United States
Department of
Agriculture

Soil
Conservation
Service

**Project
Development and
Maintenance**

Washington, D. C.

National Watersheds Manual

Title 390 — Chapter V

U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

DIRECTIVE TABULATION SHEET

SCS - ADS - 1
12 - 80

TITLE NO. 390 DIRECTIVE NAME / TYPE NATIONAL WATERSHEDS MANUAL

DIRECTIVE NUMBER 1/	ISSUE DATE	PART, SUBPART, PAGES, ETC., OR BULLETIN SUBJECT	FILED BY
ISSUE 1	9/81	PARTS 500-508, 510 and 511	
Amend. 1	1/82	Part 509	
Amend. 2	1/82	Part 504	
Amend. 3	3/82	Parts 500, 502, 503, 506, 509	
Amend. 4	4/82	Parts 501, 509, 512	
Amend. 5	5/82	Parts 500, 501, 506, 510	
Amend. 6	9/82	Changes in Part 509	jch
Amend. 7	5/83	Miscellaneous Changes	jch
Amend. 8	5/83	Changes in Cost-sharing	jch
Amend. 9	7/83	Ensuring Sponsor Willingness and Congressional Notifications	jch
Amend. 10	11/83	Change in Const. Inspection and other costs	jch
Amend. 11	03/84	Entire Part 510	jch
Amend. 12	03/84	Entire Part 504	jch
Amend. 13	03/84	Entire Part 509	jch
Amend. 14	04/84	Numerous Changes for P&G, A-95, Long-Term Contracting, and Misc Other Changes	jch
Amend. 15	07/84	Program Administration - Part 501	jch
Amend. 16	10/84	PDM - Miscellaneous Changes	jch
Amend. 17	11/14/85	PDM - Changes in Cost Sharing	kc
Amend. 18	12/85	PDM - Remedial Work	kc
Amend. 19	8/86	PDM - CHANGES IN PLAN REVIEW AND APPROVAL	kc
Amend. 20	8/88	PDM - Misc Changes and Corrections	MD
Amend. 21	01/90	PDM-Emergency Watershed Protection	MD
Amend. 22	03/90	PDM-Nat'l Watershed Manual Circular Nos. 5 & 7	MD

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BULLETINS: INSERT THE SEQUENCE NUMBER (S), OMIT TITLE AND FY

U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

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SCS-ADS-1
12-80

TITLE NO. 390 DIRECTIVE NAME / TYPE Oklahoma Amendments to the National Watersheds Manual

DIRECTIVE NUMBER 1/	ISSUE DATE	PART, SUBPART, PAGES, ETC., OR BULLETIN SUBJECT	FILED BY
Amendment OK1	5-83	Part 506	jch
Amendment OK2	11 83	Part 506 - Vegetation of Completed Works of Improvement . . .	jch
Amendment OK3	04 85	Part 580 - Storm Reports	jch
Amendment OK4	04 85	Part 401 - Cooperative Work with BIA (noncounter part - behind 506)	jch
Amendment OK5	04 85	Part 581 - Erosion Control Plan for Watershed Structures	jch
Amendment OK6	6/85	Part 582 - Procedure Checklist for Emergency Work	md
Amend OK7	5/89	PART 501 - Remedial Work	MD
Amend OK8	6/91	PART 504 - Cost Sharing	MD

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FOREWORD

Policies and criteria set forth in the National Watersheds Manual are applicable to watershed projects planned and carried out under the Watershed Protection and Flood Prevention Act, Public Law 83-566. They are equally applicable to the eleven watersheds authorized by the Flood Control Act of 1944, Public Law 78-534, except for the provisions relating to plan-approval authority, reports, and construction contract administration. In addition, Emergency Watershed Protection requirements and procedures are included in this manual. Emergency work is authorized by Section 216, Public Law 81-516 and Section 403 of Title IV of Public Law 95-334.

The manual has been designed to focus on current policy with as few constraints as possible. Procedures have been eliminated, and interpretation is left to the reader. All interpretations should be made within the intent of the Act and the sense of Congress. If an unusual situation arises or a special condition exists, a letter requesting an exception and providing adequate rationale for the request should be sent to the Chief.

Soil Conservation Service technical procedures and criteria relating to the various phases of watershed planning and operation are contained in National Office topical manuals, instructions, and bulletins.

Revisions of the Watersheds Manual will be handled by page inserts transmitted as amendments to the manual.

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SUBPART A - GENERAL

§500.00 Purpose and scope.

This part sets forth the minimum requirements for administering the Watershed Protection and Flood Prevention Act (P.L. 566). It relates the main parts of the law as well as other pertinent laws, executive orders, and secretarial memorandums that affect administration and application of the Act.

§500.01 The Act.

(a) The Watershed Protection and Flood Prevention Act, Public Law 83-566, Stat. 666, (see §500.70 of this part) authorizes "the Secretary of Agriculture to cooperate with States and local agencies in the planning and carrying out of works of improvement for soil conservation and for other purposes." It provides for technical, financial, and credit assistance by the Department to local organizations representing the people living in small watersheds. It also provides for needed additional treatment and protection of federally owned lands within such watersheds. Moreover, the Act provides for a project-type approach to solving land, water, and related resource problems. It requires that full initiative and maximum responsibility for any undertaking be exercised by local people through their local organizations.

(b) The Congress made it clear that the additional authority provided under the Act should be used to "supplement both our present agricultural soil and water conservation programs and our programs for development and flood protection of major river valleys. It will bridge the gap between these two types of programs and greatly enhance the ultimate benefits of both." (House of Representatives Report No. 1140, 83d Congress, 2d Session.) "Federal help under the Act is available only to assist local organizations to plan and install needed water management and flood prevention measures that cannot feasibly be installed under other current Federal conservation programs." (Committee Print, H.R. Committee on Agriculture, August 25, 1954, 83d Congress, 2d Session, Watershed Conservation and Flood Prevention, Answer to Question 4.)

(c) Interpretation of the Act by the Office of the President is shown in Exhibit §500.61.

SUBPART B - REQUIREMENTS OF THE ACT

§500.10 Eligible Purposes.

(a) Eligible purposes as defined by the Act is any undertaking for (1) preventing damage from erosion, floodwater, and sediment; (2) furthering the conservation, development, utilization, and disposal of water; or (3) conserving and properly using land.

(b) The Act further defines its purpose to be watershed protection; flood prevention; agricultural water management, including irrigation and drainage; nonagricultural water management including public recreation, fish and wildlife, municipal and industrial water supply, and water quality management; energy; groundwater recharge; and conservation and proper use of land, including control of agriculture-related pollution and disposal of solid waste.

(1) Watershed Protection. This is the protection of the watershed area through the establishment of land treatment measures to reduce erosion, sedimentation, and runoff.

(2) Flood Prevention. Any undertaking that reduces the hazard from floodwater or erosion by reducing or preventing damages resulting from surface water caused by abnormally high direct precipitation, stream overflow, or floods aggravated by or due to wind or tidal effects.

(3) Agricultural Water Management.

(A) Irrigation. Installation of measures planned primarily to make more efficient use of water on cropland, grassland, and woodland and to obtain the maximum practical benefits for existing investments in irrigation.

(B) Drainage. Any undertaking to increase the efficiency of land use on farms or ranches by the rehabilitation of existing drainage systems or the construction of new ones to lower the water level in areas where naturally high water tables, normal precipitation or normal tidal action, seepage, or excess irrigation water limits agricultural production.

(C) Other Agricultural Water Management. Establishment of group water supply and distribution systems primarily for agricultural use in rural areas. This category also includes control of salt water intrusion and stabilization of annual streamflow through phreatophyte control or other means for rural community use, livestock, orchard and crop spraying, and similar agricultural purposes.

500.10(b)(4)

(4) Nonagricultural Water Management.

(A) Public Recreation. Management of water to provide opportunities for the general public to participate in water-based activities.

(B) Fish and Wildlife. Management of water to improve the habitat or environment for the breeding, growth, and development of fish and wildlife or to provide opportunities for public use, or both.

(C) Municipal and Industrial Water Supply. Incorporation of additional storage in a reservoir to supply water for municipal and industrial use.

(D) Water Quality Management. Storage of water for release to achieve a larger or longer lasting effect on the resources downstream from the site.

(E) Energy. Storage of water and installation of appropriate equipment for the generation of hydroelectric power.

(5) Groundwater Recharge. Storage of water in impoundments or recharge devices along natural watercourses by diversion and other water-spreading techniques.

(6) Conservation and Proper Utilization of Land.

(A) Control of Agriculture-Related Pollution. This includes the application of conservation practices to control the source of pollution. Constructing lagoons and holding ponds and installing irrigation recycling systems to return liquid animal wastes, agriculture processing plant byproducts, runoff from chemicals and pesticides, and other pollutants to the land surface are measures which might be used to control pollution.

(B) Disposal of Solid Wastes. Locating and constructing sanitary landfills and other disposal and utilization systems in rural areas.

§500.11 Watershed Area.

(a) A watershed area comprises all land and water within the confines of a drainage divide and must follow hydrologic boundaries. In the case of irrigation or salinity projects, the watershed boundary may be based on the irrigation problem area or subsurface hydrologic area respectively. A watershed area may comprise the land and water of two or more minor drainageways that are separate tributaries to a stream, artificial waterway, lake, or other tidal area. Areas from which water is brought into it by diversion may be excluded from the watershed if these sources of water have no significant effect on the flood prevention and water management problems of the watershed area.

The watershed area must include all direct tributary drainageways and lands from which, after project installation, water and sediment could adversely affect any proposed structural measure such as an irrigation or drainage canal, floodway, or floodwater-retarding structure included in the plan.

(b) A watershed or subwatershed area is not to exceed 250,000 acres. A number of such subwatersheds, when they are component parts of a larger watershed, may be planned together when the local sponsoring organizations so desire. However, no single plan can be submitted for a watershed or subwatershed area exceeding 250,000 acres.

§500.12 Plan Formulation Criteria.

(a) No structure providing more than 12,500 acre-feet of floodwater detention capacity or more than 25,000 acre-feet of total capacity may be included in the plan. Total capacity as used in the Act is construed to mean the total volume of space available for water and sediment upstream from a dam below the elevation at which discharge begins in the primary emergency spillway. Floodwater detention capacity is the capacity between the crest of the principal spillway and the elevation at which discharge begins in the primary emergency spillway minus any capacity between these two elevations reserved for sediment. If such capacity is provided solely as a design feature for a structure installed wholly for a purpose other than flood prevention, it is not considered floodwater detention capacity.

(b) P.L. 83-566 financial assistance for land treatment measures shall not exceed the rate of assistance for similar practices under other existing national programs.

(c) Local organizations shall acquire, or provide assurances satisfactory to the Secretary that they will acquire, such land, easements, or rights-of-way as will be needed in connection with works of improvement installed with P.L. 83-566 assistance.

(d) P.L. 83-566 funds may be used, but shall not exceed 50 percent of the costs of (1) the real estate appraisals, land, easements, or rights-of-way acquired or to be acquired by the sponsoring organization for recreational developments, reservoirs or other areas, and (2) minimum basic facilities needed for public health and safety, access to, and use of such reservoir or other area for such purposes when a local organization agrees to operate and maintain the reservoir or other areas included in a plan for public fish and wildlife or recreational development.

(e) Need must be demonstrated taking into account the anticipated man-days of use of the projected recreational development and considering the availability within the region of existing water-based outdoor recreational developments.

500.12(f)

(f) The number of recreation or fish and wildlife developments within a watershed shall be limited by the size of the watershed; one development in a watershed project of less than 75,000 acres, two developments in a project containing between 75,000 and 150,000 acres, or three developments (the maximum number allowed) in a project of more than 150,000 acres.

(g) Works of improvement for water quality management shall consist of land treatment or water storage capacity in reservoirs for regulation of streamflow. Water storage shall not be provided as a substitute for adequate upland treatment. Any solutions developed for water quality management shall be consistent with standards and regulations adopted by the Water Resources Council on federal cost sharing for water quality management.

(h) The local people must be willing to carry out all phases of project installation, operation and maintenance, and must have the financial ability or be able to make adequate financial arrangements for carrying out their full responsibilities with relation to the project.

(i) There must be a need for watershed works of improvement that the local people cannot readily install with the technical and financial assistance available under nonproject-type national programs.

(j) Landowners or water users shall acquire such water rights pursuant to State law as may be needed in the installation and operation of the works of improvement.

(k) The sponsoring organization shall obtain agreements to carry out recommended soil conservation measures and proper conservation plans from owners of not less than 50 percent of the lands situated in the drainage area above each retention reservoir to be installed with P.L. 83-566 funds.

(l) The sponsoring organization shall submit a plan of repayment satisfactory to the Secretary for any loan or advancement made.

(m) Beneficial effects must exceed adverse effects.

§500.13 Cost Sharing.

Construction costs including technical assistance costs applicable to flood prevention and features relating thereto shall be borne by P.L. 83-566 funds. Table 500.1 gives the cost-share rates for each purpose allowed by the Act. Note that P.L. 83-566 funds can be used to cost share in relocation assistance in the same proportion as the overall project costs are shared between P.L. 83-566 and other funds.

TABLE 500.1 - Cost-Share Rates

PURPOSE	PL-566 Technical Assistance	PL-566 Financial Assistance
1. Watershed Protection [accelerated land treatment]	100%	Not to exceed the level of other existing national programs
2. Flood Prevention		
a. Structural	100%	100% of construction costs
b. Nonstructural	75% 1/	75% of costs 1/
3. Agricultural Water Management		
a. Irrigation	100%	Up to 50% of construction costs
b. Drainage	100%	Up to 50% of construction costs
c. Other Water Management	100%	Up to 50% of construction costs
4. Nonagricultural Water Management		
a. Public Recreation		
(1) Structure	100%	Up to 50% of construction costs
(2) Land Rights	- 2/	Up tp 50% of costs
(3) Basic Facilities	50%	Up to 50% of construction costs
b. Fish and Wildlife		
(1) Structure	100%	Up to 50% of construction costs
(2) Land Rights	- 2/	Up to 50% of costs
(3) Basic Facilities	50%	Up to 50% of construction costs
c. Municipal and Industrial Water Supply 3/	0	Up to 50% of the cost of storage for present demands
d. Water Quality Management 3/	0 4/	0 4/
e. Energy	0	0
5. Groundwater Recharge 3/	0 5/	0 5/
6. Conservation and Proper Utilization of Land		
a. Control of Agriculture Related Pollution	100%	Not to exceed the level of other existing national programs
b. Disposal of Solid Wastes 3/	0 5/	0 5/

1/ Local share shall be 75% of composite cost of TA, PA, and LR.
2/ Limited to providing information on requirements of SCS and data relating to plan elements.
3/ Although authorized by the act, authority to implement has not been granted by OMB.
4/ Cost sharing to be established by WRC.
5/ Rate is to be set at the discretion of the Secretary.

500.14(a)

§500.14 Watershed Plan Approval Authority.

(a) Approval authority is based on the P.L. 83-566 land treatment financial assistance cost plus construction cost and the capacity of water-impounding structures included in the plan. Table 500.2 summarizes approval authorities. All plans sent to congressional committees must have the approval of the Chief, SCS, and the Secretary of Agriculture.

Table 500.2 - Watershed Plan Approval Authorities

P.L. 83-566 Construction Cost	Total Capacity of any Single Structure	Approval Required
Less than $5 million	Less than 2,500 ac. ft.	Administratively
Any amount	More than 2,500 ac. ft., but less than 4,000 ac. ft.	Committee on Agriculture, Nutrition and Forestry of the Senate and the Committee on Agriculture of the House of Representatives
Any amount	More than 4,000 ac. ft.	Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives

(b) Administratively approved plans fall into three categories: (1) those plans costing less than $2.0 million which are approved by state conservationists with delegated authority, (2) those plans costing between $2.0 and $5.0 million which are approved by state conservationists that have received NTC technical concurrence, and (3) those plans for which a secretarial exception is required.

SUBPART C - RELATED PUBLIC LAWS

§500.20 General.

In addition to the Act, there are several laws directly related to the administration of the Act. This subpart contains only a partial listing of general laws, executive orders, and Secretary's memorandums which apply to all projects. All work undertaken and performed under the Act is to be in harmony with all applicable Federal, State and local laws, orders, and related work of other Federal agencies.

§500.21 Public Law 78-534 - Flood Control Act of 1944.

(a) The Flood Control Act of 1944 as amended, gives to the U.S. Department of Agriculture (USDA) responsibility in 11 selected watersheds for watershed investigations and for planning and installing measures to reduce runoff and erosion and slow down streamflow. The Soil Conservation Service (SCS) and the Forest Service (FS) carry out this responsibility with assistance from other agencies within and outside USDA.

(b) The 11 watersheds are Buffalo Creek, New York; Coosa River, Georgia and Tennessee; Little Sioux River, Iowa and Minnesota; Little Tallahatchie River, Mississippi; Los Angeles River, California; Middle Colorado River, Texas; Potomac River, Virginia, West Virginia, Maryland, and Pennsylvania; Santa Ynez River, California; Trinity River, Texas; Washita River, Oklahoma and Texas; and Yazoo River, Mississippi. They cover 30 million acres.

(c) This manual also applies to all P.L. 534 watersheds.

§500.22 Public Law 88-523 - Reservoir Salvage Act of 1960 (as amended).

(a) This law relates to the preservation of historical and archeological materials or data, including relics and specimens, that might otherwise be lost or destroyed as a result of any Federal or federally assisted or licensed project, activity, or program.

(b) The state conservationist is to notify the Secretary of the Interior whenever a plan includes a dam that creates a reservoir larger than 40 surface acres or a floodwater-retarding dam providing more than 5,000 acre-feet of detention capacity. For smaller structures, if SCS finds evidence, or is presented with evidence, that historical or archeological materials exist or may be present in the

proposed reservoir area, it will advise the Secretary of the Interior. If any such materials are found during construction, the law requires similar notification.

§500.23 Public Law 89-665 - National Historic Preservation Act of 1966 (as amended).

(a) This law provides for the preservation of certain properties including historic districts, sites, buildings structures, and objects that are significant in American history, architecture, archeology, and culture. SCS, before it undertakes any work, must take into account the effect of that work on any historic district, site, building, structure, or objects eligible for or listed in the National Register of Historic Places. No Federal funds may be expended on work affecting a historic property until the Advisory Council on Historic Preservation has had a reasonable opportunity to comment. Where historic sites, places, structures, or objects are encountered, the state conservationist will proceed in accordance with 7 CFR 656.

(b) In addition to historic sites, structures, or objects listed in the National Register, various other cultural features may have State or local significance. This law does not cover these specifically, but notes that it is appropriate for the Federal Government to assist State and local governments to expand and accelerate their historic preservation programs and activities.

§500.24 Public Law 91-190 - National Environmental Policy Act of 1969

(a) Through this Act, the Congress declared it national policy to encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the Nation. This act calls for environmental evaluations and impact analysis of all planned actions, disclosure of the decisionmaking process, and that measures be taken to mitigate adverse environmental impacts. This Act also established the Council on Environmental Quality.

(b) The Council on Environmental Quality's regulation for implementing the National Environmental Policy Act (NEPA) (40 CFR 1500-1508) prescribes document format, coordination among agencies, scoping of evaluations, tiering of evaluations of impacts, and minimizing adverse impacts.

(c) The general procedures for SCS programs for compliance with NEPA are contained in 7 CFR 650. Secretary's Memorandum 1695 (as supplemented), Protecting and Improving the Quality of the

Environment, and 7 CFR 3100 further implement the provisions of P.L. 91-190.

§500.25 P.L. 93-251 - Water Resource Development Act of 1974.

Federal assistance in projects is authorized for the installation of nonstructural measures for flood protection by Section 73 of this Act dated March 7, 1974. An excerpt from the text of the Act follows:

(a) "In the survey, planning, or design by any Federal agency of any project involving flood protection, consideration shall be given to nonstructural alternatives to prevent or reduce flood damages including, but not limited to, flood proofing of structures; flood plain regulation; acquisition of flood plain lands for recreational, fish and wildlife, and other public purposes; and relocation with a view toward formulating the most economically, socially, and environmentally acceptable means of reducing or preventing flood damages.

(b) "Where a nonstructural alternative is recommended, nonfederal participation shall be comparable to the value of lands, easements, and rights-of-way which would have been required of nonfederal interests under Section 3 of the Act of June 27, 1936 (P.L. 738, Seventy-fourth Congress) for structural protection measures, but in no event shall exceed 20 per centum of the project costs."

§500.26 P.L. 93-291 - Archeological and Historic Preservation Act of 1974.

This Act amends the Reservoir Salvage Act of 1960 and authorizes the Secretary of the Interior or the federal agency itself to undertake recovery, protection, and preservation of historic and archaeological data that would otherwise be lost as a result of federal or federally assisted activities. SCS procedures for the protection of archaeological and historical properties encountered in SCS-assisted programs are published in the General Manual (420-401).

§500.27 P.L. 90-542 - Wild and Scenic Rivers Act of 1968.

(a) This Act permits certain select rivers which, with their immediate environments, have outstanding, scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, to be preserved in free-flowing condition, and that they and their immediate environment shall be protected. Components may be added to the system from time to time.

(b) The Act specifically states that no department or agency shall recommend authorization of any water resources project that would have a direct and adverse effect on the values of one of the designated rivers. Issuance of permits and licenses is prohibited in these cases.

§500.28 P.L. 92-500 - Amendments to the Federal Water Pollution Control Act of 1972.

This Act requires a 404 permit from the U.S. Army Corps of Engineers for placing dredge and fill material into, or adjacent to, navigable waters. It also requires the development of water quality management plans for each state and authorizes 5- to 10-year contracts to install best management practices to control nonpoint-source pollution and improve water quality.

§500.29 P.L. 93-205 - Endangered Species Act of 1973 (as amended).

(a) This Act declares that, as policy, all federal departments and agencies shall seek to conserve endangered species and threatened species and shall exercise authority to further the purposes of this Act. The Secretary of the Interior determines which species are covered and regulates the program for their protection. Extensive cooperation with states is called for to ensure maximum compliance with the program.

(b) Section 7(a)(2) of the Act requires that federal agencies, in consultation with and assistance of the Secretary of the Interior, ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or destroy or modify the critical habitat of such species.

§500.30 Public Law 97-98 - Farmland Protection Policy Act of 1981.

This Act states federal policy in regard to protecting prime and unique farmlands by minimizing the extent to which federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses. It states that federal programs will be administered in a manner that, to the extent practicable, will be compatible with state, local, and private programs and policies to protect farmland.

§500.31 Public Law 99-198 - Food Security Act of 1985.

(a) This act sets forth the terms and conditions under which a person, who, after December 23, 1985, produces an agricultural commodity on highly erodible land or converted wetland, shall be determined to be ineligible for certain benefits provided by the United States Department of Agriculture and agencies and instrumentalities of the Department. It also removes certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland and to thereby-

(1) Reduce soil loss due to wind and water erosion.
(2) Protect the Nation's long term capability to produce food and fiber.
(3) Reduce sedimentation and improve water quality.
(4) Assist in preserving the Nation's wetlands, and
(5) Curb the production of surplus commodities.

§500.32 Public Law 99-662 - Water Resources Development Act of 1986.

(a) Section 103(b) changed the cost share rate for nonstructural measures to require the non-Federal share to be 25 percent of the costs of such measures.

(b) Section 402 requires that, before construction of any project for local flood protection, the non-Federal interests agree to participate in and comply with applicable Federal flood plain management and flood insurance programs.

(c) Section 928 requires that reports on projects having recreational benefits submitted to the Committee on Public Works and Transportation of the House of Representatives describe the usage of other similar public recreational facilities in the area and the anticipated impacts of the proposed project on the use of such existing recreational facilities.

(d) Section 929 modifies section 2 of the act to require that projects submitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives after July 1, 1987, must contain benefits directly related to agriculture that account for at least 20 percent of the total benefits of the project.

§500.32(e)

(e) Section 1201(b) modifies Public Law 92-367 by authorizing the establishment of a National Dam Safety Review Board, which shall be responsible for reviewing and monitoring State implementation of the Dam Safety Act. The Board will consist of seven members selected for their expertise in dam safety, to represent the Department of the Army, the Department of the Interior, the Tennessee Valley Authority, the Federal Emergency Management Agency, and the Department of Agriculture, plus two members, selected by the President, from employees of officials of States having an approved program under section 8 of this Act.

(f) Section 1202 requires that reports submitted to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary, or the Secretary of Agriculture acting under Public Law 83-566, as amended, which proposes construction of a water impoundment facility, shall include information on the consequences of failure and geologic or design factors which could contribute to the possible failure of such facility.

§500.33 Other Laws.

(a) P.L. 89-80 - Water Resources Planning Act of 1965. Section 103 requires the establishment of principles, standards, and procedures which would be followed for all Federal water and related land projects.

(b) P.L. 90-480 - Accessibility to Public Buildings by Physically Handicapped.

(c) P.L. 91-224 - Environmental Quality Improvement Act of 1970 - Requires federal departments and agencies to implement environmental policies.

(d) P.L. 91-646 - Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970.

(e) P.L. 96-597 - 48 USC 1469 - (d)(c), Section 9 extends all SCS programs to trust territories. There is a need to advise USDI 60 days prior to extending assistance and to advise Public Works and Agricultural Committees of Congress, and a need to sign a memorandum of understanding with the territory.

SUBPART D - RELATED EXECUTIVE ORDERS

§500.40 General.

Executive orders are issued by the President of the United States to further clarify the Administration's position on various subjects. These orders provide direction to Federal agencies. Following are some of the more pertinent orders related to P.L. 83-566.

§500.41 Executive Order 10584 as Supplemented by Executive Order 10913.

(a) These two Executive orders prescribe rules and regulations relating to the administration of the Act. (See §500.71.) Since programs of the Departments of the Interior, Army, and Agriculture, and other Federal agencies often affect one another, close cooperation and coordination are mandated. Before planning is started, the Secretary of Agriculture shall obtain the views of these other agencies, river basin authorities and commissions, and others.

(b) The Secretary is responsible for administering the Act, approving or disapproving applications, establishing criteria for formulation and justification, establishing engineering and economic standards and objectives, planning and installing works of improvement, coordinating reviews of the plans for works of improvement, and giving full consideration to recommendations concerning the conservation and development of fish and wildlife resources.

(c) Only those plans shall be submitted to the Secretary that constitute needed and harmonious elements in the comprehensive development of the river subbasin or river basin involved. All plans submitted must properly reflect respective contributions of upstream and downstream improvements, provide best use and control of water resources at minimum cost, and give preference to the least costly combination of measures where benefits are approximately the same.

§500.42 Executive Order 11514 (as amended) - Protection and Enhancement of Environmental Quality.

This order reaffirms national environmental goals and describes the responsibilities of Federal agencies and the Council on Environmental Quality. It requires the monitoring, evaluation, and control of agency activities so as to protect and enhance the quality of the

environment. It requires that the public be given timely information through public hearings, if necessary, to ensure a full understanding of Federal plans and programs. It was revised by Executive Order 11991, dated May 24, 1977, which provided for other agency involvement in issuing regulations for implementation of NEPA.

§500.43 Executive Order 11988 - Flood Plain Management.

(a) This Executive order of May 24, 1977, directed Federal agencies to refrain from supporting development in flood plains. It revoked and replaced Executive Order 11296 issued August 10, 1966. It prescribes that alternatives be considered to avoid adverse effects and incompatible development in the flood plains. In addition, the Water Resources Council (WRC) has prepared Flood Plain Management Guidelines for implementing Executive Order 11988, which were published in the Federal Register (43 FR 6030) on February 10, 1978.

(b) Watershed projects will be developed in full compliance with SCS rules and regulations for flood plain management, 7 CFR 650.25.

§500.44 Executive Order 11990 - Protection of Wetlands.

The Executive order of May 24, 1977, directed Federal agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative. Watershed projects will be developed in full compliance with SCS rules and regulations for Protection of Wetlands, 7 CFR 650.26.

§500.45 Other Executive Orders.

(a) Executive Order 11593 - Protection and Enhancement of the Cultural Environment. This ensures that Federal plans and programs will contribute to the preservation and enhancement of nonfederally owned sites, structures, and objects of historical, architectural, and archaeological significance.

(b) Executive Order 12322 - Water Resource Projects. This requires that water resources projects are to be reviewed for technical adequacy by the Office of Management and Budget before they are submitted to Congress.

SUBPART E - USDA REGULATIONS

§500.50 USDA Regulation 9500-2 - Statement on Land Use Policy.

(a) This regulation states the Department's policy to promote attainment of land use objectives that are responsive to the needs of the people. Although it covers all land uses, of particular importance is the section relating to preservation of important farmland.

(b) The Department advocates the retention of important farmlands, forest lands, and prime rangeland whenever the proposed conversions are caused by actions or programs of a Federal agency or are inconsistent with local or State government plans. Agency actions will ensure that important farmland, forest land, and rangeland will not be irreversibly converted to other uses unless other national interests override the importance of preservation or otherwise outweigh the environmental benefits derived from their protection. Wetland retention and refraining from development of flood plains are also covered in this regulation.

(c) The Department advocates the conservation of natural and manmade scenic resources and the improvement of the technical ability of agencies to identify and evaluate scenic resources. It assures that its agencies will protect and enhance the visual quality of the landscape.

§500.51 USDA Regulation 9400-1 - Rural Development.

This regulation states the Department's policy of conducting programs that result in rural development with aggressive leadership and assistance to meet the following national rural development goals:

(a) Improve rural income levels and increase rural employment opportunities.

(b) Improve the access of rural residents to adequate housing and essential community facilities and services.

(c) Provide a more equitable distribution of opportunities through targeting efforts on distressed areas, communities, and people.

500.51(d)

(d) Create and implement a process for involving the private sector and local, State, and Federal agencies in establishing policies and programs that affect rural areas.

(e) Strengthen the planning, management, and decisionmaking capability of public and private institutions concerned with economic opportunity and quality of life in rural America.

§500.52 USDA Regulation 9500-3 - Policy on Fish and Wildlife.

(a) This regulation declares the Department's policy to assure that the values of fish and wildlife are recognized, and their habitats, both terrestrial and aquatic, including wetlands, are recognized and, where possible, enhanced, as the Department carries out its overall missions.

(b) The Department will support research and management programs that respond to the economic, ecological, educational, recreational, scientific and aesthetic values of fish and wildlife. A goal of the Department is to improve, where needed, fish and wildlife habitats, and to ensure the presence of diverse, native and desired non-native populations of wildlife, fish, and plant species, while fully considering other Department missions, resources, and services.

SUBPART F - CODIFIED RULES AND GUIDELINES

§500.60 Soil Conservation Service Rules

These rules outline, in a general way, SCS procedures for carrying out water resource activities. Specifically, the rules cover the watershed protection and flood prevention programs and are found in 7 CFR 622 and included in this manual as exhibit §500.72. These rules are supported by this manual, both of which provide the policy for the implementation of the P.L. 83-566 and P.L. 78-534 programs. Other topical manuals provide details for rules concerning landrights, water rights, and construction permits (7 CFR 651), relocation assistance (7 CFR 652), technical standards (7 CFR 653), and operation and maintenance (7 CFR 654). Rules that cover compliance with NEPA (7 CFR 650) and procedures for protection of archaeological and historical properties encountered in SCS-assisted programs (7 CFR 656) are complete within themselves.

§500.61 Consistency Policy

In May 1978 the Water Resources Council adopted a policy which directed departments and agencies to ensure that projects that receive federal funding are consistent with the appropriate regional water resource management plans (river basin plans).

§500.62 Principles and Guidelines (P&G) for water resource planning.

(a) General.

This rule establishes uniform requirements to be followed by federal agencies in formulating and evaluating alternative plans for Level C Implementation Studies. SCS water and related land resources plans are specifically mentioned for inclusion under this rule. Principles and Guidelines have been established as rules in accordance with the Water Resources Planning Act of 1965 (P.L. 89-80), as amended (42 U.S.C. 1962a-z).

(b) Principles.

The principles are the basic concepts from which the guidelines are developed. They are intended to ensure proper and consistent planning by federal agencies in the formulation and evaluation of water and related land resources implementation studies.

(c) Guidelines (Procedures).

The guidelines establish the procedures for use in water resource planning. They implement the principles discussed above and are found as Chapter I of the Principles and Guidelines.

(d) National Economic Development (NED) Procedures.

These WRC-developed procedures ensure that benefits and costs are estimated by using the best current techniques and are calculated accurately, consistently, and in compliance with Principles and Guidelines and other economic evaluation requirements. The NED procedures are found as Chapter II of the Principles and Guidelines.

(e) Environmental Quality Evaluation (EQ) Procedures.

These procedures (Chapter III of the Principles and Guidelines) establish the process for identification and evaluation of EQ problems and the development of a plan. They require that effects be designated as adverse or beneficial and that the overall effect of the project be specified as either beneficial or adverse. The procedures are intended to aid in complying with NEPA requirements and to provide a basic analytical framework for focusing the concurrent integration of other related review, coordination, and consultation requirements into the planning process.

§500.63 Channel Modification Guidelines.

These guidelines were developed jointly by the USDA's Soil Conservation Service and the Fish and Wildlife Service of USDI (190-GM-410.27). They provide guidance on considering alternatives in channel modification to minimize environmental damage.

§500.70 Watershed Protection and Flood Prevention Act, as amended*

To authorize the Secretary of Agriculture to cooperate with States and local agencies in the planning and carrying out of works of improvement for soil conservation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That erosion, floodwater, and sediment damages in the watersheds of the rivers and streams of the United States, causing loss of life and damage to property, constitute a menace to the national welfare; and that it is the sense of Congress that the Federal Government should cooperate with States and their political subdivisions, soil or water conservation districts, flood prevention or control districts, and other local public agencies for the purpose of preventing such damages, of furthering the conservation, development, utilization, and disposal of water, and the conservation and utilization of land and thereby of preserving protecting, and improving the Nation's land and water resources and the quality of the environment.

SEC. 2. For the purposes of this Act, the following terms shall mean:

The "Secretary"--the Secretary of Agriculture of the United States.

"Works of improvement"--any undertaking for--

(1) flood prevention (including structural and land-treatment measures),

(2) the conservation, development, utilization, and disposal of water, or

(3) the conservation and proper utilization of land in watershed or subwatershed areas not exceeding two hundred and fifty thousand acres and not including any single structure which provides more than twelve thousand five hundred acre-feet of floodwater detention capacity, and more than twenty-five thousand acre-feet of total capacity. No appropriation shall be made for any plan involving an estimated Federal contribution to construction costs in excess of $5,000,000 or which includes any structure which provides more than twenty-five hundred acre-feet of total capacity unless such plan has been approved by resolutions adopted by the appropriate committees of the Senate and House of Representatives: Provided, That in the case of any plan involving no single structure providing more than 4,000 acre-feet of total capacity the appropriate committees shall be the Committee on Agriculture and Forestry of the Senate and the Committee on Agriculture of the House of Representatives and in the case of any plan involving any single structure of more than 4,000 acre-feet of total capacity the appropriate committees shall be the Committee on Public Works of the Senate and the Committee on Public Works of the House of Representatives, respectively. A number of such subwatersheds when they are component parts of a larger watershed may be planned together when the local sponsoring organizations so desire. Each such project submitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives after July 1, 1987, must contain benefits directly related to agriculture that account for at least 20 percent of the total benefits of the project.

"Local organization"--any State, political subdivision thereof, soil or water conservation district, flood prevention or control district, or combinations thereof, or any other agency having authority under State law to carry out, maintain and operate the works of improvement; or any irrigation or reservoir company, water users' association, or similar organization having such authority and not being operated for profit that may be approved by the Secretary; or any Indian tribe or tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), having authority under Federal, State, or Indian tribal law to carry out, maintain, and operate works of improvement.

SEC. 3. In order to assist local organizations in preparing and carrying out plans for works of improvement, the Secretary is authorized, upon application of local organizations is such application has been submitted to, and not disapproved within 45 days by, the State agency having supervisory responsibility over programs provided for in this Act, or by the Governor if there is no State agency having such responsibility—

(1) to conduct such investigations and surveys as may be necessary to prepare plans for works of improvement ;

(2) to prepare plans and estimates required for adequate engineering evaluation;

(3) to make allocations of costs to the various purposes to show the basis of such allocations and to determine whether benefits exceed costs;

(4) to cooperate and enter into agreements with and to furnish financial and other assistance to local organizations: Provided: That, for the land-treatment measures, the Federal assistance shall not exceed the rate of assistance for similar practices under existing national programs;

(5) to obtain the cooperation and assistance of other Federal agencies in carrying out the purposes of this section;

(6) to enter into agreements with landowners, operators, and occupiers, individually or collectively, based on conservation plans of such landowners, operators, and occupiers which are developed in cooperation with and approved by the soil and water conservation district in which the land described in the agreement is situated, to be carried out on such land during a period of not to exceed ten years, providing for changes in cropping systems and land uses and for the installation of soil and water conservation practices and measures needed to conserve and develop the soil, water, woodland, wildlife, energy, and recreation resources of lands within the area included in plans for works of improvement, as provided for in such plans, including watershed or subwatershed work plans in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented. Applications for assistance in developing such conservation plans shall be made in writing to the soil and water conservation district involved, and the proposed agreement shall be reviewed by such district. In return for such agreements by landowners, operators, and occupiers the Secretary shall agree to share the costs of carrying out those practices and measures set forth in the agreement for which he determines that cost sharing is appropriate and in the public interest. The portion of such costs, including labor, to be shared shall be that part

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*(P.L. 566, 83d Cong., 68 Stat. 666; P.L. 1018, 84th Cong., 70 Stat. 1088; P.L. 85-624, 85th Cong., 72 Stat. 563; P.L. 85-865, 85th Cong., 72 Stat. 1605; P.L. 86-468, 86th Cong., 74 Stat. 131, 132; P.L. 86-545, 86th Cong., 74 Stat. 254; P.L. 87-170, 87th Cong., 75 Stat. 408; P.L. 87-703, 87th Cong., 76 Stat. 608; P.L. 89-337, 89th Cong., 79 Stat. 1300; P.L. 90-361, 90th Cong., 82 Stat. 250; P.L. 92-419, 92d Cong., 86 Stat. 667; P.L. 95-113, 95th Cong., 91 Stat. 913; P.L. 97-98, 97th Cong., 95 Stat. 1213; P.L. 99-662, 99th Cong., 100 Stat. 4196)

which the Secretary determines is appropriate and in the public interest for the carrying out of the practices and measures set forth in the agreement, except that the Federal assistance shall not exceed the rate of assistance for similar practices and measures under existing national programs. The Secretary may terminate any agreement with a landowner, operator, or occupier by mutual agreement if the Secretary determines that such termination would be in the public interest, and may agree to such modifications of agreements, previously entered into hereunder, as he deems desirable to carry out the purposes of this paragraph or to facilitate the practical administration of the agreements provided for herein. Notwithstanding any other provision of law, the Secretary, to the extent he deems it desirable to carry out the purposes of this paragraph, may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of any crop; or (2) surrender of any such history and allotments.

SEC. 4. The Secretary shall require as a condition to providing Federal assistance for the installation of works of improvement that local organizations shall--

(1) acquire, or with respect to interests in land to be acquired by condemnation provide assurances satisfactory to the Secretary that they will acquire, without cost to the Federal Government from funds appropriated for the purposes of this Act, such land, easements, or rights-of-way as will be needed in connection with works of improvement installed with Federal assistance: Provided, That when a local organization agrees to operate and maintain any reservoir or other area included in a plan for public fish and wildlife or recreational development, the Secretary shall be authorized to bear not to exceed one-half of the costs of (a) the land, easements, or rights-of-way acquired or to be acquired by the local organization for such reservoir or other area, and (b) minimum basic facilities needed for public health and safety, access to, and use of such reservoir or other area for such purposes: Provided further, That the Secretary shall be authorized to participate in recreational development in any watershed project only to the extent that the need therefor is demonstrated in accordance with standards established by him, taking into account the anticipated man-days of use of the projected recreational development and giving consideration to the availability within the region of existing water-based outdoor recreational developments: Provided further, That the Secretary shall be authorized to participate in not more than one recreational development in a watershed project containing less than seventy-five thousand acres, or two such developments in a project containing between seventy-five thousand and one hundred and fifty thousand acres, or three such developments in projects exceeding on a hundred and fifty thousand acres: Provided further, That when the Secretary and a local organization have agreed that the immediate acquisition by the local organization of land, easements, or rights-of way- is advisable for the preservation of sites for works of improvement included in a plan from encroachment by residential, commercial, industrial, or other development, the Secretary shall be authorized to advance to the local organization from funds appropriated for construction of works of improvement the amounts required for the acquisition of such land, easements or rights-of-way; and, except where such costs are to be borne by the Secretary, such advance shall be repaid by the local organization, with interest, prior to construction of the works of improvement, for credit to such construction funds: Provided further, That the Secretary shall be authorized to bear an amount not to exceed one-half of the costs of the land, easements, or rights-of-way acquired or to be acquired by the local organization for mitigation of fish and wildlife habitat losses, and that such acquisition is not limited to the confines of the watershed project boundaries;

(2) assume (A) such proportionate share, as is determined by the Secretary to be equitable in consideration of national needs and assistance authorized for similar purpose under other Federal programs, of the costs of installing any works of improvement, involving Federal assistance (excluding engineering costs), which is applicable to the agricultural phases of the conservation, development, utilization, and disposal of water or for fish and wildlife development, recreational development, ground water recharge, water quality management, or the conservation and proper utilization of land: Provided, That works of improvement for water quality management shall consist primarily of water storage capacity in reservoirs for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment of other methods of controlling waste at the source, and shall be consistent with standards and regulations adopted by the Water Resources Council on Federal cost sharing for water quality management, and (B) all of the cost of installing any portion of such works applicable to other purposes except that any part of the construction cost (including engineering costs) applicable to flood prevention and features relating thereto shall be borne by the Federal Government and paid for by the Secretary out of funds appropriated for the purpose of this Act: Provided, That, in addition to and without limitation on the authority of the Secretary to make loans or advancements under section 8, the Secretary may pay for any storage of water for present or anticipated future demands or needs for municipal or industrial water included in any reservoir structure constructed or modified under the provisions of this Act as hereinafter provided: Provided further, That the cost of water storage to meet future demands may not exceed 30 per centum of the total estimated cost of such reservoir structure and the local organization shall give reasonable assurances, and there is evidence, that such demands for the use of such storage will be made within a period of time which will permit repayment within the life of the reservoir structure of the cost of such storage: Provided further, That the Secretary shall determine prior to initiation of construction or modification of any reservoir structure including such water supply storage that there are adequate assurances by the local organization or by an agency of the State having authority to give such assurances, that the Secretary will be reimbursed the cost of water supply storage for anticipated future demands, and that the local organization will pay not less than 50 per centum of the cost of storage for present water supply demands: And provided further, That the cost to be borne by the local organization for anticipated future demands may be repaid within the life of the reservoir structure but in no event to exceed fifty years after the reservoir structure is first used for the storage of water for anticipated future water supply demands, except that (1) no reimburement of the cost of such water supply storage for anticipated future demands need be made until such supply is first used, and (2) no interest shall be charged on the cost of such water supply storage for anticipated future demands until such supply is first used but in no case shall the interest-free period exceed ten years. The interest rate used for purposes of computing the interest on the unpaid balance shall be determined in accordance with the provisions of section 8.

(3) make arrangements satisfactory to the Secretary for defraying costs of operating and maintaining such works of improvement, in accordance with regulations presented by the Secretary of Agriculture.

(4) acquire, or provide assurance that landowners or water users have acquired, such water rights, pursuant to State law, as may be needed in the installation and operation of the work of improvement.

(5) obtain agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than 50 per centum of the lands situated in the drainage area above each retention reservoir to be installed with Federal assistance; and

(6) submit a plan of repayment satisfactory to the Secretary for any loan of advancement made under the provisions of section 8.

SEC. 5. (1) At such time as the Secretary and the interested local organization have agreed on a plan for works of improvement, and the Secretary has determined that the benefits exceed the costs, and the local organization has met the requirements for participation in carrying out the works of improvement as set forth in section 4, the local organization may secure engineering and other services, including the design, preparation of contracts and specifications, awarding of contracts, and supervision of construction, in connection with such works of improvement, by retaining of employing a professional engineer or engineers satisfactory to the Secretary or may request the Secretary to provide such services: Provided, That if the local organization elects to employ a professional engineer or engineers, the Secretary shall reimburse the local organization for the costs of such engineering and other services secured by the local organization as are properly chargeable to such works of improvement in an amount not to exceed the amount agreed upon in the plan for works of improvement of or any modification thereof: Provided further, That the Secretary may advance such amounts as may be necessary to pay for such services, but such advances with respect to any works of improvement shall not exceed 5 per centum of the estimated installation cost of such works.

(2) Except as to the installation of works of improvement on Federal lands, the Secretary shall not construct or enter into any contract for the construction of any structure: Provided, That if requested to do so by the local organization, the Secretary may enter into contracts for the construction of structures.

(3) Whenever the estimated Federal contribution to the construction cost of works of improvement in the plan for any watershed of subwatershed area shall exceed $5,000,000 or the works of improvement include any structure having a total capacity in excess of twenty-five hundred acre-feet, the Secretary shall transmit a copy of the plan and the justification therefor to the Congress through the President.

(4) Any plan for works of improvement involving an estimated Federal contribution to construction costs in excess of $5,000,000 or including any structure having a total capacity in excess of twenty-five hundred acre-feet (a) which includes works of improvement for reclamation or irrigation, or which affects public or other lands wildlife under the jurisdiction of the Secretary of the Interior, (b) which includes Federal assistance for floodwater detention structures, (c) which includes features which may affect the public health, or (d) which includes measures for control or abatement of water pollution, shall be submitted to the Secretary of the Interior, the Secretary of the Army, the Secretary of Health, Education, and Welfare, or the Administrator of the Environmental Protection Agency, respectively, for his views and recommendations at least thirty days prior to transmission of the plan to the Congress through the President. The views and recommendations of the Secretary of the Interior, the Secretary of the Army, the Secretary of Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, if received by the Secretary prior to the expiration of the above thirty-day period, shall accompany the plan transmitted by the Secretary to the Congress through the President.

(5) Prior to any Federal participation in the works of improvement under this Act, the President shall issue such rules and regulations as he deems necessary or desirable to carry out the purposes of this Act, and to assure the coordination of the work authorized under this Act and related work of other agencies, including the Department of the Interior and the Department of the Army.

SEC. 6. The Secretary is authorized in cooperation with other Federal and with States and local agencies to make investigations and surveys of the watersheds of rivers and other waterways as a basis for the development of coordinated programs. In areas where the programs of the Secretary of Agriculture may affect public or other lands under the jurisdiction of the Secretary of the Interior, the Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture in the planning and development of works or programs for such lands.

SEC. 7. The provisions of the Act of June 22, 1936 (49 Stat. 1570), as amended and supplemented, conferring authority upon the Department of Agriculture under the direction of the Secretary of Agriculture to make preliminary examinations and surveys and to prosecute works of improvement for runoff and waterflow retardation and soil erosion prevention n the watersheds of rivers and other waterways are hereby repealed: Provided, That (a) the authority of that Department of Agriculture, under the direction of the Secretary, to prosecute the works of improvement for runoff and waterflow retardation and soil erosion prevention authorization to be carried out by the Department by the Act of December 22, 1944 (58 Stat. 887), as amended, and (b) the authority of the Secretary of Agriculture to undertake emergency measures for runoff retardation and soil erosion prevention authorized to be carried out by section 7 of the Act of June 28, 1938 (52 Stat. 1215), as amended by section 216 of the Act of May 17, 1950 (64 Stat. 163), shall not be affected by the provisions of this section: Provided further, That in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, the Secretary of Agriculture is authorized to prosecute additional works of improvement for the conservation, development, utilization, and disposal of water in accordance with the provisions of section 4 of this Act of any amendments hereafter made thereto.

SEC. 8. The Secretary is authorized to make loans or advancements (a) to local organizations to finance the local share of costs of carrying out works of improvement provided for in this Act, and (b) to State and local agencies to finance the local share of carrying out works of improvement (as defined in section 2 of this Act) in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented: Provided, That the works of improvement in connection with said eleven watershed improvement programs shall be integral parts of watershed or subwatershed work plans agreed upon by the Secretary of Agriculture and the concerned State and local agencies. Such loans or advancements shall be made under

contracts or agreements which will provide, under such terms and conditions as the Secretary deems appropriate, for the repayment thereof in not more than fifty years from the date when the principal benefits of the works of improvement first become available, with interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which the loan or advancement is made, which are neither due nor callable for redemption for fifteen years from date of issue. With respect to any single plan for works of improvement, the amount of any such loan or advancement shall not exceed $10,000,000.

SEC. 9. The provisions of this Act shall be applicable to Hawaii, Alaska, Puerto Rico, and the Virgin Islands.

Sec 10. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, such sums to remain available until expended. No appropriation hereafter available for assisting local organizations in preparing and carrying out plans for works of improvement under the provisions of section 3 or clause (a) of section 8 of this Act shall be available for any works of improvement pursuant to this Act or otherwise in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, or for making loans or advancements to State and local agencies as authorized by clause (b) of section 8.

SEC. 11. This Act may be cited as the "Watershed Protection and Flood Prevention Act".

SEC. 12. When the Secretary approves the furnishing of assistance to a local organization in preparing a plan for works of improvement as provided for in section 3:

(1) The Secretary shall so notify the Secretary of the Interior in order that the latter, as desires, may make surveys and investigations and prepare a report with recommendations concerning the conservation and development of wildlife resources and participate, under arrangements satisfactory to the Secretary of Agriculture, in the preparation of a plan for works of improvement that is acceptable to the local organization and the Secretary of Agriculture.

(2) Full consideration shall be given to the recommendations contained in any such report of the Secretary of the Interior as he may submit to the Secretary of Agriculture prior to the time the local organization and the Secretary of Agriculture have agreed on a plan for works of improvement. The plan shall include such of the technically and economically feasible works of improvement for wildlife purposes recommended in the report by the Secretary of the Interior as are acceptable to, and agreed to by, the local organization and the Secretary of Agriculture, and such report of the Secretary of the Interior shall, if requested by the Secretary of the Interior, accompany the plan for works of improvement when it is submitted to the Secretary of Agriculture for approval or transmitted to the Congress through the President.

(3) The cost of making surveys and investigations and of preparing reports concerning the conservation and development of wildlife resources shall be borne by the Secretary of the Interior out of funds appropriated to his Department.

As amended November 17, 1986.

§500.71 Executive Order 10584, as supplemented

TEXT OF EXECUTIVE ORDER NO. 10584 OF DECEMBER 18, 1954, PRESCRIBING RULES AND REGULATIONS RELATING TO THE ADMINISTRATION OF THE WATERSHED PROTECTION AND FLOOD PREVENTION ACT AS AMENDED AND SUPPLEMENTED BY EXECUTIVE ORDER NO. 10913 of JANUARY 18, 1961

By virtue of the authority vested in me by the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. 1001 et seq.), and as President of the United States, it is ordered that Executive Order No. 10584 of December 18, 1954, be, and it is hereby, amended by deleting sections 1, 2, 3, and 4 thereof, by renumbering sections 5 and 6 thereof as sections 6 and 7, respectively, and by substituting the following new sections:

"Section 1. Scope of order. This order shall apply (a) to the planning, construction, operation, and maintenance of all works of improvement under the authority of the Watershed Protection and Flood Prevention Act (Public Law 566, approved August 4, 1954, as amended; 16 U.S.C. 1001 et seq.), hereinafter referred to as the Act, and (b) to other programs and projects of the Department of Agriculture, and to programs and projects of the Department of the Interior, the Department of the Army, and other Federal agencies to the extent that such programs or projects affect, or are affected significantly by, works of improvement provided for in the Act.

"Sec. 2. General administration. The Secretary of Agriculture shall have the following-described responsibilities under the Act:

"(a) Approval or disapproval of applications for Federal assistance in preparing plans for works of improvement, and the assignment of priorities for the provision of such assistance.

"(b) Establishing criteria for the formulation and justification of plans for works of improvement and criteria for the sharing of the cost of both structural and land-treatment measures which conform with the provisions of the Act and with policies established by or at the direction of the President for watershed protection, flood prevention, irrigation, drainage, water supply, and related water-resources development purposes.

"(c) Establishing engineering and economic standards and objectives, including standards as to degrees of flood protection, for works of improvement planned and carried out under the authority of the Act.

"(d) Determination and definition of (1) those land-treatment

measures and structural improvements for flood prevention and measures for the agricultural phases of conservation, development, use and disposal of water or for fish and wildlife development which are eligible for assistance under the Act, and (2) the nature and extent of such assistance and the conditions under which such assistance shall be rendered.

"(e) Planning and installing works of improvement on lands under his jurisdiction, and arranging for the participation of other Federal agencies in the planning and installation of works of improvement on lands under their jurisdiction. Recommendations of the heads of other Federal agencies for necessary works of improvement on lands under their jurisdiction shall be submitted as an integral part of the plans of the Department of Agriculture for works of improvement. Arrangements for construction, operation, and maintenance of works of improvement on such lands shall be mutually satisfactory to the Secretary of Agriculture and the head of the Federal agency concerned.

"(f) Submitting plans for works of improvement to the State Governor or Governors concerned and to the Federal agencies concerned for review and comment when the Secretary and the interested local organization have agreed on such plans; and, when and as required by the Act, submitting such plans to the Secretary of the Interior and the Secretary of the Army for their review and comment prior to transmission of the plans to the Congress through the President.

"(g) Giving full consideration to the recommendations concerning the conservation and development of fish and wildlife resources contained in any report of the Secretary of the Interior which is submitted to him, in accordance with section 12 of the Act and section 5 of this order, prior to the time he and the local organization have agreed on a plan for works of improvement, and including in the plan such works of improvement for fish and wildlife purposes recommended in the report as are acceptable to him and the local organization.

"(h) Holding public hearings at suitable times and places when he determines that such action will further the purposes of the Act.

"Sec. 3. Notification. (a) The Secretary of Agriculture shall:

"(1) Notify in writing the State Governor or Governors concerned, the Secretary of the Interior, the Secretary of the Army, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

"(2) Notify the following, severally, in writing of all approvals or disapprovals of applications for planning assistance: the sponsoring organization, the State Governor or Governors concerned,

the Secretary of the Interior, the Secretary of the Army, and other Federal agencies concerned.

"(b) The Secretary of the Interior shall notify in writing the State Governor or Governors concerned, the Secretary of Agriculture, the Secretary of the Army, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

"(c) The Secretary of the Army shall notify in writing the State Governor or Governors concerned, the Secretary of Agriculture, the Secretary of the Interior, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

"Sec. 4. Coordination. In order to assure the coordination of work authorized under the Act and the related work of other agencies, so that the proper use, conservation, and development of water and related land resources through Federal programs and financial assistance may be achieved in the most orderly, economical, and effective manner.

"(a) The Secretary of Agriculture, before authorizing planning assistance in response to an application from a local organization for assistance under the Act, shall:

"(1) When an application applies to a watershed located in one of the seventeen western reclamation States or Hawaii and it appears that a major objective is the agricultural phase of the conservation, development, utilization, and disposal of water for irrigation purposes, request the views of the Secretary of the Interior concerning the feasibility of achieving equivalent irrigation benefits by means of works of improvement constructed pursuant to the Reclamation Act of June 17, 1902 (43 U.S.C. 391), and acts amendatory or supplementary thereto, or by means of assistance furnished pursuant to the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422a-422k), and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving that objective.

