

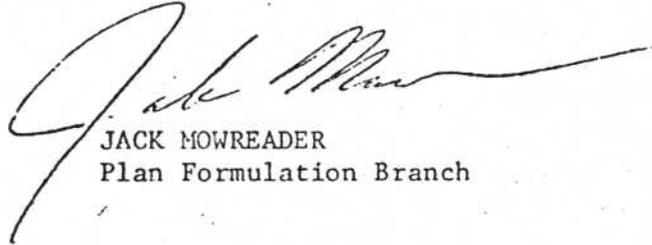
THRU: Chief, NPDPL  
Chief, NPDPL-PF  
TO: NPDPL Files

SUBJECT: Skagit River Levees

1. In response to a telephone request from Vern Cook, Seattle District, I researched the matter of appropriate action to remedy adverse effects from construction of the proposed project. Vern stated that NPS Real Estate Division and Office of Counsel have taken the position that the local sponsor should be required to purchase flowage easements in the areas where some induced flooding damage will result with the project.
2. I discussed the matter informally with NPD Office of Counsel and found that Dave Nelson has been talking with OCE Offices of Counsel. Based on the view that these are consequential damages, NPS has been advised that no flowage easements would be required to be purchased by the Federal government. They cite a law that states the U.S. is not responsible for damages due to flood waters (33 USC 702C).
3. The Board recently passed a local flood protection project for the Little Arkansas River at Halstead, Kansas. The project would result in construction of a levee on one bank of the river and raise the water surface profile an undetermined amount on the opposite shore. The report and items of local cooperation have no special consideration to accommodate potential induced damages. In talking to SWD (Ron DeBruin); they admit that induced damages may have been overlooked. He cited a Section 205 project at Grenada, Colorado as an example where induced damages were recognized due to increased stage. As a result of OCE review, the induced damages were quantified and local interests were required to purchase flowage easements as part of the Section 221 agreement.
4. Planning regulations indicate that expected adverse effects or negative benefits should be recognized in the economic evaluation, and suitable remedies should be provided when practicable in the engineering design. Practicability is established by prudent and objective planning. The matter of compensation, as by easements, or of requiring local interests to hold and save, or of providing suitable remedial measures should be discussed in the GDM. Compensatory measures may consist either of engineering remedies or of payment for damages caused. Costs of remedial should be assigned to the Federal government or to local interests as warranted by considerations of equity or by the standard a-b-c's provided for local protection projects. (Reference: EM 1120-2-101, paragraphs 1-82d, 1-84, 1-84-d, and 1-124c(5); EM 1120-2-104, paragraph 17).
5. The Digest of Water Resources Policies (EP 1165-2-1 dated 10 Jan 1975) discussed the treatment of adverse effects and associated costs in general (paragraphs 5-5a(5) and 5-7a(3), and agrees with the summary in the foregoing paragraph. The matter of cost sharing for Mitigation of Project-Caused Damages is shown on page A-47. I was unable to find a regulation that supports that cost sharing is the same as for the purposes causing the damages.

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6. Conclusion. I have advised Vern Cook of the above. Based on the above, there is a Federal interest in identifying expected detrimental effects of project implementation. In addition a plan to mitigate these effects should be formulated. In formulating a plan, consideration should be given to structural solutions when practicable and economical, as well as, easements and/or requiring the local interests to hold and save. This plan should be formulated without regard to cost sharing requirements. Cost sharing and local cooperation requirements should then be determined based on the principles contained in EM 1120-2-101, and other applicable regulations. The District should submit the proposed mitigation plan and formulation together with proposed cost sharing to NPD for review prior to completion of the final GDM.

  
JACK MOWREADER  
Plan Formulation Branch

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SK  / Cook