and the Corps is provided with all the necessary resources, such as was the case in the aftermath of Hurricane Katrina in the reconstruction of flood control structures for the City of New Orleans, projects generally came in on-time and under budget.

The reality is that, based on current revenues to the Inland Waterways Trust Fund, the administration (regardless of party) is limited in what it can do to accelerate project delivery other than constrain the pipeline of ongoing projects. For example, in the fiscal year 2014 budget request, the administration provides a total of $176 million for a limited number of inland waterways projects—including a transfer of the entire $93 million balance from the Inland Waterways Trust Fund. According to hearing testimony from the Assistant Secretary of the Army (Civil Works), Jo-Ellen Darcy, this is the "maximum amount that is affordable within the projected Trust Fund revenue under existing law."

To reverse this trend, we must ensure that sufficient resources are made available for Corps' projects throughout the study, design, and construction phases.

While H.R. 3080 does touch on this concern through multiple studies looking at long-term options for funding inland waterways projects, a short-term fix to this challenge, and one endorsed by the users of the inland system and others, is to increase the current user fee on fuel used while operating on the inland system.

In September, 2013, a significant number of business interests, inland waterways users, and agricultural commodity groups cosigned a letter to the Chairman and Ranking Member of the Committee on Ways and Means calling for a 6-to-9 cent increase in the current 20-cent-per-gallon user fee that funds the Inland Waterways Trust Fund. (*See attached letter from several inland waterways stakeholders, dated September 24, 2013.*) This would represent a 30 to 45 percent increase in the current user fee, and, at the 9-cent per gallon increase, would just be sufficient to restore the inflationary-adjusted value of the current 20-cent-per-gallon to the level when it was established in 1995.

In addition, other organizations, such as the American Society of Civil Engineers, have urged Congress in testimony to go even further and ensure that, in addition to increasing the current user fee, Congress also include a provision to index the user fee to the Consumer Price Index, and that the fee be adjusted every two years to avoid any future erosion of the value as a result of inflation.

I recognize the concerns raised by Chairman Shuster that increasing the current user fee involves the participation of other Congressional committees and was not possible in the Committee markup of H.R. 3080. However, I am also encouraged by the Chairman's willingness to examine options to address funding in the Inland Waterways Trust Fund in the future.

In my view, the fact that we continue to rely on user fee rates that were established almost 20 years ago to finance critical investments on our inland system is not sustainable.

I also believe that much of the hand-wringing about the causes of project delay, both in the inland waterway system and beyond, would be resolved if sufficient funding were made available for these projects at critical times during project study and delivery.

The solutions for many project development and implementation challenges are readily apparent—the question, then, is how Congress will respond to these solutions, and whether we will take the steps necessary to achieve what I believe we all want—an efficient

and sustainable system of water resources projects to serve the needs of our nation.

TIM BISHOP,
Ranking Member, Subcommittee on Water Resources and Environment.

Waterways Council, Inc.
801 N. Quincy Street, Suite 200
Arlington, VA 22203; (703) 373-2261
waterwayscouncil@vesselalliance.com

September 24, 2013

The Honorable Dave Camp
Chairman
House Ways & Means Committee
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Sander Levin
Ranking Member
House Ways & Means Committee
110 Longworth House Office Building
Washington, DC 20515

Dear Chairman Camp and Ranking Member Levin:

Now that the House Transportation & Infrastructure Committee has acted on a Water Resources Reform and Development Act (WRRDA), there is an urgent need for the revenue committees to act to increase the user fee for modernizing our nation's inland waterways.

The undersigned organizations strongly support an increase in the user fee that barge and towing companies pay into the Inland Waterways Trust Fund.

This user fee – currently 20-cents-per-gallon of fuel used while operating on the inland system — should be increased to 26- to 29-cents-per-gallon. This amount is matched by General Treasury Funds and is dedicated to new construction and major rehabilitation of the inland system. This user fee increase is supported by those who pay it – just 300 commercial operators – while the entire nation benefits, from hydropower, municipal water supply, recreational boating and fishing, flood control, national security, and waterfront property development.

