



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

REPLY TO
ATTENTION OF:

29 DEC 2000

CECW-PM (10-1-7a)

SUBJECT: Upper Newport Bay, Orange County, California

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on ecosystem restoration at Upper Newport Bay, California. It is accompanied by the report of the district and division engineers. These reports are in final response to Section 841 of the Water Resources Development Act of 1986 (WRDA 1986), Public Law 99-662. Section 841 of WRDA 1986 directed the U.S. Army Corps of Engineers to dredge and maintain a 250-foot-wide navigation channel to the boundary of the Upper Newport Bay State Ecological Reserve. However, during the initial stages of the study, it became clear that there were significant sedimentation problems in the ecological reserve just upstream from the proposed channel extension and the study was re-directed and expanded accordingly to address these sedimentation problems.
2. Section 101(b)(9) of the WRDA 2000 authorized construction of the Upper Newport Bay, California, project for ecosystem restoration, subject to completion of a favorable report of the Chief of Engineers not later than 31 December 2000, and subject to the conditions recommended in that final report. The authorizing language for this Upper Newport Bay project reflects a total project cost of \$32,475,000, with an estimated Federal cost of \$21,109,000 and an estimated non-Federal cost of \$11,366,000. This report constitutes the final report of the Chief of Engineers required by WRDA 2000.
3. The reporting officers recommend a plan to provide ecosystem restoration at Upper Newport Bay, California. The selected plan would control the deposition of sediments in the ecological reserve and maintain a balance of open water, mudflats, and marsh areas. The plan provides for expanding and deepening the existing Unit II and Unit I/III in-bay sediment control basins to -20 feet mean sea level (msl), relocation of an existing 4-acre least tern island (Skimmer Island) from the upper Unit I/III basin to the lower Unit II basin adjacent to the western segment of the salt dike, and where necessary deepening the existing access channel from the Unit I/III basin to the Pacific Coast Highway Bridge to a depth of -14 msl. Mudflats in the northeast corner of the uppermost segment would be maintained, and about 100 feet of mudflats would be retained around the shoreline perimeter of the deepened Unit II and Unit I/III basins and New Island to a depth of -3 feet msl. To construct the new deepened basins, the mudflats between elevation -3 feet and -20 feet msl would be dredged to a depth of -20 feet msl on a 5:1 side slope. To

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restore tidal action to the area, a trapezoidal channel with a 20-foot bottom width, -5 foot msl depth, and 3:1 side slopes would be dredged between the remaining least tern island in the Unit I/III basin and the shore. An access channel with a 20-foot bottom width, -5-foot msl depth, and 3:1 side slopes would be constructed along the southern tip of the island for maintenance of the least tern island. The western portion of the main dike would be removed and a portion of the dike would be used to construct the new least tern island in the lower Unit II basin to compensate for removal of the least tern island in the upper basin. An access channel would also be constructed along the eastern tip of the new island to provide maintenance access to the island. The plan also includes restoring about 10 acres of wetlands along Northstar Beach, Shellmaker Island, and a section of the northwestern edge of the upper basin, at Bullnose point. Side channels would be restored around New Island, Middle Island, and Shellmaker Island. The dredged material from the Upper Bay, estimated at 2.1 million cubic yards, would be disposed at the designated LA-3 offshore disposal site, located in the Pacific Ocean about 4 miles southwest of the Newport Harbor entrance. The plan recommended by the reporting officers is the national ecosystem restoration plan.

4. Based on October 1999 price levels, the estimated total first cost of the recommended plan is \$32,475,000. Following the cost sharing provisions of WRDA 1986, as amended by Section 210 of WRDA 1996, the Federal share of the total project cost would be about \$21,109,000 and the non-Federal share would be about \$11,366,000. The County of Orange, California, and the State of California are the non-Federal cost sharing sponsors for all features of the plan. The non-Federal sponsors would also be responsible for all the costs of the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the project after construction, a cost currently estimated at \$702,000 per year. Maintenance dredging for the recommended plan is expected to occur once every 21 years, on average. Average annual costs, including initial construction and OMRR&R, are \$3,071,000 based on an interest rate of 6.625 percent and a project life of 50 years.

5. The cost of the recommended ecosystem restoration features is justified by the restoration of about 46 average annual habitat units and provides for achieving increases in the most cost-effective manner. These restored habitats are considered especially valuable due to the scarcity of and dependence on these resources by the species of special concern. The estuarine and open-water habitats of Upper Newport Bay are utilized by three federally-listed endangered bird species, two federally-listed threatened bird species, one federally-listed endangered plant species, and a number of State of California listed species of concern. In addition, there are many species of plants, birds, fish, and mammals that are restricted to salt marsh and estuarine/open water habitats that would benefit from the restoration of the Upper Newport Bay ecosystem.

6. Washington level review indicates that the plan recommended by the reporting officers is technically sound, environmentally justified, cost effective, and socially acceptable. The plan conforms with essential elements of the U.S. Water Resources Council's Economic and

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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.

7. I concur in the findings, conclusions, and recommendation of the reporting officers. Accordingly, I recommend that implementation of the authorized project for ecosystem restoration be 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 Federal and State laws and policies, including WRDA 1986, as amended by Section 210 of WRDA 1996, and in accordance with the following requirements which the non-Federal sponsor must agree to prior to project implementation:

a. Provide 35 percent of the separable project costs allocated to ecosystem restoration as further specified below:

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

(2) Provide, during construction, any additional funds needed to cover the non-Federal share of project design costs;

(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 the project;

(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 the project; and

(5) Provide, during construction, any additional funds as necessary to make its total contribution equal to 35 percent of the separable project costs allocated to ecosystem restoration.

b. For so long as the project remains authorized, operate, maintain, repair, replace, and rehabilitate the completed project, or functional portion of the project, at no cost to the Government, in accordance with applicable Federal and State laws and any specific directions prescribed by the Government.

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c. Give the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the local 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 sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element.

f. Hold and save the Government free from all damages arising from the construction or 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.

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.

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.

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j. 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.

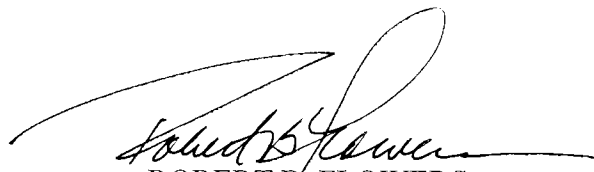
k. Prevent future encroachments on project lands, easements, and rights-of-way which might interfere with the proper functioning of the project.

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."

n. Provide 35 percent of that portion of total cultural resource preservation mitigation and data recovery costs attributable to ecosystem restoration that are in excess of 1 percent of the total amount authorized to be appropriated for ecosystem restoration.

o. 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.



ROBERT B. FLOWERS
Lieutenant General, U.S. Army
Chief of Engineers