"(2) When it appears that a major objective of an application is the reduction of flood damages in urban areas (as defined in the most recent census), request the views of the Secretary of the Army concerning the feasibility of achieving equivalent urban flood protection benefits by means of works of improvement constructed

pursuant to the Flood Control Act of March 1, 1917 (39 Stat. 948), the Flood Control Act of May 15, 1928, 45 Stat. 534), the Flood Control Act of June 22, 1936 (49 Stat. 1570), or acts amendatory or supplementary thereto, and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving that objective.

"(3) When an application applies to a watershed located in the Tennessee River drainage basin, request the views of the Board of Directors of the Tennessee Valley Authority concerning the feasibility of achieving the objectives of the application by means of works of improvement for flood control or watershed protection constructed under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831 et seq.), and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving such objectives; and when such planning assistance is authorized, consult with the Tennessee Valley Authority throughout all phases of project development concerning the relationship of works of improvement under the Act to the unified development and regulation of the Tennessee River system.

"(b) The Secretary of the Interior shall, prior to undertaking any survey or field investigation under the Reclamation Act of June 17, 1902 (43 U.S.C. 391), and acts amendatory or supplementary thereto, or prior to initiating investigations after receipt of a Notice of Intent to apply for a loan under the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422a-422k), relating to works of improvement wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the project proposal by means of Federal assistance furnished pursuant to the Act, and submit a report on such a survey or field investigation or approve such application for assistance only after carefully considering whether works of improvement under his authorities would be a more appropriate method of achieving such objectives.

"(c) The Secretary of the Army shall, prior to undertaking any survey or field investigation pursuant to the Flood Control Act of March 1, 1917 (39 Stat. 948), the Flood Control Act of May 15, 1928 (45 Stat. 534), the Flood Control Act of June 22, 1936 (49 Stat. 1570), and acts amendatory or supplementary thereto, relating to works of improvement wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the project proposal by means of Federal assistance furnished pursuant to the Act, and submit a report on such survey or field investigation only after carefully considering whether works of

improvement under his authorities would be a more appropriate method of achieving such objectives.

"(d) The Board of Directors of the Tennessee Valley Authority shall, prior to undertaking any survey or field investigation under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831 et seq.), relating to works of improvement for flood control or watershed protection to be installed wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the works of improvement for flood control or watershed protection by means of works of improvement constructed under the Act, and proceed with such survey or investigation only after carefully considering whether works of improvement under the Tennessee Valley Authority Act would be a more appropriate method of achieving such objectives.

"(e) Whenever the foregoing provisions of this section require an agency head to request the views of another agency head, such request shall be effected prior to the making of any commitment to local interests, and local interests shall be informed at the outset of negotiations that any plan resulting therefrom is subject to coordination as required by this section.

"(f) When any agency having responsibilities for water resources development is considering the initiation of surveys or field investigations in a watershed or subwatershed area of not more than 250,000 acres and it appears that the purposes to be served by the project under investigation could more advantageously be met by means of a combination of works of improvement under the statutory authority available to that and other agencies, the appropriate agency head shall consider with the other agency heads concerned and the cooperating local interests the feasibility of preparing a jointly developed plan for coordinated action under available statutory authority.

"Sec. 5. Fish and wildlife development. Upon receipt of the notice required by section 12 of the Act and section 3(a)(1) of this order, the Secretary of the Interior, as he desires, may make surveys and investigations and prepare a report with recommendations concerning the conservation and development of fish and wildlife resources and participate, under arrangements satisfactory to the Secretary of Agriculture, in the preparation of a plan for works of improvement which will be acceptable to the local organization and the Secretary of Agriculture."

Sec. 6. Relationship to comprehensive development. (a) The Secretary of Agriculture shall submit plans for installation of works of improvement under the Act to the Congress through the President

only if the Secretary is satisfied that such works constitute needed and harmonious elements in the comprehensive development of the river subbasin or river basin involved.

(b) Federal agencies having responsibilities for water resource developments shall, in the design and justification of works of improvement, take cognizance of all upstream and downstream works in place and in operation, or soon to be brought into operation. The guiding principle shall be to adjust the nature, capacity, and operating characteristics of works of improvement in a manner that (1) reflects the respective contributions of upstream and downstream works to flood protection and to the conservation, development, use, and disposal of water, and (2) provides the best use and control of water resources at minimum cost: Whenever approximately equivalent benefits can be obtained from alternative works of improvement or combinations of improvements, with approximately the same cost, the alternative or combination least costly to the Federal Government shall be given preferential consideration. In case benefits are produced jointly by more than one work of improvement, or in case complementary relationships exist between the projects and plans of the several agencies, the benefits claimed in justification of a system of improvements shall not include any duplication or compounding of benefits.

Sec. 7. Basic data. In the utilization of existing basic physical and economic data, and in the acquisition of additional basic data required for planning, design, construction, operation and evaluation of works of improvement authorized under the Act, the Department of Agriculture shall be assisted by the principal basic-data collection agencies, including the Geological Survey in the Department of the Interior and the Weather Bureau in the Department of Commerce. The basic-data collection agencies shall assist and cooperate with the Department of Agriculture with respect to the following:

(a) Provision of pertinent information in the preliminary planning of works of improvement.

(b) Collaboration in planning programs of hydrologic-data collection in project areas, in the selection of station sites and installation of equipment for collecting hydrologic data, and in the collection of such data.

(c) Collaboration in the analysis and interpretation of hydrologic data collected specifically for projects initiated under the Act, and of relevant data which may contribute to an analysis of the effects of such projects.

500.72 Codified Rule - 7 CFR 622 Watershed Projects.

6076 Federal Register / Vol. 49, No. 34 / Friday, February 17, 1984 / Rules and Regulations

Soil Conservation Service

7 CFR Parts 620, 622, and 623

Water Resources; Watershed Projects

AGENCY: Soil Conservation Service (SCS), USDA.

ACTION: Final rule.

SUMMARY: This rule prescribes the general procedures for implementation of the Watershed Protection and Flood Prevention Program under the authority of Pub. L. 83-566 and those under the authority of Pub. L. 78-534. 7 CFR Parts 620 and 623 are being removed and reserved, as the information contained in these parts is now included in 7 CFR Part 622. Incorporating the material in 7 CFR simplifies and clarifies the rule by eliminating unnecessary detail and repetitious wording. These changes will result in a more accurate and usable regulation. The need for separate rules no longer exists.

EFFECTIVE DATE: March 19, 1984.

FOR FURTHER INFORMATION CONTACT: Edgar H. Nelson, Director, Basin and Area Planning Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 447-3587.

SUPPLEMENTARY INFORMATION:

I. General

Pub. L. 83-566 and Pub. L. 78-534 authorize the Secretary of Agriculture to cooperate with State and local agencies in the planning and carryout out of works of improvement for flood prevention; for the conservation, development, utilization, and disposal of water; and for the conservation and proper utilization of land in watershed or subwatershed areas. Under Pub. L. 83-566, these areas shall not exceed 250,000 acres; there is no limitation on acres for Pub. L. 78-534. The Secretary of Agriculture has delegated authority for administration of the Act to the Chief of the Soil Conservation Service (SCS) with two exceptions: (a) The Administrator of Farmers Home Administration (FmHA) has responsibility for administering Sec. 8 of the Act and those functions with respect to repayment obligations under section 4

and (b) The Chief of the Forest Service (FS) administers the forestry aspects of the Act under such general program criteria and procedures as may be established by the Chief of SCS.

This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 to implement Executive Order 12291, and has been classified "nonmajor."

It will not affect the national economy by $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Peter C. Myers, Chief, Soil Conservation Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

There will be no major increase in cost or prices for consumers, individuals, industries, Federal, State or local government agencies, or geographic regions.

The rule will govern a program of technical and financial assistance in which participation is voluntary. Thus, it will not impose an unnecessary regulatory, information or compliance burden on small businesses, organizations, or governmental jurisdictions as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601).

II. Discussion of Comments

On April 19, 1983, SCS published a proposed rule (48 FR 16691) to revise its regulations for the watershed programs. This rule also covered the cancellation of 7 CFR Part 620 and 7 CFR Part 623 since this information is covered in 7 CFR Part 622. At that time, SCS solicited written comments from interested persons regarding the proposed revisions. The public comment period ended on June 20, 1983. Comments were received from three state environmental agencies, one regional environmental agency, four environmental advocacy organizations, and one Federal agency. A summary of the comments and SCS responses are as follows:

Comment 1: The most universal comment received from environmental organizations was concern over the loss of the environmental objective as a coequal objective in planning. The primary concern is that environmental concerns will not receive equal treatment during planning.

Response: It is not the intent of this rule to change the method of planning to exclude consideration of the environment. This regulation provides several mechanisms for the consideration of environmental concerns during the planning effort.

The Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G) issued by the Water Resources Council set the policy for planning watershed projects. SCS is committed to following the P&G along with regulations issued by the Council on Environmental Quality for complying with Pub. L. 91-190, National Environmental Policy Act (NEPA). By using both sets of guidelines, watershed plans will be developed which reasonably maximize net national economic benefits while at the same time minimize adverse environmental impacts. This is consistent with the Federal objective of water and related land resources planning which "is to contribute to national economic development consistent with protecting the Nation's environment, pursuant to national environmental statutes, applicable executive orders and other Federal planning requirements."

These guidelines also make it clear that any alternative plans (including the NED plan) developed will "include appropriate mitigation of adverse environmental effects." Using the environmental quality account and the impacts section, environmental effects will be accounted for in the analysis and the plan. Another key point is covered under the State and local concerns of the Principles and Guidelines. Alternative plans can be developed to address State and local concerns when their concerns are not fully addressed by the NED plan. In this regard, environmental concerns can be raised and thus examined in the planning effort.

Comment 2: Several comments were received which took exception to the deletion of § 622.2 (c) and (d) which addressed planning with environmental considerations and the input of other agencies.

Response: The two paragraphs of concern have been reincorporated in the rule as part of a new subpart: Subpart D—Planning.

Comment 3: Many comments were received indicating the new rule eliminates planning guidance and the new § 622.4 does not convey any substantial information. Suggestions were made to go back to the existing rule or at least be more explicit.

Response: Section § 622.4 was incorporated into the rule to cover all planning procedures which are to be followed in the watershed program. By including all references, the need for repeating information available from other sources is eliminated. The SCS intends to continue complying with all rules, regulations, and legislative mandates which affect the program. The last sentence of § 622.4 has been changed to more clearly convey this intent.

Comment 4: One commenter disagreed with the decision that this is a nonmajor action and, therefore, should have a program environmental impact statement.

Response: A major Federal action is defined as a change in the regulations which will result in an effect on the national economy of $100 million or more. Although the watershed program is funded on the average of more than $100 million, these proposed rule changes will not cause any change in the funding or any change which would have more than a $100 million impact (see the Supplementary Information at the beginning of this rule.) Therefore, under USDA procedures established in Secretary's Memorandum 1512-1 which implement Executive order 12291, this change has been classified as "nonmajor."

Comment 5: Most of the commenters were concerned over the change in the rule which states that projects must reasonably maximize "net national economic benefits" rather than just have benefits which are greater than the costs as in the former rule.

Response: The rule has been changed to indicate that net national economic benefits would be the criteria because of the changes put into effect with the approval of the *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G).* The Principles state that "A plan recommending Federal action is to be the alternative plan with the greatest net economic benefit consistent with protecting the Nation's environment (the NED plan) is to be selected unless the Secretary of a department or head of an independent agency grants an exception . . ." The SCS has no choice but to follow the P&G. However, Pub. L. 83-566 requires that the benefits be greater than the costs and, therefore, a benefit-cost ratio will normally be developed for each water resource project plan.

Comment 6: There also were concerns over the elimination of the detail and protective language (planning procedures, environmental concerns, etc.) in the existing rule. Numerous

commenters felt that substantive parts of the existing rule should be retained.

Response: The simplification of the rule was carried out in accordance with Executive Order 12291, and Departmental and Office of Management and Budget guidelines. Detailed policy and procedural matters are reserved for departmental and agency directives and manuals. The SCS will continue to utilize the most up-to-date planning and implementation procedures that have evolved from experiences over the years in the soil and water resource arena.

Comment 7: Several sections dealing with the priority of considering measures have been eliminated. It has been suggested that the consideration of land treatment should be first, and channel work the last measure considered. This concept should be retained in the proposed rule.

Response: According to the procedures outlined in the *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*, all possible solutions shall be considered to determine the one which maximizes net NED benefits. This is interpreted to mean that all measures must be considered in order to formulate the National Economic Development Plan.

Comment 8: Several comments indicate that the rule seems to imply that other agencies will be left out of the planning process.

Response: As a result of the comments received, § 622.3 has been changed to clarify this point. Section 12 of Pub. L. 83-566, which requires coordination with the Fish and Wildlife Service and specifically refers to coordination with land management agencies when Federal lands are involved, is now cited in the rule.

Comment 9: The rule appears to require SCS to do all the design work for municipal and industrial (M&I) water supply structures.

Response: SCS's requirements for design of M&I water supply structures have not been changed by this proposed rule. Design work for an M&I structure will continue to be done by private consultants or the sponsor's own engineers.

Comment 10: Several reviewers suggested Subpart D—Planning and Approval be retained in the rule.

Response: As a result of this and other similar comments, Subpart D—Planning has been added to the proposed rule. The step-by-step procedures dropped from the old rule are now replaced with an overview of the planning and review process.

Comment 11: The proposed rule states that 7 CFR 623 is being cancelled but there is nothing in the rule that indicates the differences between the watershed program (Pub. L. 83-566) and the flood prevention program (Pub. L. 78-534).

Response: Section 622.3 has been added to the rule to summarize the differences between the programs.

Comment 12: The rule does not state that the programs will be operated so as not to be discriminatory.

Response: Section 622.6 on equal opportunity has been added to the rule.

List of Subjects

7 CFR Part 620

Soil conservation, Water resources.

7 CFR Part 622

Watersheds, Flood prevention, Technical assistance, Soil conservation, Grant programs-natural resources, Loan programs-natural resources.

7 CFR Part 623

Flood assistance.

Dated: January 11, 1984.

Peter C. Myers,

Chief, Soil Conservation Service.

Accordingly, Chapter VI of Title 7 is amended by removing and reserving Parts 620 and 623 and by revising Part 622 to read as follows:

PART 620—[RESERVED]

PART 622—WATERSHED PROJECTS

Subpart A—General

Sec.
622.1 Purpose.
622.2 Scope.
622.3 Relationship to the Pub. L. 78-534 Program.
622.4 Relationship to other agencies.
622.5 Guidelines.
622.6 Equal opportunity.
622.7 Notification under Executive Order 12372.

Subpart B—Qualifications

622.10 Sponsors.
622.11 Eligible watershed projects.

Subpart C—Application Procedure

622.20 Application.
622.21 State agency approval.

Subpart D—Planning

622.30 General.
622.31 Basic planning efforts.
622.32 Reviews and approvals.

Authority: Pub. L. 83-566, 68 Stat. 666 as amended (16 U.S.C. 1001, et seq.); Pub. L. 78-534, 58 Stat. 889, 33 U.S.C. 701b-1.

Subpart A—General

§ 622.1 Purpose.

This part sets forth the general policies for planning and carrying out watershed projects under Pub. L. 83-566, 68 Stat. 666 (16 U.S.C. 1001 et seq.) and flood prevention projects under Pub. L. 78-534, 58 Stat. 889 (33 U.S.C. 701b-1

§ 622.2 Scope.

(a) To assist sponsors in preparing and carrying out watershed plans, the Soil Conservation Service (SCS) shall conduct investigations and surveys, with the cooperation and assistance of other Federal agencies, to:

(1) Determine the extent of watershed problems and needs, and

(2) Set forth viable alternative solutions consistent with local, regional, and national objectives, including an alternative solution which makes the greatest net contribution to national economic development.

(b) Alternatives will consist of either land treatment, nonstructural or structural measures, or combinations thereof that will help accomplish one or more of the authorized project purposes.

(c) Authorized project purposes are watershed protection, conservation and proper utilization of land, flood prevention, agricultural water management including irrigation and drainage, public recreation, public fish and wildlife, municipal and industrial water supply, hydropower, water quality management, ground water supply, agricultural pollution control, and other water management.

(d) After a final plan for works of improvement is agreed upon between SCS and the sponsors and the approval processes are completed, SCS will provide technical and financial assistance to install the project, subject to the availability of funds and the budgeting and fiscal policies of the President.

§ 622.3 Relationship to the Pub. L. 78-534 Program.

(a) *General.* The purposes and objectives of the programs under Pub. L. 83-566 and Pub. L. 78-534 are the same in most cases. Planning criteria, economic justification, local sponsorship, agency participation, financial assistance, eligible measures, operation and maintenance arrangements for the Pub. L. 78-534 program are consistent with those of the Pub. L. 83-566 program. The differences with the Pub. L. 78-534 program are outlined below.

(b) *Initiation.* Flood prevention projects are individually authorized by

Federal legislation. The state conservationist and the sponsors agree on a plan of action and notify interested parties to solicit their participation. The sponsors keep the public informed and solicit their views and comments.

(c) *Subwatershed plans.* These plans are administratively approved by the state conservationist. If the plan involves purposes other than flood prevention, clearance must be obtained from the Office of Management and Budget before approval. Financial assistance available differs only in that program funds may be used for the purchase of land rights for single-purpose flood prevention structures and installing land treatment on Federal lands.

(d) *Installation.* SCS shall award and administer contracts for the installation of project measures unless the sponsors agree to perform the work. Project agreements between the sponsors and SCS are not required if the work consists of flood prevention structures built and funded by SCS.

§ 622.4 Relationship to other agencies.

SCS will coordinate responsibilities with other water and land resource development agencies on projects that may come under the jurisdictions of various authorities. This will include any land management agencies which may have land which would be affected by project measures. Coordination with the U.S. Department of the Interior's Fish and Wildlife Service will be in accordance with section 12 of Pub. L. 83-566 (as amended).

§ 622.5 Guidelines.

Guidelines for carrying out programs authorized under Pub. L. 83-566 and Pub. L. 78-534 are contained in miscellaneous instructions, manuals, and handbooks issued by the Soil Conservation Service. Regulations for Implementing NEPA (40 CFR Parts 1500-1508) issued by the Council on Environmental Quality, and in Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies issued by the Water Resources Council. Watershed projects are to be planned and carried out in a way that will conform to conditions mandated by the above and other applicable laws, Executive orders, and codified rules.

§ 622.6 Equal opportunity.

The Pub. L. 83-566 and Pub. L. 78-534 programs will be conducted in compliance with all requirements respecting nondiscrimination as contained in the Civil Rights Act of 1964, as amended, and in the regulations of the Secretary of Agriculture (7 CFR Part 15), which provide that no person in the United States shall, on the grounds of race, color, national origin, sex, age, handicap, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted or assisted by the Department of Agriculture.

§ 622.7 Notification under Executive Order 12372.

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 7 CFR Part 3015, Subpart V, "Intergovernmental Review of the Department of Agriculture Programs and Activities." State processes or directly affected State, areawide, regional and local officials and entities have 60 days for comment starting from the date of submission of the application to the State Single Point of Contact.

Subpart B—Qualifications

§ 622.10 Sponsors.

(a) Watershed projects are sponsored by one or more local organizations qualifying as sponsors. All watershed plans shall be sponsored by entities legally organized under State law or by any Indian tribe or tribal organization having the authority to carry out, operate and maintain works of improvement. Those plans that incorporate the use of nonstructural or structural measures shall be sponsored by organizations that, individually or collectively, have:

(1) The power of eminent domain.

(2) The authority to levy taxes or use other adequate funding sources, including state, regional, or local appropriations, to finance their share of the project cost and all operation and maintenance costs.

(b) To receive Federal assistance for project installation, sponsors must commit themselves to use their powers and authority to carry out and maintain the project as planned.

§ 622.11 Eligible watershed projects.

(a) To be eligible for Federal assistance, a watershed project must:

(1) Meet the definition of a watershed area as defined in SCS's National Watersheds Manual.

(2) Not exceed 250,000 acres in size.

(3) Not include any single structure that provides more than 12,500 acre-feet of floodwater detention capacity nor more than 25,000 acre-feet of total capacity.

(4) Have significant land or water management problems that can be solved or alleviated by measures for watersheld protection, flood prevention, drainage, irrigation, recreation, fish and wildlife, municipal or industrial water supply, or other water management.

(5) Produce substantial benefits to the general public, to communities, and to groups of landowners.

(6) Cannot be installed by individual or collective landowners under alternative cost-sharing assistance.

(7) Have strong local citizen and sponsor support through agreement to obtain land rights, contribute the local cost of construction, and carry out operation and maintenance.

(b) Works and improvement that may be included in a watershed project are those that:

(1) Contribute to reducing floodwater, erosion, and sediment damages.

(2) Further the conservation, development, utilization, and disposal of water and the conservation and proper utilization of land.

(3) Have the greatest net national economic benefits consistent with protecting the Nation's environment (for structural water resource projects) relative to alternative works, unless an exception is granted by the Secretary.

Subpart C—Application Procedure

§ 622.20 Application.

Sponsors shall follow State developed procedures (based on Executive Order 12372) for coordination of proposed Federal financial assistance and also USDA's 7 CFR Part 3015 in applying for Pub. L. 83-566 assistance. Standard forms for Federal assistance or other approved forms may be obtained from SCS State, area, or field offices. These forms should be submitted to the Single Point of Contact in accordance with the State developed procedures.

§ 622.21 State agency approval.

The governor or designated State agency will approve or disapprove the application. If disapproved, no further action is required of SCS. If approved or not disapproved within 45 days, the application shall be sent to the SCS state conservationist. After the state conservationist has determined that the application is legally valid, he will notify the sponsor of receipt of the application. If found not legally valid, the state conservationist will return it to the originator with an opinion.

Subpart D—Planning

§ 622.30 General.

(a) Watershed projects are to be planned and carried out in a way that will (1) minimize all adverse impacts, and (2) mitigate unavoidable losses to the maximum practicable degree. Projects must comply with the requirements of the National Environmental Policy Act of 1969 (Pub. L. 91-190, 83 Stat. 852) (42 U.S.C. 4321 et seq.).

(b) Fish and Wildlife enhancement measures proposed by Federal or State fish and wildlife agencies will be included if they are technically and economically feasible and are acceptable to the sponsors and the SCS. If additional sponsors are needed to carry out the recommended fish and wildlife measures, SCS will assist fish and wildlife agencies in attempting to obtain such sponsors.

(c) All planning efforts by SCS and the sponsors must include well publicized public meetings to obtain public input and views on the project.

§ 622.31 Basic planning efforts.

Upon receipt of an application, the SCS will make any necessary field studies and develop a report to justify the need for planning effort. Once planning is authorized by the Chief of SCS, a watershed plan-environmental impact statement (plan-EIS) or a watershed plan-environmental assessment (plan-EA) will be prepared by SCS to request funding. This effort must be coordinated with other State and Federal agencies.

§ 622.32 Reviews and approvals.

(a) The watershed plan-environmental impact statement (or assessment) will be subject to internal technical reviews, sponsor and other local party review, interagency review by other Federal, state, and concerned groups, and a final review as stated in SCS's National Watersheds Manual.

(b) After thorough review by SCS and other agencies, the SCS and the sponsors shall accept the plan-EIS or plan-EA by signing the watershed agreement. The watershed plan must be approved by the Committees of Congress or the Chief of SCS. Funding for installation can then be granted by the Chief of SCS.

PART 623—[RESERVED]

[FR Doc. 84-1986 Filed 2-16-84; 8:45 am]
BILLING CODE 3410-16-M

*U.S. GOVERNMENT PRINTING OFFICE : 1984 0-420-931/SCS-668

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PART 501 - PROGRAM ADMINISTRATION

SUBPART A - INTRODUCTION

501.00(f)

§501.00 General.

(a) This manual is written primarily in terms of P.L. 83-566, but applies to P.L. 78-534 projects as well. Where procedures differ for P.L. 78-534 projects, special instructions are given.

(b) Watershed projects should be formulated to accomplish one or more of the purposes stated in the preamble of the Act. Overall guidance in the formulation process is provided by the Water Resources Council's "Principles and Guidelines for Water and Related Land Resources Implementation Studies." Watershed projects are to be formulated and evaluated in full recognition of the National Environmental Policy Act of 1969 (Public Law 91-190).

(c) Procedures outlined in the "Channel Modification Guidelines," developed and agreed upon by the Secretaries of Agriculture and the Interior, are to be used as a guide for projects likely to contain channel modification (Federal Register, V-44, No. 248, December 26, 1979).

(d) Public participation throughout the planning process is required on all projects. This is a significant item both in time and cost of watershed plan-Environmental Impact Statement (plan-EIS) development. A reviewable record of public participation must be available for all plan-EIS's.

(e) Project sponsors should understand that the SCS, in administering the provisions of the Act, will give high priority to watersheds in which local people are willing to include provisions for all the land and water management needs. Such projects generally will be multiple purpose and should include flood plain management.

(f) Most documents prepared to request funding will be a combination watershed plan-Environmental Impact Statement (plan-EIS). The plan-EIS contains all elements required for authorization by Congress and the National Environmental Policy Act of 1969. If a

501.00(f)

Finding of No Significant Impact (FONSI) is filed, an EIS is not required; only a watershed plan is developed. References to the plan-EIS should be considered to mean only the plan in these cases.

§501.01 Multiple-purpose projects.

(a) Whenever possible, watershed projects should serve multiple purposes and satisfy as wide a range of locally identified needs as possible. Projects may be formulated to solve problems or satisfy opportunities associated with flooding, erosion, sediment, irrigation, drainage, recreation, fish and wildlife, municipal water, or other phases of water quality and management. To be eligible for P.L. 83-566 assistance, the plan-EIS must include as a purpose watershed protection, flood prevention, irrigation, or drainage. Projects will not be developed solely for any other purpose.

§501.02 Management of flood plains.

(a) All projects will be formulated keeping within the intent of Executive Order 11988, Floodplain Management (7 CFR 650.25 and §500.43 of this manual). Since watershed plan-EIS's represent a total resource planning effort, SCS may require that they contain provisions for flood plain zoning for present and future urban and built-up areas as a requirement for assistance when appropriate.

(b) Urban and built-up areas, as used here, are considered as present or likely future areas (within the next 20 years) to be used for residences, industrial sites, commercial sites, construction sites, institutional sites, public administration sites, railroad yards, cemeteries, airports, golf courses, sanitary landfills, sewage treatment plants, water control structures and spillways, etc. This land should be in contiguous units of 40 acres or larger. Generally, the density averages one or more residences or other structures per 1.5 acres; in strip developments, the density is 20 or more residences or other structures per mile. The likelihood of future development can be determined from existing land use plans, trends, and local, State, and Federal policy concerning land use and development needs.

(c) Formulation to solve problems in urban and built-up areas should lead to the development of the NED plan without regard to apparent risk to loss of life. If there is a remaining risk to loss of life after the development of the NED plan, consideration may be given to adding to the NED plan to reduce the risk. This would require a Secretarial exception and therefore there must be adequate rationale for adding increments to the NED plan. In determining the apparent risk to loss of life, consideration should be given to the

structural and use characteristics of the improvement, the depth of flooding, and the velocity of flood flow in and immediately adjacent to the improvement.

(d) If the recommended plan leaves a risk to loss of life, include the following information:

(1) A thorough description of the remaining flood hazard in the benefit area for the 100- and 500-year events, including approximate number, kinds, and location of properties subject to continued flooding and the depths and velocities of flooding.

(2) To keep land use compatible with the level of protection or remaining hazard, the sponsors must agree to adopt (or see that the appropriate unit of government adopts), if not already done, land use regulations that meet the standards for the regular National Flood Insurance Program as a prerequisite to financial assistance for installing the flood prevention measures. These flood plain management features should be included as nonproject features of the plan-EIS.

(e) A map showing the urban areas expected to be flooded by the 100- and 500-year events with and without the project should be shown in the plan-EIS.

§501.03 Evaluation period.

Measures have different periods of longevity, depending on the materials used in construction. As a result, replacement costs must be included if the evaluation period (project life) exceeds the life of the measure. Evaluated life of land treatment measures, channel work, and earth dams shall not exceed 100 years. Where accrual of a beneficial effect depends on interrelated measures (i.e., on-farm drainage and channel work), the evaluation period should be the same for all interrelated works of improvement.

§501.04 Enhancement and mitigation of environmental values.

(a) Enhancement.

(1) SCS will encourage sponsors to include features in plan-EIS's that will preserve, create, or enhance wetlands, fish and wildlife habitats, landscape resources, cultural resources, important farmland and forest land, and prime rangeland where feasible. These enhancement measures must have appropriate justification and sponsorship. SCS will not pay for incidental enhancement features that do not contribute to solving identified problems.

501.04(2)

(2) Fish and wildlife enhancement measures proposed by Federal or state fish and wildlife agencies will be included if they are technically feasible and are acceptable to the sponsors and SCS. If additional sponsors are needed to fund and carry out the recommended fish and wildlife measures, SCS will assist in obtaining such sponsors.

(b) Mitigation.

(1) Appropriate mitigation to address effects on fish and wildlife and their habitat should be determined in consultation with federal and state fish and wildlife agencies. Mitigation measures may be established outside the watershed if no other alternative exists.

(2) Release of stored waters through a gated or ungated port in a principal spillway at a predetermined rate may be included as a mitigation feature. However, water stored in the capacity provided for sediment may not be used for this purpose. Storage capacity may be added in both single-purpose and multiple-purpose sites to achieve a larger or longer-lasting effect downstream. The predetermined release rate will be based on a study of existing downstream conditions, water storage characteristics of the reservoir, and hydrologic analysis of base flows in the stream with and without the project. Mitigation effects, including those expected from water released from a reservoir or reservoir system, should not exceed the losses attributable to the project.

(3) Arrangements for installing, operating, and maintaining mitigation measures must be as explicit and as firm as for other measures. The state conservationist will take affirmative action to ensure that the planned mitigation measures are properly installed, operated, and maintained on schedule.

SUBPART B - AGENCY RESPONSIBILITIES

§501.10 Soil Conservation Service.

(a) SCS will provide information on the potential and type of assistance available through the P.L. 83-566 program. When a local organization becomes aware of a problem, SCS will provide guidance to them in making preliminary evaluations to determine if assistance is warranted and help in preparing the necessary applications.

(b) SCS will assist sponsors in preparing a plan-EIS with the cooperation and assistance of State, local, and other Federal agencies. Investigations and surveys will be made by SCS and at no cost to the sponsors for all cost-shared purposes. These investigations are to determine the extent of watershed problems and needs and to set forth viable alternative solutions consistent with local, regional, and national objectives. Alternatives will consist of land treatment practices, nonstructural measures, and structural measures, or a combination of these measures that will benefit one or more of the authorized project purposes. Alternatives should not be limited to those eligible under P.L. 83-566, but also those available from USDA and other Federal, State, and local sources.

(c) After a final plan-EIS for works of improvement is agreed upon between SCS and the sponsors and the required review and approval processes are completed, SCS will provide technical and financial assistance to install the project as set forth in this part. Landrights maps for the first 2 year's construction should be provided to the sponsors at the time all approvals of the plan-EIS are obtained.

(d) SCS will provide technical assistance to the sponsor in the operation and maintenance of installed measures as defined in the Operation and Maintenance (O&M) Agreement.

§501.11 Land administering agencies.

Land administering agencies usually are responsible for the installation, operation, and maintenance of works of improvement on lands they administer. Federal funds appropriated for P.L. 83-566 work may not be used to install, operate, or maintain land treatment measures on federal lands. Other works of improvement on Federal lands will be cost shared as provided in the plan-EIS.

§501.12 Forest Service.

The Forest Service of USDA is responsible for administering the forestry aspects of the program on the National Forest System and

rangelands within National Forest boundaries and adjacent rangelands administered under formal agreement, and on other forest lands (7 CFR subtitles A, 2.60 (a)(8)(ii)(iii)). Specific actions for program development, funding, and reporting are covered in an interagency agreement between the SCS and the Forest Service (Exhibit §501.80).

§501.13 Farmers Home Administration.

The Farmers Home Administration of USDA is responsible for administering the watershed loan and advance provision of P.L. 83-566. A memorandum of understanding that outlines coordination procedures (Exhibit §501.83) has been signed by both agencies. FmHA procedures are found in §501.84.

§501.14 Economic Research Service.

The Economic Research Service assists SCS by reviewing policies and procedures, undertaking special studies to find ways to improve the watershed program and providing an annual analysis of program progress. Details are found in the memorandum of understanding between SCS and the Economic Research Service (Exhibit §501.81).

§501.15 Army Corps of Engineers.

Close coordination with the Corps is necessary to avoid overlap of activities. The Corps may have information and expertise that can be used in planning and evaluating projects. An agreement has been developed between the Corps and SCS which outlines who will deal with potential flood problems (Exhibit §501.82). As part of their responsibilities under P.L. 92-500, Amendments to the Federal Water Pollution Control Act of 1972, the Corps issues "404 Permits" needed before most project construction can begin.

§501.16 Fish and Wildlife Service.

Authority for Fish and Wildlife Service participation in watershed planning is contained in section 12 of P.L. 83-566. They are to make surveys and investigations and provide a report with recommendations for conservation and development of wildlife resources. Their involvement in the preparation of the plan-EIS is desired.

§501.17 Other agencies.

Other Federal and state agencies will provide technical and financial assistance in the planning and installation of watershed projects under their authorities. Special agreements that are outlined for the projects in the Tennessee Valley Authority area are outlined in Exhibit §502.53.

SUBPART C -- SPONSOR RESPONSIBILITIES

§501.20 General.

(a) Watershed projects are sponsored by one or more local organizations qualifying as sponsors. At least one sponsor must be included who can carry out each planned purpose of the project. Sponsors of projects that include nonstructural or structural measures, or both, must, individually or collectively, have the power of eminent domain so that they may acquire land and water rights needed for the project and have authority to levy taxes or have another adequate means of financing their share of the cost of the project as well as operation and maintenance expenses. To receive Federal assistance for project installation, sponsors must assure SCS that they will use their powers and authority to ensure the installation, operation, and maintenance of the project as planned.

(b) Projects that include only land treatment practices shall, as a minimum, include a sponsor with soil and water conservation responsibilities organized under State law .

§501.21 Application stage.

Sponsors must notify, in writing, the State's Single Point of Contact for Federal Assistance, of their intent to submit an application for assistance. This will be followed by the preparation and submission of a formal application to the state conservationist and the appropriate designated State agency. Sponsors should utilize, to the extent practicable, county rural development committees to aid them in identifying all needs that should be considered in preparation of the application.

§501.22 Planning stage.

(a) Sponsors are to arrange for and carry out activities, including meetings, that encourage the public to participate in the watershed planning process. The public is to be asked to provide data for problem identification and an environmental, social, and economic impacts study, and to provide suggestions and comments throughout the planning process.

501.22(b)

(b) Sponsors must obtain necessary permission and permits for making investigations and surveys needed during the planning phase.

(c) Landowners and others participating in planning, installing, and maintaining the works of improvement must be informed by the sponsors of their responsibilities for compliance with applicable local, State, and Federal laws.

(d) Sponsors must agree to provide relocation assistance in conformance with Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(e) They must provide assurance that planned measures will be installed, operated, and maintained in accordance with State and Federal laws and as provided in an operation and maintenance agreement entered into with SCS.

§501.23 Installation stage.

(a) Sponsors must acquire needed landrights, permits, and licenses. Acquisition procedures shall conform to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Also, the sponsors must acquire or provide evidence that landowners or water users have acquired necessary water rights in accordance with State law.

(b) They will obtain agreements to carry out recommended land treatment measures based on proper conservation plans.

(c) Sponsors will finance their share of the installation cost and install or implement planned structural and nonstructural measures on nonfederal land. All activities must comply with applicable local, State, and Federal statutes and regulations.

(d) A satisfactory repayment plan must be submitted by the sponsors for repaying advances or loans obtained under the provisions of Section 4 or 8 of the Act.

(e) The sponsors must agree to prohibit construction of any facility or the alteration of any works of improvement that would interfere with a planned measure functioning as designed or serving the purpose for which it was installed.

(f) When National Forest lands are involved, the special use permit granting construction and occupancy rights must be requested at least 1 year prior to planned construction. If cost-sharing with a National Forest on a multiple-purpose structure is involved, a minimum of 3 years' lead time should be allowed in order to meet the normal requirements of the Forest Service budgetary process.

§501.24 Post installation stage.

Sponsors are to carryout all activities related to the Operation and Maintenance of installed measures. The O&M agreement and plan as described in the National Operation and Maintenance Manual, 180-500 shall define the requirements, responsibilities and reporting for all installed measures.

§501.25 Non-cost shared purposes

(a) When a non-cost-shared purpose, such as municipal and industrial water, energy, or water quality management is involved, the sponsors must employ or retain professional engineers or other specialists to provide technical services needed for planning and installing measures needed for the special purpose. These services will be provided at no cost to SCS to (1) plan the measures of a watershed plan-EIS relating to municipal and industrial water supply, and (2) prepare final plans and specifications for installation of these measures.

(b) The sponsors must provide satisfactory evidence that any proposed Municipal and Industrial (M&I) or hydroelectric water supply use will be acceptable in quantity and quality to meet the anticipated needs, evaluate the monetary benefits accruing thereto, and present satisfactory evidence to support its evaluation.

(c) The sponsors must also furnish a written statement, for inclusion in the plan, that they intend to use the water, from the storage capacity provided, for future use within the life of the reservoir when applicable.

(d) Projects will not be formulated nor built where the primary purpose is for municipal and industrial water supply. The following is the criteria used by OMB to identify single-purpose M&I water supply projects.

"A single-purpose M&I water supply project should be defined as a project, other than a modification of an existing Federal structure, where less than 20 percent of the anticipated National Economic Development (NED) benefits are attributable to flood control, navigation, and/or agricultural water supply. An exception would be made for a project where at least 10 percent of the anticipated NED benefits are attributable to flood control, navigation, and/or agricultural water supply that requires separable, economically justified storage in order to develop the anticipated benefits from these purposes."

501.25(d)

"If a project in the Federal pre-authorization planning stage falls within the criteria described above for a single-purpose M&I water supply project, the study should be terminated and accumulated data given to the local sponsors. If project planning has been completed, the Federal agency should not propose the project for authorization as a Federal project. If the project is already authorized, the agency should not propose it for Federal construction funding, or if a project is already under construction, any separable, single-purpose M&I dams in the project should not be constructed with Federal appropriations."

SUBPART D - COSTS

§501.30 Definition of costs.

(a) Program Cost. Program cost includes all expenditures from appropriations made under authority of P.L. 83-566.

(b) Planning Cost. The cost of planning services includes all expenditures from P.L. 83-566 and other funds for surveys and investigations and preparation of plans prior to authorization of assistance for the installation of works of improvement.

(c) Project Installation Cost. Project installation cost includes all P.L. 83-566 and other costs for installing the works of improvement to be incurred after the project is authorized for installation. Included are the costs of work required to comply with mandatory State law or regulations.

(d) Technical Assistance. The cost of technical assistance includes all P.L. 83-566 and other costs for personnel and contracted services for soil surveys, planning, and applying land treatment measures on nonfederal land.

(e) Engineering Services. The cost of engineering services includes the direct cost of engineers and other technicians for surveys, investigations, designs, and preparation of plans and specifications for structural and nonstructural measures, including the vegetative work associated therewith, and preparation of operation and maintenance plans. Also included as engineering services are costs related to the review of engineering plans and specifications prepared by others, and necessary inspection service during construction to ensure that measures are installed in accordance with the plans and specifications. It does not include the cost of similar services for landrights, obtaining permits, or contract administration for the project.

(f) Water Rights. The cost of water rights includes the actual cost or the value of water rights (based on appraisals) acquired by local interests for carrying out, operating, and maintaining the project.

(g) Landrights. All expenditures made in acquiring landrights and other interests in land and related relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (A more complete definition is given in §506.45 of this manual.)

501.30(h)

(h) Construction Cost. Construction costs are the cost of constructing structural and nonstructural measures and include any or all of the following:

(1) Reinforcing, underpinning, or reconstructing existing railroad and public road bridge piers and abutments necessitated by modification of the channel or the replacement of a closed conduit crossing of a public road or railroad which is an intergal part of a closed conduit system. These costs are limited to those required to provide a facility comparable in quality and performance to the existing bridge or culvert.

(2) Clearing of sites for project purposes including the cost of removing buildings, bridges, fences, or other improvements which the local organization desires to abandon.

(3) Construction of pumping plants and pressure conduits, gates, or other structures to carry interior drainage through dikes or flood walls.

(4) Construction of diversion dikes and practices for conducting surface water to project outlets or pumping plants for interior drainage.

(5) Construction of necessary structures to provide controlled inlets for drainage from adjacent fields and internal ditches into the project measure.

(6) Flagman and protective devices, such as barriers or lights, required to protect workmen or the public during construction.

(6) Alteration, modification, or reconstruction of existing irrigation or drainage facilities made necessary by project works of improvement.

(8) Providing needed maintenance access, including necessary culverts and fords.

(9) Borrow material obtained from land purchased by the sponsoring local organization for the specific purpose of obtaining borrow material. The cost may not exceed the difference in land value before and after borrow removal or the actual cost of acquiring the borrow materials (without purchasing the land) whichever is the least cost.

(10) Construction of catwalks, handrails, fences, gates, etc., needed for the proper functioning of the structural measures and for the operator's and public's safety. This also includes any safety features needed for public recreation or fish and wildlife in a project. (This only applies to project agreements signed after October 1, 1981.)

(11) The disposal of waste spoil in accordance with sound engineering and environmental principles, giving consideration to: (a) customary practices in the area; (b) width and planned land use of flood plain; (c) wildlife and environmental values of contiguous oxbows and vegetation; and (d) wetlands, cultural resources, and threatened and endangered species. Agreement on the specifics of spoil disposal will be reached in the planning stage.

(12) Premiums for construction liability insurance when the construction contractor is made the principal.

(13) Provision for fire prevention and suppression made necessary by project construction activities.

(14) Establishment of vegetation or other protective cover on all construction sites and areas disturbed during construction to prevent erosion, improve stability, and restore or maintain wildlife habitat and the landscape quality. Such establishment includes herbaceous and woody plantings for erosion control, wildlife food and shelter, walkways, and screening or improving the appearance of structural measures.

(15) Identification signs and plaques, if desired by local sponsors, as long as there is reasonable assurance that these signs will not be vandalized.

(16) Any of the above features adopted to mitigate losses attributed to structural measures.

(i) Land treatment financial assistance costs. The cost of installing land treatment practices other than technical assistance, engineering services, and project administration.

(j) Project Administration. These are the P.L. 83-566 and other administrative costs associated with the installation of financially assisted measures including the cost of contract administration, government representatives, obtaining any permits needed to install the works of improvements, relocation assistance advisory services, and administrative functions connected with relocation payments.

(k) Relocation Costs. These are the P.L. 83-566 and other costs associated with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646). Relocation payments include moving and related expenses for a displaced person, business, or farm operation as well as financial assistance for replacement housing for a displaced person who qualifies and whose dwelling is acquired because of the project. Items eligible for inclusion in relocation payments are detailed in the SCS Property Management Regulations 104I - 71.503.3.

(l) Operation and Maintenance Costs. These are the costs of materials, equipment, services, and facilities needed to operate the project, and make repairs and replacements necessary to maintain structural measures in sound operating condition during the evaluated life of the project. Included are the cost of repairs, replacements, or additions and an appropriate charge for inspection, engineering, supervision, custodial service, and general overhead.

(m) Associated costs. These are the costs of measures needed over and above project measures to achieve the benefits claimed during the analysis period. An example is the cost of irrigation water supply laterals and onfarm irrigation and drainage systems required to produce the increased outputs on which the benefits were computed.

(n) Other direct costs. These are the costs of resources directly required for a project or plan for which no financial outlays are made.

(o) External diseconomies. These costs are uncompensated economic losses caused by the installation, operation, maintenance, or replacement of project measures. An example is increased downstream flood damages caused by channel modifications or dikes.

(p) Nonproject Installation Costs. These include costs that will be incurred at the time of project installation for features not required for project purposes. They are not eligible for assistance under the Act. They are not included in cost tabulations or accounts, nor are they considered a part of the local organizations' contribution to the installation cost of a project, but should be incorporated into Tables 1-6 in the plan-EIS.

§501.31 Allocation of Costs.

(a) The Act provides that costs be allocated to the various purposes and that the basis of such allocations be shown. Where a single work of improvement is planned to serve more than one purpose, costs shall be allocated so that each of the purposes share equitably in any resulting savings. The method or basis of such allocations shall be described in the plan-EIS [§508.38(f)(3)]. Procedures are found in the Principles and Guidelines.

(b) Multipurpose sites.

Paragraph 1.9.2(a) of the P&G indicates that the separable costs are the differences between the cost of the multipurpose structure and the cost of a structure with that purpose omitted. Separable costs must be determined in accordance with this paragraph in order to conform with the P&G. Consistency must be established in the

treatment of constituent costs. In the Separable Cost- Use of Facilities Method, the percent use of each purpose must be uniformly applied to the allocated joint cost for each constituent.

(1) The Principles and Guidelines (P&G) [§1.9.3(b)] state that "Joint cost may be allocated in proportion to the use of facilities, provided that the sum of the allocated joint cost and separable cost for any purpose does not exceed the lesser of the benefit or the alternative cost for the purpose." This is interpreted to mean the total cost for that purpose and not to each constituent cost.

(2) Sediment storage in a multipurpose structure will be considered a joint use storage when allocating joint costs by the use of facilities option stated in paragraph 1.9.3(b) of the P&G. The designated storage capacity for a specific purpose will be used to determine its proportional use of the facility.

(3) Mitigation costs will be separated into the cost of the feature and the cost of land components. The cost of the land will be a landrights cost while all other costs will be construction costs. This will be done when determining the cost of the multipurpose structure, the cost of the structures used to estimate separable costs, and the cost of the single-purpose measure used to determine alternative cost estimates.

(4) The single-purpose measure used to determine the alternative cost for a purpose does not need to be physically located at the site of the multipurpose structure.

(5) There will be instances where a structure with high construction costs relative to O&M costs displaces an alternative method with low installation costs relative to O&M costs for achieving the same or equivalent benefits. These situations will be handled on a case-by-case basis with combined input of the NTC and the NHQ.

(c) Multipurpose channels.

For multiple-purpose flood prevention-drainage channels, the cost allocation will be 50-50 in all instances (P&G§2.3.8(c)).

SUBPART E - PROJECT INSTALLATION

§501.40 General.

(a) Installation is the phase of project development beginning after the watershed plan-EIS has been approved and federal assistance for installing the project has been authorized. The installation phase continues until the project is officially closed out.

(b) Installation will be implemented as provided by the specific agreements entered into between SCS and the sponsors. Each agreement will detail the working arrangements, funding, and responsibilities of each party for carrying out specified elements of work. As stated in the watershed agreement, no work may be initiated by either party until a separate agreement is entered into which spells out the working arrangements. Sponsors are responsible for carrying out the approved watershed plan. SCS is responsible for providing authorized assistance as set forth in the approved watershed plan-EIS.

(c) P.L. 83-566 funds may not be used for developing final layout and structural details until after federal installation assistance is authorized.

(d) Further information on specific agreements and responsibilities is found in the National Contracts, Grants and Cooperative Agreements Manual (120-V).

§501.41 Methods of installation.

(a) Formal Contract - Under formal contract, sponsors provide their share of the contract cost in cash. (National Contracts, Grants and Cooperative Agreements Manual 120-510.11 and 120-510.12.)

(b) Force Account - Under this method the sponsors provide their own forces including labor, equipment, and materials in lieu of cash. Sponsors must keep accurate records of the cost of all the work performed (National Contracts, Grants and Cooperative Agreements Manual 120-510.15).

(c) Division of Work - This method may be used only for cost-sharing land treatment measures. Measures to be installed by this method shall be described in the plan-EIS narrative and cost estimates included in the plan-EIS. The watershed agreement shall specify the increments of installation work for which SCS and the

sponsors are responsible without citing a percentage rate of cost sharing. Sponsors are not required to keep records of expenditures. Detailed SCS cost estimates shall be maintained in support of the plan-EIS to show that P.L. 83-566 costs for land treatment do not exceed the rate authorized (National Contracts, Grants and Cooperative Agreements Manual 120-510.16).

(d) Performance of Work - Under this method, the value of work to be provided by the sponsors is determined by negotiation between the sponsors and SCS and is included in a project agreement for the work. SCS-approved cost estimates made immediately before signing the agreement establish the maximum value of the work (National Contracts, Grants and Cooperative Agreements Manual 120-510.17).

(e) Average Cost - This method is limited to the installation of land stabilization measures for flood prevention purposes. The average cost method is a procedure where cost-share payments are based either on a percentage of the average cost when the conservation district cooperator installs the work using his own forces, or on a percentage of the actual cost not exceeding the average cost for any component of the work which the cooperator contracts. Average costs are to be developed by SCS for each component of a measure to be installed by this method (National Contracts, Grants and Cooperative Agreements Manual 120-510.18). Long-term contracts may not be used for the installation of these land stabilizations measures.

(f) Long-Term Contracts - These contracts are to be used for installing P.L. 83-566 financially assisted land treatment measures with landowners or operators. The contract period depends on the magnitude of the work. It will be at least 3 years, but may not exceed 10 years. All required work is to be initially installed 2 years before the contract ends (General Manual 120-404.00(c)).

§501.42 Landrights.

(a) Acquisition of landrights is a major step in project implementation. It is one of the most important responsibilities of the sponsoring local organizations and requires firm scheduling, attention to details, and followup. SCS is responsible for providing landrights work maps. These maps should not be distributed to the sponsors until the plan-EIS has received all approvals. Sponsors are entitled to assurance that landrights requirements will not change after they have received an approved landrights work map.

(b) State conservationists are to approve in writing all landrights work maps and all subsequent changes required by SCS. Changes are to be made only after consultation with and concurrence of the sponsors. State conservationists are to establish procedures that will minimize the need for change. Further information can be found in §506 Subpart E of this manual.

§501.43 Watersheds with conditional approvals.

The Public Works Committees have limited the amount of P.L. 83-566 funds that may be expended on some approved projects. On conditionally approved watersheds when cost exceed the established limits steps shall be taken to obtian approval for expenditure of funds. Written notification shall be provided to the Director of PDM. No funds are to be obligated in excess of the limitation without prior approval of the Director of PDM.

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* §501.44 Partially completed projects.

(a) General. Where only part of the planned measures has been installed at the end of the installation period, the state conservationist will arrange a meeting, within 30 days of the end of the installation period, with the sponsors to review the situation. The purpose of the meeting will be to review the project installation schedule set forth in the plan and sponsor responsibilities, and to develop a plan for completing the project.

(b) No further progress. If the sponsors agree that no further progress can be made, the project will be closed out. Procedures outlined in §501.63 of this part should be followed.

(c) Further progress possible.

(1) If the state conservationist and the sponsors agree that additional progress can be made, they shall use the meeting to prepare a schedule for installing the remaining works of improvement. The schedule is to include an agreement that at the end of a fixed time period (up to 2 years) from the date the schedule is prepared, the plan will be closed out if no progress has been made in completing the structural measures.

(2) The state conservationist will inform the Governor or designated state agency of the decision and transmit a copy of the schedule. A copy of the schedule also will be transmitted to the Director, PDMD. The Deputy Chief for Natural Resource Projects

501.44(c)(3)

(3) If the agreed-to lapse period (up to 2 years) has passed and no progress has been made, the state conservationist will notify the sponsors of his intent to proceed to close the project as indicated in §501.63(a) of this part. If progress has been made, the state conservationist may agree to extend the closing date for 1 year. Successive extensions may be granted if there was progress in the past year. Progress is defined as the signing of a project agreement to begin construction.

SUBPART F - PROVISIONS FOR FINANCING

§501.50 General.

(a) Federal assistance for project installation is authorized after the plan-EIS is approved. Federal assistance may include technical and financial assistance, advances, and loans. The watershed agreement shall specify the Federal assistance to be provided, and shall show evidence of the sponsor's commitments for funding, installing, and operating and maintaining the project. The Chief shall allocate Federal funds for watershed projects from annual appropriations made for this program by Congress. Farmers Home Administration is appropriated their own funds.

(b) P.L. 566 funds obligated for a particular project agreement or long-term contract must be expended for that purpose or returned to PDMD.

(c) Sponsors shall provide their share of installation costs from other than P.L. 566 funds. Local financing may include State, county, and other local funds such as watershed or special purpose district taxes. Loans or grants of funds from other Federal programs may be used unless specifically prohibited.

§501.51 Cash payments or expenditures.

Sponsors may provide their share of funds by direct cash contributions from general tax revenues, sale of bonds, assessments, or other legally recognized means of raising money. Expenditures made on behalf of the project by the sponsors for land, equipment (whether rented or purchased), labor and other personal services, and materials and supplies can be used toward the other costs.

§501.52 Donated goods and services.

This includes all donations of land, materials and supplies, labor and other personal services contributed by landowners, local organizations, or others in behalf of the project, including that used in obtaining the necessary landrights. Services or labor must be provided directly for the primary purposes of the projects, and will not include such services as those of district supervisors or other organization leaders spent at regularly scheduled meetings of such organizations.

§501.53 In-kind contributions.

(a) These contributions may consist of expendable and nonexpendable personal property, buildings, and land or use thereof.

501.53(b)

(b) In-kind contributions are applicable only to new projects that will be approved administratively or were transmitted to the Office of Management and Budget (OMB) after May 1, 1979. No exceptions will be allowed for any other projects regardless of the date or nature of project supplements. Only when authorized by Federal legislation may property purchased with Federal funds be considered the grantee's in-kind contribution.

(c) In no case will the amount of an in-kind contribution exceed the sponsor's share of the cost for the works of improvement. The maximum area eligible for in-kind credit is to be the same as the maximum area eligible for cost sharing. Sponsors will receive no cash reimbursement for in-kind contributions of real property. Real property already devoted to and improved for public recreation or fish and wildlife use will not be eligible as an in-kind contribution.

§501.54 Loans.

The Farmers Home Administration may make watershed loans to sponsors to help finance the local share of project costs set forth in approved plan-EIS's. FmHA has developed notices and procedures for granting these loans for all or part of the local cost for a watershed works of improvement (Exhibit §501.85).

§501.55 Advance of funds by SCS.

SCS may advance funds to sponsors in special situations to be used for engineering and construction costs, purchase of landrights, or engineering services. In all cases, special conditions outlined below must be met.

(a) Engineering and construction costs, not to exceed 30 percent of the total cost of the structure, to provide storage capacity for future municipal or industrial water supply are eligible for an advance of funds. The advance must be paid with interest within 50 years after the retention reservoir is constructed, or a shorter period if required by State law. Interest will not be charged until the water supply is first used from the structure or until 10 years after the date of completion of the structure, whichever is earlier.

(b) Funds may be advanced to purchase landrights if the immediate purchase is essential to preserve the site for project works of improvement, a watershed plan has been approved, SCS and the sponsors have signed an agreement covering the acquisition of landrights, and FmHA has approved the repayment on the date the advance is made to the sponsors. The advance and accrued interest are to be repaid by the sponsors before the works of improvement are constructed.