The inland waterways provide the most cost-competitive transportation option for our bulk commodities used in America and exported to marketplaces worldwide. The facts are clear:

- ✦ 60% of the nation's export-bound grain is transported on the inland waterways.
- ✦ An effective and efficient water transport system is essential to supply American farmers with fertilizer for Spring and Fall planting seasons.
- ✦ Farmers depend on our waterways' infrastructure to compete and win against producers outside the USA.
- ✦ The soon to be completed Panama Canal expansion will create opportunities for increased American trade, but not if our channels are not dredged and our locks and dams are not functioning.
- ✦ American family-wage jobs depend on operational ports and inland waterways.
- ✦ The waterways are vital to our manufacturing sectors and to the construction industry.
- ✦ American consumers benefit from transportation cost-savings made possible by the inland waterways; for every $1 invested in our inland waterways, $10 is returned in national benefits.

Most of America's locks and dams were built in the 1920s and 1930s, yet are used to transport 21st century cargoes that fuel our modern economy. This critical component of the transportation supply chain needs reinvestment and recapitalization, and a WRRDA bill that joins industry supported project delivery reforms with an industry sought increase in the user fee it pays is fiscally responsible.

We hope that the Members of the House Ways & Means Committee support inclusion of a user fee increase in the WRRDA bill that passes the House.

Sincerely,

U.S. CHAMBER OF COMMERCE
Manufacturers
INDIANA SOYBEAN ALLIANCE
NOPA NATIONAL OILSEED PROCESSORS ASSOCIATION
INDIANA CORN GROWERS ASSOCIATION
WATERWAYS COUNCIL, INC.
U.S. CANOLA ASSOCIATION
MissouriCorn Growers Association
NCFC National Council of Farmer Cooperatives
NORTH AMERICA'S BUILDING TRADES UNIONS Value on Display. Every Day.
National Barley Growers Association
Pennsylvania Farm Bureau

National Organizations: Agricultural Retailers Association • American Farm Bureau Federation • American Soybean Association • American Waterways Operators • Associated General Contractors of America • Building and Construction Trades Department, AFL-CIO • Carpenters' District Council of St. Louis & Vicinity • The Fertilizer Institute • GROWMARK, Inc. • International Union of Operating Engineers • National Association of Manufacturers • National Association of Wheat Growers • National Barley Growers Association • National Corn Growers Association • National Council of Farmer Cooperatives • National Grain & Feed Association • National Oilseed Processors Association • The United Association of Plumbers & Pipefitters • United Brotherhood of Carpenters • US Canola Association • US Chamber of Commerce • US Dry Bean Council • Waterways Council, Inc.

State Organizations: Alabama Soybean and Corn Association • Colorado Corn Growers Association • Corn Producers Association of Texas • Illinois Corn Growers Association • Illinois Farm Bureau • Indiana Corn Growers Association • Indiana Soybean Alliance • Iowa Corn Growers Association • Kentucky Corn Growers Association • Missouri Corn Growers Association • Nebraska Corn Board • Ohio Corn & Wheat Growers Association • Ohio Soybean Association • Pennsylvania Farm Bureau

