



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

REPLY TO  
ATTENTION OF:

AUG 16 2005

CECW-PB

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Reconstruction of U.S. Army Corps of Engineers Structural Flood Damage Reduction Projects for which Non-Federal Interests are Responsible for Operation, Maintenance, Repair, Rehabilitation and Replacement

1. Purpose. This memorandum provides policy guidance on reconstruction of Corps structural flood damage reduction projects for which non-Federal interests are responsible for operation, maintenance, repair, rehabilitation and replacement (OMRR&R).
2. Background. Pursuant to Section 3 of the Flood Control Act of 1936 and Section 103 of the Water Resources Development Act of 1986 (WRDA 86), non-Federal interests are required to pay 100 percent of the costs of OMRR&R of structural flood damage reduction projects. As projects age, it is recognized that the projects may not perform as intended due to long term degradation of features which have exceeded their expected service life. The term "reconstruction" applies to the measures to address the long-term degradation of project features, which have exceeded their expected service life. There are several ongoing feasibility level studies examining reconstruction of such projects.
3. Policy. This policy is applicable to Federally constructed structural flood damage reduction projects and separable elements for which non-Federal interests are responsible for OMRR&R. It does not apply to Corps activities pursuant to Public Law 84-99.
  - a. Authority. There is no general authority for reconstruction of projects for which non-Federal interests are responsible for OMRR&R. This lack of authority, however, does not apply to measures addressing design and construction deficiencies, which will continue to be addressed pursuant to existing project authority. Except for those specific features on which it is determined that a design or construction deficiency is involved, Congressional authorization is required to undertake reconstruction.
  - b. Study Authority. The authority to conduct feasibility studies examining the reconstruction of structural flood damage reduction projects and separable elements constructed by the Corps is Section 216 of the Flood Control Act of 1970 (Public Law 91-611) which states:

*"The Secretary of the Army, acting through the Chief of Engineers, is authorized to review the operation of projects the construction of which has been completed and which were constructed by the Corps of Engineers in the interest of navigation, flood control, water supply,*

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*and related purposes, when found advisable due to significantly changed physical or economic conditions, and to report thereon to Congress with recommendations of the advisability of modifying the structures or their operation, and for improving the quality of the environment in the overall public interest.”*

Feasibility studies may also be conducted in response to specific study resolutions.

c. Adequate Non-Federal Maintenance. In general, a Federal project or separable element will only be eligible for reconstruction when the non-Federal sponsor has adequately maintained the project or separable element by accomplishing the items provided for in the operation and maintenance manual and the Code of Federal Regulations (33 CFR 208.10 - Local flood protection works; maintenance and operation of structures and facilities) and by addressing operation and maintenance deficiencies noted in any inspection. Where a non-Federal sponsor has not adequately maintained a project, it may still be eligible for reconstruction but the non-Federal sponsor will be responsible for 100 percent of the costs of bringing the project to a fully maintained condition in accordance with the operation and maintenance manual for the project and the Code of Federal Regulations. In other words, the cost of any items recommended in a reconstruction project report that are the result of deficient maintenance will be at 100 percent non-Federal expense.

d. Design Deficiencies. Design or construction deficiencies will continue to be addressed according to ER 1165-2-119 and under the guidance presented in the annual budget EC under the original/existing project authority. Cost sharing and financing of deficiency corrections at structural flood damage reduction projects for which non-Federal interests are responsible for OMRR&R, will reflect the concepts of WRDA 86, as amended, unless the Assistant Secretary of the Army (Civil Works) grants an exception for a project implemented under pre-WRDA 1986 cost sharing or Congress directs otherwise.

e. Definition of Reconstruction. Cost shared reconstruction will be defined by elimination. Reconstruction excludes design or construction deficiencies. Further, reconstruction is limited to addressing impediments that prevent a project from performing as authorized after all maintenance, as required by the project operation and maintenance manual and the Code of Federal Regulations, has been accomplished and any deficiencies resulting from a lack of maintenance have been addressed. Reconstruction will consist of addressing the major performance deficiencies caused by a long-term degradation of the foundation, construction materials, and engineering systems that have exceeded their expected service lives and the resulting inability of the project to perform its authorized project functions. In addressing reconstruction needs, the latest design standards and efficiency improvements should be incorporated into the project.