(c) An advance of funds can be made for engineering services for works of improvement if the work of improvement is included in the watershed plan, the engineers retained or employed by the sponsor are satisfactory to SCS, and the total advance does not exceed 5 percent of the estimated installation cost of the works of improvement.

SUBPART G - WATERSHED OPERATIONS MANAGEMENT

§501.60 General.

(a) A major objective of the Soil Conservation Service (SCS) is to manage the water resources program effectively to facilitate installation of authorized projects. Technical and financial assistance is to be provided for implementation of viable high priority projects. A balanced program between new planning starts and authorized work is to be maintained through program management.

(b) Each state is to develop and maintain a state program analysis and long-range plan that identifies viable authorized projects, sets operation schedules, and identifies the program resources needed to achieve and maintain a balanced program. This long-range plan will be the basis for requesting annual program budgets.

§501.61 Responsibilities.

(a) State responsibilities.

The state conservationist is responsible for the overall management of the program. The state conservationist is to provide for the coordination, organization, and management of program activities to insure that all phases of the water resources program are carried out effectively and efficiently.

(b) National Technical Center responsibilities.

The National Technical Center (NTC) is responsible for providing technical assistance to the states to facilitate project implementation.

(c) National Headquarters responsibilities.

The Project Development and Maintenance Division is responsible for developing national policy, standards, and procedures for project installation, operation and maintenance, and allocation of funds for implementation to maintain a balanced program. Direct assistance is provided to the NTC and states in program management.

§501.62 Program management.

(a) State long-range plan.

(1) A long-range plan is to be developed that identifies viable operations workload, sets priorities, and funding needs. The plan should be updated annually prior to the submission of annual budget requests.

(2) The long-range plan should summarize the status of each operational project. Each project should be listed, followed by an identification of the remaining work, current estimated Federal cost, probability of installation, status of compliance with National Environmental Policy Act (NEPA), and actions needed to accomplish the next increment(s) of work. Include only viable work in the total estimated cost of the remaining work to determine future obligations. Those projects that are not considered viable should be declared inactive, closed, or deauthorized as outlined in this subpart. Actions and resources needed to deal with the nonviable projects are to be included in the long-range plan.

(3) Operations budget estimates for the current fiscal year, and at least the next 2 fiscal years of operations based on a detailed operations schedule, are to be included in the long-range plan. Staff-years, technical, and financial assistance needs should be shown. The current annual budget estimates and remaining future obligations are to be submitted to the National Headquarters as specified in Subpart H of this manual.

(b) Project Status.

Project financial status shall be maintained annually on all projects. Items to be included are current cost values, obligated funds, and remaining funds. §501.77 presents details for maintaining project status.

(c) Reaffirming feasibility

The continued feasibility of a project is to be monitored during the operations phase. Factors to be monitored are the latest estimated costs versus work plan estimates, benefits, environmental impacts, and sponsors commitments. Project feasibility is to be reexamined when current estimated costs significantly exceed planned costs. The analysis should identify the cause of the cost increase such as changes in engineering design criteria, inflation, contracting or safety requirements, landrights, etc.

If the remaining work is found to be infeasible, rationale for proceeding is to be developed and placed in the project file. The rationale should include the impact that changes in criteria had on projects costs, plus what effect termination of the project would have on safety, potential loss of life, economic impact, alteration of other interrelated Federal plans, or other local effects.

§501.63 Budget requests, funds management, and construction starts.

(a) Operations budget.

States will submit budget requests as specified by the annual budget process schedule. The request is to be submitted as specified in Part 501, National Watersheds Manual (NWSM), Subpart H. The Forest Service budget estimates are included in the request. Program and financial plans for the Forest Service activities are to continue to be developed as outlined in the interagency agreement (Exhibit 501.80). PDMD will coordinate the review of the request for funds with appropriate National Office staff.

(b) Fund management.

Unobligated funds are to be recalled by PDMD at the end of the third quarter of the fiscal year for reallowance to projects that are ready for installation. Instructions for recalling funds are to be provided by the Financial Management Division. States are to notify PDMD during the year when unfunded work is ready for signing a project agreement.

(c) Construction starts.

A new construction start exists when a project agreement is signed for the installation of a structural or nonstructural measure where there is an operation and maintenance agreement. This does not include a project agreement for landrights.

Projects requiring a new construction start are identified in the annual budget request information. PDMD will use this information to prepare a list of projects needing a construction start each fiscal year. States with projects ready to start are to provide PDMD a revised Table 1 and a current b:c ratio for their projects shown on the list. PDMD is to notify the state conservationist, in writing, when a new construction start is authorized. Reports of new construction starts are to continue to be made as specified in §501.76, Subpart H of this manual.

(d) Claims management.

Program managers are to monitor all aspects of contract administration and provide input at appropriate times. Contracting officers are to notify program managers of all claims and program managers are to follow the handling of these claims to assure the Government's policy of trying to resolve all contractual issues by mutual agreement at the contracting officer level without litigation is achieved. When contracting officer decisions for claims exceeding $100,000 are appealed by the contractor, the

501.63(d)

state conservationist is to notify the Deputy Chief for Programs and provide the information needed for the claims data base. The Deputy Chief for Programs, in consultation with the Deputy Chief for Administration, will appoint an independent review team consisting of representatives from PDM, Administrative Services, and Engineering Divisions, to review the case and recommend alternative actions the Service should consider to minimize its litigation risks.

§501.64 Terminating projects.

(a) General.

State conservationists are to review all authorized watershed projects each year to determine the likelihood of specific projects being installed. Where it is evident that installation will be unduly delayed or no further construction will occur, steps are to be taken to declare inactive, deauthorize, or close, those projects in accordance with the procedures outlined in this subpart. State conservationists are to deactivate location codes for all inactive, deauthorized, or completed projects so that funds cannot be charged to these projects.

(b) Inactive projects.

(1) A project is to be placed in an active status, by the state conservationist, when installation is unduly delayed because the sponsors failed to carry out their responsibilities or their improper actions or inactions result in a continuous 2-year delay in installation.

(2) Approximately 3 months before declaring a project inactive the state conservationist is to notify, in writing, sponsors and other Federal agencies having authority to spend watershed funds on the project that (1) installation of the project is behind schedule; (2) what corrective actions are needed; (3) that the project will be placed in an inactive status on a specified date; and (4) SCS assistance is not authorized for an inactive project. SCS should offer assistance, as is available, to help sponsors meet their requirements. A copy of the letter of intent is to be sent to the Chief and the Director, NTC.

(3) If it becomes necesary to declare a project inactive, the state conservationist is to send a letter to each sponsor advising them that their project is in an inactive status; stating the reasons; informing them that assistance is terminated until the project is reactivated; and actions they must take to remove the inactive status. Copies of the letter are to be provided to the Chief, Assistant Chief, NTC, other Federal agencies having authority to spend watershed funds on the project, the Governor or his designated agency, and others who would be concerned with the suspension of project installation.

(4) After the sponsors have taken corrective action and the state conservationist is satisfied that sponsors will continue to carry out their responsibilities, the project may be reactivated. Documentation for the decision should briefly state the problems, actions taken, and reasons the project has been reactivated. The state conservationist is to notify the sponsors, the Chief, and other appropriate Federal agencies by letter that the project is reactivated.

(5) Public Law 83-566 funds are not to be expended on a project in an inactive status.

(c) Deauthorized projects.

(1) Deauthorization is applicable only to projects where there are no operation and maintenance agreements in effect.

(2) When it becomes evident that the proposed works of improvement will not be installed, the state conservationist is to consult with the sponsors to seek their concurrence to deauthorize funding for the project. Agreements with sponsors for deauthorization of funding may be documented by an exchange of correspondence.

(3) Deauthorization of the project removes authority to expend Public Law 83-566 funds. Projects listed as terminated before June 1978 are considered the same as deauthorized if there are no operation and maintenance agreements in effect.

(4) The state conservationist shall initiate deauthorization of funding. This action is to be taken when no structural measures have been installed during the installation period, and it is unlikely that planned measures will be installed. A complete record of actions taken must be maintained throughout this process. If the sponsors do not concur in deauthorization, the state conservationist is to submit the matter to National Headquarters, setting forth the facts and the reasons why the sponsors do not agree. A case-by-case determination is to be made for the procedures to be followed for projects when the sponsors do not agree to deauthorization.

(5) The state conservationist is to notify the Chief in writing of the proposed deauthorization of funding. At the same time, the notice of intent (§501.84) should be sent to the Federal Register, assistant chief, NTC, and concerned agencies. If authorization of funding by the Chief was subject to approval by resolution by committees of Congress, the Chief is to give the appropriate committees written notice of the proposed deauthorization at least 60 days before final deauthorization action is taken. The Chief will notify the state conservationist if there are congressional concerns about the proposed deauthorization.

501.64(c)(6)

(6) Following the 60-day waiting period, the state conservationist will notify the PDMD of any concerns received. If there are none, the Chief will notify the state conservationist that funding is deauthorized. The state conservationist is to notify sponsors and concerned Federal, State, and local agencies of the final action. Other actions by the state conservationist includes submitting final Table 1 to * PDMD; removing project identification from project status maps; and * disposing of records as specified by SCS Records and Management Guide.

(7) The deauthorization process may be stopped by the state conservationist at any time before final notice of deauthorization is published.

(8) Areas included in a project that has had funding deauthorized may be included in a new watershed application.

(9) The state conservationist will send a notice to the Federal Register announcing final deauthorization action (§501.85).

§501.65 Partially completed and completed projects.

(a) Projects are to be closed where some construction has been completed and there is little likelihood that the remaining structural work will be installed. In these cases, a supplemental watershed agreement that deletes the measures that have not been installed is to be prepared. Reasons for deleting the measures should be given in the supplement along with a discussion of the benefits that will be foregone by not installing the remainder of the project. Sponsors with SCS assistance should prepare a flood plain map (based on the partially completed project) showing areas with significant remaining flood problems and publicize the remaining hazard before the supplement is signed. A final Table 1 is to be submitted to the Director, PDMD. If the sponsors do not agree to close the project, the state conservationist is to submit the matter to the Director, PDMD, setting forth the facts and the reasons why the sponsors do not agree. Each project will be handled on a case-by-case basis.

(b) Project installation is considered completed when watershed plan-EIS commitments for Public Law 83-566 assistance in installing works of improvement are satisfied as follows:

(1) All structural, nonstructural, and mitigation measures involving Public Law 83-566 assistance are installed in keeping with the watershed plan, as amended or supplemented; and

(2) Land treatment provided for in the plan-EIS has been accomplished or has progressed to the extent that it can be carried out with assistance from ongoing programs.

(c) The state conservationist is to report the completion of construction in writing to the Director, PDMD. This report will be submitted as soon as all planned structural measures have been completed. Federal assistance will then be limited to the installation of land treatment measures, reseeding, and other work specifically authorized by the Chief.

(d) As soon as all features of the project are completed, the state conservationist is to notify the Chief of the completion date. Copies of this notification should be sent to the NTC and other concerned Federal agencies. A final table 1 is to be forwarded to the Director, PDMD, as soon as the state obtains information as to total project obligations from the Financial Management Division.

(e) The state conservationist is to send each of the sponsors a letter informing them of the official completion date of the project and reminding them of their responsibility for operation and maintenance, as shown in the Operation and Maintenance (O&M) agreement(s). As a courtesy, and to document final agreement, each sponsor should be requested to concur in the final completion letter. Sponsors' concurrence is not required to report a project complete.

(f) Public Law 83-566 funds may not be charged to completed projects without prior approval of the Chief.

§501.66 Reopening projects.

(a) Completed or partially completed projects that have been closed may be reopened to do remedial or additional work, where there is a justified need. Deauthorized projects may also be reopened to continue the original authorized work or do additional work, where justified.

(b) Authorizations to reopen projects to provide additional funding are to be specifically given by the Chief.

(c) State conservationists are to use the following process to reopen projects:

1. Develop the necessary program report, as outlined in §501.67 for remedial work or §501.68 for additional work.

2. Request authorization to reopen the project.

3. Upon notification by the Chief that the project may be reopened, reactivate the project code.

4. When the authorized work is complete, send a revised Table 1 to the Director, PDMD, and take the required actions to report the project complete.

§501.67 Remedial work.

(a) Remedial work is defined as work needed to correct problems caused as a result of a mistake or misjudgment by SCS during the installation of a measure or as a result of latent site conditions unknown to SCS, or the sponsor/land user at the time of installation. Changes in policy, technical standards, or engineering concepts developed subsequent to the installation of the original measure are not considered mistakes or misjudgment by SCS. The following kinds of work may be considered as remedial work:

1. Repair of components of a measure that deteriorate more rapidly than planned or do not perform as expected because of unusual or latent conditions.

2. Reconstruction or repair of a completed measure that malfunctioned or failed because of a design or construction deficiency.

3. Modification of a structure, property relocation, or addition of nonstructural measure, whichever is the most cost effective to meet the criteria for a higher hazard classification, where a structure was misclassified prior to installation.

(b) Remedial work may be necessary in operational or completed projects. Where a project has been reported complete or the scope of the work exceeds the state conservationist's authority, the state conservationist is to request authorization to proceed as outlined in §501.66, NWSM. Where the project has not been closed, the state conservationist may proceed within the authorities outlined in this section.

The need for remedial work is to be documented by a program report. The preparation of the report is to be coordinated by the responsible state staff program manager. The report is to contain specifics as to what caused the situation, alternative considered (this should include doing nothing, determining method for sponsor solutions and alternate engineering solutions) and selected solutions (from the engineering report where appropriate), analysis of the cost effectiveness of alternatives, estimated costs, and a recommended solution. Technical input from the appropriate state technical specialists will be obtained by the program manager when the report is prepared. An informational copy of the final report is to be sent to the PDMD and NTC for all work authorized by the state conservationist, and a copy of the final report will accompany all requests for authorization for remedial work exceeding the state conservationist's authority.

(c) SCS may provide cost-sharing assistance for needed remedial work up to the same cost-sharing rate used for the original installation.

(d) The state conservationist may approve cost-sharing for remedial work if:

1. The estimated Federal construction cost of the remedial work does not exceed $150,000.

2. The necessary program report has been completed and the required technical approvals have been obtained.

3. The project is an operational project or the state conservationist has taken the necessary actions to reopen the project.

4. The Director, PDMD, has been notified.

(e) Where the estimated Federal construction cost of the remedial work exceeds $150,000, the state conservationist is to request authorization to proceed from the Chief. The letter of request is to include a copy of the program report.

§501.68 Additional work.

(a) Additional work may be considered in completed or partially completed projects that have been closed. Additional work considered for operational projects will follow the policies in Part 510, NWSM. Additional work for completed or closed projects may include the following:

1. Installing structural, nonstructural, or land treatment measures to benefit new or the same beneficiaries to a different degree. This may include situations where structures have reached their useful life and their failure would pose a threat of loss of life or where changes in the watershed have resulted in inadequate flood protection.

2. Reconstructing or repairing a measure that has failed where an engineering investigation has determined that the failure was not due to a mistake by SCS, latent conditions, or lack of O&M and where a feasible alternative that meets program authorities can be implemented.

(b) Requesting authorization for additional work.

1. Authorization to reopen the project and reaffirmation of planning must be granted by the Chief. The request must be supported by an amended project application and a preauthorization report. The report should indicate that the additional work meets program objectives and is economically feasible and environmentally acceptable. A copy of the letter of request and the preauthorization report is to be sent to the Director, PDMD, and the director of the NTC.

501.68(b)(2)

2. Requests to authorize additional work will compete with requests for new planning authorizations. The Director, PDMD, will make a policy and administrative review of the proposal, consulting with the NTC and appropriate division directors, as needed. The National Conservation Program (NCP) priorities and objectives and other program considerations will be used to evaluate the proposals.

3. Upon notification from the Chief that the planning authorization is reaffirmed, the state conservationist is authorized to reopen the project and proceed with the development of a revised plan-EIS or supplement, whichever is appropriate, as outlined in Part 510, NWSM.

§501.69 Operation and maintenance.

Responsibilities for O&M of watershed works of improvement are described in the National Operation and Maintenance Manual, 180-500. The O&M requirements must be documented in O&M agreements with sponsors. Program managers should be familiar with these responsibilities and requirements and provide followup to help ensure that an effective O&M program is carried out.

§501.69a Program Completion

State conservationist are to prepare a report to sponsors when key structural elements of the project reach its evaluated life. The report is to outline options available to the relative need to continue operations and maintanance of the project facilities.

SUBPART H - REPORTS

§501.70 General.

(a) Program managers in each State are to monitor project installation and report progress as specified in this subpart. Data sources and progress reports that are to be used to manage the operations phase of the water resources program are:

(1) National Progress Reporting System - GM-330, Part 409 and GM-300, Part 406. Maximum use is to be made of the options provided in the SCS-MGS-253 Reporting System to keep track of progress for installation in all projects.

(2) Annual budget estimates and future obligation reports. *

*

(b) National Headquarters staff will use these data bases and reports to manage the program from a national perspective. States are expected to keep the information in these data bases current so that full consideration for their program needs can be given during the budget allocation and project authorization process.

§501.71 Annual Operation Budget Estimates and Future Obligation Report.

(a) The format and content of these reports are specified in §501.72 of this subpart.

(b) The data base is designed to be dynamic. Once established, changes are to be submitted electronically by the states to keep the information up-to-date. The information is to cover all projects needing future funds. The data will be accessed by PDMD each year during the month of April for budget allocation purposes and throughout the year in response to Congress, Office of Management and Budget, or other requests. States are expected to keep the information current and correct without annual reminders. New projects that are approved or changes that occur during the year should be added to the data base as these changes occur.

501.71(c)

(c) Factors to be considered in developing the annual budget estimates and future obligations are:

(1) Approval for operation and construction starts;
(2) the plan-EIS schedule of installation;
(3) the states program analysis and long-range plan;
(4) sponsors progress in fulfilling their obligations; and
(5) sponsors capability to proceed with installation.

Current estimates are to be developed by the program manager in consultation with area conservationist, district conservationist, sponsors, and appropriate SCS technical and administrative staff. If the project is located in more than one state, each state will prepare a report for that portion of the project in their state.

§501.72 Format Annual Budgets - Future Obligations Report.

Annual Budget (WF-08) (WF-03) estimates. Annual budgets for watershed operations (WF-08), flood prevention operations (WF-03), and future obligations are to be maintained in a computerized data base. Instructions for the contents of data bases reside in the computer information program.

§501.73 Progress summaries.

(a) Progress summaries will be developed from information available from the data bases residing in the Washington Computer Center. The report is to be reviewed annually by the state program manager to assure the data is accurate and factual.

(b) Every three years state watershed maps are to be updated to show current status of watershed activity. Eight maps are to be submitted to the Director, PDM, two copies to the NTC, and two copies to each of the Area of Regional office of the Forest Service.

* §501.74 Status of flood prevention projects - Form SCS-PDM-405. *

This report is to be prepared by all states in which flood prevention projects authorized under Public Law 78-534 are in operation. Two copies of this report should be sent to PDMD by October 10 of each year.

§501.75 Report of obligations of construction funds.

Program management responsibilities and new construction limitations require that the PDMD maintain a running account of the cumulative total of new construction starts and obligations of watershed construction funds. Obligations of watershed construction funds will be monitored from SCS Program accounting and Reporting System (SPARS).

§501.76 Report of new construction starts.

New construction starts are to be reported by letter, from the state conservationist, to the Director, PDMD.

§501.77 Project status.

(a) In order to provide a uniform system for determining project status the formats shown in paragraphs (b) and (c) below, will be used to account for the use of funds for each watershed approved for operations The project status is to cover each fiscal year from project approval through the end of the last fiscal year.

(b) Instructions for updating costs.

Table 1 shows the procedure for developing the factors used to update the various cost categories. These factors are to be determined for each fiscal year. The index for project installation is to be based on the Consumer Price Index-Services. Project installation consists of the sum of land treatment (less critical area treatment), engineering, and project administration as shown in Table 1 of the plan-EIS. The index for construction and critical area treatment is to be based on the Engineering News-Record Construction Cost Index for each year or other appropriate indices. The index for landrights and relocation is to be determined by the state conservationists based on an analysis of the cost of land and its acquisition appropriate to the local area.

* Table 2 shows that the total Public Law 83-566 funds are limited to $3,210,269 for the fiscal year in which the project was approved. This was determined by updating the 1973 price base, which was used in developing the plan, to the fiscal year 1975 level. During fiscal year 1975, a total of $144,825 was obligated, leaving a net to carry over to fiscal year 1976 of $3,065,444. At the end of fiscal year 1976, new indices were determined and the cost allowance increased to $3,304,564. The process will be repeated each fiscal year until the project is completed. *

(d) Table 1.

(e) Table 2.

TABLE 1
COST INDEXES

Fiscal Year	Consumer Price Index-Services (Seasonally Adjusted) 1967=100 1/		Engineering News-Record Construction Index 1967=100 1/		Local Land Cost Index 1973=100 2/	
	Index	Percent Change	Index	Percent Change	Index	Percent Change
1973	139	-	177	-	100	-
1974	152	+9.35	188	+6.21	115	+15.00
1975	167	+9.87	206	+9.57	125	+8.70
1976	180 3/	+7.78	224 3/	+8.74	130	+4.00
TQ	182	+1.11	228	+1.79	131	+0.77
1977						
1978						
1979						

1/ Available from Survey of Current Business published monthly by the U.S. Department of Commerce, Bureau of Economic Analysis.

2/ Index as determined by the state conservationist for local conditions.

3/ Estimated.

TABLE 2
PL-566 FUNDS
LIGHTBULB WATERSHED, ANYSTATE

	Project Installation (Engineering, Project Administration, and Land Treatment)			Construction and Critical Area Treatment	Relocation	Landrights	Total
	SCS	FS	Other				
Cost Estimate Shown in Plan (Price Base 1973)	630,000	57,000	0	1,668,000	52,000	303,000	2,710,000
Project Authorized for Installation on January 16, 1975							
Adjustment for FY 1974 and 1975	126,900	11,481	0	+273,123	+13,000	+75,765	+500,269
Available for FY 1975	756,900	68,481	0	1,941,123	65,000	378,765	3,210,269
Obligated during FY 1975	-15,312	-1,163	-150	-128,200	0	0	-144,825
Net to carry over to FY 1976	741,588	67,318	-150	1,812,923	65,000	378,765	3,065,444
Adjustment for FY 1976	57,695	5,237	-12	+158,450	+2,600	+15,150	239,120
Available for FY 1976	799,283	72,555	-162	1,971,373	67,600	393,915	3,304,564
Obligated during FY 1976	-153,600	-10,400	-200	-472,607	0	-316,090	-952,897
Net to carry over to TQ	645,683	62,155	-362	1,498,766	67,600	77,825	2,351,667
Adjustment for TQ	+7,167	690	-4	+26,828	+520	1/	+35,201
Available for TQ	652,850	62,845	-366	1,525,594	68,120	77,825	2,386,868
Obligated during TQ	-171,000	-11,610	-300	-839,600	-15,200	1/	-1,037,710
Net to carry over to FY 1977	481,850	51,235	-666	685,994	52,920	77,825	1,349,158
Adjustment for FY 1977							
Available for FY 1977							
Obligated during FY 1977							
Net to carry over to FY 1978							
Adjustment for FY 1978							
Available for FY 1978							
Obligated during FY 1978							
Net to carry over to FY 1979							

1/ Item completed - no more adjustments.

SUBPART I - EXHIBITS

§501.80 Interagency Agreement

INTERAGENCY AGREEMENT
BETWEEN THE
SOIL CONSERVATION SERVICE
AND THE
FOREST SERVICE

I. Purpose. The purpose of this agreement is to describe procedures adopted by the Soil Conservation Service (SCS) and the Forest Service (FS) to assure effective program planning and execution and define responsibilities for program management and accountability in connection with the Watershed Protection and Flood Prevention (16 U.S.C. 1001-1009), and the 1944 Omnibus Flood Control (Sec. 13, 58 Stat. 905) Acts. This agreement is not applicable to emergency assistance authorized by Section 216 of the Flood Control Act of May 17, 1950, (33 U.S.C. 701b-1).

II. National Level Activities.

A. Program Development. The FS and SCS will jointly prepare a National Program Activity Plan. The Plan will be prepared by October 1 each year and will cover the current year, budget year, and projected year. The Plan will identify activities to be carried out by the FS National Office to support activities at the State, region, and area levels, and the man-years and funding necessary to carry out those activities.

B. Program Funding. Funds for each year's work under the National Program Activity Plan will be transferred by SCS to the FS at the National Office level. In the event final appropriations to SCS are not known when the National Program Activity Plan is prepared, the Plan and estimated funding levels may be adjusted based on final appropriations.

C. Accomplishment and Financial Reporting. Directors of the SCS Watersheds Division and FS Area Planning and Development Unit will meet in February and August of each year to review and evaluate current year National level activities. Review and evaluation will include: (1) progress on accomplishments during the year, (2) charges made to program funds, and (3) other available program and financial data as may be required.

III. State, Regional, and Area Level Activities. The SCS State Conservationists have responsibility for SCS program planning and management and are accountable for accomplishments in Watershed Protection and Flood Prevention, and the eleven (11) authorized flood prevention projects. Area directors and regional foresters have the responsibility to administer the forestry aspects under such general program criteria and procedures as may be established by the Soil Conservation Service.

A. Program Development.

1. Small Watershed and Flood Prevention Planning (Public Law 78-534 and Public Law 83-566). The SCS State Conservationist is responsible for developing, coordinating, and maintaining a 3-year plan for small watershed and flood prevention planning activities. Copies of these plans and revisions will be provided the appropriate FS regional forester or area director by June 1 each year and currently as revised.

FS regional foresters and area directors are responsible for developing, submitting to State Conservationists prior to the annual meetings, and maintaining a 3-year program and financial plan fully coordinated with the State Conservationists' 3-year plans to cover FS participation in small watershed and flood prevention planning activities. Program and financial plans will identify planned accomplishments and the method used in carrying them out, i.e., State forester, consultant, or FS inhouse. Plans will also provide the following financial data for each small watershed and flood prevention project: (1) funding requirements by object class of expense as prescribed by OMB Circular A-12 for the current year, budget year, and projected year, (2) amount of regional or area level program management and general administration costs which have been included in the funding requirements, and (3) actual obligations incurred during the prior year. The program and financial plan will be prepared in the format shown in Exhibit 1.

The SCS State Conservationist is responsible for reviewing and approving the FS 3-year program and financial plan for small watershed and flood prevention planning activities in his State.

2. Small Watershed and Flood Prevention Operations (Public Law 78-534 and Public Law 83-566). The field cost estimate for each operational project is listed on Form SCS-WS-207 (Rev. 1-77) and shows: (1) total project cost, (2) cumulative obligations, and (3) estimated direct project obligations for the current year, budget year, and projected year.

FS regional foresters and area directors are reponsible for developing, submitting to State Conservationists prior to the annual meetings, and maintaining a 3-year program and financial plan fully coordinated with the Form SCS-WS-207 and the small watershed work plan

covering FS participation in each small watershed and flood prevention project. Program and financial plans will identify planned accomplishments and the method to be used in carrying them out, i.e., State forester, consultant, contract, or FS inhouse. Plans will also provide the following financial data for each planned project: (1) funding requirements by object class or expense as prescribed by OMB Circular A-12 for the current year, budget year, and projected year, (2) amount of regional or area level program management and general administration costs included in the funding requirements, and (3) actual obligations incurred during the prior year. The program and financial plan will be prepared in the format shown in Exhibit 1.

The SCS State Conservationist is responsible for reviewing and approving the FS 3-year program and financial plan for projects in his State.

B. Program Funding. Program funding for the FS small watershed and flood prevention planning and operations will be included in the State Conservationists' budgets for the current year, budget year, and projected year. Current year funds for FS participation in planning activities and operations in the several States, as identified in FS program and financial plans will be transferred by SCS to the FS at the National Office level based on the State Conservationist's written recommendation. In the event final appropriations to SCS are not known when the program and financial plans are approved, the plans and estimated funding levels may be adjusted based on final appropriations.

C. Accomplishment and Financial Reporting. The SCS State Conservationist and the FS regional forester or area director or their representative, will meet one or more times each year to review and evaluate both planning and operations activities. Review and evaluation will include: (1) progress on items agreed upon to be accomplished during the year, (2) expenditures by project for small watershed planning, small watershed operations, and flood prevention showing the amount spent inhouse by FS, State foresters, and contracted, and (3) changes that need to be made in program funding.

IV. Overall Financial Reporting. The FS will prepare and submit any financial information required by Office of Management and Budget, the Treasury Department, and Congress. In addition, at the end of each fiscal year, the FS will prepare and submit to SCS a report of obligations charged against SCS approriations. This report will show obligations by small watershed project within each State for small watershed planning and operations, and obligations by State for each flood prevention project.

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The agreement shall become effective as of the date of approval and continue in effect until modified or terminated by either party.

Sept. 21, 1977 Date	/S/ R. M. Davis Administrator, Soil Conservation Service
Sept. 14, 1977 Date	/S/ John R. McGuire Chief, Forest Service

Approved:

Sept. 21, 1977	/S/ M. Rupert Cutler Assistant Secretary for Conservation, Research, and Education

Critical Dates and Activities
Flowing From the
INTERAGENCY AGREEMENT
BETWEEN THE
SOIL CONSERVATION SERVICE
AND THE
FOREST SERVICE
(dated September 21, 1977)
(updated July 1981)

Due Date:	National Level Activities:
October 1 each year	(1) SCS and FS finalize each year by October 1, a National Program Activity Plan for the current year, budget year, and projected year.
February & August each year.	(2) Director of SCS Project Development and Maintenance and FS Area Planning and Development Unit will meet in February and August of each year to review and evaluate current year National Level Activities.
	(3) FS will prepare and submit to SCS a report of obligations charged against SCS appropriations. This report will show obligations by small watershed projects within each state (planning and operations) and by state for each flood prevention project.

Due Date	State Level Activities:
Prior to April 15 each year.	(1) STC is responsible for developing, coordinating, and maintaining a 3-year plan for small watershed and flood prevention planning. Copies of these plans and revisions will be provided to the appropriate FS regional forester or area director by June each year and currently, as revised.
Prior to annual meeting.	(2) FS regional forester and area directors are responsible for developing, submitting to the STC prior to the annual meeting, and maintaining a 3-year program and financial plan for FS participation in the planning and installation of small watershed and flood prevention projects.

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Due Date		State Level Activities:
Jan/Feb	(3)	Hold annual meeting to review and discuss FS and SCS 3-year programs and financial plans. Agreement should be reached or further meeting(s) scheduled.
During or shortly after annual meeting	(4)	STC is responsible for reviewing and approving the FS 3-year program and financial plan for project installation in his state.
March/April each year	(5)	STC is to establish the amounts later to be withdrawn and allocated to the FS in this fiscal year planning budget.
April 15	(6)	STC is responsible for submitting financial needs by April 15, presenting the WF-08 and WF-03 funds needed for the next fiscal year. SCS funds for technical assistance and object classes 25.1, 25.2, 25.5, 26.1 and 41.0 must be fully coordinated with WS-207.
April 15 each year	(7)	STC is responsible for submitting Form WS-207 (Rev. 1-77) by April 15 each year showing a fully coordinated 3-year plan for each operational project in his state.
After final allotment letter received from Chief.	(9)	STC is to prepare annually and submit to PDM a request to withdraw funds from this allotment to be allocated to FS. This request should be fully supported by the WS-207 (a and b) and listed by project in planning and operations.
	(10)	Director, PDM is to prepare and submit to B&F a consolidated request from all STC to withdraw funds from the respective STC and allot to FS.

Program and Financial Plan
Small Watershed and Flood Prevention (Planning-Operations)*
*delete inapplicable term

Current Fiscal Year 19____

Region or Area _____

I. Small Watershed

Name of Project	State	Planned Accomplishments 1/	Major Object Class	Costs: Current Year Total Costs	Current Year Overhead Costs	Budget Year Total Costs	Budget Year Overhead Costs	Projected Year Total Costs	Projected Year Overhead Costs	Prior Year Total Costs
XXXXX	XX	XXXXX	11	XX	2/	XX	2/	XX	2/	3/
		XXXXX	12	XX		XX		XX		
			21	XX		XX		XX		
		State Total		XX	XX	XX	XX	XX	XX	XX
	XX	XXXXX	11	XX		XX		XX		
		XXXXX	12	XX		XX		XX		
			21	XX		XX		XX		
			25	XX		XX		XX		
			41	XX		XX		XX		
		State Total		XX	XX	XX	XX	XX	XX	XX
XXXXX	XX	XXXXX	11	XX		XX				
		XXXXX	12	XX		XX				
			21	XX		XX				
			41	XX		XX				
		State Total		XX	XX	XX	XX			XX
Total Small Watershed				XX	XX	XX	XX	XX	XX	XX

II. Flood Prevention

XXXXX	XX	XXXXX	11	XX		XX		XX		
		XXXXX	12	XX		XX		XX		
			23	XX		XX		XX		
		State Total		XX	XX	XX	XX	XX	XX	XX
	XX	XXXXX	11	XX						
			12	XX						
			21	XX						XX
		State Total		XX	XX					
XXXX	XX	XXXXX	11	XX		XX		XX		
			12	XX		XX		XX		
			21	XX		XX		XX		
			41	XX		XX		XX		
		State Total		XX	XX	XX	XX	XX	XX	XX
Total Flood Prevention				XX	XX	XX	XX	XX	XX	XX

1/ Include a brief description of planned accomplishments and method to be used, i.e., Forest Service In-house, State Forester, Consultant, or Contract.

2/ Show amount of overhead costs which have been included in the "total costs" column.

3/ Do not break down prior year actual costs by object class.

§501.81 Memorandum of Understanding between SCS and ERS

MEMORANDUM OF UNDERSTANDING
BETWEEN
The Soil Conservation Service
and
The Economic Research Service
relative to
Services to be Furnished by the Economic
Research Service Under the Watershed Planning
and Operations Appropriation Items

This Memorandum of Understanding describes the work to be undertaken by the Economic Research Service to assist the Soil Conservation Service administer the Watershed Protection and Flood Prevention Act and establishes interagency arrangements for conduct of the work. This Memorandum of Understanding will supersede the Memorandum of Agreement dated January 1955.

I. Kinds of work to be undertaken by the ERS

A. The ERS will provide technical assistance to the SCS, as requested, in development or review of policies and procedures for planning and evaluating Watershed Protection and Flood Prevention projects. This includes application and interpretation of economic principles and criteria in the evaluation of projects.

B. The ERS will undertake special socio-economic studies to assist the SCS in appraising and improving the watershed program. Selected completed projects, proposed projects, and related data will be analyzed for the purposes of:

1. determining program effectiveness in achieving stated goals,

2. identifying alternate social goals, development needs, and project purposes to improve watershed program and design of individual projects,

3. identifying need for changes in planning procedures to more accurately assess economic and other impacts of projects.

C. The ERS will provide an annual analysis of program progress. This will include a summary of benefit, cost and other data from authorized project plans.

II. Procedure for selection of specific work assignments:

A plan of work will be developed annually for work to be accomplished or initiated each year under this agreement. The annual plan of work will be prepared jointly by the ERSZ and SCS. Since budgets are prepared approximately one to one and one-half years i n advance of authorization to obligate funds, the annual plan of work would be completed at least a full year in advance of the fiscal year covered. It will be signed by the Administrators of the two agencies.

The annual plan of work will (1) set forth a schedule for completing the work to be continued; (2) describe the new work to be undertaken and the schedule for its completion; (3) list ERS personnel that will be available to undertake the studies; and (4) specify estimated funds required for each item undertaken.

In support of this annual planning the following activities will involve both agencies:

(1) A statement of research needs will be developed to provide overall guidance in the selection of priority work to be undertaken; (2) these research needs will be revised as necessary as a result of planned workshops and seminars involving appropriate personnel of both agencies. By these means specific plans for each year's work can be shaped to move toward the accomplishment of longer range objectives, and fund authorizations can be anticipated well in advance of budgeting.

Mutually acceptable adjustments in this annual working schedule will be made as necessary, subject to availability of funds.

III. Financing

Based on appropriations actually received for planning and installing works of improvement in P.L. 566 projects and a mutually satisfactory plan of work, the SCS will transfer to the ERS the necessary funds to carry out the agreed-to items" called for in the annual plan of work.

IV. Publications and Administrative Reports

Reports and special studies will be issued as mutually agreed upon. Such reports will have the approval of cooperating agencies and will be published through the established channels of the SCS, the ERS, or cooperating agencies.

V. This Memorandum of Understanding shall become effective as of the date of approval and shall continue in effect until modified by mutual agreement or until terminated by either party by giving not less than 60 days' notice in writing to the other party.

/S/ Kenneth E. Grant Administrator, Soil Conservation Service	1/27/72 Date	/S/ M. L. Upchurch Administrator, Economic Research Service	1/6/72 Date

§501.82 Agreements Between SCS and COE

AGREEMENT

Between The
Soil Conservation Service, Department of Agriculture
And The
Corps of Engineers, Department of the Army

WITH RESPECT TO FLOOD PROTECTION BY ENGINEERING WORKS

Objectives

The Corps of Engineers of the Department of the Army, and the Soil Conservation Service of the Department of Agriculture, enter into this agreement in order to:

a. Provide a basis for deciding which agency will assume primary responsibility for providing flood protection by means of engineering works in those instances in which either agency could assume such responsibility under available legislative authorities;

b. insure that both agencies follow the same policy in dealing with local interests; and,

c. foster coordination in the preparation of flood protection plans for areas in which there is a mutual interest.

Agreement

The Corps of Engineers and the Soil Conservation Service agree:

1. That they will endeavor to plan any engineering works which they may propose for flood protection, as harmonious components of plans for the optimum development of the river basin or region in which they are located.

2. That in the preparation of plans under the authorities of Public Law 566 the primary flood protection objective of the Soil Conservation Service will be to provide protection for upstream agricultural flood plains and for those upstream urbanized areas where flood problems of minor magnitude exist; but that this will not preclude the inclusion in Public Law 566 plans of upstream engineering works for, (a) the protection of downstream agricultural flood plain lands pursuant to section 4 hereof, or (b) the protection of upstream urbanized areas, pursuant to section 8 hereof, where flood problems of intermediate magnitude exist.

3. That in the preparation of plans under the authorities of the Flood Control Acts the primary flood protection objective of the Corps of Engineers will be to provide protection for downstream agricultural flood plains and for urbanized areas where flood problems of major magnitude exists; but this will not preclude the inclusion in plans prepared under the Flood Control Acts of upstream engineering works for, (a) the protection of upstream agricultural flood plain lands pursuant to section 5 of this asgreement, or (b) the protection of upstream urbanized areas, pursuant to section 8 hereof, where flood problems of intermediate magnitude exist.

4. That within the limitations of Public Law 566 the Soil Conservation Service may provide, in addition to land treatment and minor engineering works, reservoir capacity the primary purpose of which is to protect downstream flood plains if the following conditions are met:

a. That such capacity is provided by ungated storage of not more than 12,500 acre-feet for flood protection in any single reservoir.

b. That protection by this means would be more economic than protection by reservoirs providing more than 12,500 acre-feet of capacity for flood protection in any single reservoir.

c. That the proposal is consistent with any existing or contemplated comprehensive river basin or regional plan.

d. That the Corps of Engineers has been given an opportunity to review the proposal and its views have been considered.

5. That the Corps of Engineers may provide reservoir capacity the primary purpose of which is to protect upstream agricultural flood plains if the following conditions are met:

a. That protection by this means would be more economic than protection by a combination of land treatment and structural works that could be provided under the authorities of Public Law 566.

b. That the proposal is consistent with any existing or contemplated comprehensive river basin or regional plan.

c. That the Soil Conservation Service has been given an opportunity to review the proposal and its views have been considered.

6. That the Soil Conservation Service will generally provide protection for upstream urbanized areas at which the flood problem is of "minor magnitude."

7. That the Corps of Engineers will generally provide protection for upstream urbanized areas at which the flood problem is of "major magnitude."

8. That when either the Soil Conservation Service or the Corps of Engineers contemplates the provision of flood protection for any upstream urbanized area at which the flood problem is of "intermediate magnitude" it will inform the other party to this agreement, and that the two parties will consult with a view to reaching agreement as to which of them should provide such protection. Such consultations shall be guided by the following:

a. In general, the Corps of Engineers will assume responsibility where, (1) a very high degree of protection is needed (i.e., where a great flood would result in such catastrophic damages and possible loss of life that protection against a flood larger than a 100-year flood appears to be justified), or (2) where protection (regardless of the degree of protection contemplated) can most economically be provided by local protection works.

b. In general, the Soil Conservation Service will assume responsibility where, (1) protection against a flood of 100-year magnitude or less is found to be adequate, or (2) protection may most economically be provided principally by upstream reservoirs none of which provide more than 12,500 acre-feet of flood protection capacity, or (3) protection of upstream agricultural lands may be advantageously combined with protection of the urban area.

c. Consideration shall also be given to the readiness of the two agencies to proceed promptly and to the desires of the interests to be benefited.

Agreements resulting from such consultations shall be confirmed in writing.

9. That when either the Soil Conservation Service or Corps of Engineers concludes that for a particular situation special conditions would justify an assignment of responsiblity not in conformance with section 6 or section 7 hereof, it may propose a consultation similar to that provided for by section 8 hereof and propose a departure from the provisions of sections 6 and 7.

10. That in the event consultations at field level under sections 8 or 9 hereof fail to result in agreement as to the proper assignment of responsibility for protecting a specific urbanized area, the issue shall

be referred to the Washington Offices of the Soil Conservation Service and the Corps of Engineers for further consideration.

11. That the definitions of Supplement A shall govern the interpretation of this agreement.

12. That the agreement of 19 January 1959 between the parties hereto shall remain in effect.

13. That this agreement shall become effective upon the date of approval of legislation raising to 12,500 acre-feet the limit on the floodwater detention capacity which may be provided in any reservoir proposed under the authorities of Public Law 566, and that the provisions hereof shall govern all planning initiated after that date by either of the parties hereto.

/S/ William F. Cassidy WILLIAM F. CASSIDY Lieutenant General, USA	23/Sept./65 (Date)	/S/ D. A. Williams D. A. WILLIAMS Administrator, Soil Conservation Service	9/23/65 (Date)

SUPPLEMENT A

DEFINITIONS OF TERMS

"Upstream": Above the point at which the drainage area equals 250,000 acres.

"Downstream": Below the point at which the drainage area equals 250,000 acres.

"Urbanized area": A city, town, or other area occupied by residences, public or commercial buildings and industrial structures or expected to be so occupied within a period of 10 years; the area so occupied being essentially continuous.

"Urban flood problem of major magnitude": The flood problem at an urban area where a flood large enough to inundate substantially the entire flood plain would, should it occur ten years in the future, probably result in flood damages exceeding $2,000,000.

"Urban flood problem of minor magnitude": The flood problem at an urban area where a flood large enough to inundate substantially the entire flood plain would, should it occur 10 years in the future, probably result in flood damages of less than $750,000.

"Urban flood problem of intermediate magnitude": The flood problem at an urban area where a flood large enough to inundate substantially the entire flood plain would, should it occur 10 years in the future, probably result in flood damages exceeding $750,000, but less than $2,000,000.

501.82

19 January 1959

AGREEMENT BETWEEN THE
CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY
AND
SOIL CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE
ON PARTICIPATION IN URBAN FLOOD PROTECTION

1. The Corps of Engineers of the Department of the Army and the Soil Conservation Service of the Department of Agriculture, in addition to other normal coordination and cooperation, agree to the following basic position on participation in providing flood protection for urban areas:

Under the flood control laws and the watershed protection and flood prevention acts which govern the activities of the two agencies in this field, both agencies have authority to plan, recommend and carry out, or to provide assistance to local organizations in carrying out, projects for the reduction of flood damages in urban areas.

2. In order to carry out their responsibilities in this area of overlapping authorization, the District Engineers of the Corps of Engineers, the State Conservationists of the Soil Conservation Service, and the local organizations concerned with the development of proposed projects will consult in the following cases with a view to reaching a mutually satisfactory decision as to whether the Corps of Engineers or the Soil Conservation Service should provide the Federal assistance desired by local organizations:

a. When the Soil Conservation Service receives an application for assistance in developing a watershed work plan where the problem appears to require for its solution the installation of local protection within an urban area or the benefits accrue primarily to an urban area.

b. When the Corps of Engineers is confronted with an ubran flood problem where it appears that an optimum solution could be obtained as a part of a watershed work plan normally provided under P.L. 566.

3. In such consultations District Engineers and State Conservationists shall be guided by the following:

a. Local protection works such as channel, levee or similar improvements for urban flood protection shall normally be provided by the Corps of Engineers.

b. Reservoirs for urban flood protection may be provided by the Corps of Engineers, or by the Soil Conservation Service under authority of P.L. 566.

c. In the event it is concluded that an urban area can be protected most advantageously by a combination of works some of which could best be provided by the Corps of Engineers and one of which could best be provided by the Soil Conservation Service, the District Engineer and the State Conservationist will consider the desirability of jointly developing a unified plan to be carried out by coordinated action of the concerned agencies.

d. Regardless of the types of improvement used in providing protection to urban areas, or of the agency involved in planning such protection, the standards of design, project evaluation, and cost sharing should be as uniform as practicable within the legislation under which the two agencies function.

/s/ Dewey Short
Assistant Secretary of the Army
(Civil-Military Affairs)

/s/ E.L. Peterson
Assistant Secretary of Agriculture

/s/ E. C. Itschner
E.C. Itschner, Major General
Chief of Engineers, U.S. Army

/s/ D. A. Williams
D. A. Williams
Administrator, Soil Conservation Service

§501.83 Memorandum of Understanding Between SCS and FmHA

MEMORANDUM OF UNDERSTANDING
Between the
SOIL CONSERVATION SERVICE
and the
FARMERS HOME ADMINISTRATION
Relating to the Making of WS Loans and WS Advances
Under the
Watershed Protection and Flood Prevention Act

(1) Purpose: This memorandum is to coordinate general agency responsibilities and functions of the Farmers Home Administration (FmHA) and the Soil Conservation Service (SCS) in connection with loans and advances made to sponsoring local organizations under the provisions of the Watershed Protection and Flood Prevention Act (68 Stat. 666), as amended.

(2) General agency responsibilities: The general assignments to the SCS and the FmHA for the administration of the Watershed Protection and Flood Prevention Act are contained in the Secretary's Policy Statement dated October 19, 1962. Each agency will establish policy and procedures and take such other action as required to carry out its responsibility.

(i) The FmHA is responsible for making and servicing WS loans or advancements under Section 8 and obligations for repayment of WS advances made by the SCS under Section 4 of the Act.

(ii) The SCS is responsible for administration of all authority under the Act, except making and servicing WS loans made under Section 8, and for servicing obligations for repayment of WS advances made by the SCS under Section 4 of the Act.

(iii) The SCS and the FmHA will cooperate in developing and carrying out their respective policies, procedures, and requirements, as they relate to WS loans and WS advances made under the Act.

(3) Receipt and processing of applications for loans and advances:

(i) A works of improvement must be included in an approved watershed plan before a loan or advance for it is made under the Act. During the development of a Watershed Plan, the State Conservationist of SCS will afford the State Director of FmHA an opportunity to gain an understanding of watershed problems and needs, and the proposed plans for works of improvement. When a sponsoring local organization indicates a desire for a WS loan or WS advance the SCS State Conservationist will consult with the FmHA State Director on matters such as organizational arrangements, specific local or state requirements and other problems related to the plan for financing, installing, operating and maintaining the planned works of improvement being considered.

(ii) The SCS State Conservationist will furnish the FmHA State Director a copy of each Watershed Plan. The Administrator of SCS will furnish the Administrator of FmHA a copy of each approved WS Plan.

(iii) A Watershed Plan and the related executed watershed plan agreement will not obligate the FmHA to make a WS loan or obligate the SCS to make a WS advance to sponsoring local organizations.

(4) Coordination of assistance for design, construction and maintenance.

The following principals are to be used as a guide for the design, construction, operation and maintenance of works of improvement when a WS loan or WS advance is involved:

(i) The SCS will furnish or assume the cost of engineering services required to plan and install the portion of the works of improvement allocated to flood prevention, agricultural phases of the conservation, development, utilization, and disposal of water, fish and wildlife, and recreational development, and not more than 50 percent of the costs of engineering services for minimum basic facilities. Sponsoring local organizations are expected to furnish and assume the cost of other engineering services required. The SCS will give such engineering advice and guidance to the sponsoring local organization as required to insure that plans, specifications and cost estimates furnished by them meet the design and construction standards and criteria established for the project and that the works are properly coordinated with any other works to be installed under Watershed Plan. The SCS State Conservationist will consult with and keep the FmHA State Director informed during the development and construction plans and the construction of works of improvement. This will include an engineering review and a statement by the SCS of the adequacy and appropriateness of cost estimates, designs, plans, and specifications prepared by private engineers.

(ii) Engineering plans, including specifications, drawings and cost estimates for works of improvement involving WS loans or advances will be approved by the SCS State Conservationist and the FmHA State Director.

(iii) The SCS State Conservationist will consult with the FmHA State Director as to terms and conditions to be included in invitations to bids and contracts for construction or purchase of supplies and materials in connection with works of improvement to be installed with loans or advances. The SCS will provide technical assistance advice needed by the sponsoring local organizations for the preparation of these documents and in analyzing bids and selecting the lowest responsible bidder. The contracts shall be acceptable to the FmHA State Director and the SCS State Conservationist before execution by the sponsoring local organization receiving a loan or advance.

(iv) The sponsoring local organization will not be permitted to accept a bid which would require additional loan funds or make changes in plans or specifications in order to obtain a bid within the estimated cost without the concurrence of the FmHA State Director. Should the sponsoring local organization desire to reject bids or to not call for bids and undertake construction of works of improvement by force account, the concurrence of the FmHA State Director shall be obtained.

(v) The SCS will provide technical assistance including periodic inspections during construction as necessary to protect the Government's interest and to assure that the works of improvement are being constructed in accordance with approved drawings and specifications. The SCS may approve minor changes during construction in the contract terms and conditions and the drawings and specifications which do not appreciably affect the design, cost or function of a structure without concurrence of the FmHA. Major changes or changes which affect the overall cost of the works of improvement will require the prior concurrence of the FmHA State Director.

(vi) The SCS and FmHA will make annual joint inspections, for a period of three years after completion thereof or more frequently if necessary, to see that works of improvement are being operated and maintained according to agreements. The sponsoring local organization will be required to make annual inspections throughout the life of the structure and report their findings to the SCS and FmHA offices. When SCS or FmHA determine that there are serious deficiences in operation and maintenance, the FmHA State Director will collaborate with the SCS State Conservationist in arranging with the local sponsoring organziation for the correction of such deficiencies. The FmHA or SCS may make other inspections as necessary to service the loan or advance account of the borrowing sponsoring local organization.

(vii) Responsibility rests with the local sponsoring organization to acquire any land, easements, or rights-of-way that will be needed for works of improvement. If a lien is to be taken on works of improvement and the land, easements, or rights-of-way, the FmHA will, after consultation with the SCS, approve the easements, deeds, and permits before they are executed. The FmHA will provide instructions to the local sponsoring organization pertaining to acknowledgement, title searches and examinations, obtaining consent of holders of liens outstanding against the land, and recording easements and deeds. The SCS will check land description in all landrights instruments to the extent necessary to determine that the areas required for construction, operation and maintenance of works of improvement are included, except that the SCS will make property line surveys.

(viii) When loan payments will depend upon a right to use a specific quantity of water, the local sponsoring organization will furnish to FmHA satisfactory evidence of such rights, and any required additional information concerning the water supply. This evidence will include such documents and materials as affidavits, permits, title certificates, court decrees, stream gage records, rainfall records, well logs, records of pumping tests and water analysis. The SCS will examine information that is furnished together with other available information and give FmHA a written opinion of the adequacy of supply, including quality, to meet the requirements of the plan.

(5) Disbursement of funds. Proceeds of WS loans will be deposited in, and withdrawn from, bank accounts in the manner required by FmHA regulations. Checks on these bank accounts for payments to contractors and suppliers of materials will be based upon Form SCS 49a, "Contract Payment Estimate and Construction Progress Report." Form SCS 49a, prepared by the local sponsoring organization for this purpose, will be approved by the SCS. In giving his approval to Form SCS 49a, the SCS representative shall be certain that the items covered are for the purposes and in the amounts authorized in the project agreement.

(i) Advances for future water supply shall be made as provided in the project agreement. The maximum amount of such advance shall be shown in the project agreement.

(ii) Advances for site preservation will be handled in accordance with procedures mutually agreeable to the SCS and the FmHA, which will be developed on a case by case basis.

(6) Starting construction: The local sponsoring organization will not be authorized to start construction on works of improvement to be financed in whole or in part, with a WS loan or a WS advance until:

(i) The SCS has entered into a Project Agreement for Construction of Works of Improvement.

(ii) The State Conservationist has notified the State Director that the local organization has complied with all SCS requirements for receiving PL 566 construction assistance and the State Conservationist has furnished the State Director with a schedule indicating the approximate times that construction work will begin on works of improvement to be installed with such funds.

(iii) The State Director has notified the State Conservationist and the borrower that the loan or advance has been properly closed.

(iv) Any contract entered into by the local organization for materials, labor, or the construction of works of improvement to be financed with loan funds has been found acceptable by the FmHA.

(v) The State Director has notified the State Conservationist that any advance for the preservation of sites has been repaid.

(vi) All engineering drawings and specifications for works of improvement to be financed in part by WS loans or advances have been approved by the FmHA and the SCS.

(7) FmHA Contracts with local organizations: Ordinarily, a WS loan or advance will be made to the local organization having primary interest in, and direct responsibility for, the operation and maintenance of works of improvement to be installed with loan or advance funds rather than to an organization that would have to contract with another organization for the operation and maintenance of works of improvement and the collection of revenues for repaying the loan or advance. When it is proposed to make a WS loan to an organization that would have to contract with another organization, the organization and the contractual arrangements will be mutually acceptable to the FmHA and the SCS. This determination will be made before the approval of the Project Agreement for Construction of the Works of Improvement.

(8) Informational activities: The SCS will be responsible for the preparation, release, or other handling of the overall informational and educational material regarding the watershed protection program, including bulletins, press releases and other public announcements. The SCS will obtain the recommendations of the FmHA prior to releasing pamphlets and similar informational material which makes reference to loans. The FmHA may prepare and release informational material on the handling of loan applications. Such material will be reviewed with the SCS if it alludes to overall costs or benefits or to technical aspects for which SCS has responsibility. When desirable or necessary in particular watershed areas for SCS to arrange for community meetings to discuss and explain the program to interested local people, the FmHA will be invited to participate in such meetings if a loan or advance may be needed by a local organization to carry out planned works of improvement.

/S/ Victor H. Barry, Jr.
Acting Administrator
Soil Conservation Service

May 26, 1978
Date

Gordon Cavanaugh
Administrator
Farmers Home Administration

5/31/78
Date

§501.84 Example of Notice of Intent to Deauthorize Federal Funding.