City/County Organizations: Greater New Orleans, Inc. • Adams County (Illinois) Farm Bureau • Brown County (Illinois) Farm Bureau • Calhoun County (Illinois) Farm Bureau • Cass County (Illinois) Farm Bureau • Christian County (Illinois) Farm Bureau • Cook County (Illinois) Farm Bureau • Crawford County (Illinois) Farm Bureau • Cumberland County (Illinois) Farm Bureau • Ford-Iroquois County (Illinois) Farm Bureau • Hancock County (Illinois) Farm Bureau • Henry County (Illinois) Farm Bureau • Jackson County (Illinois) Farm Bureau • Kankakee County (Illinois) Farm Bureau • Knox County (Illinois) Farm Bureau • LaSalle County (Illinois) Farm Bureau • Lawrence County (Illinois) Farm Bureau • Lee County (Illinois) Farm Bureau • Livingston County (Illinois) Farm Bureau • Marshall-Putnam County (Illinois) Farm Bureau • Mason County (Illinois) Farm Bureau • Massac County (Illinois) Farm Bureau • McHenry County (Illinois) Farm Bureau • McLean County (Illinois) Farm Bureau • Menard County (Illinois) Farm Bureau • Mercer County (Illinois) Farm Bureau • Monroe County (Illinois) Farm Bureau • Morgan County (Illinois) Farm Bureau • Moultrie County (Illinois) Farm Bureau • Peoria County (Illinois) Farm Bureau • Pike County (Illinois) Farm Bureau • Pulaski-Alexander County (Illinois) Farm Bureau • Richland County (Illinois) Farm Bureau • Rock Island County (Illinois) Farm Bureau • Sangamon County (Illinois) Farm Bureau • Scott County (Illinois) Farm Bureau • St. Clair County (Illinois) Farm Bureau • Union County (Illinois) Farm Bureau • Vermilion County (Illinois) Farm Bureau • Wayne County (Illinois) Farm Bureau • White County (Illinois) Farm Bureau • Will County (Illinois) Farm Bureau • Winnebago-Boone County (Illinois) Farm Bureau

cc: Members of the House Ways & Means Committee

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

FEB 21 2012

Honorable Timothy H. Bishop
United States House of Representatives
306 Cannon House Office Building
Washington, D.C. 20314

Dear Representative Bishop:

This is in response to your letter dated February 14, 2012 to Major General Michael Walsh, Deputy Commanding General, Civil and Emergency Operations. You asked if the substantive provisions of H.R. 104, "Realizing America's Maritime Promise" (RAMP) were enacted, as currently drafted, would the legislation have an adverse impact on other business lines and missions of the Civil Works program of the Army Corps of Engineers. I am responding on behalf of Major General Walsh.

Let me be clear that I am responding to your request for information on the potential impacts of H.R. 104, but I am not providing a statement of an Army or Administration position on the bill, because no Army or Administration position has been developed at this time.

First, under current law, spending from the Harbor Maintenance Trust Fund (HMTF) is included in the President's Budget and is dependent on Congressional appropriations. The funds are not automatically available, so mandating that they be spent would not be effective without a supporting appropriations action.

Second, if the level of spending from the HMTF that RAMP envisions were to be appropriated, one cannot assume that the President's Budget for the Civil Works program would be increased by a comparable amount. Indeed, in today's economic and fiscal climate, it is extremely unlikely that the Civil Works budget would be so increased. As a result, as you stated in your letter, reductions would need to be taken in flood risk management, environmental restoration, hydropower, recreation, and the other Civil Works mission areas.

Third, under the Congressional budget process, the Energy and Water Development Appropriations Subcommittee's 302(b) allocation would have to be increased by an amount comparable to the increase in spending from the HMTF. Otherwise, that increase would have to be offset elsewhere, in either the Civil Works program or another program in the Energy and Water Development Appropriations Act.

I hope this answers your question. Thank you for your interest in and support for the Army Civil Works program.

Very truly yours,

Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)

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ADDITIONAL VIEWS

While we support H.R. 3080, we have concerns with Section 103—a modified version of streamlining provisions that were included in MAP–21 and previous amendments to Title 23 that relate to transportation projects. While not as broad, the provisions will still undermine the environmental protection and public participation processes that are provided for under National Environmental Policy Act (NEPA) and other laws, such as the Endangered Species Act and the Fish and Wildlife Coordination Act. When considered with other provisions in the bill that strictly limit the timeline for and the amount of funds that can be spent on feasibility studies, Section 103 could limit the quality of information available to the Corps in planning projects that often have broad environmental impacts.

