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

Reply to
Attention of:

CEMP-SWD

19 December 2006

SUBJECT: May Branch, Fort Smith, Arkansas

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on the study of flood damage reduction along May Branch in Fort Smith, Arkansas. It is accompanied by the report of the district and division engineers. These reports are an interim response to a resolution by the Committee on Public Works and Transportation of the United States House of Representatives, adopted March 11, 1982. This resolution requested a review of the report of the Chief of Engineers on the Arkansas River and tributaries, Arkansas and Oklahoma, to determine if the recommendations contained therein should be modified at this time, with particular reference to developing an implementable plan for storage, conservation, treatment, and conveyance of water in the Arkansas River and tributaries for municipal, industrial, and agricultural uses and other purposes. Preconstruction engineering and design activities for the May Branch project will continue under the authority provided by the resolution cited above.

2. The reporting officers recommended authorization of a plan for flood damage reduction along May Branch in Fort Smith, Arkansas. The recommended plan is the locally preferred plan (LPP) and provides for a new 2.77-mile long open channel to convey flood waters from the May Branch basin to the Arkansas River. The new channel alignment would require 15 structure relocations, 5 rail and 9 road crossings, and a gated hydraulic control structure at the Fort Smith (Arkansas River) Levee. The reporting officers find that approximately 2.25 miles of the new channel, from the Arkansas River upstream to Grand Avenue (Reaches 1 through 4), satisfy requirements for full Federal participation in cost sharing under current Administration policy. The remaining 0.52 miles of new channel (Reaches 5 and 6) will lie upstream of the limit of Federal interest and will be constructed at 100 percent non-Federal cost.

3. Reaches 1 through 4 of the proposed LPP are recommended for full participation in cost sharing. Based on October 2006 price levels, the total first cost of Reaches 1 through 4 of the LPP is currently estimated as $25,710,000. The non-Federal share of this cost is currently estimated as $10,700,000 and the Federal share is currently estimated as $15,010,000. The cost of flood damage reduction features in Reaches 5 and 6 of the LPP, which will be constructed at 100 percent non-Federal expense, is estimated at $5,140,000. The total cost of the cost-shared reaches (1 through 4) and non-cost-shared reaches (5 and 6) of the LPP is estimated as

$30,850,000. The total Federal cost of the project is estimated as $15,010,000 and the total non-Federal cost is estimated as $15,840,000. The City of Fort Smith, Arkansas, is the non-Federal project sponsor.

4. Based on October 2006 price levels, a 4.875 percent discount rate, and a 50-year period of economic analysis; Reaches 1 through 4 of the recommended LPP have an investment cost of $27,470,000. The equivalent annual cost of the project is $1,540,000 and equivalent annual benefits are $1,740,000. Equivalent annual net benefits are $200,000, and the ratio of benefits-to-costs is 1.13 to 1.

5. The features of the National Economic Development (NED) Plan are, in all material respects, identical to those of Reaches 1 through 4 of the LPP, except that the NED plan would have smaller flow capacity in Reaches 1 and 2 nearest the Arkansas River. Implementing the NED plan would be approximately $1,980,000 less costly than the LPP. However, the LPP would provide greater flood damage reduction and less expected residual flood damages compared to the NED Plan. Implementation of the recommended LPP would remove 127 structures from the 100-year flood plain of May Branch. Consequently, the recommended project has the potential to reduce future net Federally-subsidized reimbursements for flood losses. The recommended LPP would decrease expected annual flood damages along May Branch by more than 96 percent and nearly eliminate the flood damages expected to be caused by a flood that has a 1.0 percent chance of occurring in any given year (100-year event). The recommended plan would also diminish flood damages for events larger than the 1.0 percent chance event by decreasing flood stages and increasing the chances of successful emergency flood fighting. The project would also reduce highway and railroad traffic interruptions, lessen flood-induced disruptions to the delivery of health and safety services, and decrease the threat of loss of life attendant to flash flooding in urban settings. Based on the preceding information, the Assistant Secretary of the Army (Civil Works), by memorandum dated 27 October 2005, granted an exception to the Administration policy requirement that the NED plan be recommended for implementation.

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

7. I generally concur in the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that improvements for flood damage reduction for the May Branch, Fort Smith, Arkansas, project be authorized generally in accordance with the reporting officers' recommended plan, with such modifications as in the discretion of the Chief of Engineers may be advisable. This recommendation is subject to cost sharing, financing, and other applicable requirements of the Water Resources Development Act of 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 allocated to reaches 1 through 4 of the project, as further specified below:

(1) Enter into an agreement which provides, prior to execution of the project cooperation agreement, 25 percent of design costs;

(2) Provide, during construction, any additional funds needed to cover the non-Federal share of design costs allocated to reaches 1 through 4;

(3) Provide, during construction, a cash contribution equal to 5 percent of total project costs allocated to reaches 1 through 4;

(4) 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 determined by the Government to be necessary for the construction, operation, and maintenance of reaches 1 through 4;

(5) Provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged or excavated material disposal areas required for the construction, operation, and maintenance of reaches 1 through 4; and

(6) Provide, during construction, any additional costs as necessary to make its total contribution equal to at least 35 percent of total project costs allocated to reaches 1 through 4.

b. Provide 100 percent of total project costs allocated to reaches 5 and 6 of the project, as further specified below:

(1) Enter into an agreement which provides, prior to execution of the project cooperation agreement, 25 percent of design costs;

(2) Provide, during construction, any additional funds needed to cover 100 percent of design costs allocated to reaches 5 and 6;

(3) 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 determined by the Government to be necessary for the construction, operation, and maintenance of reaches 5 and 6;

(4) Provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged or excavated material disposal areas required for the construction, operation, and maintenance of reaches 5 and 6; and

(5) Provide, during construction, any additional costs as necessary to make its total contribution equal to 100 percent of total project costs allocated to reaches 5 and 6.

c. Give the Government a right to enter, at reasonable times and in a reasonable manner, upon land which 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.

d. Assume responsibility for operating, maintaining, replacing, repairing, and rehabilitating (OMRR&R) the project or completed functional portions of the project, including mitigation features, without cost to the Government, in a manner compatible with the project's authorized purpose and in accordance with applicable Federal and State laws and specific directions prescribed by the Government in the OMRR&R manual and any subsequent amendments thereto.

e. 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 non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element.

f. Hold and save the United States free from all damages arising for 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.

g. 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 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 in 32 CFR Section 33.20.

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), 42 U.S.C. 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.

i. 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-way that

the Government determines necessary for the construction, operation, or maintenance of the project.

j. Agree that, as between the 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, repair, replace, and rehabilitate the project in a manner that will not cause liability to arise under CERCLA.

k. Prevent obstructions of or encroachments on the project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) which might reduce the level of protection it affords, or hinder its operation and maintenance, or interfere with its proper functioning, such as any new development on project lands or the addition of facilities which would degrade the benefits of the project.

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 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.

m. Comply with all applicable Federal and State laws and regulations, including Section 601 of the Civil Rights Act of 1964, Public Law 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 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)).

n. 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. 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, implement the plan not later than one year after completion of the construction of the project. Provide an information copy of the plan to the Government upon its preparation.

o. Provide the non-Federal share of that portion of the costs of archeological 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.

p. Participate in and comply with applicable Federal floodplain management and flood insurance programs.

q. 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.

r. 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.

s. Inform affected interests, at least annually, regarding the extent of the protection afforded by the project.

8. 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.

CARL A. STROCK
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Chief of Engineers