BILLING CODE: 3410-16

DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

(Name) Watershed, (State)

AGENCY: Soil Conservation Service

ACTION: Notice of Intent to Deauthorize Federal Funding

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the (Name) Watershed project, (County or Counties), (State).

FOR FURTHER INFORMATION CONTACT: (Name), State Conservationist, Soil Conservation Service, (Street Address), (City), (State) (Zip Code), telephone (Area Code and Number).

.....(Name)..... Watershed, ...(State).....
Notice of Intent to Deauthorize Federal Funding

SUPPLEMENTARY INFORMATION: A determination has been made by ...(State Conservationist's Name).. that the proposed works of improvement for the .....(Watershed)..... project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from .....(Name)....., State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the Federal Register.

(Signature)
(Type name and title of signee)

(Date:)

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

§501.85 Example of Notice of Deauthorization of Funding.

BILLING CODE: 3410-16

DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

.....(Name..... Watershed, ...(State).....

AGENCY: Soil Conservation Service

ACTION: Notice of Deauthorization of Federal Funding

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the .....(Name)..... Watershed project, ..(County or Counties)., ...(State)....., effective on ...(Date as indicated in letter from Chief)....

FOR FURTHER INFORMATION CONTACT: .....(Name)....., State Conservationist, Soil Conservation Service, .(Street Address) ....., ...(City)....., .(State) (Zip Code) ..(Area Code and Number)..

(Signature)
(Type name and title of signee)

(Date:)

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

501.84 FmHA loan and advance procedures.

PART 1942 - ASSOCIATIONS

SUBPART I - RESOURCE CONSERVATION AND DEVELOPMENT (RCD) LOANS AND WATERSHED (WS) LOANS AND WATERSHED (WS) ADVANCES

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Exhibit A - Watershed loans and SCS-WS advances
Memorandum of Understanding between Soil Conservation Service (SCS) and Farmers Home Administration (FmHA)

Exhibit B - Resource Conservation and Development loans
Memorandum of Understanding between Soil Conservation Service (SCS) and Farmers Home Administration (FmHA)

PART 1942 - ASSOCIATIONS

SUBPART I - RESOURCE CONSERVATION AND DEVELOPMENT (RCD) LOANS AND WATERSHED (WS) LOANS AND WATERSHED ADVANCES

§1942.401 Purpose.

This Subpart prescribes Farmers Home Administration (FmHA) policies and procedures for making:

(a) Watershed (WS) loans and Watershed (WS) advances for works of improvement in a watershed project, and

(b) Resource Conservation and Development (RCD) loans for measures or projects needed to implement the RCD area plan to achieve objectives in an RCD area.

1942.402 Policy.

(a) FmHA will make WS and RCD loans available to sponsoring local public bodies, agencies, and nonprofit organizations to assist them in obtaining the local cost of WS works of improvement and RCD measures. FmHA will assist the local sponsors and the Soil Conservation Service (SCS) in making loans from SCS construction funds as WS advances when needed for the development of future water supplies or for site preservation.

(b) FmHA will coordinate application processing with the SCS and other appropriate State and Federal agencies. These agencies include State and area planning and development agencies responsible for clearinghouse functions in accordance with Office of Management and Budget Circular A-95, "Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects."

§1942.403 Authorities, responsibilities and delegation of authority.

(a) SCS provides technical and financial assistance to sponsoring local organizations for developing WS and RCD area plans and for individual RCD measures or projects and watershed works of improvement.

The watershed work plan for developing, operating, and maintaining watershed works of improvement must be agreed upon by sponsoring local organizations and SCS. When approved, it is the basis for extending technical and cost sharing assistance from watershed funds. The RCD area plan is prepared for the development of the RCD area by sponsoring local organizations with assistance from SCS and other agencies, endorsed by the Governor or by the agency designated by the Governor, and accepted by the Secretary of Agriculture or his delegate. It includes objectives, planned courses of action, and RCD measures or projects to be developed. It is amended as necessary to include continuing activities and needs in the RCD area.

(b) FmHA receives and processes applications for WS loans and SCS WS advances and RCD loans and makes and services such loan and advances.

WS loans are made by FmHA from either Public Law 534 (78th Cong.) funds authorized in the Flood Control Act of 1944 or Public Law 566 (83rd Cong.) funds authorized in the Watershed Protection and Flood Prevention Act of 1954 to cover a part or all of the local cost for a watershed work of improvement.

(c) WS loans and WS advances may be made to project sponsors in watershed project areas for which:

(1) A watershed work plan has been approved administratively or by resolutions adopted by the Committee on Agriculture and Forestry of the Senate and by the Committee on Agriculture of the House of Representatives, and

(2) Federal assistance has been authorized for the installation of works of improvement by the Administrator of SCS.

(d) RCD loans may be made in areas authorized for RCD program assistance by the Secretary of Agriculture and for which an RCD plan design or area plan has been accepted by the State SCS Conservationist.

(e) Delegation of authority. The State Director is authorized to approve WS and RCD loans subject to limitations in FmHA Instruction 1901-A and conditions of this Subpart. The State Director is authorized to redelegate authority in accordance with this Subpart to the Chief, Community Programs; or other members of the State Office staff.

(f) SCS is responsible for providing technical and financial assistance to sponsoring local organizations for planning and developing WS and RCD areas. This includes development of WS and RCD plans and WS works of improvement and RCD measures or projects.

(g) FmHA is responsible for making and servicing WS loans and advances and RCD loans.

(h) The SCS - FmHA Agreements in Exhibits A and B to this Subpart include further responsibilities and functions of SCS and FmHA in WS and RCD areas.

§1942.404 Definitions.

(a) Watershed (WS) project. An authorized area in which watershed assistance from SCS and other U. S. Department of Agriculture (USDA) agencies including WS loans and advances may be provided. Watershed assistance is provided in two types of watershed projects identified by the Public Law under which they are authorized.

(1) Public Law-534 Watershed. One of the 11 watersheds authorized by Congress in the Flood Control Act of 1944, Public Law 78-534 as amended.

(2) Public Law-566 Watershed. A small watershed of not more than 250,000 acres authorized in accordance with the Watershed Protection and Flood Prevention Act, August 4, 1954, Public Law 83-566 as amended.

(b) Resource Conservation and Development (RCD) area. An area in which RCD program assistance from SCS and other USDA agencies has been authorized. It usually includes all or part of more than one county and may be coterminous with substate planning and development areas. RCD loans are authorized under Section 32 of Title III of the Bankhead-Jones farm Tenant Act (7 U.S.C. 1011).

(c) Watershed plan. A plan agreed upon by sponsoring local organizations and the SCS for developing, operating, and maintaining watershed works of improvement.

(d) RC&D measure plan. A plan document for a land area, directly controlled or under the jurisdiction of the sponsoring public bodies or public nonprofit organization. It involves one of the measure purposes eligible for RC&D cost sharing assistance. The document sets forth what will be done, how, when and by whom, and involves RC&D technical and/or financial assistance.

(e) RCD area plan. A plan prepared by sponsoring local organizations with assistance from SCS and other agencies for the development of the RCD area which has been endorsed by the Governor or his designated agency and accepted by the Secretary of Agriculture or his delegate. It includes objectives, planned courses of action, and RCD measures to be developed. It is amended as necessary to include continuing activities and needs in the RCD area.

(f) Watershed works of improvement. Structural, nonstructural, and land treatment measures included in a watershed plan which are to be installed in a watershed project.

(g) RCD measure or project. An activity or development indicated in the RCD area plan as being needed to achieve RCD area goals and objectives.

(h) Cost sharing. The WS and RCD legislative authorities provide for sharing certain costs of installing WS works of improvement or RCD measures by the Federal Government and by sponsoring local organizations. Federal cost sharing from WS and RCD funds is provided by SCS for certain WS works of improvement and RCD measures. Information on amounts, purposes, and procedures for cost sharing is available from the SCS.

(i) Local cost. The part of the cost of a WS work of improvement or a RCD measure or project that is to be paid by a sponsoring local organization.

(j) Public agency or public body. A State agency or department or instrumentality, county, municipality or other political subdivision or instrumentality of a State or agencies or districts created by or pursuant to State law for making improvements of a public nature or providing public services such as soil and water

conservation districts, irrigation districts, drainage districts, flood prevention and control districts, school districts, other special purpose districts, municipal corporations or similar governmental units.

(k) Non-profit corporation. Mutual and other irrigation, water users, water supply, drainage, or waste disposal companies or associations, ditch companies, grazing, recreation and forestry associations and similar associations and organizations generally designated as private corporations operating on a non-profit basis. They may be organized and chartered under special law, general nonprofit corporation law, or general profit corporation law, if operated on a nonprofit basis under adequate charter, bylaw, mortgage or supplementary agreement provisions which will assure continued operation in that manner.

(l) Sponsoring local organization. A local public agency or body or a local nonprofit corporation having authority under State law to plan, develop, maintain and operate WS works of improvement or RCD measures or projects included in a WS or RCD area plan. The name of the sponsoring local organization must be included in the plan and sponsorship must be evidenced by execution of the plan.

(m) Watershed loan. A loan made by FmHA from watershed funds to a sponsoring local organization to develop a WS work of improvement.

(n) RCD loan. A loan made by FmHA from RCD funds to a local sponsoring organization to develop a RCD measure or project. RCD loans are made from RCD funds to enable sponsoring local organizations to provide a part or all of the local share of cost for an RCD measure.

(o) Watershed advance. A loan made from SCS watershed construction funds to develop a future water supply or for the preservation of a site for a work of improvement authorized in a watershed plan.

(p) Future water supply. Water storage capacity in a reservoir with related facilities for release or withdrawal of water to meet future needs for municipal or industrial use.

(q) Preservation of sites. Acquisition to assure their availability for planned developments. Land, easements, or rights-of-way essential to preserve sites for watershed works of improvement or RCD measures.

§1942.405 Eligibility.

To be eligible for a WS loan, WS advance, or an RCD loan, the sponsoring local organization must meet the following requirements as applicable. Questions on eligiblity will be referred to the Regional Attorney, OGC for legal advise prior to development of a loan docket.

(a) Be named in the WS or RCD plan as a sponsor of the development to be financed.

(b) Be legally organized and established in the WS or RCD area with legal authority, responsibility and capability to develop and operate the facility for which assistance is requested,

(c) Have authority under and comply with Federal, State and local laws on such matters as:

(1) Organizing, installing, operating, and maintaining proposed WS works of improvement or RCD measures or projects.

(2) Borrowing money, giving security, levying taxes, making assessments or raising revenues for operation and maintenance of the facility and repayment of loans.

(3) Land use zoning.

(4) Acquiring necessary property, lands, and rights.

(5) Obtaining approval of construction plans and specifications by appropriate Federal, State, and local agencies and construction facilities.

(6) Health and sanitation standards, water pollution control, and environmental regulations.

(7) Design and installation standards.

(8) Public service commission or similar State public body rules and regulations.

(d) Be financially sound and capable of providing service essential to the rural development needs of the area.

(e) If it is a nonprofit corporation.

(1) Membership should be broadly based and representative of the area benefiting from the facility. Membership on the governing board of the corporation will be limited to those living in the area to be benefited unless for justifiable reasons the State Director gives prior approval for other than local residents to serve on the board of directors.

(2) The corporation must propose a facility which will primarily serve or generate other substantial, tangible benefits for farmers and other residents of the area. In the case of a recreational development at least two-thirds of the membership must be farmers and other residing in the area.

(3) Nonprofit corporations will not be formed to serve an area which could be served by a public agency which has adequate authority to provide the needed service unless prior approval of the National Office is obtained.

§1942.406 Loan purposes.

(a) WS and RCD loans. WS and RCD loans may be used for:

(1) Water development, storage, treatment and conveyance to farms for irrigation and other farm use, including farmstead, livestock, orchard, and crop spraying.

(2) Drainage systems and facilities in farm areas to sustain agricultural production or protect farmers and rural residents from water damage.

(3) Agricultural water management practices for annual streamflow stabilization, recharging ground water reservoirs, and conserving water supplies by management and control of vegetation along waterways and in drainage basins.

(4) Soil conservation and water control facilities such as dikes, terraces, detention reservoirs, stream channels, ditches, and other special land treatment and stabilization measures needed to protect farms and rural residents from water damage, provided such facilities cannot be installed or improved

under, or will not conflict with, other public programs such as those administered by the Corps of Engineers.

(5) Special treatment measures or equipment primarily, though not exclusively, for flood prevention such as:

(i) Facilities and equipment for fire prevention and control.

(ii) Tree planting and establishment of other vegetative cover for stabilizing critical runoff and sediment-producing areas.

(iii) Structural and vegetative measures to stabilize stream channels and gullies.

(iv) Basic farm conservation practices to control runoff, erosion, and sedimentation.

(6) Installing, repairing, and improving water storage facilities, including outlets for immediate and future domestic, municipal and industrial water supply and water quality management, and conveying water to treatment facilities or distribution systems. When payment of loans for such facilities are primarily dependent upon revenues from use of water stored the loan approval official must determine the adequacy of facility for use of the water before a loan is closed.

(7) Public water based recreation and fish and wildlife developer loans will only be made to public bodies for the local share of cost for such developments for which SCS is providing technical or financial assistance from WS or RCD funds. Loans will not be made for developments larger or more elaborate than that which is included in the WS or RCD plan. Loans may include funds for:

(i) Construction of necessary water resource improvements such as storage capacity in multipurpose and single purpose reservoirs, water level control structures in reservoirs and streams, and stream channel improvements necessary for the development of the facilities. This may include practices for improvement of fish and wildlife habitat and environment and related areas and facilities for proper protection and management of the development.

(ii) Essential developments, improvements, equipment and facilities for access, public health and safety, and efficient operation management and maintenance; such as energy utilities, water supply and waste disposal systems, maintenance buildings, fences, cattle guards, roads and trails, parking, picnicking, camping, beaches, playgrounds, and related shelters and equipment.

(iii) Special areas and structures such as forest and other vegetative cover, marshes, pits, shelters and fish ladders to provide protected natural spawning, breeding, nesting, and feeding for fish and wildlife.

(8) Soil and Water Management for Agriculture Related Pollutant Control. Measures to reduce agriculture-related pollutants that adversely affect the community and the general public. Measures may include, but are not limited to, holding ponds, debris basins, diversions, terraces, and community distribution systems.

(9) Acquiring fee simple title to lands or perpetual easements, or rights-of-way for sites for works of improvement or project measures and related costs for removal, relocation, or replacement of existing improvements including relocation payments for displaced persons, business enterprises and facilities, and other related purposes. Funds for land acquisition will be limited to costs necessary for WS works of improvement or RCD measures. Final construction plans will indicate minimum essential lands and rights-of-ways to be acquired. In some cases, sponsoring local organizations may need to acquire lands in excess of actual needs when it is expedient for planned development. If the State Director determines that the acquisition of excess land is necessary or expedient for the orderly development of a WS works of improvement, or RCD measure, he may authorize the action subject to the following conditions:

(i) The applicant must agree to sell excess land as soon as practicable and apply the proceeds, together with any income from excess land, on the debt to FmHA.

(ii) The applicant must furnish legal evidence of authority to acquire additional land and dispose of it as agreed.

(iii) Evidence must be provided to justify acquisition of additional land.

(iv) Easements for land or water resource protection structures must be perpetual and must not include clauses that terminate the easement with the dissolution or abandonment of the applicant organization. Loan funds will not be used for an easement that deviates in any way from that provided in the standard SCS form unless modifications of it are approved by both SCS and FmHA.

(10) Acquisition of water supply or water right by purchase or by appropriation under local, State, and Federal laws. The loan may include funds for the purchase of land on which the water supply or water right is presently being used when:

(i) The water supply or water right cannot be purchased without the land, and

(ii) The value of the land is not the major portion of the cost, and

(iii) Any excess land thus acquired will be sold as soon as possible and the proceeds applied on the loan.

(11) Purchase of equipment and machinery necessary for development and operation of planned WS works of improvement or RCD measures or projects including:

(i) Special-purpose equipment. Purchase or rent special-purpose equipment to install or maintain any community facility in the above categories or to establish on farms soil and water conservation measures such as terraces, ponds, land leveling for irrigation or drainage, subsoiling, seeding, tree planting, and removal of brush, scattered trees, and stumps, provided:

(A) Such equipment is not otherwise available when needed.

(B) There is sufficient need and local demand to justify ownership or rental.

(C) Rates to be charged include, among other things, an allowance for depreciation, obsolescense, and replacement based upon the recommendations of the

equipment manufacturer or the experience of contractors engaged in providing services for similar types of work.

(ii) Forestry equipment and services. Purchase or rent basic special-purpose equipment, facilities, certain land or land rights, and supplies needed for furnishing services for the establishment, improvement, protection, and harvesting of timber (not processing) suitable for lumber, pulp, poles or posts; providing that the forest program and forest practices benefiting from such services are in accordance with approved conservation practices for the development, use, and control of water resources on farms and in forests. Special-purpose equipment may include such items as tractors, bull dozers, plows, planters, trucks, loaders, fire-fighting equipment, and sprayers. Facilities may include such items as ponds and reservoirs, pipelines, buildings for storage of equipment and supplies, nurseries, access roads, fire lanes, and lookout towers. Supplies may include such things as seed, seedlings, fertilizers, fencing, and pesticides. Land or land-rights acquisition will be limited to that necessary for sites for facilities listed above which are directly related to the forestry program. Loans for these purposes may be made only when the equipment, supplies, and facilities to be provided:

(A) Are not readily available when needed.

(B) Will be justified by local need and demand.

(C) Will be available to users at rates sufficient to cover loan amortization, obsolescence, replacement, operation, and cost of supplies.

(D) Will more efficiently serve the group through cooperative effort.

(12) Refinancing debt obligations of the sponsoring local organization that were incurred before application for a WS or RCD loan when that is not the primary purpose of the loan and:

(i) The debt being refinanced was for works of improvement or measures for which loan funds could be used and,
(ii) The debt is a valid obligation of the sponsor and

(iii) Creditors will not modify payment terms on existing debts, and the organization cannot pay existing debts and a loan from FmHA over the same period of time.

(13) Longterm debts will not be refinanced unless necessary to provide a sound basis for the loan or WS advance and concurrence is obtained from the National Office.

(14) If repayment is based on revenues, payment of interest installments from loan funds (but not WS advances) until the facility is generating enough revenue to make accrued interest payments. Loan funds for interest payments will not exceed the estimated amount that will accrue to the end of the third full calendar year after loan closing without prior approval from the National Office.

(15) Relocation payment to displaced persons, business, and farm operations and for relocation assistance advisory services in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (Public Law 91-646, 84 Stat. 1894), the Regulations issued by the Secretary of Agriculture under the Act, (7 CFR Part 21) and the Memorandum of Understanding Between SCS and FmHA.

(16) Services of engineers, architects, attorneys, auditors construction foremen, managers, clerks, and others for organizing, planning, surveying, supervising, analyzing, developing, operating, managing, and accounting for activities related to loan processing and closing and development for which the loan is made.

(17) Buildings, fences, roads, utilities, facilities, and relocation.

(i) To construct buildings of modest design essential for the operation and maintenance of the works of improvement or measure.

(ii) To provide support facilities and utilities such as gas, electricity, water, sewer, and waste disposal.

(iii) To build or relocate roads, bridges, utilities, fences, and other improvements when necessary to acquire rights-of-ways or to construct or operate the facility.

(18) Services and fees. To pay costs for services for any purposes listed under this section such as:

(i) Fees or other legal expenses for establishing a water right through appropriation, agreement, permit, or court decree.

(ii) Purchase of water stock or membership in an incorporated water users' association to acquire a water supply.

(iii) Costs of labor, technical or professional services, and fees to be incurred in obtaining the loan and in planning and completing the facilities or services to be financed with loan funds.

(iv) Services such as those listed in paragraph (a) (16) of this section.

(b) RCD loans. Purposes for which RCD loans may be made in addition to those included in paragraph (a) of this section are:

(1) Solid waste management. Lands, equipment and facilities to collect, transport, and dispose of solid waste in sanitary landfills for which SCS is providing technical assistance.

(2) Shifts-in-land use. Lands for uses such as grazing, forestry, wildlife, natural areas and parks, greenbelts, and other open spaces.

(3) Purchase existing facilities. Purchase existing facilities for shift-in-land use, soil and water development, conservation, control and use when it is determined that purchase is necessary to provide efficient service through a facility owned and operated by a public agency (or a nonprofit corporation in a rural area), or the owner is either unwilling or unable to make improvements, enlargement, or extensions needed to provide significant additional or improved service for present users or for a new group of users at reasonable rates.

(c) SCS watershed advances.

(1) SCS watershed advances are loans that may be made from SCS construction funds for the following purposes included in a watershed work plan agreement:

(i) To pay construction costs including cost of engineering and related services for increasing reservoir capacity (including intake and outlet structures) for a future water supply for municipal, domestic, industrial, or agricultural uses.

(ii) To preserve sites for authorized watershed works of improvement by acquiring land, easements, and rights-of-ways or other property rights.

§1942.407 Loan and advance limitations and obligations incurred before loan closing.

(a) WS and RCD loan limitations.

(1) Loans will not be used for:

(i) Land treatment measures on individual farms except as provided in §1942.406 (a) (5) (iv).

(ii) Buildings and facilities to be used for lodging, dining or entertainment purposes.

(iii) Building industrial parks or constructing facilities in them, or establishing private industrial or commercial enterprises, or purchasing land to be used primarily for industrial purposes.

(iv) Paying costs allocated to structural measures for flood prevention.

(v) Facilities for the production and harvesting of fish and wildlife such as hatcheries, rearing ponds, and related facilities other than those under natural conditions.

(vi) Facilities primary for treatment and distribution of water or for sewerage, collection and treatment for domestic or industrial use or for municipal or community systems.

(vii) Electric generating, transmission, and distribution facilities, except when provided as part of the minimum basic facilities for recreation and fish and wildlife developments authorized in §1942.406 (a) (7).

(viii) Storm and sanitary sewers and solid waste disposal facilities other than authorized in §1942.406 (b) (1).

(ix) Payment for a tract of land, easements, or rights-of-ways on which SCS will share the cost if the amount to be paid with loan funds exceeds the difference between the SCS share and the value on which the SCS share is based.

(x) Purchasing tracts of land primarily for later resale to private developers or individuals for agricultural or nonagricultural use.

(xii) Buildings for residential, commercial, or industrial, use.

(xiii) Developments on private property primarily for the benefit of the individual property owner.

(xiv) Payment of that part of the cost of facilities, improvements, and practices that could be earned by participation in agricultural conservation programs unless such cost cannot be covered by purchase orders or assignments to material suppliers or contractors. If a loan is made for such purposes for which practice or cost share payments exceed $500, FmHA will obtain an assignment on such payments to be paid on the loan.

(xv) Primarily for water and sewage treatment plants and distribution systems.

(xvi) Drainage facilities primarily for the benefit of other than rural areas.

(xvii) Any single RCD measure that requires a loan of more than $500,000.

(xviii) The total amount of principal outstanding for all WS loans made for one or more watershed works of improvement in a single watershed project, whether made to one or more sponsoring organizations, will not exceed $10,000,000.

(b) Watershed advance limitations.

(1) A WS advance for future water supply will not be used for acquiring property rights including lands, easements, and rights-of-way; water rights; administration of contracts; storage capacity for immediate municipal use; pipelines from the reservoir to place of use; or for other uses such as irrigation, fish and wildlife, and recreation.

(2) A WS advance for increasing reservoir capacity for future water supply will not exceed 30 percent of the total installation cost of the structure.

(3) A WS advance for site preservation will not exceed that determined necessary by SCS except to purchase land in excess of actual needs in accordance with the provisions of §1942.406 (a) (7).

(4) Before a project agreement is entered into, there must be satisfactory evidence that the borrower will develop the site to be acquired or will use the future water supply and that revenue will be sufficient to meet all scheduled installments.

(c) Obligations incurred before loan closing.

(1) WS loans, WS advances, and RCD loans may be used for payment of obligations incurred before loan closing when the State Director determines that:

(i) The obligations incurred are necessary for planned developments,

(ii) The obligations are incurred for authorized loan purposes, and

(iii) Contracts and construction plans meet FmHA and SCS standards, and

(iv) The applicant has legal authority to incur the obligations at the time proposed and

(v) The State Director authorizes such action in a letter to the applicant.

(2) The State Director's letter will specifically state that the permission is granted on the condition that FmHA is not committed to make a loan and assumes no responsibility for any obligation incurred by the applicant because of the permission granted and that the loan will be closed subject to compliance with agency regulations including closing instructions of the Regional Attorney Office of the General Counsel.

§1942.408 Rates and terms - WS loans and WS advances and RCD loans.

(a) Interest rates. The interest rate for WS loans, WS advances and RCD loans is the average rate as determined by the Secretary of the Treasury, payable by the U.S. Treasury on its marketable public obligations outstanding at the beginning of the fiscal year in which an obligating agreement is executed, which are neither due nor callable for redemption for 15 years from the date of issue.

(1) The interest rate determined at the beginning of each fiscal year, will be charged for loans or advances obligated in that fiscal year.

(2) For loans, unless otherwise required by State law, interest will accrue from date of check delivery where Form FmHA 440-22, "Promissory Note (Association Organization)," is used. Where bonds are used interest will accrue from the appliable dates recorded on the bonds. Where multiple loan disbursements are used interest will accrue from date of check.

(3) Interest on an advance for future water supply will begin as required by State law, when water is first used from the future water storage capacity installed with advance, or ten years from the scheduled date of the completion of the facility, whichever date is the earlier.

(4) Interest on an advance for preservation of sites will begin on the date the advance is closed.

(b) Length of repayment period. The repayment period on loans may not exceed the shortest of the following periods:

(1) The statutory limitation on the sponsoring local organization's borrowing authority.

(2) Fifty (50) years for WS loans and WS advances and 30 years for RCD loans from the date when the principal benefits from the WS works of improvement or RCD measure being financed first become available.

(3) The useful life of the WS works of improvement or RCD measure being financed with loan or advance funds.

(c) Deferred or partial payments. Deferred or partial payments may be authorized when:

(1) Payments need to be delayed until the receipt of income from taxes or other revenues is enough to meet a regular installment but not exceed:

(i) The completion date of the facility or

(ii) The date when benefits from the facility begins but

(iii) In no case for more than 5 years for other than future water supply.

(2) Payments will depend on the increased returns expected from planned improvements, or from the installation on individual farms of land development or other soil and water improvements essential for obtaining benefits from the improvement to be installed with loan funds.

(3) They will not be used to permit the accelerated payment of other debts, to make capital improvements, or to create operating reserves.

(4) Where prohibited by State statutes; interest payments will not be deferred even though payments on principal may be deferred.

(5) Loans or advances for future water supply will be repaid within the life of the reservoir structure but in no event later than 50 years for WS and 30 years for RCD after the reservoir structure is built. Payments on the principal amount may be deferred one year after the water is first used from the storage capacity installed with the advance or for 10 years from the scheduled completion date of the structures, whichever occurs first.

(i) Interest will begin for a future water supply as required by State law, or when water is first used from the future storage capacity or 10 years from the scheduled date of completion of the facility, whichever occurs first.

(ii) If State law requires that interest be charged and repaid before water is first used or earlier than 10 years from completion date of the structure, interest payments will be scheduled to comply with State law even though payments of principal may be deferred.

(iii) The borrower should be encouraged to begin repayments as soon as practicable after the reservoir is built even though this liberal deferment policy exists.

(iv) WS advances for preservation of sites must be fully repaid before beginning construction of the works of improvement for which such sites were acquired.

(A) Unless a WS advance is to be repaid with a WS loan, installments will be scheduled at the earliest possible date following the date of closing the advance. The date and amount of each such installment will be fixed to coincide with the receipt of income from taxes or other revenues.

(B) Payments for both principal and interest on a WS advance for preservation of sites may be scheduled for payment in one installment to be paid on the

date of the closing of a WS loan which includes funds for the repayment of the WS advance.

(C) Interest on a WS advance for preservation of sites will begin on the date the WS advance is closed.

(d) Payment amortization and application.

(1) A borrower may make prepayments on WS loans, WS advances or RCD loans in any amount at any time.

(2) Payments will be applied first to interest accrued to the date of the receipt of payment, and second to the principal balance. If the regular payments plus any prepayments exceed the cumulative amount due, the excess payments will be applied on the next installment first to interest, then principal. Loan refunds and proceeds from the sale of security property, however, will be applied on the final unpaid installment.

(3) Payments will be scheduled annually beginning one year following the date of loan closing or one year following the end of any approved deferment period, unless another annual due date is required by State statute or upon prior written authorization from the National Office. In those cases where loans are being made under statutes requiring a repayment date other than this, the State Director will send a copy of the Regional Attorney's opinion that such is required, to the Finance Office.

(4) When a single obligation instrument is used, amortized installments will be required. When this cannot be done because of state law, serial bonds or a single bond having installments of principal plus interest, stated separately, will be used. In cases where the payment of interest has been deferred, all collections will be applied to interest until such interest has been paid. Also, when a full installment is not paid when due, the payment made will be applied first to accrued interest.

(5) In cases where the indebtedness will be represented by serial bonds or a single bond having installments of principal plus interest, stated separately, annual payments of principal and interest will be scheduled to permit them to be paid in amounts approximately equal to the amounts that would be required for annual amortized installments.

(6) If the borrower will be retiring other debts represented by bonds or notes, the payment on such bonds may be considered in developing the payment schedule for the FmHA loan. In some cases, it may be desirable to reduce the amount of payments to FmHA in the early years of the loan in order to preclude the necessity for refinancing the outstanding debt. When such payment schedules are proposed, National Office authorization will be obtained prior to loan approval.

(7) Payment date. Insofar as loan payments are consistent with income availability, applicable State statutes, and commercial customs in the preparation of bonds or other evidence of indebtedness, they should be scheduled on a monthly basis either in the bond or other evidence of indebtedness or through the use of a supplemental agreement. Such requirements will be accomplished not later than the time of loan closing. When monthly payments are required, such payments will be scheduled beginning one full month following the date of loan closing or the end of any approved deferment period. Subsequent monthly payments will be scheduled each full month thereafter. In those cases where evidence of indebtedness calls for annual or semiannual payments, they will be scheduled beginning six or twelve full months, respectively following the date of loan closing or the end of any approved deferment period. Subsequent payments will be scheduled each sixth or twelfth full month respectively, thereafter. When the evidence of indebtedness is dated the 29th, 30th, or 31st day of a month, the payment date will be scheduled the 28th day of the month.

§1942.409 Security, feasibility, evidence of debt, title, insurance and and other requirements.

(a) Security. WS loans, WS advances, and RCD loans will be secured in accordance with applicable provisions of §1933.17 (a) (6).

(b) Feasibility. All projects financed under the provisions of this subpart must be based on taxes, assessments, revenues, fees, or other satisfactory sources in an amount that will provide for facility operation and maintenance, a reasonable reserve, and payment of the debt. The State Director may obtain needed assistance in determining economic feasibility from officials of SCS and other appropriate USDA agencies. See §1933.17 (a) (7) for applicable economic feasiblity requirements and feasibility reports.

(c) Notes, bonds, and bond transcript documents. See §1933.19 for applicable requirements and provisions.

(d) Insurance. See §1933.17 (a) (9) for requirements.

(e) National flood insurance. The requirements of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 will be complied with in accordance with applicable provisions of FmHA Instruction 1901-L. Also see §1933.18 (a) (3) (i).

(f) Borrower contracts and bonds. See §1933.18 (a) (9) for applicable provisions.

(g) Title requirements.

(1) Title evidence for land, easements, and rights-of-way to be acquired with proceeds of loans or advances will be furnished by the sponsoring local organization in accordance with SCS policies and procedures.

(2) FmHA will specify and approve the form and content of instruments for conveying title to or interest in real estate on which a lien will be taken to secure a WS loan, WS advance, or RCD loan. These should be consistent with the applicable provisions of §1933.17 (a) (6). The State Director will make his decision after consultation with the Regional Attorney and the State Conservationist. He will notify SCS in writing of his decision. Thereafter, title clearance will be completed under SCS regulations except that a marketable title must be obtained on any tract of land, a part of which will be sold as excess land in accordance with §1942.406 (a) (9). In addition to the title evidence required by SCS, applicants will furnish an opinion of legal counsel on all land and interest in land acquired with loan or advance funds.

(h) Purchasing lands, rights and facilities. The amounts paid for lands, rights, and facilities with loan funds will be not more than that determined to be reasonable and fair by the loan approval official based upon an appraisal of the current market value made by an FmHA employee or an independent appraiser authorized by the FmHA loan approval official.

(i) Water rights. Applicants will be required to comply with applicable State and local laws and regulations governing appropriating, diverting, storing and using water, changing the place and manner of use of water, and in disposing of water. All of the rights of any landowner, appropriator, or user of water from any source will be

fully honored in all respects as they may be affected by facilities installed with WS loans and advances and RCD loans. If, under the provisions of State law, notice of the proposed diversion or storage of water by the applicant may be filed, the applicant will be required to file such a notice. An applicant must furnish evidence to provide reasonable assurance that its water rights will be or have been properly established, will not interfere with prior vested rights, will likely not be contested or enjoined by other water users or riparian owners, and will be within the provisions of any applicable interstate compact.

§1942.410 Reserved.

§1942.411 Other considerations.

(a) Technical assistance. When pipelines from reservoirs to treatment plants are included in watershed work plans, SCS will not furnish engineering services for their design or installation. When such pipelines are to be financed by WS or RCD loans, FmHA will

supervise the activities of the private engineers retained for the purpose. Such FmHA supervision will include, among other things, approval of private engineer's contracts, approval of plans and specifications, authorization of contract awards, spot checks of engineering inspection, and final inspection and acceptance.

(b) Professional services. Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Necessary professional services may include such as that of an engineer, architect, attorney, bond counsel, accountant, auditor, and financial advisor or fiscal agent. Form FmHA 442-19, "Agreement for Engineering Services," may be used when appropriate. Section 1933.20 (a) (Guide 14) of this Part available in any FmHA office and may be used as a guide to prepare the agreement for legal services.

(c) Other services. Contracts for other services such as management, operation, and maintenance will be developed by the applicant and presented to the FmHA official developing the docket for review and approval.

(d) Fees for services. Fees provided for in contracts, agreements or services will not be more than those ordinarily charged by the profession for similar work when FmHA financing is not involved.

(e) State pollution control or Environmental Protection Agency standards. Facilities will be designed, installed, and operated to prevent pollution of water in excess of established standards. Effluent disposal will conform with appropriate State and Federal Water Pollution Control Standards.

(f) Water pollution. When repayment of a WS loan, WS advance, or RCD loan will be dependent upon income from the use or sale of water, FmHA approval will be contingent upon a determination that the proposed use of water will not be impaired by pollution. For example, full use of stored water for recreation or municipal supply might not be permitted by a State health department because the water is being polluted from an upstream or other source.

(g) Environmental assessments and environmental impact statements. Actions will be taken to comply with the National Environmental Policy Act in accordance with FmHA Instruction 1901-G. When environmental assessments and environmental impact statements have been prepared on WS plans or RCD area plans by SCS, a separate environmental impact statement on WS works of improvement or RCD measures for which a WS loan, WS advance, or RCD loan is requested will not be necessary unless it will have a significant adverse environmental impact not covered in the existing statement. The environmental assessment prepared by the FmHA State Director should indicate the action taken by SCS in compliance with the requirements of the National Environmental Policy Act. If a determination is made that a further assessment of the environmental impact is needed. The FmHA State Director will make necessary arrangement s with the State SCS conservationist for such action to be taken before a loan is made.

(h) National Historic Preservation Act. All projects will comply with the provisions of the National Historic Preservation Act of 1966 in accordance with FmHA Instruction 1901-F.

(i) Civil Rights Act of 1964. Recipients of WS loans, WS advances, or RCD loans are subject to Title VI of the Civil Rights Act of 1964 which prohibits discrimination because of race, color, or national origin. Borrowers must agree not to discriminate in their operations by signing Form FmHA 400-4, "Nondiscrimination Agreement," before loan closing. This requirement should be discussed with the applicant

as early in the negotiations as possible. Necessary actions will be taken in accordance with FmHA Instruction 1901-E.

(j) Appraisals. When required by the State Director, appraisals will be made by an FmHA official designated by him. Form FmHA 442-10, "Appraisal Report - Water and Waste Disposal Systems," with appropriate supplements, may be modified as needed for use with the type of facilities being appraised.

(k) Architectural Barriers Act of 1968. All facilities financed with FmHA loans and grants which are accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with this act in accordance with this act.

§1942.412 Preapplication and application processing.

(a) WS and RCD Loans.

(1) Preapplications.

(i) The County Supervisor or other person designated by the State Director may assist the applicant in completing Form AD-621, "Preapplication for Federal Assistance," and in filing a written notice of intent and request for priority recommendation with the appropriate clearinghouse. He will forward one copy of Form AD-621 along with clearinghouse comments and priority recommendations to the State Director.

(ii) The State Director will review Form AD-621 along with other necessary information and will coordinate selection of preapplications to be processed with SCS and the State clearinghouse. He will consult with the SCS State Conservationist concerning the status of the WS plan or RCD measure plan, the estimated time schedule for construction and cost of the proposed works to be installed with the loan, cost sharing funds to be made available to the applicant, and other pertinent information.

(iii) Form AD-622, "Notice of Preapplication Review Action," will be prepared and signed by the State Director within forty-five (45) days from receipt of the preapplication in FmHA stating the results of the review action. An original and one copy of Form AD-622 will be sent to the County Supervisor who will deliver the original to the applicant.

(2) Applications.

(i) The application includes applicable forms and information indicated in §1933.20 (a), (Guide 15). When the State Director determines that an application will be further processed and Form AD-622 is delivered, he will designate the District Director, a community program specialist (field), or a member of the community program staff to assist the County Supervisor and the applicant with assembling and processing the application.

(ii) The County Supervisor should arrange needed conferences with the applicant and its legal and engineering consultants, and when necessary, arrange for review of other FmHA officials, and provide guides, forms, instructions and other assistance with assembling and processing the application. A processing checklist and time schedule will be established by using Form FmHA 442-40, "Processing Check List (Public Bodies)," or Form FmHA 442-39, "Processing Check List (Other than Public Bodies)." The County Supervisor will send a letter and a copy of the processing checklist to the applicant to confirm instructions and decisions conference. The original and a copy of the processing checklist will be kept in the County Office. and will be posted current as application processing actions are taken. The copy will be circulated from the County Office to the District Director to the State Office for use in updating copies of the forms retained, after which it will be returned from the State Office to the County Office.

(3) Dockets. WS loan, WS advance, and RCD loan dockets will be developed and assembled in accordance with applicable provisions of FmHA Instruction 1933-A including §1933.20 (a) (Guide 16).

(b) Watershed advances. Applications for WS advances will be developed and processed with SCS assistance as necessary.

(1) The State Director will arrange with the SCS State Conservationist to be advised when a local sponsoring organization applies to SCS for a WS advance.

(2) The FmHA State Director will request the SCS State Conservationist to provide information justifying the WS advance along with a written recommendation that it be made. This will include:

(i) Economic feasibility of the proposed WS advance.

(ii) Evidence of the legal authority of the sponsoring local organization to incur the obligation and make required payments.

(iii) Any limitations on the issuance of additional bonds or notes which may be imposed by the provisions of bond ordinances or on resolutions which authorize the issuance of any outstanding obligation of the sponsoring local organization.

(iv) The amount of WS advance funds to be provided, purpose for which funds will be used, and date funds will be needed.

(3) When the above information has been made available to the FmHA State Director, he will send written recommendations concerning further action on the WS advance request to the SCS State Conservationist including actions to be taken in the preparation of the WS advance docket as required by §1933.20 (a) (Guide 16).

(c) Combination WS Loans and WS Advances. If an applicant requests both a WS loan and WS advance, the application for the WS loan should indicate the amount of the WS advance needed and whether a request for it has been made to SCS. The FmHA State Director and the SCS State Conservationist will coordinate applicable processing actions of such applications. When the FmHA State Director determines that favorable consideration will be given to an application for a loan or advance, he will provide instructions to the County Supervisor for completing and processing the appropriate docket. Any questions concerning eligibility or other legal matters should be cleared with the Regional Attorney.

(d) Review of Decision. When it is determined that the preapplication or application cannot be given favorable consideration, the State Director will return it to the County Supervisor along with written reasons. When the County Supervisor receives this information, he will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that the FmHA Administrator may be requested to review the decision. This action will be taken in accordance with FmHA Instruction §1933.2 (c).

(1) Upon receipt of the State Office copy of a review request from the applicant, the State Director will furnish a report on the matter to the Administrator.

(2) The Administrator will notify the applicant and the State Director in writing of his decision and the reasons therefore.

§1942.413 Reserved.

§1942.414 Planning, options, and appraisals.

(a) WS and RCD area plans are developed by sponsoring local agencies and organizations with technical assistance from SCS and other Federal and State agencies. These plans include WS works of improvement and RCD measures to be developed or constructed for which SCS construction funds may be made available on a cost share basis along with funds provided by the sponsoring local organization, a portion or all of which may be obtained by a WS loan and/or WS advance or a RCD loan.

(b) Current information on the availability of cost share funds and purposes for which they may be used is provided by SCS. The amount of SCS cost share funds and the amount of funds to be provided by the sponsoring local organizations will be indicated in each plan. The estimated amount of WS loan, WS advance or RCD loan anticipated by the sponsoring local organization should also be included.

(c) Plans for the development or construction of individual WS works of impovement and RCD measures will normally be developed with SCS technical assistance. In every case they will be approved by both the SCS State conservationist and the FmHA State Director or their designated agent when a WS loan, WS advance or RCD loan is made.

(d) Options and appraisals related to the purchase of real estate for which a WS loan, WS advance, or RCD loan is made must be developed in accordance with SCS and FmHA requirements and approved by FmHA. The determination of present market value will be made in accordance with §1933.3.

§1942.415 Planning and performing development.

(a) Planning and performing development will be handled in accordance with §§1933.9 and 1933.18 and regulations of SCS for developments with SCS financial assistance.

§1942.416 County Committee Review.

(a) Comments and recommendations in narrative form will be obtained prior to approval of a WS loan, WS advance, or RCD loan from:

(1) The County Committee for the county in which the WS works of improvements or RCD measure is or will be located and also in which the applicant is located if in different counties, and

(2) The County Committee in other counties in the WS or RCD area if the State Director determines that such is desireable.

(b) The comments and recommendations should indicate the community need for and interest in the proposed WS works of improvement or RCD measure, any local issues, or other information which the committee feels should be considered by the approval official.

(c) The written statement of the County Committee will be signed by at least two members of each committee involved and will be included in the loan docket.

§1942.417 Docket preparation and processing.

(a) Loan dockets. Dockets for WS loans, WS advances and RCD loans will be prepared in accordance with the applicable provisions of FmHA regulations including §§1933.2, 1933.5, and 1933.20 (a), (Guide 15), (Guide 16), and the following:

(1) Time for preparation of docket. Docket preparation may begin as soon as a preliminary draft of the watershed plan or RCD area plan, together with an estimate of costs and benefits, have been prepared with the assistance of SCS and approved by the sponsoring local organization applicant. However, the applicant must understand that approval of the WS loan, WS advance, or RCD loan will not be determined until the work plan has been authorized for assistance by SCS. To the extent practicable, docket preparation may be completed by that time to facilitate the availability of funds when needed.

(2) Instructions for preparation of docket. When the State Director has determined that plans and other requirements are completed to the extent that preparation of the loan docket may begin, he will send the County Supervisor a memorandum giving complete instructions for docket preparation, with a list of documents to be included in the docket.

(3) Objectives of the docket. The docket should include information for use in determining that:

(i) The sponsoring local organization:

(A) Has legal authority to construct and operate the proposed facility, borrow money, give security, incur debt, and generate revenue needed for operation,maintenance, reserves, debt payment, and other cash requirements.

(B) Is a sponsor or cosponsor of the WS plan or RCD work plan and is otherwise eligible for assistance.

(ii) Funds will be used for authorized purposes.

(iii) The source of income to be pledged for debt payment and the security proposed is adequate.

(iv) Actions required for loan closing are administratively satisfactory, legally sufficient and properly documented in accordance with Agency regulations.

(4) Assembly of the docket. The docket will be assembled in accordance with paragraph (2) of this section, applicable provisions of §1933.20 (a) (Guide 15) and (Guide 16) and will include the following:

(i) A copy of the WS works of improvement agreement or RCD measure agreement.

(ii) A copy of the Operation and Maintenance Agreement between SCS and the WS or RCD sponsoring local organization for the WS works of improvement or the RCD measure.

(iii) A statement from the SCS State Conservationist concurring in the feasibility of the WS work of improvement or RCD measure and that SCS is providing financial and/or technical assistance in accordance with applicable WS or RCD authorities.

(5) Narrative by County Supervisor. This should be included in or attached to the Project Summary. It should relate project costs to benefits of the WS or RCD loan or WS advance. Minimum and average individual charges, tax levies or assessments should be given where applicable. Where taxes or assessments on land will be levied, acres should be indicated and average cost per acre should

be given. Analyses of income from recreational facilities should be based on the best information available from local, State, and Federal agencies concerned with such recreation facilities. Determination of water rates, schedules, and estimated consumption of water should be made by the same methods as for loans for domestic water and irrigation.

(6) Estimates of right-of-way Costs. The docket should include, as part of the Project Summary, current estimated costs of easements, rights-of-way, and other land rights which must be acquired. The amount estimated for such purposes in the WS or RCD plan should reflect current conditions.

(b) Loan processing by State Office.

(1) Review of the docket. The County Supervisor and the District Director will check the docket for accuracy and completeness and forward it to the State Office with their recommendations. The State Director will review the docket to determine that:

(i) All documents are accurate and complete.

(ii) The proposed loan complies with WS and RCD program policies and procedures of both FmHA and SCS.

(iii) Security is adequate and the repayment plan is sound.

(iv) Funds requested are for authorized purposes.

(v) Actions are in compliance with requirements of applicable Federal and State laws.

(2) Letter of conditions. When the State Director determines that the docket is complete and the proposed activity is feasible, he will prepare a proposed letter of conditions including the requirements §1933.5 (a) (3) under which the application may be further processed. The letter will be delivered to and discussed with the applicant upon acceptance of the conditions the applicant will indicate instructions to meet the conditions by a letter of interest and the application will be further processed.

(3) Legal Review. The complete docket and proposed letter of conditions will be forwarded to the Regional Attorney, OGC for review and preparation of closing instructions. If it is not possible to issue closing instructions at that time, the Regional Attorney, will issue a preliminary legal opinion commenting upon

the applicants legal existence, authority to incur debt and give security for the WS loan, WS advance, or RCD loan requested and actions to be taken before closing instructions may be issued.

(4) Authorization for Approval. When the FmHA State Director receives closing instructions or a preliminary legal opinion for a WS loan, WS advance, or RCD loan that is not within his approval authority he will send this information along with the docket, the proposed letter of conditions, and a memorandum recommending approval to the National Office. A copy of his memorandum will be sent to the County Supervisor and to the District Director. If the proposed action is within the State Director's approval authority he need not submit the material listed above to the National Office unless he wants reveiw and comments before approval.

(c) WS Advance Processing.

(1) When the FmHA State Director has concurred with the SCS State Conservationist in the inclusion of a WS advance in a watershed plan, preparation of the advance docket can be initiated and will be processed in the same manner as for a WS loan. Where both a WS loan and WS advance are planned only one docket will be prepared to include both the WS loan and WS advance.

(2) If the advance appears to be sound and proper, the FmHA State Director will send a proposed memorandum of concurrence to the SCS State Conservationist. The memorandum will state that FmHA concurs in the execution of a work of improvement agreement for which SCS will obligate advance funds and that FmHA will accept the proposed obligations of the applicant to repay the advance subject to conditions specified in or attached to the memorandum. These conditions will include all appropriate requirements in accordance with §1942.417 (b) (2) of this Instruction and will specify compliance with closing instructions issued by the Regional Attorney. It will also indicate that preparation of the WS advance docket will be in accordance with §1942.417 (a) of this Instruction.

(3) The FmHA State Director and the SCS State Conservationist will sign the memorandum of concurrence to SCS when:

(i) It has been determined that funds for the advance will be obligated by SCS, and

(ii) The WS advance docket, has been approved and

(iii) Closing instructions have been issued by the Regional Attorney, and

(iv) The FmHA Sate Director and SCS State Conservationist have determined that the applicant can comply with all requirements of the letter of conditions and closing instructions.

§1942.418 Feasibility.

(a) Before WS loan, WS advance, or RCD loan is approved, a determination of feasibility will be made by the FmHA State Director based upon a review of plans developed in cooperation with SCS personnel. The feasibility determination must have the concurrence of the SCS State Conservationist before a WS loan, WS advance, or RCD loan is approved.

(b) A written assessment of the project's feasibility will be made by the County Supervisor, Architect/Engineer, District Director, and Program Chief in their recomendations or comments on the Project Summary. These should reflect concurrence of the respective SCS personnel in counterpart positions with whom they cooperate in administering these programs.

§1942.419 Approval, closing, and cancellation.

(a) Approval and closing actions will be taken in accordance with the applicable provisions of FmHA regulations including §1901-A, and §1933.5, §1933.6, §1933.7, §1933.8, §1933.17 (a) and the following:

(1) The WS or RCD plan has been approved for operations by SCS and the applicant is an official sponsoring or cosponsoring local organization for the plan as evidenced by being included in the list of sponsoring or co-sponsoring local organizations in the plan.

(2) Closing instructions or a preliminary legal opinion has been prepared by the Regional Attorney.

(3) The governing body of the applicant's sponsoring local organization has formally passed and approved the loan resolution.

(4) The FmHA State Director and SCS State Conservationist have determined that all planned actions can be carried out as proposed in the project plan and the docket.

(5) The SCS State Conservationist and FmHA State Director have mutually agreed on the priority to be given the WS loan or WS advance, or RCD loan. In making this determination, consideration will be given to the relative priority of the WS works of improvement or RCD measures to all other such work in the State and the anticipated availability of Federal and local funds to assure continuity of action and work until the project is completed. When funds are to be provided by SCS for a WS or RCD loan or a WS advance such funds must be obligated by SCS before closing.

(6) Public bodies will be required to use bond councel in accordance with §1933.19.

(b) When favorable action is not taken on a WS loan, WS advance, or RCD loan, the FmHA State Director will notify the SCS State Conservationist and the applicant in writing and, if possible, arrange for a meeting of FmHA and SCS representatives with the applicant to explain the action. WS loans, WS advances, or RCD loans may be canceled before closing in accordance with §1933.12.

§1942.420 Disbursement of WS and RCD loan funds and WS advance funds.

(a) WS and RCD loan funds will be disbursed by the County Supervisor in accordance with the applicable provisions of §1933.17 (a) (13) and Exhibit A, paragraph (5). Funds will be made available to the borrower as needed for payment of development or other costs for which the loan is made. The County Supervisor must determine that the payment is for an authorized purpose and is for benefits accrued to the borrower. This will require evidence from SCS in accordance with the applicable provisions of Exhibit A, "Memorandum of Understanding Between FmHA and SCS."

(b) WS advance funds may be disbursed in the same manner as WS loan funds if such funds are transferred to FmHA by SCS for disbursement or they may be disbursed by SCS.

(1) When WS advance funds are disbursed by SCS, payments from advance of funds will be reported to the FmHA State Director each month to be reported to the Finance Office and charged to the borrower's account. This action will be taken in accordance with the applicable provisions of Exhibit A or Exhibit B and agreement between the SCS State Conservationist and FmHA State Director as follows:

(i) When a future water supply is being developed with SCS, WS advance funds, the SCS State Conservationist will send the FmHA State Director a monthly report of funds disbursed. This will include three (3) copies of Form SCS-AS-49a and 49b, "Contract Payment Estimate and Construction Progress Report," along with a transmittal Memorandum showing the sequential number (first, second, third, etc.) of the payment, the amount and date of payment, the check number by which the payment was made and the cumulative amount of advance funds disbursed to date. When the works of improvement, for which WS advance funds are used is completed the final report will, in addition to the above, show the date that construction was completed and the total amount of WS advance funds used.

(ii) WS advances for construction costs will be set out each month on Form SCS-49a. The FmHA State Director should make arrangements with the SCS State Conservationist to be supplied each month with a copy of Form SCS 49a when advance funds are included together with an official statement from the SCS State Administrative Officer giving the date of the check and the exact amount of each advance of funds made under the advance provisions of the project agreement or of any engineering services agreement or other supplementary agreement which further implements the proposal for the advance in the project agreement. The original will be sent immediately to the Finance Office and a copy provided for the FmHA County Office file.

(iii) When WS advance funds are used to acquire property for site preservation the same reporting procedure as for a future water supply will be used except that Form SCS-AS-49a and 49b if used, should be adopted to indicate fund use. As payments are made on land on which a mortgage or other security instrument is required, such instruments will be executed in accordance with instructions from the Regional Attorney, OGC.

(iv) The FmHA State Director maintain send the bond or note evidencing WS advance indebtedness of the borrower to the along with reports of payments from advance funds disbursed by SCS. A copy of the bond or note and copy of each report of payment will be sent to the FmHA County Office.

(c) Actions subsequent to closing of loans or advances. Actions will be taken in accordance with §1933.8.

§1942.421 Borrower accounting methods, management, reporting, and audits.

These activities will be handled in accordance with the provisions of FmHA Instruction §1933.10.

§1942.422 Subsequent loans.

Subsequent loans will be processed in accordance with this Instruction.

§1942.423 Servicing.

Servicing will be handled in accordance with the provisions of FmHA Instructions 451.5 and 1955-A.

§1942.424 State supplements.

(a) State supplements will be issued as needed in accordance with applicable provisions of FmHA Instructions including 1933-A §1933.16.

§§1942.425 - 1942.450 Reserved.

MEMORANDUM OF UNDERSTANDING
Between the
SOIL CONSERVATION SERVICE
and the
FARMERS HOME ADMINISTRATION
Relating to the Making of WS Loans and WS Advances
Under the
Watershed Protection and Flood Prevention Act

(1) Purpose: This memorandum is to coordinate general agency responsibilities and functions of the Farmers Home Administration (FmHA) and the Soil Conservation Service (SCS) in connection with loans and advances made to sponsoring local organizations under the provisions of the Watershed Protection and Flood Prevention Act (68 Stat. 666), as amended.

(2) General agency responsibilities: The general assignments to the SCS and the FmHA for the administration of the Watershed Protection and Flood Prevention Act are contained in the Secretary's Policy Statement dated October 19, 1962. Each agency will establish policy and procedures and take such other action as required to carry out its responsibility.

(i) The FmHA is responsible for making and servicing WS loans or advancements under Section 8 and obligations for repayment of WS advances made by the SCS under Section 4 of the Act.

(ii) The SCS is responsible for administration of all authority under the Act, except making and servicing WS loans made under Section 8, and for servicing obligations for repayment of WS advances made by the SCS under Section 4 of the Act.

(iii) The SCS and the FmHA will cooperate in developing and carrying out their respective policies, procedures, and requirements, as they relate to WS loans and WS advances made under the Act.