While we support the timely delivery of water resources projects, there is no question that the biggest obstacle to the construction of Corps of Engineers' projects is a lack of funding. There are literally tens of billions of dollars of authorized projects that have not initiated construction, and H.R. 3080 would authorize an additional $8 billion in new projects. The estimated cost for completion of Corps projects *currently* under construction is about $20 billion. At the same time, the most recent appropriation for the Corps' construction budget was $1.2 billion. This is not a new problem. In 1986, GAO did a study of the causes of delay in Corps construction projects and found that the $60 billion backlog in Corps construction was caused by a lack of funding given an annual construction appropriation of only $1.6 billion. Corps officials also stated that delays were due to a lack of local support or the project no longer being economically feasible. All of these reasons remain applicable today, and it is unfortunately beyond the scope of this bill to address them.

One thing that is clear, at least from the hearing record developed in support of this bill, there has been no demonstration that the public participation or environmental review process is the cause of delay in implementation of Corps' studies and projects. In the hearings that preceded Committee markup of H.R. 3080, no witness called before the Committee identified a single project where the public participation or environmental review processes caused the project implementation to be delayed. In fact, when asked direct questions about why Corps' projects typically take years to implement, the common answer from witnesses before the Committee was simple—lack of available appropriations at critical times during project development and construction. In the words of one witness, "[w]hen projects are fully funded or they have a steady funding stream, they tend to be completed more expeditiously and more efficiently."

Further, it remains unclear whether simply taking language that was developed for highway projects and applying it part and parcel to water resources projects will improve decision making and not, instead, hamper agency collaboration and slow decisions. Additionally, there seems to be no distinction in this language between the "streamlining" of reviews for projects or activities that might be considered a repair or a replacement, versus the wholesale construction of a large scale, complex project in a previously undisturbed area. While trying to expedite the review process might make sense in some situations, we are not convinced that you can apply arbitrary schedules, review deadlines and penalties with no regard for the scale, complexity and impacts of a project as this bill would do.

As one example, we have serious concerns with the provision that would limit to 150 days, the ability of the public to seek judicial review of a final Environmental Impact Statement (EIS) issued by the Corps, or any other permits that might be issued for a water resources project. Imposing an arbitrary time limit on judicial review—that is years shorter than current law—ignores the large-scale and very complex nature of many Corps projects. When you consider this provision in light of the already very short comments periods that the bill imposes throughout the environmental review process, and the elimination of the comment period that typically exists between the publication of the final EIS and the record of decision, there is a real likelihood that the bill could short circuiting the public's ability to participate in the decision making process.

In short, while we strongly support timely delivery of water resources projects, we have concerns as to whether the changes made in this bill in the name of streamlining will actually achieve that goal, particularly given the real world funding issues that we face, and we remain very concerned about the impacts these changes will have on the public participation process and the assessment of impacts to the environment. The Senate environmental review language was ultimately adopted as a ten year pilot program. We believe a meaningful pilot program would ensure a review of whether this process is actually working and has not undermined environmental protections or precluded public participation in the project development process.

PETER DEFAZIO.
ELEANOR HOLMES NORTON.
MICHAEL CAPUANO.
MIKE MICHAUD.
GRACE NAPOLITANO.
ALBIO SIRES.
ELIZABETH ESTY.
RICK NOLAN.

ADDITIONAL VIEWS ON WATER RESOURCES REFORM AND DEVELOPMENT ACT CONCERNS ABOUT STREAMLINING PROVISIONS AND NEED FOR PILOT PROGRAM

We first want to commend Chairman Shuster and Ranking Member Rahall for their leadership and hard work with Subcommittee Chairman Gibbs and Ranking Member Bishop. The Water Resources Reform and Development Act (WRRDA) demonstrates that compromise and collaboration is still possible in the People's House.

We would, however, like to express concerns about the environmental streamlining provisions included in this bill. While the goal of accelerating the pace at which we are putting projects on the ground is certainly admirable, looking at these provisions through the lens of the Economic Development, Public Buildings and Emergency Management Subcommittee, on which some of us are honored to serve, we believe that limiting environmental review is not the answer to that problem. It is possible that the streamlining provisions will not accelerate the pace of project construction, but could actually lead to projects that are more costly and environmentally destructive.