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f. Implementation Process. Reconstruction feasibility studies will be pursued under the two-phase preauthorization study process described in Chapter 4 of ER 1105-2-100. Because Corps interest in the existing structural flood damage reduction project is already established, the reconnaissance phase will concentrate on the need for and rationale for reconstruction (over and above any deficiency correction and performance of deficient maintenance) and the level of interest and support from the non-Federal sponsor. After certification of the 905 (b) report for consistency with policy, preparation of the Project Management Plan and negotiation and execution of the Feasibility Cost Sharing Agreement will take place. The cost shared feasibility study will follow the same procedures as described in Appendix H of ER 1105-2-100 leading to a Chief's Report, ASA(CW) and OMB review and transmittal to Congress for authorization.

g. Study Scope. Depending on the interest of the non-Federal sponsor, the feasibility study may be limited to examination of the reconstruction of the existing project with no change in its scope or function. Under this limited objective, evaluation would be limited to individual project features, (closure structures, pumping stations, gravity drains, relief wells, etc.) to establish the justification of reconstruction based on a comparison between the with and without reconstruction condition. Features considered for reconstruction should be evaluated as to their incremental justification in a manner similar to that used for major rehabilitation at federally maintained projects in accordance with Chapter 3 of EP 1130-2-500. The analysis should first determine whether there are any design or construction deficiencies or insufficient maintenance of the existing project. The analysis should then address the probability of a feature not performing, physical and fiscal consequences of that failure to perform, and consideration of the actions that would be taken after the failure occurred and how that would affect the likelihood of failure in the future. For levee and floodwall projects, the with and without reconstruction analysis should include consideration of both exterior and interior flooding. Reconstruction studies may also include a combination of reconstruction of an existing project with extension or expansion of flood damage reduction (change in scope or level of protection). These studies would be identical in scope to any other flood damage reduction feasibility study and include a full range of alternatives and economic evaluation to identify the plan that maximizes net benefits as well as compliance with all environmental laws and regulations. In both instances (limited and expanded scope), the report should address operation and maintenance and design deficiencies and recommend combined actions subject to the appropriate cost sharing.

h. Ecosystem Restoration. In accordance with the Chief of Engineer's Environmental Operating Principles, any project reconstruction study will include an evaluation of the environmental sustainability of the existing project. The question to be addressed in the evaluation is whether the reconstruction and continued operation and maintenance of the structural flood protection project are compatible with a healthy, diverse, and sustainable condition in the affected aquatic and riparian ecosystem. Modification of the project to add

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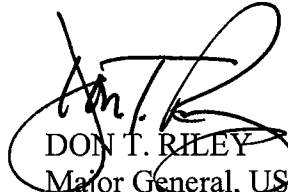
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ecosystem restoration measures would require specific authorization and should be considered in cooperation with the non-Federal sponsor and subject to cost-sharing in accordance with Section 103 of WRDA 86, as amended.

i. Cost Sharing. Costs for reconstruction will be shared in accordance with the provisions of Section 103 of WRDA 86, as amended. A non-Federal sponsor commitment to cost share will be a condition for undertaking a reconstruction project. Measures to address maintenance deficiencies may be included in a reconstruction project but will be at 100 percent non-Federal cost. The non-Federal sponsor must commit to operate, maintain, repair, rehabilitate and replace the completed reconstructed project in accordance with the provisions of Section 103 of WRDA 86, as amended.

4. Permanent Guidance. The guidance in this PGL will be incorporated into permanent guidance as it is updated.

FOR THE COMMANDER:

  
DON T. RILEY  
Major General, USA  
Director of Civil Works