(3) Receipt and processing of applications for loans and advances:

(i) A works of improvement must be included in an approved watershed plan before a loan or advance for it is made under the Act. During the development of a Watershed Plan,

the State Conservationist of SCS will afford the State Director of FmHA an opportunity to gain an understanding of watershed problems and needs, and the proposed plans for works of improvement. When a sponsoring local organization indicates a desire for a WS loan or WS advance the SCS State Conservationist will consult with the FmHA State Director on matters such as organizational arrangements, specific local or state requirements and other problems related to the plans for financing, installing, operating and maintaining the planned works of improvement being considered.

(ii) The SCS State Conservationist will furnish the FmHA State Director a copy of each Watershed Plan. The Administrator of SCS will furnish the Administrator of FmHA a copy of each approved WS Plan.

(iii) A Watershed Plan and the related executed watershed plan agreement will not obligate the FmHA to make a WS loan or obligate the SCS to make a WS advance to sponsoring local organizations.

(4) Coordination of assistance for design, construction and maintenance. The following principals are to be used as a guide for the design, construction, operation and maintenance of works of improvement when a WS loan or WS advance is involved:

(i) The SCS will furnish or assume the cost of engineering services required to plan and install the portion of the works of improvement allocated to flood prevention, agricultural phases of the conservation, development, utilization, and disposal of water, fish and wildlife, and recreational development, and not more than 50 percent of the costs of engineering services for minimum basic facilities. Sponsoring local organizations are expected to furnish and assume the cost of other engineering services required. The SCS will give such engineering advice and guidance to the sponsoring local organization as required to insure that plans, specifications and cost estimates furnished by them meet the design and construction standards and criteria established for the project and that the works are properly coordinated with any other works to be installed under the Watershed Plan. The SCS State Conservationist will consult with and keep the FmHA State Director informed during the development of construction plans and the construction of works of improvement. This will include an engineering review and a statement by the SCS of the adequacy and appropriateness of cost estimates, designs, plans, and specifications prepared by private engineers.

(ii) Engineering plans, including specifications, drawings and cost estimates for works of improvement involving WS loans or advances will be approved by the SCS State Conservationist and the FmHA State Director.

(iii) The SCS State Conservationist will consult with the FmHA State Director as to terms and conditions to be included in invitations for bids and contracts for construction or purchase of supplies and materials in connection with works of improvement to be installed with loans or advances. The SCS will provide technical assistance and advice needed by the sponsoring local organizations for the preparation of these documents and in analyzing bids and selecting the lowest responsible bidder. The contracts shall be acceptable to the FmHA State Director and the SCS State Conservationist before execution by the sponsoring local organization receiving a loan or advance.

(iv) The sponsoring local organization will not be permitted to accept a bid which would require additional loan funds or make changes in plans or specifications in order to obtain a bid within the estimated cost without the concurrence of the FmHA State Director. Should the sponsoring local organization desire to reject bids or to not call for bids and undertake construction of works of improvement by force account, the concurrence of the FmHA State Director shall be obtained.

(v) The SCS will provide technical assistance including periodic inspections during construction as necessary to protect the Government's interest and to assure that the works of improvement are being constructed in accordance with approved drawings and specifications. The SCS may approve minor changes during construction in the contract terms and conditions and the drawings and specifications which do not appreciably affect the design, cost or function of a structure without concurrence of the FmHA. Major changes or changes which affect the over-all cost of the works of improvement will require the prior concurrence of the FmHA State Director.

(vi) The SCS and FmHA will make annual joint inspections, for a period of three years after completion thereof or more frequently if necessary, to see that works of improvement are being operated and maintained according to agreements. The sponsoring local organization will be required to make

annual inspections throughout the life of the structure and report their findings to the SCS and FmHA offices. When SCS or FmHA determines that there are serious deficiencies in operation and maintenance, the FmHA State Director will collaborate with the SCS State Conservationist in arranging with the local sponsoring organization for the correction of such deficiencies. The FmHA or SCS may make other inspections as necessary to service the loan or advance account of the borrowering sponsoring local organization.

(vii) Responsibility rests with the local sponsoring organization to acquire any land, easements, or rights-of-ways that will be needed for works of improvement. If a lien is to be taken on works of improvement and the land, easements, or rights-of way, the FmHA will, after consultation with the SCS, approve the easements, deeds, and permits before they are executed. The FmHA will provide instructions to the local sponsoring organization pertaining to acknowledgment, title searches and examinations, obtaining consent of holders of leins outstanding against the land, and recording easements and deeds. The SCS will check land description in all land rights instruments to the extent necessary to determine that the areas required for construction, operation and maintenance of works of improvement are included, except that the SCS will make no property line surveys.

(viii) When loan payments will depend upon a right to use a specific quantity of water, the local sponsoring organization will furnish to FmHA satisfactory evidence of such rights, and any required additional information concerning the water supply. This evidence will include such documents and materials as affidavits, permits, title certificates, court decrees, stream gage records, rainfall records, well logs, records of pumping tests and water analysis. The SCS will examine information that is furnished together with other available information and give FmHA a written opinion of the adequacy of supply, including quality, to meet the requirements of the plan.

(5) Disbursement of funds. Proceeds of WS loans will be deposited in, and withdrawn from, bank accounts in the manner required by FmHA regulations. Checks on these bank accounts for payments to contractors and suppliers of materials will be based upon Form

SCS 49a, "Contract Payment Estimate and Construction Progress Report." Form SCS 49a, prepared by the local sponsoring organization for this purpose, will be approved by the SCS. In giving his approval to Form SCS 49a, the SCS representative shall be certain that the items covered are for the purposes and in the amounts authorized in the project agreement.

(i) Advances for future water supply shall be made as provided in the project agreement. The maximum amount of such advance shall be shown in the project agreement.

(ii) Advances for site preservation will be handled in accordance with procedures mutually agreeable to the SCS and the FmHA, which will be developed on a case by case basis.

(6) Starting construction: The local sponsoring organization will not be authorized to start construction on works of improvement to be financed in whole or in part, with a WS loan or a WS advance until:

(i) The SCS has entered into a Project Agreement for Construction of Works of Improvement.

(ii) The State Conservationist has notified the State Director that the local organization has complied with all SCS requirements for receiving PL 566 construction assistance and the State Conservationist has furnished the State Director with a schedule indicating the approximate times that construction work will begin on works of improvement to be installed with such funds.

(iii) The State Director has notified the State Conservationist and the borrower that the loan or advance has been properly closed.

(iv) Any contract entered into by the local organization for materials, labor, or the construction of works of improvement to be financed with loan funds has been found acceptable by the FmHA.

(v) The State Director has notified the State Conservationist that any advance for the preservation of sites has been repaid.

(vi) All engineering drawings and specifications for works of improvement to be financed in part by WS loans or advances have been approved by the FmHA and the SCS.

(7) FmHA Contracts with local organizations: Ordinarily, a WS loan or advance will be made to the local organization having primary interest in, and direct responsibility for, the operation and maintenance of works of improvement to be installed with loan or advance funds rather than to an organization that would have to contract with another organization for the operation and maintenance of works of improvement and the collection of revenues for repaying the loan or advance. When it is proposed to make a WS loan to an organization that would have to contract with another organization, the organization and the contractural arrangements will be mutually acceptable to the FmHA and the SCS. This determination will be made before the approval of the Project Agreement for Construction of the Works of Improvement.

(8) Informational activities: The SCS will be responsible for the preparation, release, or other handling of the overall informational and educational material regarding the watershed protection program, including bulletins, press releases and other public announcements. The SCS will obtain the recommendations of the FmHA prior to releasing pamphlets and similar informational material which makes reference to loans. The FmHA may prepare and release informational material on the handling of loan applications. Such material will be reviewed with the SCS if it alludes to overall costs or benefits or to technical aspects for which SCS has responsibility. When desirable or necessary in particular watershed areas for SCS to arrange for community meetings to discuss and explain the program to interested local people, the FmHA will be invited to participate in such meetings if a loan or advance may be needed by a local organization to carry out planned works of improvement.

Acting Administrator
Soil Conservation Service

Administrator
Farmers Home Administration

May 26, 1978
Date

5/31/78
Date

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MEMORANDUM OF UNDERSTANDING
Between
THE SOIL CONSERVATION SERVICE
and THE FARMERS HOME ADMINISTRATION
Relating to Loans Made With RCD
Under the
Provisions of Section 102 of
the Food and Agriculture Act of 1962

(1) Purpose: The purpose of this memorandum of understanding is to outline the responsibilities and functions of the Soil Conservation Service (SCS) and the Farmers Home Administration (FmHA) in regard to loans made by FmHA to local sponsors for the installation of RC&D measures within authorized Resource Conservation and Development RC&D Areas.

(2) Agency responsibilities: Secretary of Agriculture Memorandum No. 1515 designates the Soil Conservation Service as the Departmental agency responsible for administration of the activities under Section 102, Public Law 87-703, relating to Resource Conservation and Development Program. The Secretary also directed the Farmers Home Administration to assist such projects within its departmentally assigned functions which includes making and servicing RCD loans.

FmHA will establish policies and procedures for making and servicing RCD loans and will cooperate with RCD sponsors, SCS, and other Federal and State agencies in carrying out their responsibilities in support of the RCD program.

(3) Assisting local sponsors:

(i) When it is known that an eligible sponsoring local organization desires information about an RCD loan, the RC&D Coordinator of SCS will notify the FmHA County Supervisor. They will consult with the sponsorsing local organization on organizational arrangements, plans for financing, and operation and maintenance of the RCD measure for which a loan is needed.

(ii) When the RCD measure Plan has been approved by the SCS State Conservationist, the FmHA representative will assist the interested sponsoring local organization with the preparation of the application for an RCD loan.

(iii) The application will be reviewed with the RCD area sponsors to see if the application and the RCD measure for which it is requested meet the RCD area Plan objectives.

(iv) An approved RCD area Plan and the related approved RCD Measure Plan will not obligate the FmHA to make an RCD loan.

(v) The SCS will furnish technical assistance to RCD sponsoring local organizations receiving a loan in accordance with SCS policies and procedures. The SCS and FmHA representatives will work together during the development of plans for RCD measures including estimates of funds needed and sources of funds for the establishment of RCD measures to assure that RCD loan funds may be used in accordance with FmHA policies to serve the needs of the RCD sponsoring local organization and also in a manner to protect the Government's interest.

(4) Requirements to be met when financial assistance is provided by SCS and an RCD Loan is made by FmHA:

(i) The SCS will confer with FmHA as to terms and conditions to be included in invitations to bid and contracts for construction or purchase of supplies and materials issued in connection with RCD measures to be installed with RCD loan funds. The contracts must be acceptable to FmHA before execution by the sponsoring local organization.

(ii) The SCS may approve minor changes during construction which do not appreciably affect design, cost, or function of a structure. However major changes must have the concurrence of FmHA.

(iii) The SCS and FmHA will agree to make joint periodic inspections annually,or more frequently if necessary, to see that works of improvement are being operated and maintained according to the RCD Measure Operation and Maintenance Agreements. The SCS State Conservationist and FmHA State Director will collaborate in arranging for correction of deficiencies. The FmHA will make other inspections as necessary to determine compliance with FmHA loan regulations and maintenance of the security property or other security interest of the government.

(iv) When a RCD measure sponsoring local organization proposes to contract with another organization for construction, operation and maintenance, the organization and contractural arrangements must be approved by FmHA and SCS. This determination will be made prior to approval of the Project Agreement.

(v) The local organization will not be authorized to start construction on works of improvement to be financed, in whole or in part, with a RCD loan until:

(A) The SCS State Conservationist has notified the FmHA State Director that the sponsoring local organization has met all requirements for receiving RCD assistance from SCS and has furnished the State Director with a schedule for beginning and completing the construction of works of improvement to be installed with RCD loan funds.

(B) The SCS has entered into a Project Agreement for Construction of Works of Improvement, setting forth the mutual understanding, responsibilities, working relations and cost-sharing arrangements of the sponsoring and contracting local organizations and the SCS.

(C) The FmHA State Director has notified the SCS State Conservationist and the borrower in writing that the RCD loan has been closed properly and that RCD loan funds are available and the conditions under which they will be released.

(D) Any contract entered into by the local organization for materials, labor, or the construction of works of improvement to be financed with RCD loan funds has been found acceptable by both FmHA and SCS and has been approved in writing by both.

(E) All engineering plans, specifications, and drawings for works of improvement to be installed with loan funds have been approved by both FmHA and the SCS.

(5) Performing development where financial assistance (cost-sharing) is not provided by SCS: The FmHA will be responsible for construction of project measures for these loans in accordance with FmHA policies and procedures.

(6) Information activities: The SCS will be responsible for preparation, release, and handling of all informational and educational material regarding RCD plans, measures and projects, including bulletins, press releases, and other public announcements. The SCS will, however, secure the recommendations of the FmHA prior to releasing pamphlets and other informational material which makes reference to RCD loans. The FmHA will, in cooperation with SCS, prepare and release informational material on receiving and processing RCD loans applications.

Acting Administrator
Soil Conservation Service

May 26, 1978
Date

Administrator
Farmers Home Administration

5/31/78
Date

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PART 502 - PREAUTHORIZATION PLANNING

SUBPART A - INTRODUCTION

502.01

§502.00 Watershed planning process.

Watershed planning is divided into two phases: preauthorization studies and plan development. This part covers the preauthorization studies, which begin with the initial inquiry concerning a possible watershed project and terminate with the issuance of a planning authorization. Parts 503-508 cover the plan development process.

§502.01 Preauthorization study phase.

This phase has two parts which are divided by the filing of a formal application for planning assistance through the state single point of contact for federal assistance and the designated state agency. Preapplication assistance consists of gathering enough information to determine if an application will be feasible. This step includes the beginning of an environmental evaluation. Post-application activities center around conducting detailed environmental assessment to identify problems and opportunities in the watershed. Figure 502.01 shows the phases in the planning.

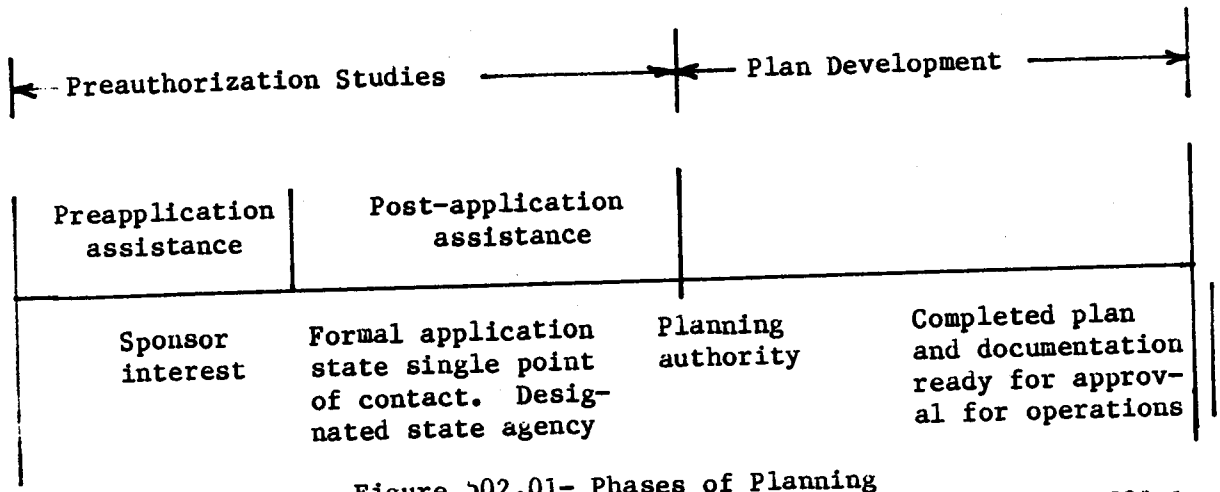


Figure 502.01- Phases of Planning

502.02

§502.02 Flood prevention projects.

Flood prevention projects were individually authorized by federal legislation (P.L. 78-534). The provisions of this chapter relating to the preapplication, application, post-application, and planning authorization, are not applicable to P.L. 534 projects.

SUBPART B - PREAPPLICATION ASSISTANCE

§502.10 Preapplication consideration.

(a) As soon as substantive inquiries are received concerning a potential watershed project, an environmental evaluation (7 CFR 650.5) should be initiated using an interdisciplinary team approach. To the extent possible, existing data should be used to provide information about the watershed. In most instances, studies conducted before receiving a formal application should not include detailed field work; however, enough work should be done to reasonably ascertain that an application will be feasible. Project potential must be evaluated objectively based on the expected environmental impacts of various alternatives.

(b) County USDA rural development committees should be notified of the intent of the project and should determine if all of the locally identified rural development needs of the communities in the watershed have been considered. All appropriate USDA agencies, other concerned Federal agencies, and the public will be notified of the potential application.

(c) As part of the evaluation, coordination with other agencies and groups as well as public participation is required by Section 4 of Executive Order 10584 (§500.71). This should be documented as it is carried out.

(d) Information gathered in the preapplication phase should be useful to the local organizations in deciding whether to submit an application for P.L. 83-566 assistance. If they decide to submit a preapplication, the information will be helpful in application preparation and for advising the Single Point of Contact for Federal Assistance and the designated State agency of intent to apply for assistance. (The designated State agency is the State agency having supervisory responsibility over programs provided for in the Act, or the Governor if no state agency has such responsibility.)

(e) If structural measures are considered as a potential solution, local organizations having the authority under state statutes to acquire land, raise money, and operate and maintain works of improvement should become sponsors at the outset. If no such organizations exist, one must be formed before planning can be authorized. For watershed plans that include only land treatment measures, a soil and water conservation district organized under appropriate State law may qualify as a sponsor.

§502.11 Notification of intent to apply for Federal assistance.

(a) Sponsors shall follow State developed procedures for coordination of proposed Federal financial assistance and must notify the State's Single Point of Contact for Federal Assistance of their intent to apply for assistance under P.L. 83-566.

(b) Form SF-424, entitled "Federal Assistance" (Exhibit §502.50), or any other form prescribed by the clearinghouse may be used. Enough copies will be needed to send a copy to each clearinghouse and the state conservationist. A record copy should be retained.

(c) The state conservationist will acknowledge receipt of the notification of intent to apply for Federal assistance within 45 days.

(d) Upon receipt of an application for assistance, the state conservationist will assign a 9000 series number to the watershed and begin reporting all time charges accordingly. This number will be used throughout the planning process to monitor planning costs.

§502.12 Notification for specially designated areas.

Formal and informal agreements have been reached with officials in several designated areas to coordinate and keep them informed of progress during planning and operations. These areas are Appalachia, Delaware River Basin (Exhibit §502.51), Susquehanna River Basin, and Tennessee Valley Authority (Exhibit §502.52).

SUBPART C - APPLICATION

§502.20 Requirements of a valid application.

A valid application must have adequate sponsorship by qualified local organizations, conform with Federal policies on nondiscrimination, comply with the acreage limitation under the Act (See §500.11(b)), include documentation that appropriate clearinghouse procedures have been followed, and be approved by the State.

§502.21 Applications from two or more States.

An application covering a watershed including nonfederal land in two or more States must be submitted to the designated State agencies and the Single Point of Contact for Federal Assistance of each State concerned. The application will be processed in accordance with arrangements mutually satisfactory to the concerned state conservationists and the designated State agencies.

§502.22 Submission of application.

(a) The original and one copy of the application should be sent by the sponsors to the designated State agency, one copy to the State Single Point of Contact for Federal Assistance, and one copy to the state conservationist. Application must be made on Form SF-424, "Federal Assistance." (Exhibit §502.50).

(b) An application must be approved by the designated State agency, who should then forward the original, signed application to the state conservationist along with a statement of the State's priority rating for the watershed. If the designated State agency disapproves an application, SCS will take no further action.

§502.23 Acknowledging the application.

(a) The state conservationist will acknowledge receipt of the application by letter to the designated representative of the sponsoring local organizations after ascertaining that the application is valid. One copy of the letter of acknowledgment is to be sent to the Chief. The state conservationist will provide the Forest Service area or regional office with a copy of the application and any subsequent amendments and will notify other concerned Federal agencies that a valid application has been received.

502.23(b)

(b) An information sheet containing a list of the sponsors, county(ies), congressional district(s), Water Resources Council's region and subregion, assigned 9000 series code number, and watershed size along with a map are to be enclosed with the National Headquarters copies of the acknowledgment letter. The Chief will furnish a copy of the letter of acknowledgment and enclosures to the Chief of the Forest Service.

§502.24 Amendment to an application.

An amendment to the application should be submitted in the same manner as the original application. Sponsors can be officially added or dropped by an amended application. This can also be accomplished when a watershed plan is prepared or a supplement thereto. Unless a change in sponsors will affect a watershed's priority rating, there is usually no advantage to using an amended application to reflect only a change in sponsorship. Changes which only modify or supplement the information contained in the application can be handled by correspondence. Amendments are used primarily to change the size of the area considered by adding or deleting part of the watershed area. The sponsors should send a letter, to the state conservationist through the designated State agency, stating what the change consists of and why it is needed.

§502.25 Withdrawal of application.

(a) Anytime it is determined that there is no possibility for the development of a feasible or acceptable project, the sponsors should be encouraged to withdraw their application. The sponsors should indicate by letter to the state conservationist through the designated State agency that they wish to withdraw their application. Upon receipt of such request, the state conservationist will return the application to the designated State agency and notify the Chief of the withdrawal.

(b) Applications considered invalid or unfeasible that have been on file for more than 10 years will be returned to the designated State agency with a letter explaining why it is being returned. Newer applications which prove to be invalid or unfeasible should also be returned as soon as it becomes apparent that that a project cannot be developed. The state conservationist will notify the Chief that these applications should be removed from National Headquarters records. A new application can be submitted if conditions change.

SUBPART D - POST-APPLICATION ASSISTANCE

§502.30 Post-application consideration.

The post-application planning study must be done pursuant to a plan of work prepared by the state conservationist. This post-application study is done to complete the environmental assessment by identifying land and water resource problems and opportunities of the watershed. The sponsors' desires must be determined; resource capabilities evaluated; alternative solutions formulated; and the environmental, social, and monetary impacts of the solutions assessed. Studies should be carried to the extent and detail necessary to determine whether an economic and an environmentally acceptable watershed plan can be developed that the local sponsors are willing and able to carry out.

§502.31 Plan of work.

(a) Prior to starting post-application studies, a plan of work should be prepared that becomes the management tool to govern federal actions in planning the watershed. The plan of work will show the scope, affected resources, planning detail, public participation, estimated cost, and schedule for completing the preauthorization planning report. Estimates of time and funds for the study must be shown in detail and will provide a basis for monitoring planning funds. It is suggested that the format for the plan of work be consistent with the six steps in planning. *

(b) All the input of SCS (including NTC), the Forest Service, other federal and state agencies and the local sponsors should be included in the plan of work. Forest Service field offices will provide forestry inputs to the state conservationist for inclusion. Technical procedures to be used must be spelled out. These should indicate compliance with NEPA and P&G. Selection of technical procedures should be based on existing rules, regulations and guidelines and on the nature of the watershed problems, project objectives, and the anticipated complexity of potential solutions and their effects as established by the scoping process. Procedures should be compatible from one discipline to another and should generally be similar in scope and detail.

§502.32 Public participation.

As the request for planning authorization is developed, the sponsoring local organization is to hold at least one widely advertised public meeting to discuss alternative proposals.

§502.33 Preauthorization report.

(a) The preauthorization planning report summarizes the results of planning studies to date. The report should be completed whether it appears likely that P.L. 83-566 financial assistance can be provided or not. The format and type of report are not specified. The report need not be lengthy but should adequately present the opportunities for solving watershed problems.

(b) If P.L. 83-566 financial assistance appears likely, the preauthorization planning report will be prepared to display the alternatives being considered and must be reviewed and concurred in by the NTC director. The report should briefly display such things as: the problems; alternatives for solving or partially solving identified problems; estimated cost; and adverse and beneficial effects of proposed alternatives. Detail will be enough to show the potential for developing a watershed project and to allow the reader to be able to determine the merits of the project. Quantification will be necessary. Sponsors will be advised that, to qualify for P.L. 83-566 assistance, they must select the NED plan or have an adequate rationale to justify an exception.

(c) If the watershed program is not the appropriate vehicle for solving the identified watershed problems or if P.L. 83-566 financial support cannot be provided, the sponsors should be promptly informed. A no-project report or letter should be prepared and provided to the sponsors and others involved in the studies. This report or letter describes the problems, potential solutions, and recommended actions. The report should cover actions the local people can take on their own. Alternative actions should be described in sufficient detail to allow local people to evaluate the merits of each alternative and to judge which alternatives need additional study and followup.

SUBPART E - PLANNING AUTHORIZATION

§502.40 Request planning authorization.

(a) Planning authorization should be requested only when the state conservationist is ready to fully commit technical resources in an intense planning effort. Before requesting planning authorization, enough detailed planning should have been conducted to ensure that a viable plan can be developed. Requests should include the following items:

(1) The designated State agency's current priority rating for the watershed application.

(2) Information on existing planning authorizations and the status of each. The 9000 number assigned to each watershed should be shown, including the number of the watershed for which the planning authorization is requested.

(3) An estimate of the additional funds that will be needed by the state conservationist for transfer to Federal agencies (other than the Forest Service) for planning on lands under their jurisdiction.

(4) An estimate of the P.L. 83-566 cost of plan development that will be used in contracting for expertise outside of SCS.

(5) A copy of the preauthorization report and updated plan of work along with a summary of planning costs to date.

(6) A list of the sponsoring local organizations, the name and address of the current chairman, and the name of the person designated as the contact for all the sponsors.

(7) Statements as to the sponsors understanding of the possible commitments, that they have made a self-evaluation of the depth and likely commitment of support for the project being planned, their authority and willingness to obtain landrights, their willingness to use their power of eminent domain.

(8) Congressional districts and names of the congressional delegation that represent the watershed area.

(9) Evidence of public participation and coordination with other agencies and groups.

(10) Include Summary fact sheet as shown in exhibit 502.53.

502.40(b)

(b) Requests for planning authorization should be submitted to the Director, PDMD. States are encouraged to submit their request by February 1, to coincide with the budget cycle.

(c) One planning start will be authorized for each application and only one plan may be prepared under each planning authorization.

§502.41 Updated plan of work.

(a) The updated plan of work and schedule must show the interdisciplinary technical procedures to be used in the plan development study and the time frame for accomplishing each task. The plan of work and schedule will represent an agreement between the NTC director and a state on the scope and detail of the study, study time needed, and date it will be completed. It will also contain agreement on the minimum amount and kind of supporting data needed for approval by the NTC Director.

(b) The state conservationist will send 12 copies of the updated plan of work, schedule, and preauthorization planning report to the NTC director, to the area or regional office of the Forest Service, and to other concerned agencies.

§502.42 National Technical Center responsibilities.

(a) The NTC is to review and concur in the technical adequacy of the preauthorization planning report and the updated plan of work. A copy of the concurrence letter will be forwarded to the Director, PDMD. Requests for planning authorization will not be considered at the National Headquarters without the NTC director's concurrence.

§502.43 National Headquarters responsibilities.

(a) The Chief of SCS is responsible for authorizing assistance to develop a watershed plan-EIS. This authorization will be limited to 5 years. If the plan-EIS is not in interagency review within this time, planning authorization is automatically canceled.

(b) The Chief will advise the state conservationist, the Forest Service, and heads of concerned Federal agencies of the planning authorization and of SCS plans to initiate the necessary surveys and investigations. When planning authorization involves more than one state, the Chief will designate one of the state conservationists as the responsible federal official to take the leadership in plan development.

§502.44 State responsibilities.

The state conservationist will notify the sponsoring local organization(s), the concerned U.S. Senators and Representatives, the State's Single Point of Contact for Federal Assistance, Governor or designated agency, the concerned state agencies, field offices of the Forest Service and other federal agencies, and others who have indicated a desire to participate. The state conservationist should also publish appropriate notices in state and local newspapers and other news media.

§502.45 Amending planning authorizations.

State conservationists must have prior approval of the Deputy Chief for Programs to amend a planning authorization in order to add or change a purpose. Requests for approval, along with NTC director concurrence, should include a revised preauthorization planning report which clearly identifies watershed problems, proposed alternatives, and the revised plan of work. There should also be an explanation of why the original proposal should be changed.

*

§502.46 Termination of planning.

(a) When it becomes apparent at any stage of plan development that a feasible plan-EIS cannot be developed, the state conservationist will terminate planning assistance. This termination will be accomplished by notifying the sponsoring local organization in writing that planning assistance is terminated and will specify the reasons for this action. Concurrently, the Chief, State's Single Point of Contact for Federal Assistance, Forest Service, and other participating agencies will be notified that planning assistance has been terminated and will be provided with a copy of the letter to the sponsoring local organization(s).

(b) Once planning is terminated either by the state conservationist or the automatic provisions of §502.43(a), no further funds may be expended on the project and the project may not be reactivated. If conditions change and it becomes possible to develop a feasible plan, the sponsors must start over and submit an amendment to the application, and a new planning authorization must be given by the Chief before work can be resumed.

502.46(c)

(c) After planning is authorized in a watershed, the application cannot be withdrawn. It will be retained to support the planning costs that were incurred even though planning may be subsequently terminated.

§502.50 Application Form.

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☒ PREAPPLICATION
- ☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE (Year month day) 19 XX XX XX

Leave Blank

3. STATE APPLICATION IDENTIFIER (NOTE: TO BE ASSIGNED BY STATE)
- a. NUMBER
- b. DATE ASSIGNED (Year month day) 19

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name: Sponsors' name, address, signatures, and witnesses are on the attached sheet(s)
- b. Organization Unit
- c. Street/P.O. Box
- d. City
- e. County
- f. State
- g. ZIP Code
- h. Contact Person (Name & Telephone No.): XXXXXX XXXXXX

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
- a. NUMBER: 1 0 . 9 0 4
- MULTIPLE ☐
- b. TITLE: Watershed Protection and Flood Prevention Prog.

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)
xxxx (Watershed name)
See narrative statement on the attached sheet(s)

8. TYPE OF APPLICANT/RECIPIENT
A—State, B—Interstate, C—Substate, D—Organization, E—County, F—School District, G—Special Purpose District, H—Community Action Agency, I—Higher Educational Institution, J—Indian Tribe, K—Other (Specify): More than one sponsor
Enter appropriate letter: K

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.): xxxx

10. ESTIMATED NUMBER OF PERSONS BENEFITING: N/A

11. TYPE OF ASSISTANCE
A—Basic Grant, B—Supplemental Grant, C—Loan, D—Insurance, E—Other
Enter appropriate letter(s): A

12. PROPOSED FUNDING

a. FEDERAL	$ N/A	.00
b. APPLICANT	N/A	.00
c. STATE	N/A	.00
d. LOCAL	N/A	.00
e. OTHER	N/A	.00
f. Total	$ N/A	.00

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT: xxxxx
- b. PROJECT: xxxxxx

14. TYPE OF APPLICATION
A—New, B—Renewal, C—Revision, D—Continuation, E—Augmentation
Enter appropriate letter: A

15. PROJECT START DATE (Year month day) 19 N/A

16. PROJECT DURATION: N/A Months

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars, B—Decrease Dollars, C—Increase Duration, D—Decrease Duration, E—Cancellation, F—Other (Specify):
N/A
Enter appropriate letter(s)

18. DATE DUE TO FEDERAL AGENCY ► (Year month day) 19 XX XX XX

19. FEDERAL AGENCY TO RECEIVE REQUEST: Soil Conservation Service
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE): State Office
- b. ADMINISTRATIVE CONTACT (IF KNOWN): State Conservtionist
- c. ADDRESS: SCS State Office Address

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER: N/A

21. REMARKS ADDED: ☐ Yes ☐ No

SECTION I—APPLICANT/RECIPIENT DATA

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
- a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
- b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE: See attached sheet for names
- b. SIGNATURE: See attached sheet for signatures

SECTION II—CERTIFICATION

24. APPLICATION RECEIVED (Year month day) 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE► (Year month day) 19

30. STARTING DATE (Year month date) 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE (Year month date) 19

33. REMARKS ADDED: ☐ Yes ☐ No

SECTION III—FEDERAL AGENCY ACTION

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

GENERAL INSTRUCTIONS FOR THE SF-424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted in accordance with OMB Circular A-102. It will be used by Federal agencies to obtain applicant certification that states which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process have been given an opportunity to review the applicant's submission.

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I with the exception of Box 3, "State Application Identifier." If an item is not applicable, write "NA." If additional space is needed, insert an asterisk "*," and use Section IV. An explanation follows for each item:

Item

1. Mark appropriate box. Preapplication and application are described in OMB Circular A-102 and Federal agency program instructions. Use of this form as a Notice of Intent is at State option. Federal agencies do not require Notices of Intent.

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared (at applicant's option).

3a. Number assigned by State.

3b. Date assigned by State.

4a–4h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. Employer Identification Number (EIN) of applicant as assigned by the Internal Revenue Service.

6a. Use Catalog of Federal Domestic Assistance (CFDA) number assigned to program under which assistance is requested. If more than one program (e.g., joint funding), check "multiple" and explain in Section IV. If unknown, cite Public Law or U.S. Code.

6b. Program title from CFDA. Abbreviate if necessary.

7. Use Section IV to provide a summary description of the project. If appropriate, i.e., if project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county, or city.

10. Estimated number of persons directly benefiting from project.

11. Check the type(s) of assistance requested.

    A. Basic Grant—an original request for Federal funds.

    B. Supplemental Grant—a request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).

    E. Other. Explain in Section IV.

12. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 12a—amount requested from Federal Government. 12b—amount applicant will contribute. 12c—amount from State, if applicant is not a State. 12d—amount from local government, if applicant is not a local government. 12e—amount from any other sources, explain in Section IV.

13b. The district(s) where most of action work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide."

14. A. New. A submittal for project not previously funded.

    B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.

    C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).

    D. Continuation. An extension for an additional funding/budget period for a project with a projected completion date.

    E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Approximate date project expected to begin (usually associated with estimated date of availability of funding).

16. Estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14c), or augmentations (item 14e).

18. Date preapplication/application must be submitted to Federal agency in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Existing Federal grant identification number if this is not a new request and directly relates to a previous Federal action. Otherwise, write "NA."

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete either item 22a or 22b *and* items 23a and 23b.

22a. Complete if application is subject to Executive Order 12372 (State review and comment).

22b. Check if application is not subject to E.O. 12372.

23a. Name and title of authorized representative of legal applicant.

FEDERAL AGENCY PROCEDURES FOR SECTION III

Applicant completes only Sections I and II. Section III is completed by Federal agencies.

26. Use to identify award actions.

27. Use Section IV to amplify where appropriate.

28. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 28a—amount awarded by Federal Government. 28b—amount applicant will contribute. 28c—amount from State, if applicant is not a State. 28d—amount from local government, if applicant is not a local government. 28e—amount from any other sources, explain in Section IV.

29. Date action was taken on this request.

30. Date funds will become available.

31. Name and telephone number of agency person who can provide more information regarding this assistance.

32. Date after which funds will no longer be available for obligation.

33. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks.

Name of Sponsor _____ By _____
(Type name below signature)

Title _____

Date _____

_____
Address Zip Code

The signing of this application was authorized by resolution of the governing body of the _____ (Name of Sponsor) _____ adopted at a meeting held o _____

_____
(Type name below signature - Secretary or other title)

_____
Address Zip Code

Date _____

(Add additional signature blocks as necessary.)

§502.51 Administrative Agreement with Delaware River Basin Commission.

DELAWARE RIVER BASIN COMMISSION

ADMINISTRATIVE AGREEMENT

Pursuant to Section 1.5 and Article 11 of the Delaware River Basin Compact and to Rule 2-3.3 of the Rules of Practice and Procedure of the Delaware River Basin Commission (Administrative Manual - Part 11), this Administrative Agreement is hereby entered into by and between the Delaware River Basin Commission and the Soil Conservation Service, U.S. Department of Agriculture, hereinafter referred to as SCS.

1. Definitions. For the purposes of this Agreement, unless otherwise required by the context:

(a) "SCS" shall mean the Soil Conservation Service.

(b) "DRBC" shall mean the Delaware River Basin Commission.

(c) "Compact" shall mean the Delaware River Basin Compact.

(d) "Facility" shall mean a facility as defined by the Compact, and within the planning jurisdiction of the SCS.

(e) "Project" shall mean a project as defined by the Compact, and within the planning jurisdiction of the SCS.

2. Planning Consultation. No less frequently than once a year the SCS and DRBC shall hold one or more joint staff conferences for review of future plans and consideration of new projects in which either agency may have an interest.

3. Initiation of Project. As to any watershed project, the SCS receives an application for assistance from the project sponsors and after due authorization for planning proceeds with helping the sponsors develop a plan. The DRBC will be consulted by the SCS during the preliminary investigation of the planning stage to determine any features of the project in which the DRBC may have an interest.

6. Work Plan Submission. The SCS will prepare a Work Plan based on the Work Plan Draft and incorporating any changes resulting from the Informal Field Review. On behalf of the project sponsors, the Work Plan will be submitted by the SCS to the DRBC for inclusion by the DRBC in its Comprehensive Plan in accordance with the Rules of Practice and Procedure. Either concurrently or subsequently the

502.51

502.51 continued

Work Plan will be reviewed in whole or in part for inclusion in the Water Resources Program or for approval under Section 3.8 as the sponsors may elect. No further approval of individual structures constructed substantially in accordance with the Work Plan will be required.

7. Work Plan Amendments. Amendments to the Work Plan resulting from significant changes in final design or for other reasons will be handled in accordance with paragraphs 4-6 above.

8. Effective Date. This Agreement shall take effect upon its execution by both parties.

IN WITNESS WHEREOF, the DRBC through its duly authorized Executive Director, and the SCS, through its Administrator, as authorized by the Compact and the laws of the signatory party, have executed this Agreement by affixing their respective signatures thereto this twenty-third day of December, 1966.

SOIL CONSERVATION SERVICE
U.S. Department of Agriculture

ATTEST:

/s/Frances C. Harris

By /s/ Gladwin Young
Acting Administrator

DELAWARE RIVER BASIN COMMISSION

ATTEST:

/s/ W. Bienton Whitall

By /s/ James F. Wright
James F. Wright, Executive Director

11-21-66

§502.52 Memorandum of Understanding Between TVA and SCS

MEMORANDUM OF UNDERSTANDING
Between the
TENNESSEE VALLEY AUTHORITY
and the
UNITED STATES DEPARTMENT OF AGRICULTURE

RELATIVE TO: Coordinating activities of the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933, as amended (48 Stat. 58, 49 Stat. 1079), with those of the Soil Conservation Service under the Watershed Protection and Flood Prevention Act, as amended (68 Stat. 666, 70 Stat. 1088).

THIS AGREEMENT, made and entered into this 6th day of November, 1958, by and between the Tennessee Valley Authority, hereinafter referred to as the "TVA" and the Soil Conservation Service of the United States Department of Agriculture, hereinafter referred to as the "SCS".

WITNESSETH

WHEREAS, the SCS is assigned responsibility for the administration of the Watershed Protection and Flood Prevention Act, as amended (68 Stat. 666, 70 Stat. 1088); and

WHEREAS, under the Tennessee Valley Authority Act of 1933, as amended (48 Stat. 58, 49 Stat. 1079), the TVA is concerned with and has statutory responsibilities relating to navigation and the control of flood waters in the Tennessee River and its tributaries; and

WHEREAS, it is the desire of the SCS and TVA to coordinate their mutual interests and activities in carrying out their assigned responsibilities in the Tennessee River Basin,

NOW, THEREFORE, the SCS and the TVA agree on procedures to accomplish their desires as follows:

A. Preapplication Phase:

1. SCS and TVA will inform each other of local interest in watershed programs within the Tennessee River Basin as such interest comes to their attention.

2. At the time local interest in a specific watershed is first recognized, TVA also will advise SCS regarding any of TVA's active projects or plans which might significantly influence the feasibility of a small watershed project under the Watershed Protection and Flood Prevention Act.

§502.52

B. Application Phase:

1. Upon receiving an application for planning assistance, SCS will forward a copy to TVA for review and comment.

2. In response, TVA will indicate the nature of its interest in the Watershed, including reference to any identifiable TVA requirements for approval of structures under Section 26a of the Tennessee Valley Authority Act of 1933, as amended, in the affected area. This statement of interest will become a part of the application file for the watershed in question.

3. SCS will inform TVA of plans for a field examination or similar preliminary survey, will invite TVA to participate, and will furnish TVA a copy of the preliminary field report.

4. SCS will inform TVA of the action taken on the application by the Service.

5. SCS will inform TVA when planning assistance is authorized.

6. SCS will inform TVA of interest and needs expressed by local sponsoring organizations and will arrange to inform local sponsoring organizations of the nature of the interest of TVA in the watershed.

C. Work Plan Development Phase:

1. On apprising TVA of an approval and authorization for assistance in Watershed Work Plan development, SCS will send TVA a list of the types of data needed from TVA for planning.

2. TVA will furnish SCS such data and planning materials as are available and applicable under the generalized list supplied by SCS.

3. SCS will furnish TVA a copy of the Plan of Operations (work outline) for developing the Watershed Work Plan.

4. a. SCS will consult with TVA on the development of Watershed Work Plans, specifically with respect to proposed structural works of improvement, that TVA decides or has previously indicated would significantly affect TVA's interests. As appropriate, SCS will also discuss with TVA the interpretation and application of data submitted by TVA.

§502.52 (page 3)

b. SCS will furnish TVA (a) a map showing the tentative location of contemplated structural works and (b) preliminary structure estimates of items usually listed in the standard "Structure Data Table" of Watershed Work Plans after preliminary agreement has been reached with the responsible local sponsoring organizations.

c. TVA will examine this preliminary information, request of SCS additional information, if needed, and advise SCS of any significant conflict between the proposed works and TVA's responsibilities for navigation, flood control, public lands, or other properties.

d. After any necessary consultation with SCS, TVA will advise the SCS as to any structures requiring approval under Section 26a of the Tennessee Valley Authority Act of 1933, as amended. SCS will formulate and develop with the local sponsoring organization further plans and recommendations with respect to such structures on a basis which will enable them to meet the requirements of the TVA Act.

5. SCS will inform TVA of the time and place of the informal review of the Work Plan draft with other agencies. In advance of this meeting, SCS will transmit to TVA copies of the Work Plan draft for information and office review. Following the informal review of the Work Plan draft, TVA will advise SCS of its views.

6. SCS will furnish TVA copies of the final Watershed Work Plan for review and comment. TVA will reply, identifying the structures, if any, requiring further review or approval under Section 26a of the Tennessee Valley Authority Act of 1933, as amended.

D. Installation Phase:

1. SCS will direct attention of the Sponsors of each watershed project to the requirements of Section 26a of the Tennessee Valley Authority Act of 1933, as amended. When the watershed goes into installation phase and when SCS has been advised that review and approval of the design of structures is required, the Sponsors will be informed by SCS of the requirement for Section 26a approval prior to construction.

§502.52 (page 4)

E. General:

1. This agreement will be effective as of the date appearing in the first paragraph hereof. The agreement may be amended by mutual agreement. Either party may terminate the agreement upon 90 days' notice given in writing to the other party.

2. This agreement does not constitute a financial obligation to serve as a basis for expenditures.

IN WITNESS WHEREOF, the parties have executed this agreement on the day, month and year first above written.

TENNESSEE VALLEY AUTHORITY

by /S/ A. J. Wagner

Title General Manager

APPROVED BY TVA
BOARD OF DIRECTORS

Nov. 6, 1958

/s/ Leona L. Malkemus
Assistant Secretary

UNITED STATES DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

By /s/ Gladwin Young

Title Acting Administrator

§502.53 Summary Fact Sheet for Planning Start Request

Fact Sheet
Request for Planning Authorization

Project:
State:
Watershed Size ac.
Date of Application:

Watershed Project No.
County:
Date of Request:
Date of NTC Concurrence

Magnitude of Problems	With Project Effects
Onsite:	Onsite:
Offsite:	Offsite:

Most Likely Recommended Plan:

No. of Beneficiaries:
Participation Rate:
Cost Share Rate:
Approval Level:
Sec'y Exception: yes no

Acres Benefited:
Federal Costs:
Local Cost:
Annual Benefits:
Annual Costs:

Name of Sponsors:

Est. Starting Date:
SCS Planning Cost:

Completion Date:

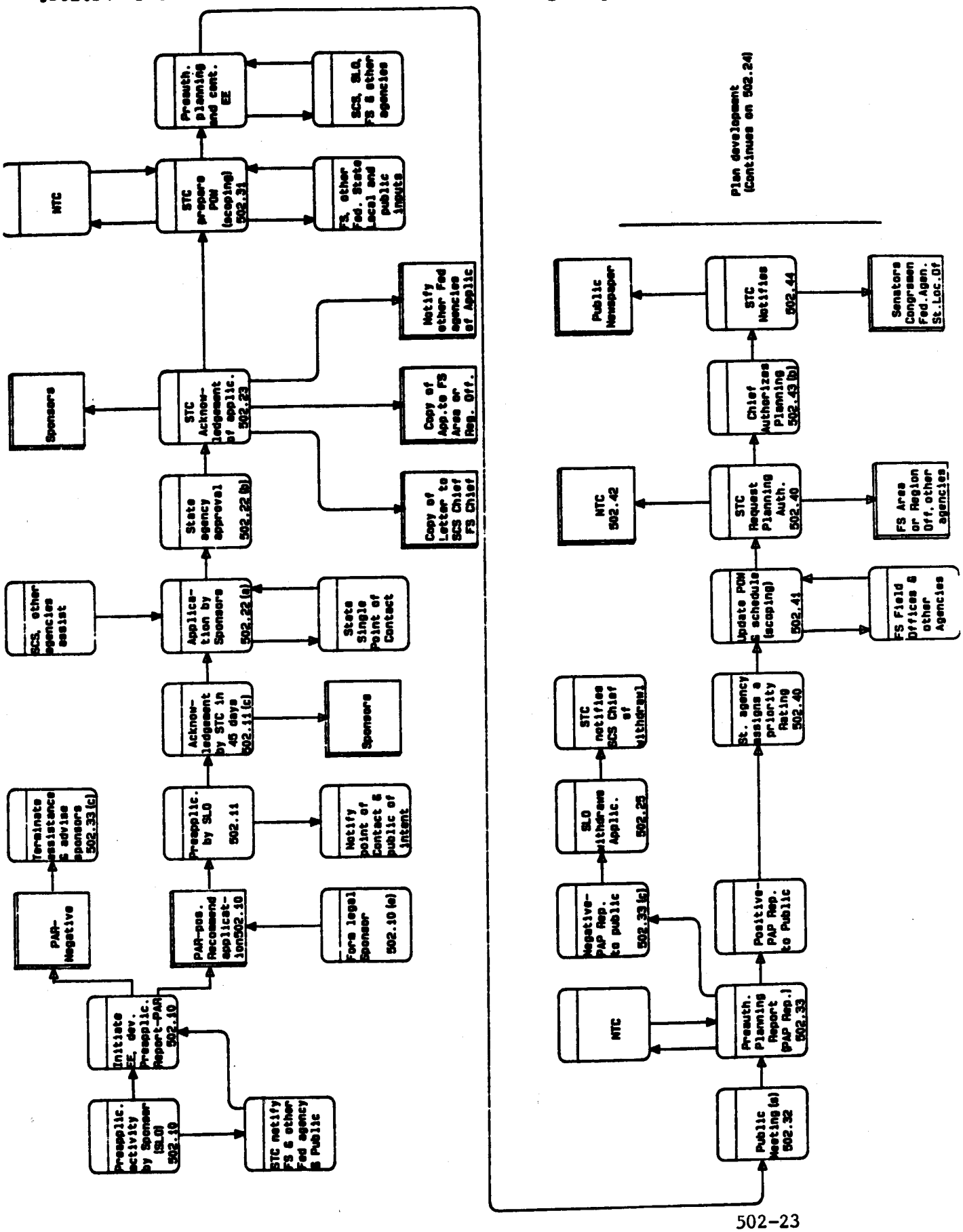
Program Status:
Projects in Operations:

Projects in Active Planning	Estimated Cost	Authorization Date	Status

Congressional Districts and Representatives:

Senators:

§502.54 Flow Chart of Preauthorization Planning Steps.



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PART 503 - COLLECTION AND DEVELOPMENT OF DATA

SUBPART A - GENERAL

503.01

§503.00 Introduction.

This part provides general guidance for planning for the preparation of a watershed plan-Environmental Impact Statement (plan-EIS), beginning with receipt of planning authorization and continuing through to the preparation of the plan-EIS. Plan development embodies the six-step planning process set forth in the Principles and Guidelines, culminating in plan selection. Reviews of predraft documents usually result in refinement of the recommended plan for purposes of authorization. Further details on one or more of the alternatives may be needed at this stage to facilitate the making of tradeoffs and the selection of a plan. The process includes the development of both draft and final plan-EIS, which is covered in Part 508 of this manual.

503.01 State procedures.

Procedures contained in this part do not contain all the necessary detail for plan-EIS development and review through approvals on drafts. Requirements for input and review vary from state to state. Each state conservationist should develop supplemental in-state procedures to ensure involvement of the entire state staff by providing early inputs and review of predraft documents. These procedures should also outline opportunities for participation of the general public, organized groups, individuals, NTC, and other agencies in the planning and review process. Procedures should be kept current and updated as the need arises. The state conservationist may request assistance from the NTC director for developing these procedures.

SUBPART B - PLANNING

503.10(b)(iv)

§503.10 Plan development requirements.

(a) General.

After planning authorization is granted, the state conservationist will take steps to provide planning assistance in accordance with the updated plan of work. For multistate staffs, the state conservationist of the State in which the watershed is located will provide the overall guidance. The approved plan of work is to be used throughout the plan-EIS development to schedule and coordinate planning activities and to monitor progress. When project objectives change, unforeseen problems arise, or opportunities exist to accelerate completion of the process, the plan of work should be revised. Copies of the revised plan of work should be furnished to all participants.

(b) Principles and Guidelines.

(1) Planning a water resource project shall conform to the "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies" (P&G). The Federal objective of water and related land resources project planning is to contribute to national economic development consistent with protecting the Nation's environment, pursuant to national environmental statutes, applicable executive orders, and other Federal planning requirements.

(2) Special attention should be given to following the six major steps of planning outlined in the P&G. These steps are:

(i) Specification of the water and related land resources problems and opportunities (relevant to the planning setting) associated with the Federal objective and specific state and local concerns.

(ii) Inventory, forecast, and analysis of water and related resource conditions within the planning area relevant to the identified problems and opportunities.

(iii) Formulation of alternative plans.

(iv) Evaluation of the effects of the alternative plans.

503.10(b)(v)

(v) Comparison of alternative plans.

(vi) Selection of a recommended plan based upon the comparison of alternative plans.

(3) Scoping is to be used early and throughout planning to ensure that all significant decisionmaking factors are addressed and that unnecessary and extraneous studies are not undertaken. It may be used to combine or narrow the number of problems, opportunities, measures, plans, or effects, considered so that efficient analysis and choice among alternative plans can be made. The public and Federal, State, and local agencies having expertise in areas that may be affected should be involved in the scoping process.

(c) National Environmental Policy Act.

(1) Full compliance is required with regulations established by the Council on Environmental Quality and entitled, "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" (40 CFR 1500-1508) and with SCS rules "Compliance with NEPA" (7 CFR 650).

(2) Special note should be made that if the environmental evaluation or environmental assessment indicates that an EIS should be filed, the state conservationist will publish in the Federal Register and local newspapers a Notice of Intent to Prepare an EIS (Exhibit §503.20). This notice requests assistance of interested agencies and individuals. If the environmental evaluation and the environmental assessment indicate that there is no need to file an EIS, a Finding of No Significant Impact (FONSI) should be prepared (Exhibit §506.21) and a notice of its availability published in the Federal Register and local newspapers (Exhibit 503.23). The state conservationist should send the notice to the Federal Register (Exhibit 503.21) with copies to ADS, PDMD, and appropriate NTC Directors. No administrative action should be taken for 30 days after the publication of the FONSI in the Federal Register.

(d) Other considerations.

(1) The scope and intensity of planned work should be made in sufficient detail to provide reliable estimates for the plan-EIS. Investigations should be detailed enough for firm determination of location, feasibility, and the general features of project measures.

(2) In the case of grade stabilization structures or land treatment measures where a number of measures of similar size and nominal cost are planned, separate site locations and feasibility

studies need not be made. Before data are collected and analyzed, the need for and probable use of such data should be critically considered.

(3) Studies will be of sufficient detail to develop landrights maps. All project measures will be designed using SCS standards and criteria. Project measures planned for installation on Federal lands, shall conform also to the standards of the land-administering agency involved.

(4) All data and writeups should be reviewed and agreed on by the appropriate state staff members. Forestry data, developed by the Forest Service, will have State forester and internal clearance before submission to SCS. These reviews will avoid changes in the plan-EIS at a later date.

§503.11 Loan opportunities.

As soon as it is evident that the sponsors may desire a loan under Section 8 of the Act, the state conservationist is to invite the state director of the Farmers Home Administration (FmHA) to provide assistance to the sponsors. Sponsors are to file a preliminary application for a loan as soon as possible; however, it must be filed before the plan is submitted for approval if credit assistance is to be sought from the FmHA. Exhibit §501.84 outlines the procedures that should be followed. Application for an advance under Section 4 of the Act will be made by the sponsoring local organization to the state conservationist. The state conservationist will advise the state director of the FmHA of this action and will furnish information on how the advance will be used and other pertinent justification.

§503.12 Public participation.

(a) Local participation. The state conservationist, in cooperation with the sponsors, will ensure that interested or affected individuals, groups, or local governmental agencies have opportunities to participate, in development of the plan-EIS. Sponsors will be requested to announce these opportunities to the general public through local newspapers and other media. Sufficient information is to be provided so that people may participate meaningfully.

(b) Forest Service. The Forest Service has planning responsibilities in the watershed program beginning with notification at the preapplication stage and continuing to the preparation of the watershed plan-EIS. Responsibilities include providing information on forest and brush-covered wild lands and hydrologic surveys of forest lands, preparing forestry plans, participating in plan formulation,

and contributing narrative material on forest resources for inclusion in the plan of work and the plan-EIS.

(c) U.S. Fish and Wildlife Service. The regional director of the U.S. Fish and Wildlife Service (FWS) and the head of the State game and fish agency will be invited to participate with SCS in inventories of fish and wildlife resources, formulate alternative plans, and identify probable impacts on fish and wildlife. FWS also will be provided the opportunity to carry out provisions of section 12 of the Act.

§503.13 Consideration of alternatives.

(a) Since detailed planning consists of refining alternatives developed during preauthorization, a broad range of alternatives will not normally be studied during the plan development. Consideration of alternatives during this phase will consist of refining the alternatives that may qualify as candidate plans. Some refinement of other alternatives considered during preauthorization planning may be necessary to ensure that the plan-EIS clearly shows tradeoffs between alternatives.

(b) SCS must clearly define and evaluate the impacts of each alternative. SCS personnel should be careful not to agree to the selection of an alternative for P.L. 83-566 assistance that is inconsistent with the Federal objective for economic development unless there are overriding reasons to grant an exception.

(c) The sponsors can select an alternative that would not qualify. for P.L. 83-566 assistance. If so, they would use means other than P.L. 83-566 for installation.

§503.14 Technical documentation of studies.