Specifically, we remain concerned that Sections 101 (Vertical Integration and Acceleration of Studies) and 103 (Environmental Streamlining) in the bill as reported could have an unintended effect of undermining effective environmental reviews of water projects and the critical protections provided by the National Environmental Policy Act (NEPA) and other vitally important environmental laws. These provisions were drafted on the assumption that the environmental review process is a root cause of project delays.

However, evidence suggests that environmental reviews are not responsible for delaying construction of economically and environmentally sound projects. In most cases, the terrible delays in too many Corps projects are the result of the huge project backlog, lack of consistent and robust federal funding, and poor project planning.

During a September 18 hearing in the Senate Environment and Public Works on similar streamlining provisions included in MAP–21, witnesses testified that streamlining provisions have not been as successful as we hoped in accelerating project delivery. The major reason for project delay is not onerous review requirements, but unrealistic budgeting and high project cost. We have offered into the record an article and letter that describe some of these concerns in more detail [attached].

During the Senate hearing, the U.S. Fish and Wildlife Service testified that, "instead of getting to 'yes' faster, we believe these 'streamlining' provisions may serve to get to 'no' faster." While it is heartening to see that the Fish and Wildlife Service would not rubber-stamp projects, these circumstances seem contrary to the very idea of project acceleration. It is possible that by including the

streamlining provisions as they are currently drafted in the WRRDA bill, we could actually be slowing down Corps projects instead of speeding them up.

Before we begin to fundamentally change the way the federal government—and the public—reviews water resources projects, we should make sure that this concept actually works effectively and does not have unintended consequences—especially those that could damage our environmental resources. The taxpayer investment in Corps projects is substantial, and we should be ensuring we're spending their money as wisely as possible.

Unfortunately, the Corps has too often relied on flawed analyses and has been known for constructing projects that are often complex, large-scale and costly. Since 1994, more than 35 reports from independent experts have revealed major flaws in Corps project planning and implementation. In light of this history, I believe that we should only make changes to the project review process if we are certain that such changes will ensure better projects that protect the safety and well-being of our communities and our environment.

Poorly planned Corps projects can lead to incomprehensible losses, like the flooding of New Orleans during Hurricane Katrina—and can destroy natural systems that provide free and effective flood protection. We need robust project review to help ensure better, more resilient projects to protect our communities from storms, floods and other disasters. Rigorous review of projects being built with federal dollars is critical to protect people, restore ecosystems and ensuring the movement of commerce.

NEPA reviews have saved taxpayers hundreds of millions of dollars and have produced better projects with more public support. It is not prudent in today's fiscal environment to undermine these longstanding protections in the hopes that the proposed changes will somehow speed up project construction. Before making permanent changes to a process that has served the nation well for decades. We should have a firm understanding of how these provisions will actually work.

We agree with the conclusions reached by eight past chairs of the Council on Environmental Quality from both Republican and Democratic administrations: NEPA is "not an impediment to responsible government action; it is a prerequisite for it."[1] Indeed, NEPA is "essential to responsible government decision-making."[2]

Effective environmental reviews protect people, wildlife, and taxpayer dollars by ensuring construction of better projects that serve the national good. In fact, with limited funds available to the Army

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[1] September 19, 2005 Letter to the Honorable Cathy McMorris, Chair of the Task Force on Improving the National Environmental Policy Act from Russell E. Train (CEQ Chair 1970–1973), Russell W. Peterson (CEQ Chair 1973–1976), John Busterud (CEQ Chair 1976–1977), Charles W. Warren (CEQ Chair 1977–1979), J. Gustave Speth (CEQ Chair 1979–1981), Michael R. Deland (CEQ Chair 1989–1993), Kathleen A. McGinty (CEQ Chair 1995–1998), George T. Frampton Jr. (CEQ Chair 1998–2001), Gary Widman (CEQ General Counsel 1974–1976), Nick Yost (CEQ General Counsel 1977–1981) (emphasis added).