(a) The support file is a vital part of watershed projects and is used throughout the development, review, installation, and operation and maintenance phases. This file provides a comprehensive, reviewable record of pertinent facts, observations, computations, procedures, assumptions, expert opinion, and rationale used in reaching planning decisions. Inasmuch as the study of alternatives is an important determinant of project actions, these too should be documented in sufficient detail to reflect the adequacy of the evaluations undertaken and conclusions reached. Documentation is to discuss the interdisciplinary process used and show that public participation was adequate.

an important determinant of project actions, these too should be documented in sufficient detail to reflect the adequacy of the evaluations undertaken and conclusions reached. Documentation is to discuss the interdisciplinary process used and show that public participation was adequate.

(b) Support information should be organized in such a manner that it is readily usable by those whose discipline is involved in plan development and that it is reviewable by others. It should be organized into distinctive sections for each principal discipline (agronomy, biology, economics, engineering, geology, hydrology, or recreation) and should be indexed for ease of reference. Within each section, the data, charts, maps, computations, and narrative material should be arranged in a sequence consistent with the six steps of planning so that the documentation leads to a clear understanding of the study, the methodology used, and the conclusions reached.

(c) Activities that are carried out but do not fit into a discipline file, such as public participation, should be documented in their own file so that the requirement for a reviewable record is met.

(d) A special "Investigation and Analysis" section will be prepared to support the plan-EIS. Details on the content of this report are given in Part 508 of this manual.

SUBPART C - EXHIBITS

§503.20 Sample Notice of Intent to Prepare an EIS.

BILLING CODE: 3410-16

DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

.....(Name)..... Watershed, ...(State) ...

AGENCY: Soil Conservation Service

ACTION: Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the .....(Name) ..... Watershed, ...(County or Counties), ...(State) .....

FOR FURTHER INFORMATION CONTACT: .....(Name)....., State Conservationist, Soil Conservation Service, ...(Street)....
..Address)....., ...(City)....., ...(State)..., (Zip Code), telephone (Area Code and Number).

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, ...(Name)..... , State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

.....(Name)..... Watershed, ...(State)....
Notice of Intent to Prepare an Environmental Impact Statement

The project concerns (List project purposes; i.e., a plan for watershed protection, flood prevention and drainage). Alternatives under consideration to reach these objectives include (List alternatives; i.e., systems for conservation land treatment, nonstructural measures, earth dams, channel improvement, and floodways).

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meetings will be held at (List time and location of meeting; i.e., 2:00 p.m., Wednesday, October 10, 1979, in the courtroom of the ....(Name)..... County Courthouse, ...(City and State).....) to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or the scoping meeting may be obtained from .....(Name)....., State Conservationist, at the above address or telephone (Area Code and Number).

(Signature)
(Type name and title of signee)

(Date:)

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904 - Watershed Protection and Flood Prevention - and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

§503.21 Sample Transmittal Letter to the Federal Register

July 8, 1981

Office of the Federal Register
National Archives and Records Service
Washington, D.C. 20408

Dear Sir:

The enclosed Notice of a Finding of No Significant Impact is submitted for publication in the Federal Register:

Payton Creek Watershed, Kansas

Sincerely,

JOHN W. TIPPIE
State Conservationist

Enclosure

cc:
Director, Administrative Services, SCS, Washington, D.C.
(with enclosure)
Director, Project Development and Maintenance, SCS, Washington, D.C.
(with enclosure)
Director, National Technical Center, SCS, (location)
(with enclosure)

§503.22 Sample Finding of No Significant Impact (FONSI)

FINDING OF NO SIGNIFICANT IMPACT
FOR
DAVID CREEK WATERSHED
CLARKE COUNTY, ANYSTATE

Introduction

The David Creek Watershed is a federally assisted action authorized for planning under Public Law 83-566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location:

U.S. Department of Agriculture
Soil Conservation Service
100 West 14th Street
Yourtown, Anystate 12345

Recommended Action

Proposed is the development of about 41 conservation plans that will provide for land treatment measures to be applied on farms for reduction of sheet, rill, and streambank erosion; storage and management of animal wastes; and improved hydrologic condition in the watershed. The proposed plan will stabilize 2,650 acres of excessively eroding cropland and grassland, and 2,500 feet of streambank. Animal waste management facilities and application practices will be installed on about 30 farms in the watershed.

Effect of Recommended Action

The proposed action will protect the watershed hydrologically by improving the soil cover condition and reducing overland flow velocities. Streamflow will be stabilized to the extent that peak floodflow rates will be slightly reduced and flow will be attenuated.

There will be little or no effect on wetlands. With land treatment applied on 2,650 acres, rainfall infiltration on cropland will be increased from 15 to 35 percent. This will provide for a 1 or 2 percent overall increase in groundwater recharge in the watershed, which will ensure maintenance of groundwater at levels needed for sustaining the wetlands.

503.22

The proposed project will encourage and promote the agricultural enterprises in the watershed through improved efficiency. This action will tend to offset pressures to convert important farmland to other uses such as residential development.

An initial management summary of cultural resources as they relate to the planned components has been developed. The survey concludes that no significant adverse impacts will occur to cultural resources in the watershed should the plan be implemented. However, construction of manure storage units, riprapping, critical-area planting, and diversion channels do have the potential as for seriously disrupting individual sites. Therefore, caution shall be exercised in planning and installing such measures to avoid serious disruption of areas having potential as individual cultural sites.

There are no threatened or endangered species in the watershed that will be affected by the project.

One of the primary objectives of the project is to improve water quality. Approximately 80 percent of the cropland and animal waste pollutants will be controlled. Sediment influx to the Coalville Reservoir will be reduced by an estimated 3,900 tons annually. Nutrients attached to sediment will be retained on the land rather than delivered to receiving waters. Land treatment practices will reduce loss of water and erodible nutrients to the stream system, thereby reducing stream enrichment and conserving the nutrients for plant production.

Fish and wildlife habitats may be temporarily disturbed in some part of the 2,650 acres of cropland and grassland during installation of land treatment practices, but they will be restored to at least their previous value within one growing season. Both Coalville Reservoir and the David Creek stream system will be more suitable for species sensitive to sediment concentrations. More suitable cover will be provided for openland wildlife by land treatment measures such as diversions, grassed waterways, and critical area plantings. The value of woodland habitat will not decline.

The 2,500 feet of streambank protection proposed will temporarily roil adjacent stream water during installation. About 40 percent of the streambank (1,000 feet) to be protected is well shaded. This shading will be lost for at least 3 years after installation. Adjacent water temperature is expected to rise no more than 1°C during this period of exposure.

There are no wilderness areas in the watershed.

Scenic values will be complemented with the diversity added to the dairy farm landscape by conservation land treatment measures. Scenic values will be temporarily decreased at specific locations in the watershed during installation of the proposed measures.

No significant adverse environmental impacts will result from installations, with the exception of minor inconveniences to local residents during construction.

Alternatives

The planned action is the most practical means of protecting the watershed, stabilizing the eroding lands, and controlling animal wastes. Since no significant adverse environmental impacts will result from installation of the measures, no other alternatives, other than the no project one, were considered.

Consultation - Public Participation

Formal agency consultation began with the initiation of the notification of the State Single Point of Contact for Federal Assistance in February 1981. The Governor and the Division of Planning were also notified of the application for federal assistance. Agencies were again notified when planning was authorized in September 1981.

Scoping meetings were held in December 1981, June 1982, and August 1982, and interdiscliplinary efforts were used in all cases. Four federal agencies (FmHA, FS, F&WS, and EPA), three state agencies (Department of Fish and Game, Department of Cultural Resources, and Economic Development Commission), four county agencies, and several local groups were involved in part or all of the scoping and planning processes.

Specific consultation was conducted with the state Historic Preservation Officer and the county historical society concerning cultural resources in the watershed.

The environmental assessment was transmitted to all participating and interested agencies, groups, and individuals for review and comment in October 1982. Public meetings were held throughout the planning process to keep all interested parties informed of the study progress and to obtain public input to the plan and environmental evaluation.

Agency consultation and public participation to date has shown no unresolved conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this federal action will not cause significant local, regional, or national

impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the David Creek Watershed Plan is not required.

_____
(type in name)
State Conservationist

(Date) _____

§503.23 Sample Notice of Availability of a FONSI.

BILLING CODE: 3410-16

DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

.....(Name)..... Watershed, ...(State)...

AGENCY: Soil Conservation Service

ACTION: Notice of a Finding of No Significant Impact

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the .....(Name)..... Watershed, ..(County or Counties).., ...(State)....

FOR FURTHER INFORMATION CONTACT: ....(Name)....., State Conservationist, Soil Conservation Service, ..(Street Address).. ....., ...(City)....., ...(State)....., (Zip Code), telephone (Area Code and Number).

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, ...(Name)....., State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

(.....Name)..... Watershed, ..(State).....
Notice of a Finding of No Significant Impact

The project concerns (List measure purposes, i.e., a plan for flood control and watershed protection). The planned works of improvement include (List planned improvements, i.e., three floodwater retarding dams and accelerated technical assistance for land treatment).

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting .....(Name).....

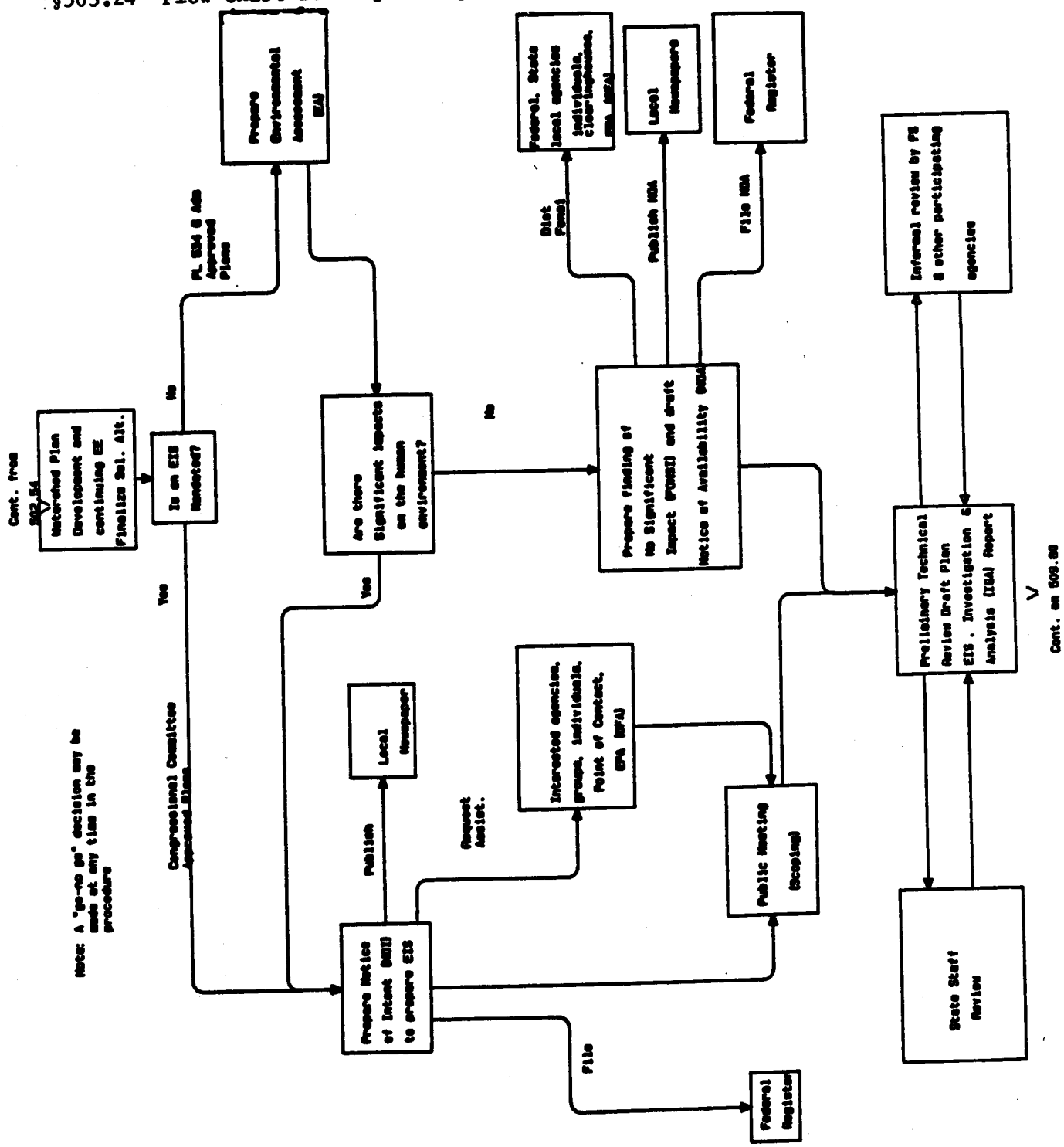
No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Signature)
(Type name and title of signee)

(Date:)

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904 - Watershed Protection and Flood Prevention - and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

§503.24 Flow Chart for Major Steps in Plan Development.



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PART 504 - ACCELERATED LAND TREATMENT

SUBPART A - GENERAL

504.01(b)

§504.00 Introduction.

(a) This Part includes all policy for planning, cost sharing, and implementing accelerated land treatment in watershed protection and water resource projects. Subpart A contains the definitions and general policy for plan formulation and plan selection. Subpart B provides specific policies applicable to watershed protection projects, and Subpart C provides specific policies applicable to water resources projects. Subpart D covers coordination during project planning and installation. Subpart E contains cost-sharing policy, and Subpart F covers implementation.

(b) Land treatment practices are one means of reducing soil and water resource problems. They should be considered alone and in combination with structural and nonstructural measures in formulating watershed projects. Financial and/or technical assistance may be provided for planning and installing accelerated land treatment practices. Financial assistance may be provided when funds from other USDA programs and State and local sources are not adequate to solve severe problems in a timely manner.

* *

§504.01 Use of land treatment measures.

(a) Land treatment practices in watershed projects are used to reduce identified soil and water related resource problems associated with floodwater, erosion, and sediment, and to further the conservation, development, utilization, and disposal of water and the conservation and utilization of land, thereby preserving, protecting, and improving the Nation's land and water resources and the quality of the environment.

(b) Accelerated technical and financial assistance may be used to address specific problems that warrant immediate action. P.L. 83-566 funds are to accelerate ongoing programs and are not to be used to replace funding from other programs or compete with them.

§504.02 Definitions.

(a) Watershed Protection Project - Projects that include only onfarm land treatment practices for the purposes of: protection of the soil resource base for sustaining productivity, conserving water, improving water quality, and reducing offsite sediment damages.

(b) Water Resource Project - Projects that include structural and/or nonstructural measures to address specific water resource problems and may include onfarm land treatment practices.

(c) Accelerated Land Treatment - Land treatment in addition to that of the ongoing programs in the project area.

(d) Required Land Treatment - Land treatment practices in the upstream watershed above structural measures needed to meet the legislative and statutory requirements and to ensure the structures will function as planned.

(e) Ongoing Programs - Existing Federal, State, and local programs other than P.L. 83-566 which provide cost sharing and/or incentives for the installation of land treatment practices.

(f) Associated Land Treatment Measures - Onfarm land treatment practices required in a water resource project to achieve the benefits claimed for irrigation or drainage project measures.

(g) Cost-Effectiveness - The least costly means of achieving a level of resource protection.

(h) System of Practices - Combinations of practices used to achieve various levels of resource protection.

(i) Evaluation Units - Areas with similar characteristics which require similar systems of practices to achieve various levels of resource protection.

(j) Incremental Analysis - A systematic approach to formulating cost-effective plans for achieving various levels of resource protection using the technique of layering practices or systems of practices.

(k) Enduring Practices - Those long-term practices that, when properly installed and maintained, remain on the land without reconstruction or reestablishment during the normal life span of the practice. Enduring practices are self sustaining and may be supplemented by management practices.

(l) Management Practices - Practices which are normally applied or used annually on the land. They are designed to use the skills of cultivation, proper fertilizer use, weed control, etc. in such a manner as to minimize soil and water problems.

§504.03 Scope and Intensity.

The scope and intensity of project planning may vary depending on the complexity of the problems and potential solutions and their significance to decisionmaking. Studies should include enough detail to identify areas eligible for assistance, develop and evaluate alternative plans, determine the selected plan, and establish cost-sharing arrangements. Normally, this will require a complete inventory of the problem areas. Areas with similar characteristics may be grouped for evaluation purposes.

§504.04 Plan formulation and evaluation procedures.

(a) Guidelines.

Land treatment in watershed protection and water resource projects must be formulated and evaluated using the "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies" (P&G).

(b) Discount rate.

The applicable discount rate required by P&G must be used for evaluating land treatment included in watershed protection and water resource projects.

(c) Formulation.

(1) A practical systematic procedure which leads to a cost effective plan to alleviate an offsite or public problem is to be used to develop alternatives. The process or procedure used will be described and discussed in the investigation and analysis section of the plan. Interdependent practices should be treated as one practice. Only conservation options using average management levels in the area and considered to be acceptable for installation if the watershed should be considered. The determination is an equal responsibility of the sponsors, the public and SCS.

(2) The formulation will be based on the problems for which planning was authorized, i.e. offsite sediment damages, one or more parameters generating water quality impairment, or some other damageable resource. Although benefits related to increased yields, reduced production costs or changed cropping sequence will not be used as the basis for formulating alternative plans, they will be evaluated and included in the overall economic analysis.

(3) The formulation of alternatives is to be based upon projected future without project conditions. The effects of other programs, laws, etc., are to be considered in projecting future without project conditions.

504.04(d)

(d) Cropping Changes.

The analysis should not consider significant changes in cropping sequence or land use conversion (except on Class VI through VIII cropland and lands with an E1 greater than 15 that erode at twice the allowable rate), unless it has been determined that the changes will take place. An economic evaluation of the on-site economic effects of land use conversion is not required, however, the off-site economic effects should be evaluated and displayed in the plan.

(e) Alternatives.

(1) As a minimum, the without project alternative, the alternative that reasonably maximizes net economic benefits (NED Plan), and the alternative that achieves an acceptable level of resource protection (RP Plan) are to be developed and displayed in the plan. As appropriate, other alternatives which provide different levels of resource protection should be formulated. Doing the economic evaluation on the formulated alternatives will determine which alternative is the NED plan.

(2) The expected rate (most likely) of land user participation should be determined for each alternative plan. The participation rate is used to determine the total costs and benefits of each alternative plan. The participation rates should be developed through the public participation process and documented in the plan-EIS.

(3) Four Criteria.

The four P and G criteria (completeness, effectiveness, efficiency, and acceptability) should be considered as conservation options are developed. Care must be taken to be sure that all practices, management and enduring, are included in each option so that it will function as planned and produce the effects projected. All costs, including operation, maintenance and replacement, expected to be incurred over the period of analysis are to be included.

This does not mean that each option must eliminate all problems and reach a predetermined level of resource protection. Also, it does not mean that only those practices desired by land users will be considered.

§504.05 Plan selection.

(a) The selected plan should be the cost-effective plan for achieving a defensible level of resource protection. For water resource projects, the Secretary of Agriculture must grant an exception for selecting an alternative other than the NED plan. For watershed protection projects, the Responsible Federal (SCS) Official (RFO) with the delegated authority to approve the plan may grant an exception for selecting a plan other than the NED plan if there is a sound basis for that decision.

(b) The rationale for granting an exception should be based on a judgment that the overall beneficial effects of added increments outweigh the overall costs. The basis for this decision should be fully documented by including the following information in the plan-EIS:

(1) A description of the NED plan.

(2) A description of the added increment.

(3) All adverse effects including the cost of the added increment.

(4) All beneficial effects of the added increment.

(5) The economic benefit-cost ratio of the added increment.

(6) The net economic benefits which would be sacrificed for obtaining the benefits of the added increment.

(7) A description of the other Federal, State, or local concerns being addressed by the added increment and the degree to which they are satisfied.

(c) The selected plan should be defined in terms of (1) the land area within each evaluation unit (map), (2) the system of practices for each evaluation unit, (3) the level of economic and other benefits produced by the system of practices for each evaluation unit, and (4) the average dollar per acre cost share for each evaluation unit.

SUBPART B - WATERSHED PROTECTION PROJECTS

§504.10 General

In addition to the requirements and policy in Subpart A, watershed protection projects should conform to the requirements in this Subpart.

§504.11 Purpose.

These projects are formulated to serve any of the following purposes:

(a) Protect the soil resource base for sustained productivity - Reducing soil losses towards a level that will maintain the soil resource base for sustained agricultural production provided significant offsite or public benefits exist.

(b) Water conservation - Increasing the efficiency of the use of water for agriculture to sustain agricultural production in water-short areas and for reducing diversions or withdrawals for agriculture to make more water available for other uses.

(c) Water quality - Reducing water use impairments of receiving waters by controlling agricultural related pollution. Water quality also pertains to groundwater contamination including salinity problems.

(d) Sediment damage reduction - Reducing severe offsite damages to agricultural land and rural community facilities.

§504.12 Incidental benefits.

Incidental benefits to other purposes may accrue onsite and offsite and may be evaluated, quantified, and considered when selecting a plan.

SUBPART C - WATER RESOURCE PROJECTS

§504.20 Purpose.

Water resource projects may include accelerated land treatment for flood prevention, drainage, irrigation, and fish and wildlife, as well as accelerated land treatment for watershed protection purposes (§504.11).

§504.21 Required land treatment.

(a) Land treatment required by Federal or State statutes, or USDA regulations shall be considered an interdependent part of the structural or nonstructural measures.

(b) Above reservoirs.

(1) The Act requires that local organizations shall "obtain agreements to carry out recommended soil conservation measures and proper farm (conservation) plans from owners of not less than 50 percent of the lands situated in the drainage area above each retention reservoir to be installed with Federal assistance" (Sec. 4(5)). USDA policy requires installation of land treatment practices necessary to ensure that at least 50 percent of the land upstream from any retention reservoir is adequately protected before beginning construction of the dam.

(2) "Proper farm plan" for nonfederal land shall mean a conservation plan that provides for the essential treatment to protect the resource base in accordance with the field office technical guide for onsite and offsite needs.

(3) To meet the above requirements, the required acreage must be determined. The required acreage is the land within the structure's drainage area not including the land under the structure site or its retention reservoir.

(c) Above channels.

Plan-EIS's are to provide for installation of land treatment necessary to ensure a stable channel without excessive sediment accumulation. Stream dynamics should be carefully considered in determining the amount of land treatment needed. Because of the delicate balance of the carrying capacity of a stream, it is important that the agronomic and geologic characteristics of the watershed be taken into account. The amount of land treatment needed to ensure a stable channel should be considered an interdependent part of the channel work.

§504.22 Associated land treatment.

Associated land treatment includes those practices necessary to ensure realization of benefits used in the economic justification of structural measures in the plan-EIS. Onfarm practices installed during the project installation period with assistance from the ongoing program are considered as non-project associated measures. Onfarm practices installed with P.L. 83-566 program technical assistance are considered as project associated measures.

SUBPART D - COORDINATION

§504.30 Introduction.

All planning and installation efforts need to be coordinated with other agencies, concerned publics, and landowners regardless of the type of plan involved. The state conservationist must assure that interested parties are given an opportunity to participate in the planning process. It is equally important to involve the affected landowners in the planning process in order to establish their needs and concerns.

§504.31 (Reserved.)

SUBPART E - COST SHARING

§504.40 Introduction.

(a) The need for cost sharing land treatment practices in watershed protection and water resource projects is to be determined on a project-by-project basis. Expected accomplishments from the ongoing program should be analyzed and projected over the expected life of the project. P.L. 83-566 cost sharing can be utilized when the ongoing programs fall significantly short of reducing severe problems and meeting the major land treatment needs within a reasonable time frame.

(b) The system of practices established in the selected plan will serve as the basis for providing financial assistance for installation. Cost sharing will be provided for enduring practices. One-time incentive payments may be provided for management practices only when needed to obtain acceptance of new methods of operation. The incentive payment must not provide a windfall benefit to the landowner.

§504.41 Eligible practices.

(a) Any practice or combination of practices listed in the National Handbook of Conservation Practices may be included in the selected plan system of practices for each evaluation unit. The watershed plan-EIS must describe the system of practices in each evaluation unit.

(b) P.L. 83-566 financial assistance (cost sharing) is limited to the installation of accelerated land treatment practices planned for the purposes of protecting the soil resource base for sustaining productivity, improving water quality, conserving water, and reducing offsite sediment damages.

(c) The treatment of critically eroding areas that significantly affect the design of structural measures is eligible for cost sharing if the erosion or sediment from the eroding areas significantly increases the cost of the structures, the treatment is more cost-effective than enlarging the structure, and the land user cannot reasonably be expected to install the treatment without assistance.

(d) P.L. 83-566 funds may be used to accelerate technical assistance for the planning and installing of any land treatment practices that are eligible for financial assistance, "associated" land treatment installed during the project installation period, and "required" land treatment.

504.41(e)

(e) The cost of installing, operating, and maintaining land treatment on federal land will not be paid from P.L. 83-566 funds. (For flood prevention projects, this restriction does not apply to the use of P.L. 78-534 funds on National Forest System lands.) Any supplementary funds needed to install and maintain land treatment will be sought by the land-administering agency through its usual budgetary process.

§504.42 Cost-sharing rates.

(a) Cost sharing will be established on the basis of the system of practices in the selected plan. The maximum amount for the system will be established as follows:

(1) For sustaining agricultural productivity and reducing erosion and sediment damages --

(i) Up to 65 percent of the average installation cost of the enduring practices in the system. The rate may vary by practice for the project, but the cummulative dollar cost-shared total for the enduring practices may not exceed 65 percent, or the existing rate of ongoing conservation programs, whichever is less, of the cost of the enduring practices in the selected plan for the evaluation unit; plus

(ii) Incentive payments for management practices are limited to a one-time payment not to exceed $10,000 per landowner or operator.

(2) For water quality (agricultural related pollution) or water conservation (irrigation) --

(i) Up to 50 percent of the average installation cost of the enduring practices in the system. The rate may vary by practice for the project, but the cummulative dollar cost-shared total for the enduring practices may not exceed 50 percent, or the existing rate of ongoing conservation programs, whichever is less, of the cost of the enduring practices in the selected plan for the evaluation unit; plus

(ii) Incentive payments for management practices are limited to a one time payment not to exceed $10,000 per landowner of operator.

(b) The average cost method (AC) will be used as a basis for payment for the installation of the selected system of practices. If special conditions exist (120-GM-404.30), the appropriate alternate method may be used.

(c) Alternative systems of practices other than the system in the selected plan may be cost shared if the alternative system of practices will achieve the same or greater results. The P.L. 83-566 cost sharing will be limited by the percent established in §504.42(a) of the actual cost of the

system of practices installed not to exceed the percent of the average cost or the cost-share amount that would have been received if the recommended system were installed. The maximum cost-share amount will be recorded in the watershed agreement.

(d) No more than $100,000 of cost-shared P.L. 83-566 funds may be paid to any one individual, family, corporation, or combination of these where the party has an interest in land regardless of where the land is located.

(e) P.L. 83-566 cost sharing on class VI through VIII croplands and on lands with an EI greater than 15 that erode at twice the allowable rate will be limited to permanent conversion to grass or trees. This does not apply to unique lands used to produce specialty crops that are not surplus and for which commodity payments are not available. However, significant offsite benefits must be present.

(f) All practices needed to assure that a system of practices will function and produce the projected benefits must be included in the cost estimates and are eligible for cost sharing if they have been approved for cost sharing in the area. For example, fencing and a water supply may be required if the benefits from grazing are to be realized when a conversion to grass is planned.

(g) The cost of accelerated technical assistance needed to install the recommended system of practices may be provided by SCS without charge to the land user. Project administration costs will be borne by the party which incurs them.

SUBPART F - IMPLEMENTATION

§504.50 General.

(a) Agreements between SCS and the sponsoring local organizations or individual landowners or operators may be used to provide cost-share assistance for installation of accelerated land treatment measures. Agreements may be (1) between SCS and the sponsoring local organizations, (2) between SCS and the sponsoring local organization with a long-term contract between the sponsoring local organization and the landowner or operator, or (3) a long-term contract between SCS and the landowner or operator.

(b) Plan-EIS's must specify the types of agreements to be used for installation of land treatment measures and how payments are to be made for each type of agreement to be used in the watershed project. All financially assisted land treatment measures with landowners or operators will be installed using long-term contracts with the sponsor or SCS. Procedures for executing these long-term contracts are in the General Manual (GM-120-404).

(c) Long-term contracts cannot be entered into if the land involved is within a unit that is under another program using contracts for conservation land treatment.

(d) Long-term contracts are to include all required cost-shared and noncost-shared practices called for in the plan-EIS that are needed to achieve the results claimed.

§504.51 Reporting. (Reserved)

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PART 505 - NONSTRUCTURAL MEASURES

SUBPART A - GENERAL

§505.00 Introduction.

(a) Nonstructural measures are one means of alleviating flood losses by modifying the susceptibility of land, people, and property to flood damage or modifying the impact of flooding. They should receive equal consideration as structural measures as a possible solution.

(b) Nonstructural measures for flood prevention should also be considered in combination with land treatment and structures. Nonstructural measures for flood damage reduction should be planned to the same degree of intensity and level of protection as structures and land treatment measures. Consideration must be given to the environmental consequences of any nonstructural work and provisions made for mitigation, if necessary.

(c) Nonstructural measures are to be consistent with SCS rules and regulations for implementing Executive Orders 11988 (flood plain management) and 11990 (wetlands) and with procedures developed by the Water Resources Council for evaluating beneficial and adverse effects of water and related land resource projects.

(d) Basic provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 apply to all nonstructural measure acquisitions and relocations. This Act also declares that relocation assistance of a displaced individual, business, or farm operation is a basic legal right.

§505.01 Preconditions.

Flood plain management through land use regulation such as zoning, building codes, or flood insurance, which are primarily administrative actions, does not lend itself to cost sharing under Public Law 93-251, section 73(b). To keep land use compatible with the level of protection or remaining flood hazard, the sponsoring local organizations must adopt or have adopted land use regulations that

meet the standards established for the regular National Flood Insurance Program as a prerequisite to financial assistance. These flood plain management features should be included as nonproject features of the plan.

§505.02 Required participation.

(a) Before any financial assistance is provided on nonstructural measures, sponsors must provide adequate assurance that significant threat to loss of life will be eliminated in 65 percent of the properties to be protected by nonstructural measures located in the high hazard area.

(b) Until the 65-percent requirement is met as stated in paragraph (a), no financial assistance is to be provided for installing nonstructural measures in the low hazard area.

(c) Where the plan-EIS includes a combination of structural and nonstructural measures, installation should be scheduled to eliminate a false sense of security that could occur when floodwater-retarding structures constitute the structural solution. When channel work, dikes, or flood plain acquisition is planned, financial assistance is not to be provided until conditions set forth in paragraph (a) have been met.

(d) Where there is no high hazard area, sponsors must provide adequate assurance that 50 percent of the nonstructural measures will be installed before financial assistance is provided.

(e) Adequate assurance is the signing of a relocation or flood-proofing contract or a similar instrument, between the owner and the sponsors.

SUBPART B - COST SHARING

§505.10 Eligible measures.

(a) Relocation of existing flood plain properties. Relocation of residential, commercial, industrial, and farm buildings may be the most economically, socially, and environmentally acceptable means of reducing or preventing flood damages. Relocation of existing flood plain properties is intended to reposition buildings on flood-free areas of the landowner's property or on other flood-free land. Land that is evacuated for relocation must have some type of deed restriction to prohibit building on that land. Where State law prohibits building in flood plains, deed restrictions will not be required. Purchase of other flood-free land is totally the responsibility of the sponsor and not eligible for cost sharing. Actual repositioning and related costs shall be based on replacement in kind and are eligible for cost sharing. This is an NED cost to be used in benefit-cost comparisons. Costs of measures taken to allow the relocated property to meet decent, safe, and sanitary requirements are eligible for cost-share at the relocation cost share rate but are not to be included as an NED cost. Cost of additional improvements beyond decent, safe, and sanitary requirements is a nonproject cost ineligible for assistance under the Act.

(b) Flood warning system. Wherever properties remain in a flood-prone area, a flood warning system may be used in conjunction with other measures to reduce flood damages. A flood warning system may include monitoring of weather or stream conditions coupled with a projection of anticipated flood depths. An alert or warning system may be included to notify flood plain occupants in time to protect property from damage, to evacuate the area, or both. An effective forcasting and warning system must be supported by an evacuation and emergency action plan. Federal cost-sharing assistance could include such items as design of the system, stream and rain gauges, the communications network, and the warning system. Costs of monitoring the flood warning system, training personnel, and testing are to be included as part of operation and maintenance. Cost sharing is not applicable to systems receiving assistance from another Federal agency.

(c) Flood proofing. This consists of work on individual buildings such as blocking off low-level entrances and windows, installing one-way valves in drains, strengthening walls and foundations, installing protective walls, and elevating the building or contents above the base flood elevation to minimize flood losses. A dike protecting an individual property is considered a nonstructural measure. Diking around groups of properties is considered a structural measure.

505.10(d)

(d) Flood plain acquisition.

(1) Flood-prone lands in developed areas may be acquired with program cost-sharing assistance. Developed land is defined as areas with existing residential development, commercial development, or both. Land that has been improved for urban use with existing streets, sewers, and waterlines, or where local authorities have granted permits for such improvements prior to an application for assistance under P.L. 566, is considered developed land. Undeveloped flood-prone lands cannot be acquired with program financial assistance. Flood plain lands developed after planning was authorized for a watershed are not eligible for cost sharing assistance.

(2) Tracts of land acquired as a nonstructural measure may be used for public benefit, such as recreation and fish and wildlife habitat preservation. Such land should be acquired by fee title, or perpetual easement. Facilities for public use on this land may be eligible for Federal cost sharing if they are consistent with existing program requirements. Land acquired as a nonstructural measure may also be used for other public purposes if the following conditions are met:

(i) The land is unsuitable for public recreation or fish and wildlife habitat, or additional public land for these purposes is not needed.

(ii) The proposed use is compatible with remaining flood hazards and project purposes, and land use regulations will be adopted to maintain such use.

(iii) Federal cost sharing is limited to the value of the development rights. This value is defined as the difference between the current appraised value and the value under restricted use.

§505.11 Cost-share rates.

(a) Section 103(b) of Public Law 99-662 requires that the non-Federal share of the cost of nonstructural flood control measures shall be 25 percent of the cost of such measures. The non-Federal interests for any such measures shall be required to provide all lands, easements, rights-of-way, dredged material disposed areas, and relocations necessary for the project, but shall not be required to contribute any amount in cash during construction of the project. Accordingly, the local share for the installation of nonstructural measures for flood protection will be 25 percent composite cost-sharing rate considering installation cost, technical or engineering assistance, landrights, and administration and overhead costs. Relocation cost-share rates will be computed in the same manner as that used for structural measures.

SUBPART C - OPERATION AND MAINTENANCE

§505.20 Responsibilities.

(a) Operation and maintenance is the responsibility of the sponsoring local organizations and is not eligible for Federal cost sharing. Operation, maintenance, inspections, and replacement will be conducted consistent with established rules and regulations outlined in the National Operation and Maintenance Manual.

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PART 506 - STRUCTURAL MEASURES

SUBPART A - GENERAL

506.01

§506.00 Introduction.

(a) An integral part of the planning process is the consideration of structural measures. They should be considered equal to land treatment or nonstructural measures in plan formulation. In some instances, structural measures alone may satisfy objectives. In any case, they must be considered to ensure that the full range of alternatives for solving the identified resource problems are analyzed.

(b) Structural measures are project works of improvement installed and maintained for flood prevention, drainage, irrigation, recreation, fish and wildlife, municipal and industrial water supply, water quality management, or other nonagricultural water management purposes. Structural measures (1) ordinarily require group action for their installation, (2) always require group benefits, (3) are not usually included in individual farm or ranch conservation plans, and (4) are installed, operated, and maintained by a project sponsor.

(c) Vegetative measures planned and installed for land stabilization, may be classed as structural measures for flood prevention when they meet the requirements outlined in §506.15 of this manual.

§506.01 Special considerations.

Structural measures will be installed with minimal damage to the existing environment. Landscape measures that preserve, maintain, or enhance the appearance and function of structural measures are part of their planning, design, construction, and operation and maintenance. Structures should be landscaped to harmonize with existing surroundings.

SUBPART B - QUALIFICATIONS AND CRITERIA

§506.10 Beneficiaries.

To qualify for Federal cost-sharing assistance, structural measures must provide direct measurable benefits to two or more beneficiaries; however, a drainage or irrigation outlet may be provided to each noncontiguous tract in a single farm unit.

§506.11 Land treatment.

Before a dam is constructed, needed land treatment must be installed to ensure that at least 50 percent of the land upstream from the floodwater-retarding structure or a multiple-purpose dam will be adequately protected. This requirement is in addition to requirements of Public Law 83-566, Sec. 4 (5). The state conservationist may require a higher percentage of land protection if conditions warrant.

§506.12 Irrigation.

(a) Direct tributary watershed land that produces runoff and sediment flowing through an irrigated area normally shall be included in the project area. The state conservationist may make an exception if the runoff and sediment cause little or no damage.

(b) Watershed land above the point or points of diversion serving the irrigated land may be excluded from the watershed or subwatershed area if (1) the landowners have the needed water rights and the irrigation water supply is adequate in quantity and quality to supply the essential needs for efficient irrigation of those lands that are now or will be irrigated after the contemplated improvements are installed; and (2) the watershed that is the water supply source has adequate cover and is managed so that watershed conditions do not adversely affect the successful operation and maintenance of the works of improvement in the irrigated area.

(c) Contemplated improvements and the number of beneficiaries represented by the local sponsors are so large that the improvements would not normally fall within the scope of assistance provided by other USDA assistance programs.

§506.13 Storage capacity.

(a) Capacity is limited by the Act to 12,500 acre-feet for floodwater detention and to 25,000 acre-feet total capacity (§500.12).

(b) Structural measures that store water to solve major water quality problems downstream may be included in the watershed project only after such purposes and plans are approved by the Environmental Protection Agency.

§506.14 Permits.

Many states have laws, procedures, and regulations relating to the design, construction, and operation of those structural works that can be installed under the Act. The local sponsors must obtain all necessary State and Federal permits and authorizations to comply with procedures and regulations relating to the types of construction involved.

§506.15 Land stabilization measures.

(a) Land stabilization measures are those used to stabilize critically eroding areas and may be a grade stabilization structure or a vegetative measure. These measures are eligible for Federal cost-sharing assistance at the rate provided for structural measures for flood prevention. Beneficial effects must exceed adverse effects.

(b) Where vegetation is used it will not be harvested, except for management purposes, for the estimated life of the project as specified in the operation and maintenance agreement.

(c) Sponsors will obtain title to or easements on and access to the land to be treated, install the measures in accordance with the terms of a project agreement with SCS, and operate and maintain the works of improvement in accordance with the terms of an operation and maintenance agreement with SCS.

§506.16 Establishment of vegetation.

SCS assumes responsibility for work to establish cover and/or landscape features required for structural measures. This responsibility continues until SCS determines that any planned vegetative cover is adequate. The determination is to be made by the state conservationist before the vegetative component of a structure is turned over to the sponsors for operation and maintenance. Where an adequate cover is not established within 2 years of the completion of the construction contract, the state conservationist is to document the conditions and prepare a justification before proceeding.

☆ U.S. Government Printing Office : 1985 -490-918/40035

SUBPART C - RECREATION AND FISH AND WILDLIFE

§506.20 General.

(a) For structural measures for recreation and fish and wildlife purposes to be eligible for assistance, they must be an integral part of the watershed project that includes structural measures for the purposes covered in §500.10 of this manual. Water resource improvements and developments are eligible for assistance, as well as, recreational facilities associated with developments.

(b) P.L. 566 financial assistance for recreation and fish and wildlife in any project may not exceed 30 percent of the total estimated P.L. 566 project cost.

(c) Financial assistance for recreational facilities will be limited to the minimum basic facilities necessary to make use of the area for its intended use. This would include parking, sanitary, and other facilities needed to accommodate the public.

§506.21 Water resource improvements.

(a) Recreational water resource improvement creates or improves a water area for all forms of recreation associated with water. A fish and wildlife water resource improvement creates or improves a water area primarily for the preservation, production, or harvest of fish and wildlife. An improvement is simply added water storage and associated features. No basic facilities are included.

(b) Improvements may include structural features in reservoirs to control water levels for fish and wildlife habitat improvement or recreation, level ditches, pits, ponds, fish ladders, and fish shelters. Also included is stream channel work that will enhance recreation or fish and wildlife resources in and along streams. Marsh and pit developments that provide pools in marshes and nesting areas for migratory waterfowl and aquatic mammals can be included in this category. It is important that the water quality is adequate for the intended use.

(c) The number of water resource improvements in a project is not limited; however, P.L. 566 limits the number of developments as outlined in §500.12(f) of this manual.

(d) The improvement must be available to the general public (not limited to certain classes or organized groups), unless the improvement is for fish and wildlife propagation, preservation, or protection. This includes landrights which guarantee public access to

506.21(e)
the entire reservoir area, access corridor(s) of adequate width and quality to safely accommodate public use of the site to one or more locations on the reservoir perimeter and provide space for parking areas and sanitary or other facilities needed to accommodate the public.

(e) Adequate sanitary facilities must be provided to serve the public use contemplated. If public use is not contemplated, adequate provisions should be made to exclude the public, if necessary, to prevent the creation of unsanitary conditions. The provisions for water pollution control set forth in Executive Orders 11507 and 11514 must be satisfied. In the absence of adequate local standards, those recommended in the Department of Health, Education, and Welfare's Publication No. (HSM) 72-10009, "Environmental Health Practices in Recreational Areas," will be used as a guide for planning, design, operation, and maintenance.

§506.22 Water resource developments.

(a) The term "development" applies to either recreation or fish and wildlife unless otherwise indicated. It is one in which P.L. 566 technical and financial assistance funds are provided for landrights or facilities, or both. A project development may be associated with a retention reservoir, an existing lake, or a well-defined reach of a perennial stream. A project development normally shall not include the entire stream system of a watershed. Adequate and appropriate facilities for planned recreational use shall be included.

(b) Recreation facilities are eligible for P.L. 566 assistance when they are part of a project development. Only those facilities to be owned, operated, and maintained by the sponsoring local organizations are eligible for cost sharing. This includes parking areas and sanitary or other facilities needed to accommodate the public. Landscaping and other vegetative treatment measures to preserve and protect the area of use by people or fish and wildlife also are eligible.

(c) All recreation facilities for which Federal cost sharing is provided shall be designed and constructed to ensure accessibility and usability by physically handicapped people in accordance with Public Law 90-480. Guidelines are found in 36 CFR 1190, "Minimum Guidelines and Requirements for Accessible Design." They must comply with appropriate health standards as stated in §506.21(e) of this manual.

(d) Construction of private facilities within the minimum landrights boundary is prohibited except for essential service facilities which are constructed or operated by private concessionaires on a controlled permit basis to serve the planned use of the improvement or development.

506.23 Private developments.

(a) If the sponsors grant permission to any individual, group, corporation, or other interest to add storage capacity to a reservoir for which P.L. 566 financial or credit assistance were given for purposes such as private recreation or nonagricultural land value enhancement, the sponsors must acquire landrights to permit access to the entire reservoir, provide adequate access corridors(s) to safely accommodate public use of the site at one or more locations on the reservoir perimeter, and provide space for parking areas and santirary and other facilities needed to accommodate the public.

(b) In addition the sponsors must obtain water rights as required by State law for the planned use; provide public access, without discrimination, to the area described in §506.23(a) and to any facilities thereon; provide an adequate parking area and boat launching ramp, where needed, to accommodate the public; and provide and maintain adequate public sanitary facilities in compliance with local and State safety and health regulations.

(c) The sponsors must be responsible for all costs for additional storage, facilities, and access; limit admission charges and use fees to the amount necessary to amortize costs and provide adequate operation and maintenance; prohibit construction of private facilities on public use areas and prohibit construction of any facility on the dam and appurtenances thereto; and limit installation of private facilities on periphery of the reservoir to those meeting SCS criteria established to ensure proper functioning of the structure and to protect the environment.

506.24 Potential Use

It is important that the sponsors protect the water quality and the health of individuals whenever there is potential for incidental recreational use of project works of improvement. The plan-EIS should indicate which sites, if any, have potential for incidential recreational use. Whenever this potential exists, sanitary facilities that meet State and local health requirements must be provided to protect the water quality. If there is no reasonable assurance of such protection, the sponsors will prohibit use.

SUBPART D - AGRICULTURAL WATER MANAGEMENT

§506.30 General.

Agricultural water management includes drainage, irrigation, and other water management methods. Structures installed for these purposes are installed on non-Federal land by responsible local organizations to serve groups of landowners. They ordinarily require group action for their installation and maintenance and always require group benefits for their justification. On Federal land, structures are installed and maintained in accordance with mutually satisfactory arrangements between the sponsoring local organizations, the land administering agency, and SCS.

§506.31 Drainage.

(a) Drainage projects include measures planned primarily to increase the efficiency of land use on farms or ranches by the rehabilitation and improvement of existing drainage systems or the construction of new drainage systems to serve cropland, woodland, and grassland. Drainage is accomplished by lowering the water level in areas where naturally high water tables, normal precipitation, normal tidal action, seepage, or excess irrigation water limit agricultural production. Drainage projects include measures planned for surface drainage, subsurface drainage, or both.

(b) Surface drainage is the removal of excess water above the surface of the ground. Subsurface drainage is the removal of excess ground water below the surface of the ground. Such projects are on watershed or subwatershed areas composed in part or totally, of lands that have been drained or proposed to be drained. The area may be a water problem area whose boundaries consist of artificial barriers that prevent the inflow of water originating outside of the area. Drainage facilities are primarily for rural areas.

(c) Structural measures for drainage include, but are not limited to, the construction or rehabilitation of artificial channels (open drains) or covered (tile) drains and the rehabilitation and improvement of natural channels. The drains may have gravity outlets or may convey drainage water to pumping plants for disposal. These measures will include all component parts of the group drainage system such as (1) drops, (2) checks, (3) flumes, (4) control gates, (5) manholes, (6) appurtenant control and stabilization measures, and (7) pumping plants and appurtenances to provide outlets for gravity drains or to reduce and control accumulations of ground water related to subsurface drainage and salinity problems.

§506.32 Irrigation.

(a) Irrigation projects include measures planned primarily to increase the efficiency of water use on land, cropland, grassland, and woodland and to obtain the maximum practical benefits for existing investments in irrigation. Such projects involve watershed or subwatershed areas composed partly or totally of lands irrigated or proposed to be irrigated. The area may be a water problem area whose boundaries may or may not coincide with surface drainage divides.

(b) Structural measures for irrigation include, but are not limited to, (1) water supply reservoirs, (2) diversion dams, (3) pumping plants, (4) sluices, (5) canal headworks, (6) canal and laterals, (7) main distribution system pipelines to convey project water to each farm unit or noncontiguous tract within a farm unit, (8) canal lining and lining or sealing storage reservoirs, (9) appurtenant sediment control and stabilization measures, (10) measuring devices, and (11) such other measures needed to conserve and efficiently use present and potential water supplies and to convey them to individual farms with the least practical loss.

§506.33 Other water management.

(a) Other agricultural water management may include group water supply and distribution systems primarily for agricultural use in rural areas, recharge of ground water aquifers, salt water intrusion control, and stabilization of annual streamflow through phreatophyte control or other means for rural community use, livestock, orchard and crop spraying, and other similar agricultural purposes.

(b) Structural measures for other water management include, but are not limited to, (1) water supply reservoirs, (2) group distribution systems, (3) measures for control of saline water intrusion, (4) eradication of salt cedar and other phreatophytes, (5) water spreading systems and other measures to recharge ground water, and (6) such other measures needed to conserve and efficiently use present and potential water supplies for planned agricultural or nonagricultural purposes.

SUBPART E - LANDRIGHTS

§506.40 Introduction.

(a) The Act does not provide authority for land acquisition by the Federal Government. Sponsors must acquire all landrights needed for investigations, surveys, installation, operation, maintenance, and inspection of works of improvement to be installed with Federal financial assistance on non-Federal lands. No cost sharing will be provided for engineering, legal, or administrative costs incurred by the local organizations for acquiring landrights, except for real estate appraisals in connection with cost-shared landrights acquisition, including direct costs associated with appearing as an expert witness in condemnation proceedings on the agency's behalf.

(b) The state conservationist is to furnish the sponsor a land rights work map showing the minimum area and rights needed for each project measure. Details are found in the National Contracts, Grants, and Cooperative Agreements Manual §511.10.

§506.41 Requirements for dams.

(a) Sponsors should be made aware that during a storm of some frequency water may reach an elevation equal to or greater than the top of the dam. On privately owned lands, the state conservationist will require that landrights be acquired for the structure, spillways, and reservoir area; areas adversely affected by changed waterflow, including, but not limited to, areas for spillway discharge; areas for environmental and protective features; and other areas needed for activities such as design, operation and maintenance, construction, spoil disposal, borrow, entry and exit, and diversion of water. If the structure has an emergency spillway, the state conservationist will require landrights upstream from the dam for at least all the area below the higher elevation of either (1) the crest of the primary emergency spillway, or (2) the maximum elevation of the water surface attained during passage of the 100-year, 24-hour stormflow through the structure. This elevation shall be known as the flowage line. If the dam does not have an emergency spillway, the state conservationist will require that landrights be acquired up to an elevation at least equal to the top of the dam.

506.41(b)

(b) On publicly owned lands, the sponsors must acquire special use or occupancy permits from the appropriate land managing agency before any planning or implementation of structural works of improvement are undertaken. The sponsors must apply for permits with sufficient lead time to ensure an orderly installation of the project.

(c) In determining landrights needed for the structure, the state conservationist will consider all pertinent circumstances, including present and likely future land use and the extent of potential damage from flooding. The state conservationist shall not authorize P.L. 566 construction assistance for the structure if it could likely endanger human life by flooding a residence or public roads.

(d) Fee simple title or term easements are required for the dam, spillways, and pool areas. Flowage easements in lieu of fee simple title may be obtained for the floodpool (temporary water storage) only. Temporary easements in lieu of permanent rights-of-way may be obtained where needed to install measures to mitigate unavoidable adverse landscape resource effects.

(e) Additional criteria which must be met before installing any structure whose installation could result in flooding of railroads, highways, public roads, dwellings, buildings, water sources, public utilities, burial sites, and historic sites or monuments are found in §506.43 of this manual.

§506.42 Requirements for channels.

(a) The state conservationist will ensure that the minimum area for landrights acquired for the channel work will include: areas within the channel's designed top width and berm width necessary on each channel bank to ensure stability of the channel, channel banks, and side slopes; areas needed for installation, inspection, design, operation and maintenance, ingress and egress, and disposal and diversion of water; areas needed for environmental protection features; and other areas adversely affected by changed streamflow characteristics or induced flooding. Fee simple title or term easements are to be acquired for the channel itself; appurtenances; any needed diversions; and areas needed for ingress, egress, and travelways to allow for operation and maintenance of the works of improvement. In addition, fee title or easements are needed for such additional areas, including downstream areas, that may be subjected to adverse effects by changed streamflow characteristics, such as extended flooding of low-water crossings and more than negligible flood damage to property.

(b) Term easements are to be acquired for areas in addition to those covered in (a) above as needed for construction performance, including areas for construction ingress and egress, equipment staging areas, and parking lots.

(c) Permit or term easements are to be acquired for areas in addition to those covered in (a) and (b) above as needed for surveys and investigations and for one-time operations such as spoil spreading areas.

§506.43 Additional Criteria - Induced Flooding.

(a) Flooding of roads and railroads.

(1) Highways and public roads may not be flooded below the elevation of the flowage line except when the highway or public road is closed for a brief period and there is an alternate all-weather route that can be used with a minimum of inconvenience. A written right or permission to flood the highway or public road must be obtained from the state, county, or agency having jurisdiction over the highway or public road. The written right or permission may be an easement, court order, or, if those cannot legally be given, a permit. The written right or permission must be accompanied by a citation of the applicable State statute or a written opinion of the state attorney general stating that the State, county, or agency granting the permission has legal authority to allow the road to be closed by flooding.

(2) Dwellings affected by the temporary closings of the flooded road must be accessible by an all-weather road that will not flood more frequently than it did under preconstruction conditions. If a road providing the only access to a dwelling is at a lower elevation that the flowage line, an historical record of preconstruction flooding is to be developed and documented in the case file.

(3) In exceptional cases, public roads may be located at the same elevation as the flowage line (such as in the case of a road located in or across the emergency spillways of dams) if:

(i) Because of the nature of the terrain adjacent to the dam area (such as in mountainous areas), the road must be located so that one or more points of the road crown is at or near the flowage line, and

(ii) Natural flooding of one or more points along the road above or below the project area would make the road impassable before any flooding caused by the structure would take effect, and state law permits flooding of roads under those conditions.

506.43(a)(3)(iii)

(iii) Flow through the emergency spillway is at a lesser frequency than the frequency the road flooded prior to construction of the road structure.

(4) Railroads that are to remain in use may not be flooded.

(b) Flooding of buildings.

(1) The state conservationist may not allow dwellings, including basements, or any other buildings that contain valuable property or that may be used as permanent or seasonal living quarters, to remain in the area requiring flowage rights unless they are floodproofed or otherwise protected from damage by the storm event used to establish the flowage right elevation. Before financial assistance is made available to a sponsor, the dwelling or building must be demolished, relocated, raised, or protected by a flood wall, and it must be done so that there will be adequate drainage and no unreasonable ponding of water.

(2) If requested by the sponsor and approved by the state conservationist, other buildings such as barns and garages may remain in the flowage easement area. Usually, approval for flooding buildings of this type will not be granted if the building is used for the storage of feed, perishables, supplies, equipment, or other items that would be substantially damaged by flooding. This also applies to any building used for other purposes if flooding would cause an interruption or delay of operations carried on in the building or cause a death, or damage to the building's contents.

(c) Flooding of water sources.

The state conservationist may not allow the flooding of water sources such as springs or wells stream diversions, etc, or the interuption of delivery, conveyance, and disposal systems until sponsors have complied with state laws, ordinances, and regulations relating to water sources.

(d) Flooding of utilities.

The state conservationist may not allow public or private utilities to be flooded unless the utility company or owner has determined that the function of the facility will not be affected adversely and a subordination agreement has been obtained.

(e) Flooding of burial and historical sites.

(1) The state conservationist may not allow burial sites such as cemeteries and private family plots to be flooded unless disinterment and reburial has been accomplished in accordance with State law.

(2) The state conservationist may not allow historical sites or monuments to be flooded until procedures for such property has been complied with. The state conservationist is to assist the sponsor in obtaining permission to survey for or recover archeological or historical resources in accordance with the General Manual 420-401.

§506.44 Requirements for improvements and developments.

(a) Fee simple title is required for all privately owned land acquired for recreation or fish and wildlife purposes in a water resource improvement or a project development where P.L. 566 cost-sharing assistance is provided for the recreation or fish and wildlife purpose. Fee simple title is preferred for all non-Federal public land needed; however, if it is not feasible to obtain fee title to the non-Federal public land required, the granting of a perpetual easement generally will suffice. An acceptable permit from the agency administering the land will be sufficient for landrights required on Federal land.

(b) Landrights required for developments include the dam site, emergency spillway and its flow area, and land in the reservoir area up to at least the crest of the emergency spillway, maximum water elevation reached during passage of a 100-year frequency storm or 100 feet horizontally from the perimeter of the designed permanent pool, whichever is greater. Acquisition by fee title, however, may be terminated 200 feet upstream from the head of the beneficial pool in each arm of the reservoir.

(c) At least one access road must be provided to all principal recreation areas. Rights-of-way required for public utilities, such as powerlines and pipelines needed to service recreation or fish and wildlife developments, must be acquired by at least a perpetual easement.

§506.45 Costs.

The cost of landrights includes all costs for the following items, including elements of work involving planning, design, acquisition, construction, mitigation for fish and wildlife habitat, and administrative services directly associated with landrights:

(a) All expenditures made in acquiring landrights and other interests in land and related relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et. seq., as implemented by 7 CFR 21). Costs over and above replacement in kind are treated as financial costs for nonproject purposes.

(b) Removal of buildings, improvements, or timber for salvage or relocation or the construction of dikes or other protective works in lieu thereof.

506.45(c)

(c) Salvaging, moving, or reconstruction of fences not needed for the proper operation, maintenance, public safety, or inspection of the works of improvement.

(d) Changes of existing telephone, power, gas, water and sewer lines, or other utilities but not including changes to existing irrigation or drainage facilities made necessary by the works of improvement.

(e) All new roads and changes of existing public road or private road or railroad bridges, culverts, and other crossings, including approaches except reinforcing, underpinning or reconstructing existing bridge piers and abutments of public roads and railroads necessitated by modification of the channel. This does not include cost for the excavation and installation of a closed conduit crossing of a public road or railroad when it is an integral part of an overall closed conduit structural measure.

(f) All modifications and changes of roads and railroads that are to remain serviceable after project installations.

(g) Premiums for construction liability insurance when someone other than the construction contractor is made the principal.

SUBPART F - WATER RIGHTS

§506.50 General.

Water rights are the responsibility of the sponsoring organizations. To fulfill their obligations, the sponsors must present satisfactory evidence that the water rights are held or can be obtained by landowners or their organizations or associations for the quantity, seasonal use, and storage of water, if required, to supply contemplated need. They also must obtain the water rights, before the project agreement is signed, to enable the proposed measure to function effectively.

SUBPART G - COST SHARING

§506.60 General.

Cost-sharing arrangements for carrying out a watershed project will be documented in the watershed agreement and will prevail throughout the installation period of a project unless subsequently modified by a supplemental watershed agreement. The use of P.L. 83-566 and other funds is set forth below.

§506.61 Engineering services.

(a) P.L. 83-566 funds will pay the entire cost of engineering services including construction inspection for flood prevention and water quality management purposes, provided any structure for the latter purpose has been approved for inclusion in the plan-EIS by the Environmental Protection Agency. Also, up to 100 percent of the engineering services cost for agricultural water management, public recreation, and water resource development or improvement associated with public fish and wildlife purposes can be paid by P.L. 83-566 funds.

(b) Up to 50 percent of technical assistance and engineering costs applicable to recreational facilities for public recreation and fish and wildlife purposes can be paid by P.L. 83-566 funds.

(c) SCS will (1) provide construction inspection for elements of structural works of improvement on which P.L. 83-566 construction funds are spent and (2) inspect other features of project installation where malfunction or failure could adversely affect the stability or functioning of cost-shared items of work. SCS inspection of local cost items is solely for the latter purpose and does not relieve the sponsors of their responsibility for providing, without P.L. 83-566 cost sharing, construction inspection necessary to ensure that the installation conforms to contract requirements.

§506.62 Construction.

P.L. 83-566 funds shall bear the entire cost of construction of measures applicable to flood prevention, including practices for land stabilization measures, and up to 50 percent of such costs applicable to irrigation, rural water supply, single purpose drainage measures, public recreation, and public fish and wildlife, including associated basic recreation facilities. For multiple-purpose flood control-drainage channels, the cost-share rate will be a maximum of 50 percent of the

construction costs. This is applicable to all projects authorized for planning after October 1, 1985. Such costs applicable to municipal or industrial water supply, water quality management (other than for land treatment), or other nonagricultural water management purposes cannot be cost shared at this time.

§506.63 Project administration costs.

All SCS administrative costs for project installation are paid by P.L. 83-566 funds. They may include the cost of awarding and administering contracts if SCS contracts for the construction of structural measures. Sponsors will pay any costs for project administration they incur.

§506.64 Relocation assistance costs.

A percentage of the cost of relocation payments to comply with P.L. 91-646, based on the ratio of total P.L. 83-566 funds to total project costs excluding relocation payments, will be paid by P.L. 83-566 funds.

§506.65 Mitigation costs.

(a) Cost for mitigation measures will be allocated to purposes at the same rate as the structure causing the loss. Cost sharing will be based on purpose.

(b) Cost sharing is authorized by the Act for landrights needed for mitigation of fish and wildlife habitat losses. The rate is not to exceed 50 percent of the cost of land, easements or rights-of-way acquired. Although authorized by the Act, authority to obligate funds to implement this provision has not been granted.

§506.66 Water resource improvements.

Cost-share assistance can be provided for any number of reservoir water resource improvements that are not part of a project development when the plan provides:

(a). For sponsors to furnish adequate facilities for the anticipated recreational use without P.L. 83-566 cost-sharing assistance.

(b) For sponsors to acquire landrights without P.L. 83-566 assistance under the same requirements as for project developments,

except that the obtaining of a perpetual easement on nonfederal public land will suffice if obtaining by fee title is not feasible.

§506.67 Water resource developments.

(a) Cost sharing is available for up to 50 percent of the cost of landrights for public recreation or fish and wildlife developments, but no part of such costs is available for any other purpose.

(b) Existing public roads within a planned recreational development area may be improved with cost-sharing assistance to serve as access roads. Payment for the right to use an existing public road for access to a recreation or fish and wildlife area is not eligible for cost-sharing assistance. In-kind contributions of an existing road are acceptable.

SUBPART H - OPERATION AND MAINTENANCE

§506.70 General.

(a) As a condition to obtaining Federal financial assistance for the installation of measures, the sponsors must make arrangements satisfactory to SCS in accordance with this part for defraying costs of operating and maintaining such measures. Sponsors remain responsible for operation and maintenance until expiration of the O&M agreement. However, this does not relieve the sponsors of their liability, which continues throughout the physical life of the measure or as may be required by Federal, State, and local laws, or both.

(b) All structural measures are to be operated and maintained by the local sponsoring organizations according to an O&M plan agreed to before the start of construction. The National Operation and Maintenance Manual describes local and SCS responsibilities. The National Grants and Cooperative Agreements Manual, Subpart H, contains property management standards which relate to the use and disposition of property furnished by SCS or acquired in whole or in part with SCS funds.

(c) No WP-08 or FP-03 funds may be spent on projects that have been closed out. If a deficiency is found and repairs are deemed necessary, the Chief must grant authorization to reopen the project before funds may be spent. (See §501.64) In other situations, CO-01 or sponsor funds should be used.

SUBPART H - OPERATION AND MAINTENANCE

506.72

§506.70 General.

(a) As a condition to obtaining Federal financial assistance for the installation of measures, the sponsors must make arrangements satisfactory to SCS in accordance with this part for defraying costs of operating and maintaining such measures. Sponsors remain responsible for operation and maintenance until expiration of the O&M agreement. However, this does not relieve the sponsors of their liability, which continues throughout the physical life of the measure or as may be required by Federal, State, and local laws, or both.

(b) All structural measures are to be operated and maintained by the local sponsoring organizations according to an O&M plan agreed to before the start of construction. The National Operation and Maintenance Handbook describes local and SCS responsibilities. Part 1041-72 of the SCS Property Management Regulations contains property management standards which relate to the use and disposition of property furnished by SCS or acquired in whole or in part with SCS funds.

(c) No WP-08 or FP-03 funds may be spent on projects that have been closed out. If a deficiency is found and repairs are deemed necessary, the Chief must be contacted for authorization to reopen the project. In other situations, CO-01 or sponsor funds should be used.

§506.71 Operation.

Deleted by Amendment 7

(a) During the planning stage, a reservoir operations study for multiple-purpose structures should be made to determine water use limits. Watershed plans should specify the operating plan for the reservoir based on anticipated evaporation and seepage losses. In general, water stored in recreational pools of multiple-purpose reservoirs by P.L. 566 assistance should not be withdrawn and used for any other purpose.

(b) In the operation of recreational development, sponsors may charge user fees if the fees are limited to no more than what is needed to amortize the sponsors' share of the installation costs and provide adequate O&M. (Property Management Regulations 104I-72.100-5(a)).

§506.72 Inspection.

It is important that each structure be inspected annually and after each major storm by the sponsors. Records are to be kept of these

506.72

inspections and SCS notified of any problems. The National Operation and Maintenance Handbook gives more detail on inspections. (Also see Property Management Regulations 104I-72-100-7.)

Deleted by Amendment 7

§506.73 Maintenance.

Maintenance includes performance of work and the application of measures to prevent deterioration as well as repairing any damages. It includes both the routine and recurring needs such as repainting exposed surfaces or fertilizing vegetation and the more complex, costly, and skilled work required to make needed repairs or to replace concrete, steel, or earthen portions of structural measures. Skilled labor, heavy equipment, materials, and costly specialized machinery may be required. The cost can usually be minimized by performing maintenance when it is first needed, which may be at any time and usually can be expected to be in proportion to the severity of storms. The repair of damages to completed structural measures and to established vegetation caused by deterioration, flash floods, abnormal rainfall, or vandalism is maintenance regardless of whether it occurs immediately or several years after a works of improvement is completed or established.

§506.74 Remedial work.

(a) Remedial work is defined as work needed to mitigate a problem caused as a direct result of a mistake or misjudgment on the part of SCS during the design or construction phase of a measure or due to latent site conditions unknown to SCS at the time of installation. Problems that could have been prevented by utilizing new products, new engineering concepts, or new criteria developed subsequent to installation of the original measure is not necessarily considered a mistake or misjudgment on the part of SCS.

(b) Prior to undertaking any remedial work on structural measures, an engineering report is to be prepared and approved in accordance with the National Engineering Manual 210-504.

(c) Plans and specifications for remedial work are to be approved in accordance with the National Engineering Manual 210-501.

(d) SCS may provide cost-sharing assistance for needed remedial work at the same cost-sharing rate as the original construction.

(1) Cost-sharing assistance for remedial work may be approved by the state conservationist if:

Deleted by Amendment 7

506.75(a)

(i) The estimated construction cost of the work does not exceed $100,000;

(ii) Installation of the original practice was completed less than 5 years prior to initiation of the remedial work; and

(iii) Funds are available to do the work.

(2) If all the conditions cited in (1) above are not met, approval from the Chief is required prior to the expenditure of funds.

§506.75 Establishment of vegetation on structural measures.

SCS assumes responsibility for work needed to establish vegetative cover and/or landscape features that are planned for structural measures. This responsibility continues until SCS determines that any planned vegetative cover is adequate, but no longer than 2 years following completion of the construction (or vegetative) contract.

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PART 507 - WATERSHED AGREEMENT

SUBPART A - GENERAL

§507.00 Legal implications.

(a) A watershed agreement is the legal document that records the responsibilities that the local sponsors and SCS will bear for installing the plan-EIS. The plan-EIS is annexed to and becomes part of the watershed agreement. This annexation permits a detailed description of duties and responsibilities of SCS and each local organization sponsoring the watershed project.

(b) The watershed agreement shall be located immediately behind the fly sheet (title page) of the plan-EIS. Since this is a legal document or contract, wording should be copied directly from Subpart B or Subpart C.

SUBPART B - FORMAT

§507.10 Introductory paragraphs.

WATERSHED AGREEMENT

between the

David Creek Soil and Water Conservation District
David Creek Watershed District

list all sponsors as appropriate

(Referred to herein as sponsors)

State of Anystate
and the
Soil Conservation Service
United States Department of Agriculture
(Referred to herein as SCS)

Whereas, application has heretofore been made to the Secretary of Agriculture by sponsors for assistance in preparing a plan for works of improvement for the David Creek Watershed, State of Anystate, under the authority of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1008); and

Whereas, the responsibility for administration of the Watershed Protection and Flood Prevention Act, as amended, has been assigned by the Secretary of Agriculture to SCS; and

Whereas, there has been developed through the cooperative efforts of the sponsors and SCS a plan for works of improvement for the David Creek Watershed, State of Anystate, hereinafter referred to as the watershed plan-Environmental Impact Statement, which plan is annexed to and made a part of this agreement;

Now, therefore, in view of the foregoing considerations, the Secretary of Agriculture, through SCS, and the sponsors hereby agree on this plan and that the works of improvement for this project will be installed, operated, and maintained in accordance with the terms, conditions, and stipulations provided for in this watershed plan and including the following:

§507.11 Item 1 - Landrights.

(a) 1. The sponsors will acquire, with other than P.L. 566 funds, such landrights as will be needed in connection with the works of improvement.
(Estimated Cost $ _____.)

(b) Explanatory note.

(1) Modification of this paragraph is necessary when public recreation or fish and wildlife development is included as a project purpose, to clearly show the extent of Federal assistance for landrights, particularly if P.L. 566 assistance will be provided for only a part of the area that the local organization will acquire. This may be shown substantially as follows:

The sponsors will acquire such landrights as will be needed in connection with the works of improvement. The percentages of this cost to be borne by the sponsors and SCS are as follows:

Works of Improvement	Sponsors (or Name of Sponsors) (percent)	SCS (percent)	Estimated landrights Costs (dollars)
Multiple-purpose Str. No. _____ and Recreational Facilities			
Payment to landowners for about _____acres _____	_____	_____	_____
Real Estate Appraisal Fees	_____	_____	_____
Cost of Alteration or Modification of Improvements*	_____	_____	_____
Legal Fees, Survey Cost, Flowage Easements, and Other	100	0	_____

All Other Structural Measures	100	0	_____

*Including necessary engineering services, construction, and additional land costs.

(2) When land is acquired or improved with P.L. 83-566 financial or credit assistance, the following paragraph must be included:

The sponsors (or name of sponsor) agree that all land acquired or improved with P.L. 83-566 financial or credit assistance will not be sold or otherwise disposed of for the evaluated life of the project except to a public agency which will continue to maintain and operate the development in accordance with the Operation and Maintenance Agreement.

§507.12 Item 2 - Relocation payments and assurances.

(a) 2. The sponsors (or name of sponsor) hereby agree that they (it) will comply with all of the policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 et. seq. as implemented by 7 C.F.R. Part 21) when acquiring real property interests for this federally assisted project. If the sponsor is legally unable to comply with the real property acquisition requirements of the Act, it agrees that, before any federal financial assistance is furnished, it will provide a statement to that effect, supported by an opinion of the chief legal officer of the state containing a full discussion of the facts and law involved. This statement may be accepted as constituting compliance. In any event, the sponsor agrees that it will reimburse owners for necessary expenses as specified in 7 C.F.R. 21, 1006 (c) and 21.1007.

The cost of relocation payments in connection with the displacements under the Uniform Act will be shared by the sponsors and SCS as follows:

	Sponsors (or name of Sponsor) (percent)	SCS (percent)	Estimated Relocation Payment Costs (dollars)
Relocation Payments	_____	_____	_____

507.12(b)

(b) Explanatory note.

(1) Enter the total estimated relocation assistance payment from Table 1. Percentages for cost sharing will be based upon the ratio of P.L. 83-566 and other funds to the "Total Project" line item of Table 1, excluding relocation payment costs. The relocation assistance advisory services cost is to be included when computing the cost-sharing percentages. These percentages are to be used for the life of the project regardless of future changes or supplements.

(2) If the planned project measures will not cause the displacement of any person, business, or farm operation under present conditions, include paragraph No. 2 in the agreement, show cost-sharing percentages, place $0 1/ in "Estimated Relocation Payment Costs," and footnote the column as follows:

> 1/ Investigation of the watershed project area indicates that no displacements will be involved under present conditions. However, in the event that displacement becomes necessary at a later date, the cost of relocation assistance and payments will be cost shared in accordance with the percentages shown.

§507.13 Item 3 - Water rights.

3. The sponsors (or name of sponsor) will acquire or provide assurance that landowners or water users have acquired such water rights pursuant to state law as may be needed in the installation and operation of the works of improvement.

§507.14 Item 4 - Permits.

4. The sponsors will obtain all necessary federal, state, and local permits required by law, ordinance, or regulation for installation of the works of improvement.

§507.15 Item 5 - Construction costs.

(a) 5. The percentages of construction costs to be paid by the sponsors and by SCS are as follows:

Works of Improvement	Sponsors (or Name of Sponsor) (percent)	SCS (percent)	Estimated Construction Costs (dollars)

(b) Explanatory notes.

(1) List each multiple-purpose measure separately. Specific cost items and joint costs of multiple-purpose measures will be shown as separate line item entries. Single-purpose measures may be grouped by kind if the rate of assistance is the same for each measure or group.

(2) Where the costs for land treatment will be shared, explain the cost sharing by adding separate paragraphs similar to those shown for construction costs (§507.21) and technical assistance costs (§507.22) and adjust the numbered items accordingly.

§507.16 Item 6 - Engineering services costs.

6. The percentages of the engineering services costs to be borne by the sponsors and SCS are as follows:

Works of Improvement	Sponsors (or Name of Sponsor) (percent)	SCS (percent)	Estimated Engineering Service Costs (dollars)

(b) Explanatory notes.

(1) List each multiple-purpose measure separately. Specific cost items and joint costs of multiple-purpose measures will be shown as separate line item entries. Single-purpose measures may be grouped by kind when the rate of assistance is the same for each measure or group. Engineering costs to be shown here do not include costs for similar landrights functions (§506.45).

(2) Construction inspection costs should be listed as a separate line item without giving any percentages. A footnote should be added to the estimated cost figure to indicate "The sponsors and the SCS will bear the cost of construction inspection that each incurs."

(3) Correct cost sharing of engineering costs for public recreation facilities eligible for P.L. 83-566 assistance may be demonstrated in one of the following ways:

(i) Where the plan provides for an A&E firm to perform all engineering services, show as a single-line item the percentage rate of sharing for engineering services to be obtained by contract.

(ii) Where the sponsors are to provide engineering services in addition to those obtained from an A&E firm, use two line items, one showing the percentage rate of sharing the costs of the engineering services contract and the other line item showing that the sponsors will pay 100 percent of all other costs for engineering services.

(iii) Where SCS is to provide engineering services in addition to those obtained by contract, use a single line item showing the percentage rate of sharing these combined costs.

(iv) Where all engineering services are to be furnished by the sponsors, they will be listed as a separate line item at 100 percent sponsors' cost.

(v) Where SCS and the sponsors are to provide all engineering services through their staff employees, show a separate line item for the services each party will provide. Services of the sponsors will be at 100 percent sponsors' cost. The cost of those services provided by SCS will be shared 50-50, except that SCS may

bear 100 percent, upon prior approval of the Chief, in those instances where the actual cost cannot conceivably exceed that provided by the sponsors.

§507.17 Item 7 - Nonstructural costs.

(a) The percentages of implementation costs (including as appropriate, construction, engineering, landrights, administration and overhead) of nonstructural costs to be paid by the sponsors and SCS are as follows:

Nonstructural Works of Improvement	Sponsors (percent)	SCS (percent)	Estimated Costs (dollars)

(b) Explanatory Note.

(1) List each nonstructural work separately by item, i.e., flood proofing, acquisition, relocation, etc.

(2) A footnote should be added to the sponsors and SCS column if appropriate. The following wording should be used:

An amount up to the percentage rate specified may be satisfied by the sponsors or by SCS accepting total responsibility for the cost of an element such as engineering, landrights, or construction. The decision to, and arrangements for, such action will be negotiated between the sponsors and SCS and will be included in a project agreement executed immediately before implementation.

§507.18 Item 8 - Project administration.

(a) 8. The sponsors and SCS will each bear the costs of project administration that each incurs, estimated to be $ _____ and $ _____, respectively.

(b) Explanatory note.

Where it would facilitate carrying out the plan, the specific responsibilities of individual sponsors may be described in appropriate numbered paragraphs of the agreement. Where specific responsibilities are divided among several sponsors, the names of each need not be inserted in the agreement if so defined elsewhere in the plan-EIS.

§507.19 Other items.

(a) 9. The sponsors will obtain agreements from owners of not less than 50 percent of the land above each multiple-purpose and floodwater-retarding structure. These agreements state that the owners will carry out conservation farm or ranch plans on their land and ensure that 50 percent of the land is adequately protected before construction of any dam.

(b) 10. The sponsors will provide assistance to landowners and operators to ensure the installation of the land treatment measures shown in the watershed plan.

(c) 11. The sponsors will encourage land owners and operators to operate and maintain the land treatment measures for the protection and improvement of the watershed.

(d) 12. The sponsors agree to participate in and comply with applicable Federal flood plain management and flood insurance programs before construction starts. (for flood prevention projects only)

(e) 13. The sponsors will be responsible for the operation, maintenance, and replacement of the works of improvement by actually performing the work or arranging for such work, in accordance with agreements to be entered into before issuing invitations to bid for construction work.

(f) 14. The costs shown in this plan are preliminary estimates. Final costs to be borne by the parties hereto, will be the actual costs incurred in the installation of works of improvement.

(g) 15. This agreement is not a fund-obligating document. Financial and other assistance to be furnished by SCS in carrying out the plan is contingent upon the fulfillment of applicable laws and regulations and the availability of appropriations for this purpose.

(h) 16. A separate agreement will be entered into between SCS and sponsors before either party initiates work involving funds of the other party. Such agreements will set forth in detail the financial and working arrangements and other conditions that are applicable to the specific works of improvement.

(i) 17. This plan may be amended or revised only by mutual agreement of the parties hereto, except that SCS may deauthorize or terminate funding at any time it determines that the sponsor has failed to comply with the conditions of this agreement. In this case, SCS shall promptly notify the sponsor in writing of the determination and the reasons for the deauthorization of project funding, together with the effective date. Payments made to the sponsor or recoveries by SCS shall be in accord with the legal rights and liabilities of the parties when project funding has been deauthorized. An amendment to incorporate changes affecting a specific measure may be made by mutual agreement between SCS and the sponsor(s) having specific responsibilities for the measure involved.

(j) 18. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this plan, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

(k) 19. The program conducted will be in compliance with all requirements respecting nondiscrimination, as contained in the Civil Rights Act of 1964, as amended, and the regulations of the Secretary of Agriculture

507.19(k)

(7 CFR 15), which provide that no person in the United States shall, on the grounds of race, color, national origin, sex, age, handicap, or religion, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted or assisted by the Department of Agriculture.

§507.20 Signature Blocks.

(a) _____ (Name of Sponsor) By _____
(Type name below signature.)

Title _____

_____ Date _____
Address zip code

The signing of this plan was authorized by a resolution of the governing body of the _____ (Name of Sponsor) _____
adopted at a meeting held on _____

_____ _____
(Type name below signature Address zip code
Secretary or other title)

Date _____

_____
(Add additional signature blocks as necessary.)

(b)

Soil Conservation Service

United States Department of Agriculture

Approved by:

_____
(Typed name below signature.)
State Conservationist

_____
Date

SUBPART C - FORMAT FOR WATERSHED AGREEMENT FOR WATERSHED PROTECTION PLANS

507.32(a)

§507.30 Introductory paragraphs.

Introductory paragraphs are the same as in any agreement (§507.10)

§507.31 Item 1 - Financial assistance costs

(a) 1. Cost-sharing rate for the establishment of enduring land treatment practices is __ percent of the average cost of installing the enduring practices in the selected plan for the evaluation unit. The estimated total financial assistance cost for enduring practices is $_____.

Cost sharing for management practices in the selected plan is limited to a one-time incentive payment (not to exceed $10,000 per individual) of $_____ per acre for ____(practice name)____ for a total estimated financial assistance cost of $_____.

(b) Explanatory note.

(1) The cost-share rate in this item should be that rate which has been agreed to by SCS and the sponsors. If the rate varies by practice, each practice should be listed and the rate for each stated.

(2) If more than one management practice is called for, list each one and the incentive payment separately i.e., $10 per acre for strip cropping, $25 per acre for conservation tillage, etc.

§507.32 Item 2 - Technical assistance.

(a) 2. The SCS will assist the sponsors in providing technical assistance to land owners or operators to plan and install land treatment practices shown in the plan. Percentages of technical assistance costs to be borne by the sponsors and SCS are as follows:

507.32(a)

Works of Improvement	Sponsors (percent)	SCS (percent)	Estimated Technical Assistance Costs (dollars)
Land Treatment Practice.	0	100	
Other (List)			

(b) Explanatory note.

Since technical assistance for practices normally is all paid by SCS, it can be lumped together. Should the plan call for the State or other agency to provide technical assistance, in addition to SCS's share, enter the correct percentages for each. If water quality monitoring or other such assistance is involved, list these items separately.

§507.33 Item 3 - Initial Participation requirements.

(a) The sponsors will obtain applications from owners of not less than ___ percent of the land in the problem area, indicating that they will carry out the planned land treatment measures. Applications will be obtained before the first long-term land treatment contract is executed.

(b) Explanatory note.

The state conservationist will set the initial percentage of applications considered necessary as an indication that the project can be installed.

§507.34 Item 4 - Operation and maintenance.

4. The sponsors will obtain agreement with land owners or operators to operate and maintain the land treatment practices for the protection and improvement of the watershed.

§507.35 Item 5 - Project Administration

(a) 5. The sponsors and SCS will each bear the cost of project administration that each incurs, estimated to be $_____ and $_____, respectively.

§507.36 Required items.

(a) Other required statements for all watershed protection plans are listed in §507.19(e) through §507.19 (j). Numbering should be adjusted accordingly.

(b) Adjust wording in §507.19(e) to indicate average costs or approved variation will be used for payment determinations.

§507.37 Optional items.

Several items must be included in the agreement if they apply to the watershed project in question. The following statements should be used when appropriate.

(a) Landrights.

The sponsors will acquire, or will ensure that land users or operators have acquired, with other than P.L. 83-566 funds, such landrights as will be needed in connection with the works of improvement. (Estimated Cost $_____)

(b) Relocation payments.

If the landrights statement is included, the relocation statement in §507.12 shall be included.

(c) Water rights.

The sponsors (or name of sponsor) will acquire, or ensure that the landowners or water users have acquired, such water rights pursuant to state law as may be needed for the installation and operation of the works of improvement.

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508.54 Project Map

PART 508 - WATERSHED PLAN-ENVIRONMENTAL IMPACT STATEMENT

Subpart A - Basic Requirements

508.02

§508.00 Watershed Plan-Environmental Impact Statement.

A watershed plan-Environmental Impact Statement (plan-EIS) is the document for recording the results of the planning process. It provides a record of compliance with NEPA (and related rules, orders, and laws), is the basis for project authorization, and guides the implementation of the recommended plan. It should clearly enumerate and describe the significant problems, needs, opportunities, alternatives, and the direct, indirect, and cumulative effects of the proposed project. It also should explain decisions concerning what is to be installed, cost sharing, responsibilities for installation, financing, and operation and maintenance. In addition, the plan-EIS should record the relationship between beneficial and adverse effects.

§508.01 Watershed plan-environmental assessment.

A watershed plan-environmental assessment (plan-EA) is a document for a project for which a Finding of No Significant Impact, FONSI, is prepared (7 CFR 650.4(1) and 650.12(c)(3)) instead of an EIS. It shall include appropriate data needed to provide an understanding of the plan and its economic and environmental impacts. This will consist of essentially the same type of information that is required of an EIS. The main difference will be in the review procedures of the plan. By handling the assessment this way, it eliminates preparing a separate document to meet NEPA requirements.

§508.02 Environmental Impact Statement

(a) An EIS may be required for pre-NEPA plans. If the plan is revised, the EIS and revised plan would be one document. Otherwise, the EIS must stand on its own and should be prepared in sufficient detail to clearly describe the alternatives; direct, indirect, and cumulative effects; and public participation activities. Minimum

508.02(a)

requirements for an EIS are outlined in CEQ (40 CFR 1500-1508) and SCS (7 CFR 650) rules. Supplements will be kept separate from the EIS and handled according to procedures outlined in part 510 of the manual. (If a negative declaration, or FONSI, has or will be prepared, this paragraph can be ignored.)

(b) Environmental evaluations will be conducted on old projects for all the remaining works of improvement to be installed. Either an environmental assessment and FONSI or an EIS, as appropriate, will be prepared. The same policy applies to clearing projects through the use of a FONSI.

§508.03 Quality.

The plan-EIS must be useful to decisionmakers, reviewers, and personnel charged with implementation. The documents should be brief, concise, and written in nontechnical language. Tables, drawings, maps, or other graphics should be used to reduce length and duplication. Format and content outlined in this part shall be followed. This is in line with the Council on Environmental Quality's requirements 40 CFR 1502.10.

§508.04 Price base and discount rate.

When a draft plan-EIS is distributed for interagency review, the date shown in the plan-EIS (including all tables) should be no more than a few months old, the price base should not be more than 1 year old, and the discount rate should be current for the date shown in the tables. It is preferable that the price base be for the same year as that shown in the tables. When a final plan-EIS is approved (signed by the state conservationist), it must reflect the current discount rate and a current price base. If an update is necessary, it may be made as follows:

(a) For plan-EIS to be approved administratively, the update may be made by a one-page addendum.

(b) For a plan-EIS to be submitted to Congress, the update may also be made by a one-page addendum if the price base and discount rate are no more than 18 months old when the final plan is submitted to the National Office. If this time requirement is not met, the addendum should include updated Tables 1, 2 and 2A, 4, 5, and 6 plus additional details. The state conservationist should contact the NTC director for specific requirements of this expanded addendum.

§508.05 Status.

Only two official status designations of watershed plan-EIS's are recognized - DRAFT and FINAL as follows:

(a) A DRAFT comes into being when the plan-EIS is made available to the general public and is distributed for interagency review. There is no DRAFT until this time. Working copies developed during the planning process for internal use and informal review by others should be clearly labeled as "PRELIMINARY - SUBJECT TO REVISION" and dated for ease in identification. The copy of the plan-EIS that is submitted for approval by higher authorities before the draft comes into being is referred to as the TECHNICAL REVIEW PLAN-EIS.

(b) A FINAL plan-EIS results from the consideration of all comments received on the DRAFT during the interagency review.

SUBPART B - RESPONSIBILITIES

§508.10 General.

(a) Plan development is the responsibility of the sponsors. SCS has leadership responsibility for providing technical assistance to the sponsors. As part of this responsibility, SCS will coordinate input of other agencies and groups in the formulation of the plan. The Forest Service has coordination responsibility for the forest land part of the plan-EIS.

(b) Compliance with NEPA is the responsibility of SCS. The state conservationist is the responsible Federal official who ensures that the watershed plan-EIS complies with NEPA.

SUBPART C - VISUAL AIDS

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*

§508.20 Maps.

Maps, other than those required in 508.43, may be included if appropriate. Some examples are: a flood plain strip map, general soils map, general geologic map, general land use map, gross erosion map, sediment yield map (for specific locations), water supply distribution map, condensed profiles, and wildlife mitigation map.

§508.21 Graphics

(a) The plan-EIS should include such tables, maps, graphs, pictures, or other graphics as are necessary to make the proposed project understandable and to reduce narrative. Exhibits illustrating "typical" structural measures should be selected carefully to truely represent the measures to be used. Any maps or drawings referred to should be checked to make sure that they illustrate the point intended.

(b) Typical graphics could include drawings for a typical reservoir showing plan view, area-capacity-discharge curves, typical zoned fill section, section through outlet work, centerline profile of dam, emergency spillway profile, typical channel cross sections showing spoil disposal, special environmental and other features, and perspective drawing(s) illustrating the appearance of project measures from one or more significant views.

SUBPART D - FORMAT AND CONTENT

§508.30 General.

(a) The plan-EIS is a document to support the terms of the watershed agreement, prepared by the sponsors to request funding for the project, and used as a basis for construction. Distribution is usually limited to those directly involved sponsors, landowners, farmers, ranchers, and local units of government. Therefore, plan-EIS's do not fall under the categories outlined in USDA's Visual Management Manual, Volume I, Graphic Design. However, those States wishing to utilize the manual may do so if they so desire.

(b) The format for the watershed plan-EIS (and plan-EA) is outlined in this subpart. This format shall be followed in all cases. Guidance on content is provided, although detailed checklists are avoided. References are included to call attention to CEQ, WRC, and other requirements of a plan-EIS. Normally, methodologies used in the plan formulation will be described in the * Inventory and Analysis Report. Sources of data should be referenced in the * document.

(c) Numbers of various units (acres, dollars, farms, etc.) in a plan should be rounded to the nearest 10, 100, or 1,000 depending on the amount of precision used in developing the data. Certain figures in Table 3, however, may be an exception. The NTC staff can provide guidance in this matter.

§508.31 Opening pages.

(a) Cover.

(1) A suitable heavyweight material should be used for the front and back covers to provide protection and enhance the appearance of the final plan-EIS. A photographic background or art design may be used. No specific format is required. However, at a minimum, the front cover should identify the documents as:

WATERSHED PLAN-ENVIRONMENTAL IMPACT STATEMENT
FOR
DAVID CREEK WATERSHED
MIDDLESTATE
Month and Year
(may be stamped)

(2) Draft copies should be identified as DRAFT. This identification may be by using a stamp to avoid a subsequent reproduction. Working copies developed during the planning process for internal use and informal review by others should be appropriately labeled as "PRELIMINARY - SUBJECT TO REVISION" <u>and dated</u> for ease in identification.

508.31(b)

(b) Addendum An addendum is used only when it is necessary to update the plan because of a change in the discount rate, price base, or both. Other minor changes can be incorporated in an addendum. It should contain the new total project costs (plus a breakdown between P.L. 566 and other), average annual project costs and benefits, and the benefit-cost ratio. Normally, the addendum will be less than one page long.

(c) Fly Sheet

(i) The sheet shall not exceed one page and shall include a list of responsible agencies and any cooperating agencies; title of the proposed action; state(s) and county(ies) in which action is located; name, address, and telephone number of the person who can supply further information; designation of the plan-EIS as a draft or final; and the date by which comments must be received. (Reference 40 CFR 1502.11)

(ii) A one paragraph abstract of the plan-EIS (40 CFR 1502.11(e)) shall be included.

(d) Watershed Agreement. This shall follow the fly sheet or addendum and follow the format shown in Part 507.

(e) Contents

(i) Only major (first order) and secondary headings should be listed in the Contents. Each appendix should be listed, followed by a separate listing of figures and tables. Small Roman numerals should be used for all pages up to and including the contents. Each side of a sheet is one page. Begin page (i) with the fly sheet and page 1 with the summary. (Note that the page number is never typed on the first page.) Appendices should be numbered with the letter of the appendix followed by the page number, i.e., A-1, A-2, etc. Each appendix should start with page 1.

(ii) Example of Contents:

Contents

Page

Addendum (as appropriate)
Watershed Agreement
Contents
Summary
Introduction
Project Setting
Problem and Opportunity Identification
Inventory and Forecasting
  Scoping of Concerns
  Existing Resources
  Forecasted Conditions

Formulation of Alternatives
- Formulation Process
- Evaluation of Alternatives
- Comparison of Candidate Plans
- Project Interaction
- Risk and Uncertainty
- Rationale for Plan Selection

Recommended Plan
- Purpose and Summary
- Plan Elements
- Mitigation Features
- Permits and Compliance
- Costs
- Installation and Financing
- Operation, Maintenance, and Replacement
- Tables

Effects of Recommended Plan
- General Impacts
- Relationship to Other Plans, Policies, and Controls

Consultation and Public Participation

List of Preparers

Index

References

Appendices
- Appendix A - Letters and Oral Comments on Draft Plan-EIS
- Appendix B - Support Maps
- Appendix C - Investigation and Analysis Report
- Appendix D - Supporting Information
- Appendix __ - Project Map

List of Tables

No.	Title	Page

List of Figures

No.	Title	Page

§508.32 Summary

This section gives a brief summary of the plan-EIS. Nothing should be indicated here which is not in the plan-EIS itself. To ensure that adequate information is presented, the following form will be used. Much of this information is required by Congressional Committees and others in judging the merit of the project. Use of this format also will provide a quickly reproducible document for use at meetings and other events.

508.32

Summary of Watershed Plan-EIS

Project Name: County: State:

Sponsors:

Description of Recommended Plan:

Resource Information:

Size of Watershed (AC)

Land Use - Total Cropland (AC) HEL Cropland (AC)
List by crop (AC)
Grassland (AC)
Forest Land (AC)
Miscellaneous (AC)

Land ownership - Private (%) State-Local (%) Federal (5)

Number of Farms - Average Farm Size -
Prime and Important Farmers (AC)
Number of Minority Farmers
Number of Limited Resources Farmers

Project Beneficiary Profile (socio-economic information such as income levels, home values, and ages as compared to state and nation)

Wetlands (AC by class)

Flood Plains (AC by land use)

Endangered Species (Name or none)

Cultural Resources (Name or none)

Problem Identification: Describe problems in terms of Erosion and Sedimentation (Sheet and Rill, Ephemeral Gully, Wind Erosion, Gully, etc.), Flooding (Agricultural, Urban, etc.), Water Quality Impairment (Chemical, Temperature, Turbidity, etc.), and Others.

Candidate Plans Considered:

Project Purpose(s): Describe purpose for which project is planned. Flood prevention, watershed protection, agricultural water management, etc. Include specific watershed protection problems being addressed. Erosion and sediment reduction, water conservation, water quality, etc.

Principal Project Measures: For structural and non-structural projects, describe the number and kinds of project measures. For land treatment include an estimate of the number of long term contracts, acres to be treated, number of waste management systems, etc.

Project Costs:	PL-566 Funds		Other Funds		Total Dollars	
	$	%	$	%	$	%
Land Treatment Measures						
Nonstructural Measures						
Structural Measures						
Flood Prevention						
Recreation						
M&I Water						
Drainage						
Irrigation						
Fish and Wildlife						
Project Administration						
Technical Assistance						
Other						

Project Benefits: Describe benefits in terms of categories shown in Tables 5 and 6.

Impacts:

Land Use Changes (AC): Describe conversions of cropland, grassland, and forest land.

Natural Resources Changed or Lost:

Wooded Flood Plain (Ac) -
Wetlands (Ac) -
Cultural Resources (Name) -
Wildlife Habitat (Ac) -
Fisheries (Ac or Mi) -
Prime Farmland (Ac) -

Other Impacts: Describe before and after erosion rates for each evaluation unit, changes in available water supply, changes in water quality based on indicator parameters, etc.

Major Conclusions: (Final Statements)

Areas of Controversy: (Final Statements)

Issues to be Resolved: (Final Statements)

Other:

§508.33 Introduction

This section introduces the watershed plan-Environmental Impact Statement. It explains the purposes served by the document and the role of the sponsors and SCS in preparing the document. Any unique items pertinent to a particular watershed should also be given here. The idea is to help the reader understand the rationale for project action.

§508.34 Project Setting

This section should describe pertinent information for the watershed. Some examples of this information are: (a) size and location, (b) stream systems, (c) essential climatological data, (d) geology, soils (very brief), and topography, (e) general land use, (f) population centers, and (g) basic social and economic information. Use of tabular data is encouraged wherever it will reduce the need for narrative. The reader should be able to obtain a general overview of the area from this brief, two-to three-page section.

§508.35 Problem and opportunity identification.

(a) This section provides the basis for USDA being involved in the watershed project. From the information presented, the reader should know which problems need to be solved as well as the

opportunities for enhancing the quality of life in the project area, based on public concerns.

(b) Each of the significant water and related land resource problems or opportunities in the watershed should be described completely by evaluation units. The section should start with an introductory paragraph that summarizes the section. Several problems may be identified during the public participation process and may be insignificant or irrelevant to the project. These problems should be stated in this section even though they have not been thoroughly investigated, evaluated, or addressed in the planning. If it is obvious that nothing can be done toward solving a problem, it should be explained in this section.

(c) Each problem or opportunity should be quantified and its extent and magnitude clearly explained. It is important the erosion related problems be described by evaluation units. Questions which should be answered in this writeup include: What specifically is being damaged? How much damage of each is occurring? Where does the damage occur? How frequent is the damage? What is the dollar damage for each damageable unit? The detail presented will depend on the severity of the problem.

(d) Opportunities for improving the quality of life and enhancing the environmental values should also be discussed in detail. These opportunities must reflect the specific effects desired by concerned groups and individuals.

§508.36 Inventory and forecasting.

(a) Scoping of concerns.

(1) An important part of the planning process is scoping, the results of which are documented in this section (P&G and 40 CFR 1501.7). The environmental issues significant in the formulation of alternatives are identified here. The narrative will identify those factors that will be affected significantly in the formulation of alternatives. This section also provides a record of the issues that were considered, but they need not be discussed at length in the plan-EIS. Further discussion is unnecessary. These issues should be agreed upon by all agencies involved in the scoping process.

(2) Certain items are always of concern and would be expected to be identified in this section. These items include cultural resources, endangered and threatened species, fish habitat, human health and safety, important agricultural land, water quality, wetlands, and wildlife habitat, as well as the identified problems and opportunities. The following table can be used to illustrate and summarize the scoping process:

TABLE ____ - Evaluation of Identified Concerns

Economic, Social, Environmental, and Cultural Concerns	Degree of Significance to Decisionmaking 1/	Remarks
(There is no limit to the number listed. All those brought up at the scoping meeting would normally be in order.)		

1/ High - Must be considered in the analysis of alternatives
Medium - May be affected by some alternative solutions
Low - Consider, but not too significant
None - Need not be considered in analysis

(b) Existing Resources.

(1) This section provides a brief, three- to four-page view of resources and social conditions in the project area. Information presented should directly relate to the problems, opportunities, and items that would be affected in formulating and evaluating alternatives. This section should minimize repetition of information given under the "project setting" section.

(2) The reader should get a general knowledge of those resources in the area that will be affected significantly by the various alternative plans. Give as much detail as needed to explain the existence of a problem or project effect on a resource.

(3) Some examples of pertinent data are: (i) soil and water resources, (ii) agricultural production (crop types, yields, acres by type etc.), (iii) wetlands, (size, type, significance), (iv) rare, threatened, and endangered species, (v) state and nationally significant archeological and historical resources, (vi) fish and wildlife (quality and quantity of habitat), and (vii) prime land. The type of study made to obtain this information should be mentioned.

(c) Forecasted conditions.

The most likely future conditions without the project should be presented, and the basis for forecasting must be stated in the plan-EIS. These without-project conditions serve as the basis for evaluating the effects of alternative plans. If erosion and sediment problems have been identified, the ongoing land treatment program should be discussed here. Indicate how long the ongoing program will take to complete the job. This section will be referred to in the discussion of the no-action alternative.

§508.37 Formulation of alternatives.

(a) General.

This part should help the reader follow the rationale of plan formulation from the development and comparison of alternatives to the selection of the recommended plan.

(b) Formulation process.

(1) This section will describe the basis for selecting combinations of measures to include in alternatives. The measures considered in developing alternatives should be described. These measures include but are not limited to land treatment, nonstructural, and structural. Water conservation is to be fully considered in plan formulation as a means of achieving the National Economic Development (NED) objective. Include a discussion of the measures or methods considered but excluded from the plan, and the procedure or criteria used to screen potential measures or methods. For example, initial studies may identify potential sites for 40 floodwater-retarding structures; however, further studies may eliminate 25 sites from detailed consideration because of size, costs, or adverse environmental impacts.

(2) Studies made to establish various combinations of measures (land treatment, structural, and nonstructural) should be discussed. Such items as how the evaluation units were established and the incremental analysis made to determine the alternative that reasonably maximizes net contributions to NED and for any other alternatives formulated should be included. Display summary line of the incremental analysis for each evaluation unit within the NED and selected plans as part of this discussion. The example shown in Table 508.2 should be followed.

(3) In the formulation of alternative plans, include only increments that provide combined beneficial effects outweighing combined adverse effects. All alternatives are to be formulated

considering the four criteria for their completeness, effectiveness, efficiency, and acceptability. Reasonable alternatives should be discussed in this section to show that they were considered but not feasible.

TABLE 508-2 INCREMENTAL ANALYSIS OF NED PLAN

Description of Increment	Annual Costs		Annual Benefits		Net Benefits
	Incremental Cost	Total Cost	Incremental Benefit	Total Benefit	

(4) Every identified problem should be addressed by a remedial measure or an explanation as to why these problems could not be solved.

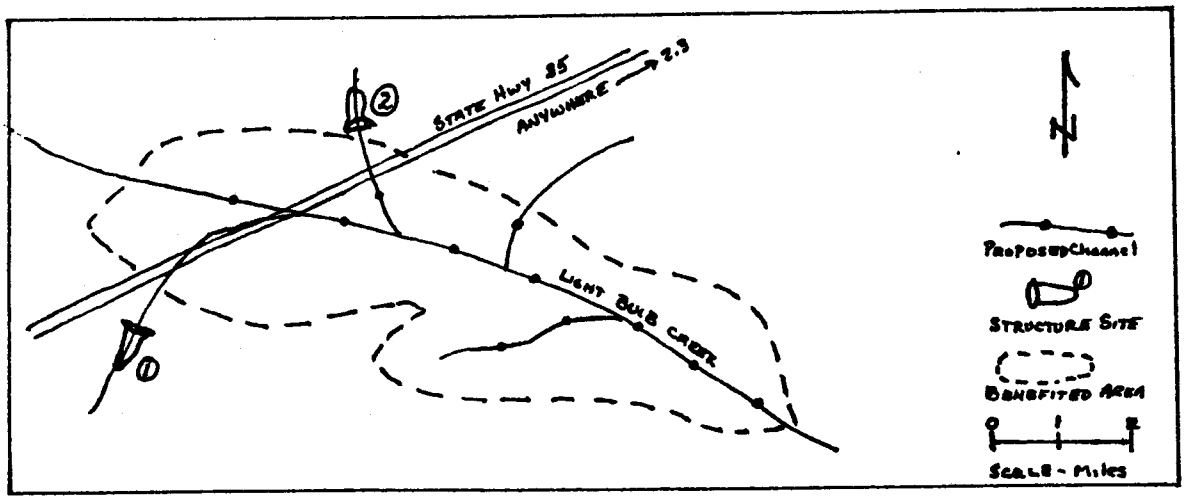
(c) Evaluation of alternative plans.

(1) This section will describe the alternative plans, including the recommended plan (in the same detail as the alternative plans), that were developed to solve the identified problems. Each alternative plan should be clearly described as to (i) what the alternative plan consists of, (ii) how much it will cost, and (iii) what will be the effects of this action (including any mitigation). Include comparative discussion and data so that decision makers and reviewers may evaluate the relative merits of each alternative plan. Each alternative plan should clearly indicate how much of the problem or opportunity it will satisfy. A map showing the location of the plan elements for each alternative plan should be included (land treatment measures need not be shown.) Each alternative plan should be discussed on a separate page.

(2) The following alternative plans shall be included unless it is clearly shown that they are unreasonable: (i) no action (without-project conditions) and (ii) NED alternative. Normally other alternative plans showing various levels of tradeoffs between objectives should be considered for inclusion. Reasonable alternatives not within the jurisdiction of USDA should be included.

(3) Example writeup.

ALTERNATIVE 2 - DAMS AND CHANNEL



Components: This alternative consists of accelerating land treatment on 7,523 acres of cropland, two floodwater retarding structures, and widening and deepening of 17.7 miles of channel. Land treatment will consist of terraces, waterways, conservation tillage, and crop residue management on 434 acres of upland cropland as well as conservation tillage on 804 acres of cropland above the dam sites. Floodwater-retarding structure number 1 is located about a mile above State Highway 35 on stream C-1A. It will be about 25 feet high, store 1,420 acre-feet of floodwater, and have a 23-acre sediment pool. Structure number 2, located 1,000 feet upstream from Highway 35 on channel C-4, will be 32 feet high, store 1,860 acre-feet of floodwater, and have a 16-acre sediment pool. The main channel (10.2 miles) will be enlarged to a width of 38 feet and a depth of 2.0 feet. Side streams (7.5 miles) will be widened to 20 feet and deepened to 2.0 feet.

Costs: Total project cost - $3,417,500: P.L. 83-566 share - $1,897,200; other - $520,300; average annual cost - $190,600.

Effects: Installation of this alternative will provide flood protection for 12,600 acres of cropland and adequate drainage outlets for 11,100 acres of this cropland. Average annual benefits of $561,600 will accrue. Net benefits are $371,000 annually. Erosion rates will be reduced an average of 3.2 tons per acre on 804 acres of cropland. Sedimentation will be reduced in Light Bulb Creek by 122,000 tons per year (48 percent). Of the 1,700 acres of wetlands in the watershed, 65 acres (types 1 and 2) will be converted to cropland. Fish and wildlife management potential will be increased on 2,000 acres of cropland, pasture land, and forest land as a result of the development of conservation plans and on an additional 39 acres of the sediment pools of the two dams.

508.37(d)

(d) Comparison of candidate plans.

Alternative plans that could be selected as the recommended plan are identified as candidate plans. This section should explain this and include a "Summary and Comparison of Candidate Plans" table which summarizes the information in each alternative, with the exception of the no-action alternative. It is important to include major items used in the decisionmaking process. Those items shown as high or medium on the table "Evaluation of Identified Concerns" in §508.36(a)(2) should be included as a minimum in this section. Significant differences between the plans should be shown. The without-project conditions should be included to allow a complete comparison. Table format shall be as follows:

SUMMARY AND COMPARISON OF CANDIDATE PLANS

Effects	Without Project	Alt. 1 (NED)	Alt. 2	Alt. 3	Alt. 4 (Recommended) 1/
Measures	--	1 multi-purpose flood rec. and M&I structure	365 acres of evt. corridor, 988 acres wildlife habitat, L.T., 4 grade stab. strs.	Repair leak in main M&I del. pipe	1 multi-purpose flood, rec. and M&I str., 4 grade stab. strs., L.T.
Project Investment	$0	$11,433,969	$1,280,000	$1,000,000	$12,389,000
NATIONAL ECONOMIC DEVELOPMENT ACCOUNT					
Adverse, Annualized	--	$ 1,005,470	$ 11,669	$ 87,937	$ 1,071,139
Beneficial, Annualized	--	1,207,810	5,369	90,000	1,213,175
Net Beneficial	--	202,340	-6,340	2,063	196,036
ENVIRONMENTAL QUALITY ACCOUNT					
Beneficial (report impacts in the EQ units for which the analyses were made)	Shortage of 2,560 acres of warm water fishing lakes	Create 1,000 ac. warm water fishing and 25 miles of shoreline	Create 20 acres for warm water fishing and 1 mile at shoreline	No effect	Create 1,021 ac. warm water fishing and 26 miles of shoreline
		Reclassify 400 acres of bottom land as prime agr. land	No effect	No effect	Same as Alt. 1
	Water quality poor due to high PO_4 levels	No effect	Reduce PO_4 level to meet State water quality standard	No effect	Same as Alt. 2
	Habitat is decreasing each year	No effect	Increase wildlife production by 10,000 H.U.	No effect	Same as Alt. 2

SUMMARY AND COMPARISON OF CANDIDATE PLANS (Continued)

ENVIRONMENTAL QUALITY ACCOUNT (Continued)					
		Introduce permanent water body as a unique feature in the landscape	Introduce 4 permanent water bodies and maintain or improve 1,353 acres of distinctive visual resource as environmental corridor and wildlife habitat.	No effect	Introduce permanent water bodies as unique features in this landscape.
		Close 4 miles of public roads	No effect	No effect	Close 4 miles of public roads
Adverse		Inundate 5.9 miles of natural intermittent stream channel and assoc. ecosystem	Inundate 0.4 miles of natural intermittent stream channel and associated ecosystem	No effect	Inundate 6.3 miles of natural intermittent stream channel and associated ecosystem
	Land use in WS 55,680 ac. cropland 5,650 ac. pastureland 52,100 ac. forest land	Permanently alter 1,075 acres of cropland, pastureland, forest land	Permanently alter 28 acres of cropland, pastureland, and forest land	No effect	Permanently alter 1,103 acres of cropland, pastureland, and forest land
	15,620 acres prime ag land in WS	Convert 710 acres of prime agricultural land to structural measures.	Convert 10 acres of prime agricultural land to structural measures	No effect	Convert 720 acres of prime agricultural land to structural measures
	1,460 acres of wetlands in WS	No effect	No effect	Dry up 3 acres of class 3 wetland	No effect
		Introduce highly visable man-made structure as a permanent feature in the landscape.	Introduce one highly visable and two moderately visable man-made structures as permanent features in landscape.	No effect	Introduce two highly visable and two moderately visable man-made structures as permanent features in the landscape.

SUMMARY AND COMPARISON OF CANDIDATE PLANS (Continued)

OTHER SOCIAL EFFECTS ACCOUNT					
Beneficial	22,570 acres damaged by moderately severe erosion	No effect	Adequately protect 17,466 acres from accel. erosion	No effect	Adequately protect 19,415 acres from accel. erosion
	Region has insufficient opportunities for recreation -- shortage 750,000 recreation visits	Produce 398,800 recreation visits annually	No effect	No effect	Produce 398,800 recreation visits annually
	Approximately 1,200 homes in need of water due to unreliable supplies	Provide adequate water for 1,200 households	No effect	Provide adequate water for 1,080 households (90% of need)	Provide adequate water for 1,200 households
	Agriculture flood damage occurs on 3,000 acres; amounts to $643,500	Reduce flood damages by 45% on 2,540 acres	No effect	No effect	Reduce flood damages by 45% on 2,540 acres
REGIONAL ECONOMIC DEVELOPMENT ACCOUNT					
Positive Effect, Annualized					
Region		$1,207,810	$ 5,369	$ 90,000	$1,213,175
Rest of Nation		0	0	0	0
Negative Effect, Annualized					
Region		921,190	1,700	87,937	922,890
Rest of Nation		842,280	9,969	0	148,249

1/ This example would require a Secretarial exception before approval.

NOTES:
Interest Rates -- All alternatives evaluated at 7-5/8 percent interest.
Period of Analysis -- All plans evaluated over 100 years.
Price Levels -- Current 1980 price levels except current normalized.
(Oct. 1980, WRC) used for crop and pasture.

508.37(e)

(e) Project interaction.

Discuss the relationship of each significantly different candidate plan to all existing or expected Federal and non-Federal projects having significant economic, environmental, or physical interactions with candidate plans. The recommended plan will be one of the candidate plans. A brief narrative explaining the interaction, is required by P&G and should be included.

*

*

(f) Risk and uncertainty.

This section should discuss the areas of sensitivity in each of the candidate plans. Risk and uncertainty may involve increased costs or reduced benefits through adjustments in design. It also should state what the chances of the plan being installed are. These facts should be clearly described to enable the reader to fully understand these effects on each plan. This section does not eliminate the need for discussing risk and uncertainty in other parts of the plan-EIS where appropriate.

(g) Rationale for plan selection.

(1) This section should state which of the alternatives is the recommended plan, and provide enough information that the reader can understand the rationale for selection. Normally the NED plan will be selected and the rationale need not be extensive since the primary objective is to maximize net economic benefits. Key factors that influenced the decision should be described.