[2] September 19, 2005 Letter to the Honorable Cathy McMorris, Chair of the Task Force on Improving the National Environmental Policy Act from Russell E. Train (CEQ Chair 1970–1973), Russell W. Peterson (CEQ Chair 1973–1976), John Busterud (CEQ Chair 1976–1977), Charles W. Warren (CEQ Chair 1977–1979), J. Gustave Speth (CEQ Chair 1979–1981), Michael R. Deland (CEQ Chair 1989–1993), Kathleen A. McGinty (CEQ Chair 1995–1998), George T. Frampton Jr. (CEQ Chair 1998–2001), Gary Widman (CEQ General Counsel 1974–1976), Nick Yost (CEQ General Counsel 1977–1981) (emphasis added).

Corps diminishing year by year, it is all the more critical that these reviews exist to ensure that only the best, most justified projects proceed to construction phase.

We believe that the Sections 101 and 103 should be reevaluated, and at a minimum, include language that would establish sections 101 and 103 as a Pilot Program with a look-back mechanism to assess their effectiveness before making these provisions permanent.

The Carson amendment was submitted that would frame these streamlining provisions as a Pilot Program with a mechanism to assess their effectiveness. Unfortunately, the Pilot Program amendment was not accepted into the manager's amendment. We sincerely hope that the bill sponsors will commit to working with us as we prepare this bill for floor action to find a suitable compromise that meets all our objectives. It is past time for a good Water Resources bill and we are very close to something that we can all support.

ANDRÉ CARSON,
Ranking Member, Subcommittee on Economic Development, Public Buildings and Emergency Management.
ELEANOR HOLMES NORTON.
DONNA EDWARDS.
JANICE HAHN.

ATTACHMENTS
Sept. 18, 2013 – 11:30 a.m.

White House Official Says Environmental Reviews Wrongly Blamed for Project Delays
By Nathan Hurst, CQ Roll Call

Legally mandated environmental reviews are often wrongly blamed for delays in transportation infrastructure projects, the top White House environmental official said Wednesday in prepared testimony to a Senate subcommittee.

Council on Environmental Quality Chairwoman Nancy Sutley told a Senate Environment and Public Works subcommittee that provisions in last year's surface transportation law (PL 112-141) designed to consolidate environmental reviews have succeeded in speeding up some major projects, such as replacement of the Tappan Zee Bridge north of New York.

But she also said that changes to the 1970 National Environmental Protection Act (PL 91-190), a 1970 law that allows public input on projects, will not necessarily address the causes of many project delays.

"While it can be true that litigation over NEPA documents or an overly detailed NEPA process due to the fear of litigation may result in project delays, many other realities of major project development often are incorrectly attributed to the NEPA process," Sutley said in prepared testimony. "Challenges such as securing project funding, low priority, local opposition to a project, project complexity, or changes in project scope are more often responsible for delays in building projects. However, because these issues are frequently identified during the NEPA process, NEPA itself is often targeted as the culprit."

Environmental groups such as the National Wildlife Federation complained that the changes to NEPA reviews required by the surface transportation authorization were intended to shut them out of the pre-building planning process. Supporters of the changes in the law complain that environmental groups frequently draw out the legal process to stall unwanted construction projects.

Sutley's testimony reiterates earlier criticism from environmental groups that changing NEPA protections would have little practical effect on many projects. The Federal Highway Administration, for instance, has only about 30 projects per year out of 9,700 — roughly 0.3 percent — that require full environmental impact statement, the most intense level of federal review under NEPA. The Federal Transit Administration averages about five projects out of more than 3,000 annually, or about 0.2 percent, that need complete environmental impact statements.

Sutley delivered her testimony on the eve of a House Transportation and Infrastructure Committee markup Thursday of a water resources bill (HR 3080) that also includes provisions designed to expedite project reviews. Environmental groups objected to language in the Senate water bill (S 601) that would speed up project reviews.

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September 10, 2013

The Honorable Bill Shuster
Chairman
Transportation & Infrastructure Committee
United States House of Representatives
Washington, DC 20515

The Honorable Nick Rahall
Ranking Member
Transportation & Infrastructure Committee
United States House of Representatives
Washington, DC 20515

Re: Do Not Weaken the Environmental Review Process for Corps of Engineers Projects; Protect Public Safety, the Environment, and Taxpayers

Dear Chairman Shuster and Ranking Member Rahall:

On behalf of the undersigned organizations and our millions of members and supporters, we urge you to ensure that the Water Resources Development Act of 2013 (WRDA) does not undermine the environmental review and public input and participation process for federal water resources projects. For four decades, environmental laws enacted with strong bipartisan support have produced better and less costly projects, providing critical protections for communities, taxpayers, and the environment. We urge you to maintain these vital, good government protections.

So called, "environmental streamlining" provisions such as those included in the recently passed Senate WRDA (S.601) and in last year's transportation package (MAP-21) strike at the very core of the environmental review process, placing communities and fragile ecosystems in harm's way. Our organizations strongly oppose applying such provisions to U.S. Army Corps of Engineers (Corps) project planning.

To shorten the review, proposals have been made to weaken the opportunity for affected citizens to have a say in Corps of Engineers projects. Democracy demands that when the

federal government is spending millions or billions of dollars to alter the economies and environment of affected communities, those citizens receive a fair opportunity to hear what is contemplated and be heard.

Robust environmental review is especially vital for Corps projects, which affect the health, safety, and wellbeing of millions of Americans. Poorly planned Corps projects can damage rivers, coasts, and wetlands that provide free and effective flood protection for communities; support jobs and businesses that rely on these resources; and provide vital habitat for fish and wildlife. Poor planning can also lead to incomprehensible losses like those caused by the flooding of New Orleans during Hurricane Katrina. Robust environmental review is also critical given the Corps' long and well documented history of flawed analyses revealed by dozens of major reports from the National Academy of Sciences, Army Inspector General, Government Accountability Office, National Academy of Public Administration, and others. The Army Inspector General found that the Corps had intentionally manipulated data in an attempt to justify a $1.2 billion project and that the Corps has an institutional bias for constructing costly, large scale structural projects. (Army Inspector General, Case No. 00-019).

The National Environmental Policy Act and coordination with agencies like the U.S. Fish and Wildlife Service disclose the true environmental and economic costs of Corps projects and allow decision makers and the public to determine whether those projects deserve investment by federal taxpayers. They lead to more effective, less damaging projects and have prevented fundamentally ill-conceived projects from moving forward. This has saved many hundreds of millions in taxpayer dollars while protecting wetlands vital to flood protection, migratory waterfowl, and clean water. In the face of increasing fiscal challenges, severe storms, floods, droughts, and sea level rise, we simply cannot afford to undermine these critical safeguards.

What's more, undermining environmental reviews will not address the real reasons for delays in planning and constructing Corps projects. Such delays are driven by funding limitations, the Corps' existing $60 to $80 billion project backlog, and poor project planning and design. There is no study, report, or credible evidence showing that effective environmental reviews are the reason why meritorious Corps projects are not constructed more quickly.

The value of the existing environmental review process is well recognized by the Corps. In a letter sent to the Senate Environment and Public Works Committee on March 14, 2013, the Corps urged Congress to "affirm continued use of the current foundational environmental framework for all water resource project decisions... support efforts to evaluate the full range of reasonable alternatives, ensure the integrity of its analysis, and promote better environmental stewardship." More pointedly, the letter recommended that WRDA "should not prescribe regulatory deadlines, limit public participation, or constrain the Federal review process of the potential impacts" of Corps proposals.

We urge the Committee to abandon attempts to cripple environmental reviews of, and public participation in, Corps projects.

Sincerely,

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Coordinator
Ad Hoc Downstream Group

Cindy Lowry
Executive Director
Alabama Rivers Alliance

Sean Gosiewski
Program Director
Alliance for Sustainability

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Senior Director of Government Relations
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Tim Guilfoile
Chair
Water Protection Network

Will Roush
Interim Director and Conservation Advocate
Wilderness Workshop

Wayne Shewmake
Board Member
Yell County Wildlife Federation

cc:
The Honorable Bob Gibbs
The Honorable Tim Bishop
Members of House Transportation and Infrastructure Committee

○