(2) If the NED plan is not selected, a Secretarial exception will be required. This section is where the information in included to justify the request for an exception.

(i) A description of the plan which reasonably maximizes net economic benefits.

(ii) A description of the added increment.

(iii) All adverse effects including cost of the added increment.

(iv) All beneficial effects of the added increment.

(v) Economic benefit-cost ratio of the added increment.

(vi) The net economic benefits which would be sacrificed for obtaining the benefits of the added increment.

(vii) A description of the other Federal, State, or local concerns being addressed and the degree to which they are satisfied by the added increment.

§508.38 Recommended Plan.

(a) General.

(1) The recommended plan should be described in sufficient detail to (i) provide a basis for authorization, (ii) guide the

implementation and operation and maintenance, and (iii) convey to the reader the relationship of the plan to the problems, the opportunities, and the effects.

(2) Nontechnical terminology should be used as much as possible. Appropriate drawings, tables, and maps should be included to provide a clear understanding of the measures and how they will function. Information on tables, maps, and other graphics should be referenced and not repeated in the narrative. However, the highlights of a table should be in the narrative.

(3) Although the discussion in this Subpart is detailed by type of action, such as, Land Treatment or Structural Measures, the plan-EIS section should be labeled Plan Elements and no distinction should be made as to the type of element. The reader must decide if it is nonstructural or structural. In general, each element should be clearly described to enable the reader to gain a clear picture of what is to be constructed. Noncritical features of individual measures should be described in a manner that will permit alternative solutions during final design, providing that neither the overall performance of the measures nor environmental impacts are affected.

(b) Purpose and summary.

The first paragraph of this section should summarize the content of the section. A statement as to which alternative is recommended, such as Alternative 1-NED PLAN, should be included here. Describe the purposes to be served by the plan in terms consistent with P.L. 83-566 (i.e., watershed protection, flood prevention, or agricultural water management). For plans with numerous plan elements, include a brief summary of the works of improvement and how long it will take for installation.

(c) Plan elements.

(1) Land treatment practices.

(i) In this part, discuss the relationship of the ongoing program to the accelerated program. Make it clear that the ongoing program will be implemented without project action and the accelerated program will supplement the ongoing program. Emphasize that the land user's participation in the program is voluntary and that he/she makes the final decision on land use and practices to be installed.

(ii) Discuss types and amounts of assistance (technical and financial) that will be provided. Describe technical assistance in terms of person-years and category (i.e., soil surveys, conservation

planning, or application) and financial assistance in terms of the types and amounts of practices, or interdependent practices, for which assistance will be provided. Separate discussions will be needed for each evaluation unit. State the amount of erosion, condition of the impaired use, remaining sediment damage, etc., which will be remaining after installation of the practices. Explain that alternative practices which provide equal or greater benefits are permitted, but the cost-share amount is limited to the amount which would have been paid for the practices in the selected plan.

(iii) Discuss the location where the assistance will be provided in sufficient detail to guide the implementation of the plan (i.e., critical areas, class IV(e) cropland, or roadsides). Problem areas for which assistance is to be provided should be identified on maps as much as possible; however, it is not intended that each acre be identified.

(iv) Describe the practices, or interdependent practices, expected to be used to solve identified problems and achieve identified objectives. Also, provide an estimate of the acres by land use for which technical and financial assistance will be provided.

(v) Clearly state that there are limitations in technical and financial assistance, such as assistance provided only when it contributes to identified project objectives and does not result in adverse impacts to significant concerns.

(vi) For federal land, clearly describe the conservation land treatment measures jointly agreed upon by SCS, the land administering agency, and the sponsoring organization.

(vii) Discuss any other pertinent information that would clarify the work to be done.

(2) Nonstructural measures.

(i) Flood Plain Acquisition - Describe location and amount of land along with the type of rights to be acquired should be described as shown on a map. Describe planned land use. It should be evident that the rights to be acquired are needed to provide a floodway or to protect the land from development and elements included to provide for any changed land use.

(ii) Flood Warning System - Describe type and location of the flood warning system. Also, include sufficient details concerning the operation of the system to show that the system will function.

(iii) Floodproofing - Identify location of buildings and the type of floodproofing. The plan should include sufficient details concerning the existing buildings to show that they are suitable for

floodproofing. Provide, the same type of information for nonstructural measures.

(iv) Relocation of Existing Flood Plain Properties - Describe type, number, and location of improvements. Make it clear that the proposed relocation site is outside the flood plain.

(3) Structural Measures.

(i) Reservoir-type structures - Describe structures in detail to include such items as: (A) foundation conditions, (B) kind of principal spillway (including the type of inlet and outlet), (C) kind of emergency spillway (i.e., rock, earth, structural, other), (D) frequency of storm controlled by the principal spillway and retarding storage, (E) type of fill material, (F) type and extent of clearing to be performed, (G) design life of structures and portion of sediment capacity that will initially store water, (H) borrow (type, location, relation to geology, and landrights), and (I) provisions for safeguarding public health, water quality, sanitation, and safety. Reference should be made to Table 3 or 3A.

(ii) Potential hazard due to dam failure - Discuss the potential hazard induced by risk of failure of a dam. Point out that although a dam failure is not expected, there is always some remote possibility of failure and that failure, if it were to occur, would endanger any development in the breach inundation area. Also include information on the geologic or design factors, which could contribute to the possible failure of a dam. Refer to the breach inundation map in Appendix B of the plan-EIS.

(iii) Explain the rationale for determining the dam classification. For class "a" and "b" dams, explain that they are designed for less than the probable maximum flood and, therefore, there is a possibility of overtopping and subsequent failure. Include precautions against future development within the breach inundation area of class "a" and "b" dams that could result in a changed classification. For class "c" dams, explain that an emergency action plan will need to be developed by the sponsors and other local groups prior to initiating construction.

(iv) Describe channel characteristics by reaches along the path of the proposed channel work, including the materials through which channels will be constructed. The nature of the planned construction, operation, and maintenance by reaches should be further subdivided as follows: (A) establishment of new channel including necessary stabilization measures, (B) enlargement or alignment of existing channel or stream, (C) clean out of natural or manmade channel

(includes bar removal, removal of loose debris, and major clearing and snagging), (D) stabilization as the primary purpose by continuous treatment of localized problem areas - present capacity adequate, (E) measures or means provided to prevent private landowners from using federally cost-shared channels as outlets for private onfarm drainage of wetlands or bottom land hardwood habitat, and (F) presence of rock or other material that will significantly affect the design of the channel. Reference should be made to Table 3B.

(iv) Write narrative on public recreation facilities to include information on (A) land and water areas made available for recreational use by project action, (B) kind and nature of recreational facilities to be installed (in sufficient detail to indicate their quality), (C) relationship between the components of the development - water resource improvement(s) and associated facilities, and (D) provisions for public access, health, sanitation, safety, and the physically handicapped. Reference should be made to Table 2B.

(v) Include the following information for each measure: (A) minimum landrights (acres) by proposed use and availability for public use; (B) approximate planned amount of each plan element; (C) planned appurtenances; (D) alteration, modification or change in existing improvements; (E) number and kind of relocations, that will result from acquisition of landrights including number of persons affected; (F) action to be taken to minimize soil erosion, and water, air, and noise pollution during construction; (G) type of action to be taken relating to preservation of historical and archeological data, sites, and specimens; and (H) nonproject features. Describe steps to be taken to minimize the project effects on these values.

(vi) Indicate that before construction of any project for local flood protection, the sponsors shall agree to participate in and comply with applicable Federal flood plain management and flood insurance programs. (PL 99-662)

(d) Mitigation features.

Features or provisions to mitigate losses and other adverse effects should be discussed. Whatever the feature is mitigating should be clear (40 CFR 1502.16(h). If the project does not contain mitigation features, this section may be omitted.

(e) Permits and compliance.

Include a list of all Federal permits and other entitlements that must be obtained and consultation which must be completed to implement the recommended plan. If none are required, include a sentence so stating (40 CFR 1502.25). If the plan-EIS will also be used in its present form to obtain a permit, it should be discussed here with all supporting information included in the appendix.

508.38

(The table which was here is no longer required and therefore has been deleted.)

508.38(f)

(f) Costs.

(1) This section should explain what the costs include which are shown on Tables 1, 2, 2A, and 4. Reference to the appropriate table. Refer to agreement for cost-sharing arrangements.

(2) The narrative should explain what each item costs, including land treatment, construction, engineering, project administration, relocation payments, and operation and maintenance. It should also highlight significant cost items not shown on the tables. Cost estimates for major subitems not listed in the tables should be described and included in the narrative. For example, project administration costs include relocation assistance advisory services and other items. It should be clear that all significant items of costs have been included in the estimates. Joint costs and specific costs for multiple-purpose structures should be described.

(3) The section should, if not included in the tables, show the costs allocated to each purpose served by the plan. The method of cost allocation should be identified.

(g) Installation and financing.

(1) This section should explicitly describe the framework for carrying out the plan. It should describe the planned sequence of installation, along with the responsibilities of the sponsors, SCS, and other cooperating agencies for installing and financing the project. Also, any preconditions for installing the project should be discussed.

(2) Planned sequence of installation.

Show by year the estimated schedule of obligating P.L. 83-566 and other funds. Show land treatment cost-share funds separately. If an advance of funds for future municipal water is involved, indicate the amount and the year needed. If certain work must be installed or completed before installing other work, this should be noted. The following table should be used to display this information:

Table ____ - Schedule of Obligations

Year	Items	PL-566 Funds	Other Funds	Total Funds
1st	Financial Assistance			
	Land Treatment			
	Nonstructural			
	Structural			
	Landrights			
	Technical Assistance			
	Land Treatment			
	Other			
2nd	Financial Asstistance			
	Land Treatment			
	Nonstructural			
	Structural			
	Landrights			
	Technical Assistance			
	Land Treatment			
	Other			
3rd	etc.			

(3) Responsibilities.

(i) Specific responsibilities of each sponsor and SCS should be listed. The plan must show that the sponsors have the needed authorities and have agreed to exercise those authorities to implement the plan. Items that should be covered for each planned measure include: acquisition of landrights, and water rights, permits, licenses, and other entitlements; contracting; engineering; project administration; relocation advisory services; financing; and installation.

(ii) The plan should specify any mitigation measures that must be installed and their relationship to the construction schedule.

(iii) The plan should describe the landrights and the amount of land treatment that must be obtained or installed prior to installing structural or nonstructural measures.

(iv) P.L. 83-566 assistance for construction of one structural measure, or the first unit of a structural measure, may be provided before all necessary landrights for the entire project are obtained if the plan shows that the sponsors have sufficient funds and agree to use their power of eminent domain to acquire the needed rights. It is a good practice to include a schedule for obtaining landrights in the plan. Generally, it is desirable that all landrights for the project are acquired in the first 2 or 3 years of the installation period.

(4) Contracting.

(i) The writeup should indicate the method of contracting used for installing the planned measures and name the sponsor responsible for dealing with SCS during installation. This applies to land treatment as well as structural and nonstructural measures.

(ii) The plan should state clearly, as appropriate, that (1) the sponsors intend to do the contracting or (2) SCS is formally requested to do a specific portion or all of the contracting.

(iii) If a "performance of work" or a "division of work" arrangement is to be used, see paragraphs 501.41(c) and (d). Where a "division of work" is involved, this section should include a statement that the value of the work SCS is to perform does not exceed cost-sharing rates for such practices applicable under other cost programs. Describe the responsibilities of each party.

(5) Landrights and relocations.

Describe the landrights needed and the number and kind of relocations that will result from the proposed action. Identify the sponsors and their responsibilities, and indicate that they will follow standard SCS procedures as outlined in Property Management Regulations in conformance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646).

(6) Other agencies.

Describe the responsibilities of and types of assistance to be made available by each Federal agency in accomplishing the plan. Specifically indicate concurrence of any land managing agency with its part in carrying out the plan, except for the Forest Service, which is a USDA agency with responsibilities in plan development and implementation.

(7) Cultural resources.

(i) If protection or preservation, or both, and recovery of cultural values are anticipated, this section should contain a brief summary of the plans involved, including responsibilities for carrying out such plans (GM 420-410).

(ii) This section should state that if cultural values are discovered during construction, that appropriate notice will be given to the Secretary of the Interior (through the appropriate field office of the Interagency Archaeological Services Division) in accordance with GM 420-401. SCS will take action to protect or recover, or both, any significant cultural resources discovered during construction.

(8) Financing.

(i) The plan should show how the sponsors and the Federal Government will finance installation and operation and maintenance costs. It should be clearly indicated that the sponsors have analyzed their financial needs in relation to the scheduled installation, estimated operation and maintenance requirements of the works of improvement, and arranged that funds will be available when needed through donations, cash reserves, tax or assessment levies, or credit. The plan should include an estimate of the out-of-pocket costs to be borne by the sponsors and should show that projected revenues are adequate.

(ii) If loans are contemplated, show that sources of credit have been contacted with favorable results. If a watershed loan is contemplated from the Farmers Home Administration, indicate that negotiations are underway with the state director of the Farmers Home Administration, including the filing of a preapplication.

(iii) Describe the extent to which donations, such as land, easements, labor, material, equipment, services, or money, will be used to finance the costs other than those payable with P.L. 83-566 funds. Where applicable, indicate that the sponsors may receive credit for such contributions toward their required cost sharing under conditions to be agreed upon in advance of their performance (§501.41(c) and §501.41(d)).

(iv) Costs not eligible for P.L. 83-566 financial or credit assistance should be identified. The means of financing such costs should be described.

(v) When an advance of P.L. 83-566 funds for future municipal or industrial water supply is involved, this section of the

plan should show: (A) the estimated amount of the advance, the type of cost for which it will be used, and that the cost will not exceed 30 percent of the total estimated installation cost of the structure involved; (B) that the sponsor will enter into an agreement, approved by the Farmers Home Administration, for repayment of the advance prior to the execution of the SCS fund-obligating agreement, (C) that the sponsor intends to use the water from the storage capacity provided for future municipal use within the evaluation period of the structure, and (D) that the state director of the Farmers Home Administration has tentatively concurred in the proposed advance.

(9) Conditions for providing assistance.

The plan should describe the conditions under which P.L. 83-566 assistance will be made available to the sponsors and should show that financial and other assistance to be furnished by SCS for carrying out the project is contingent on the appropriation of funds for this purpose. Items to consider include requirements for land treatment, landrights, and permits.

(10) Other.

(i) Appropriate explanatory statements should be included setting forth the opportunities for Federal assistance from other programs, including cost-sharing programs of USDA and community development block grants from the Department of Housing and Urban Development.

(ii) If protection or preservation, or both, and recovery of cultural values is anticipated, identify who will be responsible for the financing and how it will be funded.

(iii) When the plan includes works of improvement to be installed on Federal land, the plan should show how P.L. 83-566 funds will be used in combination with funds available from regular program sources.

(iv) If the sponsors intend to do the contracting or will otherwise receive P.L. 83-566 funds, their responsibilities are outlined in OMB-102 as implemented by SCS according to the procedures in the National Contracts Grants and Cooperative Agreements Manual.

(h) Operation and maintenance.

(1) Discuss operation, maintenance, and replacement (O&M) responsibilities in the same detail as installation responsibilities. All project features should be discussed including land treatment,

nonstructural and structural measures. The local organization will be responsible for operating, maintaining, and replacing (when needed) each planned measure. This responsibility includes the financing of these actions.

(2) This section should clearly indicate how the sponsors will encourage landowners and operators to operate and maintain the land treatment measures on their farms for the protection and improvement of the watershed.

(3) The plan-EIS should identify the responsibilities for operating the nonstructural measures to ensure their effectiveness throughout the evaluation.

(4) Identify responsibilities for operating structures, including use of water in regulated storage capacity; for operating any control works such as tide gates; for the legal steps required to establish operating authority; and others.

(5) Discuss the kinds of inspections to be made and their frequency. When National Forest land is included, specify that the inspection team will include a Forest Service member.

(6) Sufficient detail should be included to ensure that the requirements and costs for adequate operation and maintenance are fully understood and that arrangements have been or can be made to satisfy these requirements. This matter is particularly significant for recreational developments, since the operation and maintenance of even a modest recreation development likely could comprise over half of the total operation and maintenance responsibility of the entire project. Since the recreation facilities generally require periodic replacement during the project evaluation, the plan-EIS should show the extent to which replacement costs have been included. Custodial, policing, sanitation, safety, and other operational services and the manner of financing operation and maintenance costs should be described fully. If admission or use charges are contemplated, the plan should indicate the basis that will be used for establishing fees.

(7) Specific reference should be made to the provisions and responsibilities for operation and maintenance of fish and wildlife features or measures, fish and wildlife mitigation features, needed sanitary facilities, provisions for public access at any of the project measures, and any unusual operational needs and major maintenance work that may be anticipated.

(8) Provisions should be included to ensure that installation and operation and maintenance of the planned features meet the

requirements of appropriate state and local public health agencies. This point is especially important when recreation or municipal water supply, or both, are involved. Identify the agencies involved.

(9) Include a statement that specific operation and maintenance agreements will be made before signing a landrights, relocation, or project agreement. These O&M agreements are to include, in addition to specific sponsor responsibilities for nonstructural and structural project measures, specific provisions for retention, use, and disposal of property acquired or improved with P.L. 83-566 assistance. The plan-EIS should also state that the O&M agreements will be based on the National Operation and Maintenance Manual and that an operation and maintenance plan will be prepared for each structural, nonstructural, and land treatment measure. Indicate where appropriate that an Emergency Action Plan will be developed.

(i) Tables.

(1) The tables are designed to meet as many conditions in a watershed as can be readily anticipated to exist. Show those items or measures applicable to the specific watershed plan. In using all the tables, the indicated headings and items should be used in the order illustrated, from top to bottom and left to right, to facilitate all review and summary purposes.

(2) Prime-numbered tables are usually necessary in all plans; use A and B tables only if applicable. For ready reference, reproduce tables on colored paper. Date all tables with the month and year; date must be reasonably current. Round all dollar figures shown in the tables to a practical level of significance.

(3) INSTRUCTIONS FOR TABLE 1 - ESTIMATED INSTALLATION COST

All measures and items with their total estimated costs should be shown in Table 1 by federal agency and land ownership category. This table will be the basis for providing technical, cost-sharing, and credit assistance from funds made available under the Act.

(i) Land treatment is to be listed according to one of three categories. (a) The first is that land treatment that is required to be installed upstream of dams or channels in order to satisfy the 50 percent requirement for lands situated in the drainage area above each retention reservoir to be installed with federal assistance as called for in the Act. (b) The second category is that accelerated land treatment being installed to protect the soil resource base for sustained productivity, to conserve water, to improve water quality and to reduce sediment damage. Both the required and accelerated land treatment should be listed by the type of land involved and should correspond to the information in the watershed agreement. The type of land should be by evaluation units such as land capability class, soil type, or erosion-rate category which was used to delineate the problem area. This is the only category applicable to watershed protection projects. (c) The third category of land treatment is composed of those associated measures necessary to ensure realization of benefits used in the economic justification of structural measures for drainage and irrigation. Only onfarm practices installed with P.L. 83-566 program assistance are to be included.

(ii) List nonstructural measures by types such as flood plain acquisition, flood warning system, or flood proofing.

(iii) List structural measures by major types such as floodwater-retarding structures, multiple-purpose structures, irrigation structures, or channel work. Miles will be used as the unit of measure for channel work. Do not designate purposes or group such measures under a purpose designation.

(iv) If federal agencies other than SCS and FS participate in the installation of works of improvement, add columns so that their participation may be shown in the same manner as for SCS and FS.

(v) The estimated number of units and the estimated cost in dollars to be paid from P.L. 83-566 funds and from other sources for measures to be installed on federal and nonfederal land should be shown in the body of the table. The estimated costs should include any accelerated help that may be provided by other programs for cost-sharing and technical assistance on nonfederal land and works of improvement on federal lands.

(vi) Direct project funds for each agency for engineering services and project administration should be sufficient to cover all costs that will eventually be charged to the project. These funds should include allowances for assistance by the state, National Technical Center, and National Headquarters. All costs for the project should be included as part of the cost for the category rather than as a separate line item.

TABLE 1 - ESTIMATED INSTALLATION COST

David Creek Watershed, Middlestate

Installation Cost Item	Unit	Number			Estimated Cost (Dollars) 1/								
					Public Law 83-566 Funds					Other Funds			
		Federal Land	Nonfederal Land	Total	Federal Land		Nonfederal Land		Total	Federal Land	Nonfederal Land	Total	TOTAL
					SCS 2/	FS 2/	SCS 2/	FS 2/					
LAND TREATMENT-REQUIRED													
Evaluation Unit													
A	XX	—	XXX	XXX	—	—	XX	—	XX	—	XXX	XX	XXX
B	XX	—	XXX	XXX	—	—	XX	—	XX	—	XXX	XX	XXX
C													
D													
E													
Technical Assistance					—	—	XX	XX	XX	—	—	—	XXX
SUBTOTAL - REQUIRED					—	—	XXX	XX	—	—	XX	XX	XXX
LAND TREATMENT - ACCELERATED													
Evaluation Unit													
F	XX	—	XXX	XXX	—	—	XX	—	XX	—	XX	XX	XXX
G	XX	—	XXX	XXX	—	—	XX	—	XX	—	XXX	XX	XXX
H													
I													
Technical Assistance					—	—	XX	XX	XX	—	—	—	XXX
SUBTOTAL - ACCELERATED					—	—	XX	XX	XX		XXX	XX	XXX
LAND TREATMENT-ASSOCIATED	XX	—	XXX	XXX	—	—	0	—	0	—	XXX	XX	XXX
Technical Assistance							XX	—	XX	—	XXX	XX	XXX
SUBTOTAL-ASSOCIATED		—	XXX	XXX	—	—	XX	—	XX	—	XXX	XX	XXX
SUBTOTAL LAND TREATMENT					—	—	XX	XX	XX	—	XXX	XX	XXX
NONSTRUCTURAL MEASURES													
Preservation Easements													
Flood Proofing													
Land Acquisition													
Flood Warning System													
Relocation													
SUBTOTAL NONSTRUCTURAL													
STRUCUTRAL MEASURES													
Floodwater Retarding Struc.													
Multiple Purpose Structures													
Channel Work	XX	—	XXX	XXX	—	—	XXX	—	XXX	—	XXX	XXX	XXX
SUBTOTAL STRUCTURAL	XX	—					XXX	—	XXX	—	XXX	XXX	XXX
TOTAL PROJECT	XX	—					XXX	XX	XXX	—	XXX	XXX	XXX

Month and Year

1/ Price Base
2/ Federal agency responsible for assisting in installation of works of improvement

(4) INSTRUCTIONS FOR TABLE 2 - ESTIMATED COST DISTRIBUTION

This table will be used to show the various items of installation cost for individual structural and nonstructural measures and will be the basis for determining the percentages of costs to be shared by the sponsors and SCS for each measure or group of measures. The following instructions are provided to assist in the preparation of the table.

(i) Under "Item" list each measure for which separate cost estimates are available. The same number or name used on the project map should be used in this table. Grade stabilization structures may be grouped when a separate estimate for each structure in a system has not been developed.

(ii) Care should be taken to ensure that individual measures will not be grouped with other measures for which cost sharing is not the same. For example, specific cost items and recreation facilities should be included as separate line item entries.

(iii) The estimated construction cost should include costs expected to be incurred during the installation period including those costs for cultural resource protection and mitigation plus a realistic contingency allowance in accordance with good estimating practices.

(iv) The estimated land rights cost should consist of all costs, including those needed for cultural resource protection and mitigation, for purchasing the needed land rights.

(v) For those measures that incorporate nonproject features, the nonproject cost will be shown in parenthesis in the line below the project cost in the appropriate columns. The grand total cost should include only project costs.

(vi) The estimated cost for project administration will be incorporated as part of each item listed. The project administration portion of the installation cost to be borne by the sponsors may include the cost of administering construction contracts, and relocation assistance advisory services.

(vii) When applicable, footnotes should be included to identify such items as:

(a) Legal fees, survey costs, or flowage easements and their values.

(b) Engineering service contract costs to be borne by P.L. 83-566 and others.

(c) Nonproject cost items.

(d) Kind and value of modifications or alternatives included with the landrights.

(e) The cost of cultural resource protection and mitigation.

TABLE 2 - ESTIMATED COST DISTRIBUTION
STRUCTURAL AND NONSTRUCTURAL MEASURES

David Creek Watershed, Middlestate

(Dollars) 1/

	Installation Cost P.L. 566 Funds						Installation Cost-Other Funds							Total Installation Cost
	Construction	Engi-neering	Land Rights	Relocation Payments	Project Admin.	Total P.L. 566	Construction	Engi-neering	Land Rights	Water Rights	Relocation Payments	Project Admin. 6/	Total Other	
STRUCTURAL MEASURES														
Floodwater Retarding Structures														
No. 1									3/					
No. 3														
Multiple Purpose Structures:														
No. 2 Recreational Development	7/	4/	8/				7/	4/	8/5/					
Recreational Facilities							2/							
No. 4 Water Supply														
Water Intake Tower														
Channel Work														
Main A														
10+00-40+00 (M) 6/														
40+00-65+00 (M) 6/														
Lateral A														
10+00-20+00 (O) 6/														
SUBTOTAL - Structural														
NONSTRUCTURAL MEASURES														
Relocation of Properties														
Floodproofing														
Floodplain Acquisiton														
Flood Warning System														
SUBTOTAL - Nonstructural														
GRAND TOTAL														

1/ Price base _____.
2/ Nonproject cost for rerouting State Route 281 across top of dam.
3/ Includes $_____ for moving three pipelines and $____ for weighting one AT&T cable.
4/ Engineering services contract cost to be borne: $____ by P.L. 566 funds and $ _____ by other funds.
5/ Includes $_____ for surveys, legal fees other costs.
6/ Includes $_____ for relocation assistance advisory service.
7/ Includes $ _____ of P.L. 566 funds and $ ___ of other funds for cultural resource protection and mitigation measures.
8/ Includes $ _____ of landrights cost for mitigation.

Month and Year

508.38(h)(4)

(5) INSTRUCTIONS FOR TABLE 2A - COST ALLOCATION AND COST-SHARING SUMMARY

This table will show the installation costs allocated to flood prevention, drainage, irrigation, municipal and industrial water supply, recreation, fish and wildlife, etc., and the sharing of costs allocated to each purpose. Include relocation payments in the same manner as construction, landrights, and engineering costs. Use as many columns as necessary to show each project purpose.

(i) Each of the individual purposes served by project measures should be entered as a subcolumn heading under the column heading "Purpose."

(ii) All single-purpose measures serving the same purpose may be grouped by purpose under "Item." Each multiple-purpose structure and specific cost items should be listed separately, in the same manner as shown in Table 2. List the items of installation cost (as in Table 2) under each measure or group of measures.

(iii) In the cost-sharing section of the table, distribute the total cost allocated to each purpose to P.L. 3-566 funds and other funds in accordance with applicable cost-sharing policy.

(iv) When relocation costs are involved, it may be necessary to show P.L. 83-566 costs for municipal water supply. In such an instance, this should be identified by footnote on the table.

TABLE 2A - COST ALLOCATION AND COST SHARING SUMMARY
STRUCTURAL AND NONSTRUCTURAL MEASURES
David Creek Watershed, Middlestate

(Dollars) 1/

ITEM	COST ALLOCATION				COST SHARING							
	PURPOSE				P.L. 566				OTHER			
	Flood Pre-vention	Recre-ation	M & I Water Supply	Total	Flood Pre-vention	Recre-ation	M & I Water Supply	Total	Flood Pre-vention	Recre-ation	M & I Water Supply	Total
Grade Stabili-zation Structures												
Construction												
Engineering												
Relocation												
Land Rights												
Project Admin.												
Subtotal												
Multiple Purpose Structure No.__												
Construction												
Engineering												
Relocation												
Land Rights												
Acquisition												
Legal Fees												
Easements												
Road & Utility Modification												
Project Admin.												
Subtotal												
Recreation Facilities												
Construction												
Engineering												
Land Rights												
Acquisition												
Legal Fees												
Project Admin.												
Subtotal												
TOTAL												

1/ Price Base _____.

Month and Year

508.38~~(h)~~(i)(6)

(6) INSTRUCTIONS FOR TABLE 2B - RECREATIONAL FACILITIES ESTIMATED CONSTRUCTION COSTS

Table 2B will show the number, estimated unit construction cost, and total cost for each individual type of recreational facility. This table should be included in all plans that have recreational development as an integral part of the plan and when recreational benefits for a planned development are evaluated monetarily, regardless of whether P.L. 566 funds will share any of the cost for facilities.

(i) When more than one development is involved, identify the facilities to be installed at each development. Types of facilities may include access roads, parking lots, water supply, sanitary facilities, beach development, boat docks, picnic tables, or fireplaces. Where possible, include descriptive terms such as blacktop road--16 feet wide, flush toilet, and concrete picnic table.

(ii) Under "Number" show the number of units of each type of facility planned. Include a footnote to indicate those items which are estimated and subject to minor variation.

TABLE 2B - RECREATIONAL FACILITIES

ESTIMATED CONSTRUCTION COSTS

David Creek Watershed, Middlestate

(Dollars) 1/

Item	Number	Estimated Unit Cost	Total Construction Cost
	(Indicate 2/ quantities which are estimated.)		
GRAND TOTAL			

1/ Price base _____.
2/ Estimated quantity, subject to minor variation at time of detailed planning.

Month and Year

(7) INSTRUCTIONS FOR TABLE 3 - STRUCTURAL DATA, DAMS

DAMS WITH PLANNED STORAGE CAPACITY

Most of the items in the table are self-explanatory, but additional clarification is provided for the following items:

(i) Class of structure should be indicated as a, b, or c as defined in the National Engineering Manual, 210-520.21(e).

(ii) Total drainage area should include the controlled and uncontrolled drainage area above the structure. If two or more structures are in series, the amount of drainage area controlled by the upstream structure(s) should be shown in the "controlled" line. The "uncontrolled" line should indicate that the drainage area below the upstream lines will be omitted.

(iii) The emergency spillway type refers to the type of material, such as vegetated rock, earth, or concrete.

(iv) The 1-day runoff curve number used for design of the structure(s) should be indicated. Any deviation from the use of an antecedent moisture condition II runoff curve number should be appropriately noted.

(v) The floodwater-retarding pool is the reservoir space allotted for the temporary impoundment of floodwater and aerated sediment. Its upper limit is the elevation of the crest of the lowest emergency spillway. Floodwater-retarding capacity is the volume in the floodwater-retarding pool less the aerated sediment. The surface area of the floodwater retarding pool is the area at the crest elevation of the lowest emergency spillway.

(vi) The submerged sediment capacity should account for all of the reservoir space allotted to the accumulation of submerged sediment during the life of the structure. Sediment aerated is the volume of sediment that deposits above the lowest ungated aerated sediment.

The surface area for the sediment pool is the area of the reservoir at the elevation of the anticipated sediment accumulation at the dam. If the lowest ungated outlet is below the sediment pool elevation, the area to initially store water should be shown by footnote, or by adding another line. The sediment pool area will be shown in parenthesis if the reservoir contains beneficial storage or the sediment capacity will not store water.

(vii) Beneficial use storage should be shown separately for each applicable purpose, including the capacity needed for losses.

In listing the surface area for the beneficial use pool, identify the use of recreation or fish and wildlife pools, when applicable. Water storage for either of these purposes normally is considered the first increment above the sediment pool. When other beneficial uses are included in a reservoir, also show the maximum water surface area for all beneficial uses.

(viii) The principal spillway is the lowest ungated spillway designated to convey the water from the floodwater-retarding pool. Type of conduit refers to the material used such as R/C pipe, R/C box, or CMP.

(ix) The emergency spillway system of a dam is the spillway system designed to convey water in excess of that impounded for flood prevention or other beneficial purposes.

(x) The exit channel of an earth, vegetated, or rock emergency spillway is that part of the channel downstream from the control section which safely conducts the water to a point where it may be released without jeopardizing the integrity of the structure. Ve is the maximum velocity of flow in the exit channel for the emergency spillway hydrograph.

(xi) The emergency spillway hydrograph (ESH) is used to establish the minimum design dimensions of the earth or rock emergency spillway.

(xii) The freeboard hydrograph (FH) is used to establish the minimum elevation of the top of the dam.

(xiii) Elevations should be referenced to mean sea level.

(xiv) All flow capacities should be shown as maximum or peak.

(iv) Table 3 should also be used for joint-use storage structures. Joint-use storage is reservoir storage capacity partly allocated to flood prevention but also used for conservation or beneficial storage during seasons when floods normally do not occur. The operation of joint-use storage is based on water supply forecasts and continuous inflow and outflow measurements or a fixed time schedule. Modify the table headings as appropriate to show capacities for separate storage purposes and capacities for beneficial use storage shared with floodwater-retarding capacity.

TABLE 3 - STRUCTURAL DATA

DAMS WITH PLANNED STORAGE CAPACITY

David Creek Watershed, Middlestate

Item	Unit	Structure Number 1, 2, 3, 4, etc.	Total
Class of Structure			XXX
Seismic Zone			XXX
Uncontrolled Drainage Area	Sq. Mi.		
Controlled Drainage Area	Sq. Mi.		XXX
Total Drainage Area	Sq. Mi.		XXX
Runoff Curve No. (1-day) (AMC II)			XXX
Time of Concentration (T_c)	Hrs.		XXX
Elevation Top of Dam	Ft.		XXX
Elevation Crest Emergency Spillway	Ft.		XXX
Elevation Crest High Stage Inlet	Ft.		XXX
Elevation Crest Low Stage Inlet	Ft.		XXX
Emergency Spillway Type			XXX
Emergency Spillway Bottom Width	Ft.		XXX
Emergency Spillway Exit Slope	%		XXX
Maximum Height of Dam	Ft.		XXX
Volume of Fill	Cu. Yd.		
Total Capacity 1/	Ac. Ft.		
Sediment Submerged	Ac. Ft.		
Sediment Aerated	Ac. Ft.		
Beneficial Use (identify use)	Ac. Ft.		
Floodwater Retarding	Ac. Ft.		
Between High and Low Stage	Ac. Ft.		
Surface Area			
Sediment Pool 2/	Acres		
Beneficial Use Pool (identify use)	Acres		
Floodwater Retarding Pool 1/	Acres		
Principal Spillway Design			XXX
Rainfall Volume (1-day)	In.		XXX
Rainfall Volume (10-day)	In.		XXX
Runoff Volume (10-day)	In.		XXX
Capacity of Low Stage (Max.)	cfs		XXX
Capacity of High Stage (Max.)	cfs		XXX
Dimensions of Conduit	Ft./In.		XXX
Type of Conduit			XXX
Frequency Operation-Emergency Spillway	% chance		XXX
Emergency Spillway Hydrograph			XXX
Rainfall Volume	In.		XXX
Runoff Volume	In.		XXX
Storm Duration	Hrs.		XXX
Velocity of Flow (V_e)	Ft./Sec.		XXX
Max. Reservoir Water Surface Elevation	Ft.		XXX
Freeboard Hydrograph			XXX
Rainfall Volume	In.		XXX
Runoff Volume	In.		XXX
Storm Duration	Hrs.		XXX
Max. Reservoir Water Surface Elevation	Ft.		XXX
Discharge per Foot of Width (Q_e/b)	Ac. Ft.		XXX
Bulk Length	Ft.		XXX
Capacity Equivalents			
Sediment Volume	In.		XXX
Floodwater Retarding Volume	In.		XXX
Beneficial Volume (identify use)	In.		XXX

1/ Crest of Emergency Spillway.
2/ If reservoir contains beneficial storage or if sediment capacity will not store water, show area in parenthesis and footnote accordingly.

Month and Year

508.38(i)(8)

(8) INSTRUCTIONS FOR TABLE 3A - STRUCTURAL DATA - DIKES

Table 3A will show each dike separately on the table. Data in each column to the right of the stationing should be entered on the same line as the station location.

TABLE 3A - STRUCTURAL DATA - DIKES 1/

DAVID CREEK WATERSHED, MIDDLESTATE

Dike	Stationing	Top Width (ft.)	Average Side Slope	Average Height of Dike (ft.)	100-Year Frequency Velocity (ft./sec.)	Dike Protection	Volume of Earth Fill (cu. yds.)

1/ Dikes are Class _ (Ref. SCS Eng. Standard No. 356).

Month and Year

508.38(h)(9)

(9) INSTRUCTIONS FOR TABLE 3B - STRUCTURAL DATA, CHANNEL WORK

(i) The data in each column to the right of station should be entered on the same line as the station location it represents.

(ii) Data such as Hydraulic Gradient and Excavation Volume should be entered to represent values between the station given and the preceding station or entered on intervening lines.

(iii) Drainage Area is the uncontrolled area at the station.

(iv) As built and aged velocities entered in the table should be the velocities associated with the discharges used for stability analysis. If velocities are for other than design discharge, explain by footnote.

(v) The information in footnotes may be shown by a separate legend sheet.

(vi) Table 3B should also be used for irrigation canals and drainage channels.

(vii) Show totals for length of channel work and volume of excavation.

(viii) If design discharge includes overbank flow, this shall be indicated by an appropriate footnote.

(ix) If the design discharge cannot be expressed in meaningful terms by frequency, the basis for design (drainage curve ;numbers, removal rate, etc.) should be shown.

TABLE 3B - STRUCTURAL DATA

CHANNEL WORK

David Creek Watershed, Middlestate

Channel Name Reach	Station	Drainage Area sq. mi.	( ) yr. Frequency Design Discharge cfs	Water Surface Elevation Feet msl	Hydraulic Gradient ft/ft	Channel Dimensions 1/ Bottom Gradient ft/ft	Bottom Width ft	Bottom Elevation ft/msl	Side Slopes	"n" Value Aged	"n" Value As Built	Velocities Ft/Sec Aged 2/	Velocities Ft/Sec As Built 2/	Excavation Volume cu. yds.	Type of Work 3/	Existing Channel Type 4/	Present Flow Condition 5/

1/ Where Excavation is not planned, show cross sectional area and wetted perimeter below hydraulic grade line.
2/ Explain discharge upon which velocities are based, i.e., design, bankfull, 10-year, etc.
3/ I - Establishment of new channel including necessary stabilization measures.
II - Enlargement or realignment of existing channel or stream.
III - Cleaning out natural or manmade channel (includes bar removal and major clearing and snagging operation).
IV - Clearing and removal of loose debris within channel section.
V - Stabilization as primary purpose (by continuous treatment or localized problem areas--present capacity adequate).

4/ N - An unmodified, well defined natural channel or stream.
M - ( ) Manmade ditch or previously modified channel (show approximate date of original major construction in parenthesis).
O - None or practically no defined channel.

5/ Pr - Perennial - flows at all times except during extreme drought.
I - Intermittent - continuous flow through some seasons of the year but little or no flow through other seasons.
E - Ephemeral - flows only during periods of surface runoff, otherwise dry.
S - Ponded water with no noticeable flow - caused by lack of outlet or high ground water table.

NOTE: A subscript "L" should be added to the Roman numeral classification to indicate an impervious lining

Month and Year

508.38(i)(10)6

(10)
INSTRUCTIONS FOR TABLE 4 - ANNUALIZED ADVERSE NED EFFECTS

1. List measures, singly or in groups, as used for evaluation purposes. Group measures the same on Table 4 and Table 6. Each evaluation unit will include costs for all items in the evaluation unit whether or not benefits can be evaluated monetarily. Include all costs in the total and in the annual cost column of Table 6. The rationale for including uneconomical or unevaluated increments will be included in the narrative.

2. Enter the appropriate annual costs for each of the evaluation units. The annual project administration cost will be included in each evaluation unit and in the grand total.

3. The installation cost will be converted to the annual equivalent cost based on the estimated life of the project and the current discount rate. Show by footnote the discount rate and the period of analysis used.

4. Show the current price base for the installation, operation, maintenance, and replacement cost estimates.

5. Because of its magnitude and importance, the operation, maintenance, and replacement cost for recreational or fish and wildlife developments should be identified by footnote.

6. Costs that have been deducted as associated costs are not normally included in this table. All P. L. 83-566 costs including technical assistance only cost should be included in Table 4.

TABLE 4 - ANNUALIZED ADVERSE NED EFFECTS

(Dollars) 1/

Evaluation Unit	PROJECT OUTLAYS		OTHER PROJECT COSTS	Total
	Amortization of Installation Cost	Operation, Maintenance, and Replacement Cost	Other Direct Costs	
Land Treatment - Accelerated				
Evaluation Unit 1	XXX	XXX	0	XXX
Evaluation Unit 2	XXX	XXX	0	XXX
Reaches 1 to 6				
Multipurpose channel, dam, etc.				
Land Treatment - Associated 3/				
Land Treatment - Required	XXX	XXX 2/	XXX	XXX
Reaches 7 and 8				
Multipurpose channel, etc.	XXX	XXX	XXX	XXX
GRAND TOTAL	XXX	XXX	XXX	XXX

1/ Price Base _____, Discounted and annualized at ____ percent discount rate for ___ years.

2/ Includes $ _____ for operation, maintenance, and replacement for recreation development.

3/ Costs for technical assistance to install associated measures and financially assisted accelerated land treatment in this evaluation unit are included. (Costs for installing associated on farm measures are not included since they have been netted out of the analysis.)

Month and Year

508.38(i)(11)

(11)

INSTRUCTIONS FOR TABLE 5 - ESTIMATED ANNUALIZED FLOOD DAMAGE REDUCTION BENEFITS

1. Enter those types of flood damage that have been evaluated and that will be affected by the structural and nonstructural measures included in the plan in the "Item" column.

2. Gully erosion damage includes, in addition to loss resulting from land voiding, such ephemeral, sheet and rill erosion damage and impaired land use that is interrelated with gully erosion. Erosion not associated with flood damage reduction should not be included.

3. Enter in the column "With Project" the average annual damage that will continue to be incurred after project installation.

4. Enter the difference between the average annual damage with and without project to show the total damage reduction benefits of the project in the next to last column and show these converted values in annualized values in the last column.

5. When the table indicates no remaining damage in a category, a footnote is needed to show that damages and benefits were not evaluated completely. Examples of appropriate footnotes might be: "damages and benefits will accrue from floods of greater magnitude than _____ frequency, but were not evaluated" or "This includes only the damages and benefits occurring from voiding or land deterioration that are affected by the structural measures."

6. No distinction should be made between benefits accruing within or outside the watershed unless some unusual circumstances make it necessary or desirable.

7. The price base should be clear and specific, such as:

1/ Price base: 1983 current normalized prices for cropland and pasture; 1984 prices for all other.

TABLE 5 - ESTIMATED ANNUALIZED FLOOD DAMAGE REDUCTION BENEFITS

David Creek Watershed, Middlestate

(Dollars) 1/

Item	Estimated Average Annual Damage		Damage Reduction Benefit 2/3/	
	Without Project	With Project	Average Annual	Annualized
Floodwater				
Crop and Pasture	XX	XX	XX	XX
Other Agricultural	XX	XX	XX	XX
Nonagricultural				
Residential				
Commercial				
Other				
Subtotal	XX	XX	XX	XX
Sediment				
Overbank desposition	XX	XX	XX	XX
Reservoirs				
Other (list important items)				
Subtotal	XX	XX	XX	XX
Erosion				
Floodplain Scour	XX	XX	XX	XX
Steambank	XX	XX		
Gullies				
Subtotal	XX	XX	XX	XX
Grand Total	XX	XX	XX	XX

1/ Price base _____

2/ Includes effects of required land treatment measures.

3/ Costs and benefits for associated onfarm land treatment have been netted out.

Month and Year

508.38(i)(12)

(12) INSTRUCTIONS FOR TABLE 5A - ESTIMATED ANNUALIZED WATERSHED PROTECTION DAMAGE REDUCTION BENEFITS

1. Crop stand Damage - Dollar value of benefits attributed to a reduction in crop stand damage through erosion of sedimentation damages.

2. Land voiding and depreciation - Dollar value of benefits attributed to a decrease in land voiding and depreciation.

3. Water Conservation - Dollar value of benefits attributed to an onsite savings in water.

4. Maintaining Productivity - Dollar value of benefits attributed to the maintaining productivity for the evaluation period.

5. Other - Dollar value of other types of onsite benefits.

6. Onsite Subtotal - Total dollar value of onsite benefits in annual values.

7. Maintaining Productivity - Dollar value of benefits attributed to maintaining productivity for future generations.

8. Sediment Damages - Dollar value of benefits attributed to offsite sediment reduction.

9. Property Values - Dollar values of benefits attributed to an increase in property values of offsite properties.

10. Water Treatment - Dollar value of benefits attributed to a reduction in treatment costs of M&I water.

11. Recreation - Dollar value of benefits attributed to an increase in recreation.

12. Fish and Wildlife - Dollar value of benefits attributed to an increase in fish and wildlife values.

13. Water Conservation - Dollar value of benefits attributed to an offsite savings in water.

14. Other - Dollar value of other types of offsite benefits.

15. Offsite Subtotal - Total dollar value of offsite and/or public benefits in average annual values.

16. Grand Total - Annual benefits in dollars (should equal the sum of onsite and offsite/public).

TABLE 5A - ESTIMATED ANNUALIZED WATERSHED PROTECTION DAMAGE REDUCTION BENEFITS

David Creek Watershed, Middlestate

(Dollars) 1/

Item	Estimated Average Annual Damage		Damage Reduction Benefit	
	Without Project	With Project	Average Annual	Annualized
Onsite Crop Stand Damage Land Voiding and Depreciation Water Conservation Maintaining Productivity Other				
Subtotal				
Offsite/Public Maintaining Productivity for future generations Sediment Damages Property Values Water Treatment Recreation Fish and Wildlife Water Conservation Other				
Subtotal				
Grand Total				

Month and Year

1/Price Base _____

508.38(i)(13)

(13) INSTRUCTIONS FOR TABLE 6 - COMPARISON OF NED BENEFITS AND COSTS

This table will be used to show the estimated annualized benefits, estimated annualized costs, and benefit-cost ratios for project measures. The following instructions are provided for further clarification:

1. List measures, single or in groups, as used for evaluation purposes. Group measures the same as on Table 4.

2. Table 6 and the NED display account should show only NED benefits.

3. Enter the appropriate annualized benefit. All costs and benefits accruing to accelerated land treatment to protect the soil resource base for sustained productivity, to conserve water, to improve water quality and to reduce sediment damage are to be shown for each evaluation unit for the land treatment portion. The required land treatment costs and benefits upstream of dams and channel improvements are to be shown with the respective structural evaluation unit. If the associated land treatment benefits and costs have not been netted out of the analysis, they should also be shown with the respective structural evaluation unit. Both benefits and costs are to be on the same price base and period of analysis. Unemployed labor benefits will be those stemming from the utilization of unemployed and underemployed labor.

4. Include only the column headings necessary to show the project benefits. Include additional or substitute columns to show any other evaluated benefits consistent with the Principles and Guidelines that are not listed in the sample table. The nature of these benefits should be described in the narrative. All sustained production benefits and other watershed protection benefits should be reported under either the "Other Economic Effects" column or under the title of "Maintaining Productivity" if that is the only category of benefits. Headings from Table 5A may be used.

5. Enter the annualized costs for each evaluation unit. These figures should agree with those on Table 4.

6. Enter the relationship of benefits to costs, with costs as unity or 1. Express the ratio to the nearest tenth.

7. If an item that has not had its economic benefits evaluated, such as the permanent conversion of cropland to grass or trees, is included, it should be shown as a line item and footnoted indicating that not all benefits are included. (Any offsite that can be evaluated should be displayed). The project grand total benefit cost ratio should be calculated without the impact of this line item and so indicated by footnote.

TABLE 6 - COMPARISON OF NED BENEFITS AND COSTS

David Creek Watershed, Middlestate

(Dollars) 1/

Evaluation Unit	Agricultural						Urban			Recreation	Municipal and Industrial Water Supply	Unemployed Labor	Other Economic Effects	Total Annualized Benefits	Annualized Costs 3/	Benefit Cost Ratio
	Damage Reduction			Intensification												
	FP	Irr.	Dr. 2/	FP	Irr.	Dr.	Res.	Comm.	Other							
Land Treatment-Acc.																
Evaluation Unit 1										—	—	XXX	XXX	XXX	XXX	X.X:1.0
Evaluation Unit 2												XXX	XXX	XXX	XXX	X.X:1.0
Reaches 1 to 6																
Multipurpose Channel, Dam, etc.	XX			XX			XX	XX		—	—	XXX	XXX	XXX	XXX	X.X:1.0
Land Treatment, Required																
Land Treatment, Associated																
Reaches 7 and 8																
Multipurpose Channel, etc.	XX		XX	XX		XX	XX	XX				XXX	XXX	XXX	XXX	X.X:1.0
GRAND TOTAL	XXX		XX	XX		XX	XX	XX		--	--	XXX	XXX	XXX	XXX	X.X:1.0

1/ Price Base _____.

2/ Amortised costs of $___ and benefits of $____ for onfarm associated measures are not included.

3/ From Table 4.

Month and Year

§508.39 Effects of recommended plan.

(a) General effects.

(1) This section will describe the economic, environmental, and social effects of the planned project. Where benefits from a reduction of urban flood damages are claimed, benefit cost ratio for existing conditions will always be shown (18 CFR 713.521(b)). The results of the scoping process (Significant Concerns section) should be used to determine which factors should be addressed and the amount of detail in which each factor is addressed.

(2) Description of effects should be in terms of economic, environmental, social, and regional consequences. Economics should be integrated with the appropriate discussion rather than as a separate section. For each factor, the baseline data (existing and projected without-project conditions) in previous sections of the plan-EIS can be referred to if desired. Type and kind of information will depend on the location, type, scope, and complexity of the planned action.

(3) It is important to clearly identify indirect effects as well as direct effects. Also include a discussion on the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity. A separate subsection should be used to indicate any irreversible or irretrievable commitments of resources caused by the installation of the project.

(4) The narrative should summarize data using tables, drawings, maps, and other graphics pertinent to the effect of the recommended plan. If extensive listing of data needs to be included, it should be shown as an appendix.

(5) This section should fully explain the degree or extent to which each problem or opportunity is satisfied. For example, if flooding is a problem, any damages and flood hazard expected after the project is installed should be clearly described.

(6) A table should be used to display the effects of the recommended plan on particular types of resources that are recognized by certain Federal policies. The table shown below shall be used for this purpose. No other types of information are to be added to the table. (P&G §1.8.2)

(7) If the project has recreation benefits and must go to the Public Works Committee, describe the usage of other, similar public recreational facilities within the general area of the project, and the anticipated impact of the proposed project on the usage of such existing recreational facilities (PL 99-662).

(b) Relationship to land and water plans, policies, and controls.

Describe the relationship of the selected plan to local and regional comprehensive plans and land and water use plans, policies, and controls. Refer to approved river basin plans in which the project is shown as a priority for funding (WRC Consistency Policy), or describe reasons why the project is not included in an approved plan.

TABLE - Effects of the Recommended Plan on Resources of Principal National Recognition

Types of Resources	Principal sources of National Recognition	Measurement of Effects
Air quality	Clean air Act, as ammended [42 U.S.C. 1857h-7 et seq.].	[Enter area, in square miles, where State air quality classifications would change for each affected classification.]
Areas of particular concern within the coastal zone.	Coastal Zone Management Act of 1972, as amended [16 U.S.C. 1451 et seq.]	[Enter gains and losses, in appropriate units.]
Endangered and treatened species critical habitat	Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.].	[Enter area of each critical habitat type gained and lost,in acres.]
Fish and wildlife habitat	Fish and Wildlife Coordination Act [16 U.S.C. Sec. 661 et seq.].	[Enter are of each habitat type gained and lost, in acres
Floodplains	Executive Order 11988, Floodplain Management	[Enter area gained and lost in acres
Historic and cultural properties.	National Historic Preservation Act of 1966, as amended [16 U.S.C. Sec. 470 et seq.].	[Enter number and type of National Register [listed or eligible] properties affected.]
Prime and Unique farmland	CEQ Memorandum of August 1, 1980: Analysis of Impacts on Prime of unique Agricultural Lands in Implementing the National Environmental Policy Act, Farmland Protection Policy Act of 1981.	[Enter area of each farmland type gained and lost, in areas.]
Water Quality	Clean water Act of 1977 [33 U.S.C. 1251 et seq.].	[Enter length in miles for water cources, and area in acres for water bodies, where State water quality classifications would change for each affected classification.]
Wetlands	Executive Order 11990, Protection of wetlands Clean Water Act of 1977. [42 U.S.C. 1857h-7, et seq.]. Food Security Act of 1985.	[Enter area of each wetland type gained and lost, in acres.]
Wild and Scenic Rivers	Wild and Scenic Rivers Act, as amended [16 U.S.C. 1271 et seq.].	[Enter length of each river type gained and lost, in miles.]

[NOTE: If a type of resource is not present in the planning area, enter "Not present in planning area". If a type of resource is not affected, enter "no effect".]

§508.40 Consultation and public participation.

(a) The purpose of this section is to document the opportunities provided for the public's participation, throughout the process from the preapplication for USDA assistance to preparation of the final plan-EIS. This is to include the date, type, and purpose of the activity, and the names of participating organizations. Special note should be made of the successful coordination with the state Historic Preservation Officer regarding cultural resources and the Fish and Wildlife Service regarding threatened and endangered species.

(b) A listing of agencies and groups requested to comment on the draft plan-EIS should be included. An example is listed below. This section should be expanded in the final plan-EIS to summarize and provide responses to significant written comments. Similar comments may be grouped. The response should indicate where revisions were made in the document.

(c) Agencies from which written comments should be requested:

Department of the Army
Department of Commerce
Department of Health and Human Resources
Department of Education
Department of the Interior
Department of Transportation
Environmental Protection Agency
Advisory Council on Historic Preservation
Office of Equal Opportunity, USDA
Special Designated Areas
Federal Power Commission
Governor of Middlestate
State Single Point of Contact for
  Federal Assistance
(Anystate) State Historic Preservation officer, of Name of
  responsible state agency
Areawide Clearinghouse: North-central Regional
  Planning Commission
Groups or individuals as appropriate
  listed separately

§508.41 List of preparers.

(a) This list will include the key SCS personnel on the planning staff, state staff, and the area and field office staffs who were directly responsible for significant input in preparing the watershed plan and environmental impact statement. In addition, consultants, individuals, and other agency personnel should be listed if they made significant input. In some cases, it may be appropriate to list the agency, firm, etc., that provided the input rather than individuals.

(b) The list should include the person's name, present title, education, experience, employer, and other pertinent qualifications (publications, professional license, etc.) as shown in the following table:

(c) Include a brief description of the SCS state staff and NTC review process that was used. An example description follows:

"The draft watershed plan and environmental impact statement was reviewed and concurred in by state staff specialists having responsibility for engineering, soils, agronomy, range conservation, biology, forestry, and geology. This review was followed by review of the document and supporting data by the Technical Service Center. A similar review was also provided by Forest Service personnel."

508.42 Closing pages.

(a) Index.

This section should list key words, phrases, or subheadings along with appropriate page numbers. Examples of listings include alternatives, archeological, installation costs, land treatment, mitigation, National Economic Development Plan, Operation, Maintenance and Replacement, plan elements, sedimentation, and water quality.

(b) References.

This section should provide sources of information contained in the document along with numbers corresponding to appropriate reference numbers in the text. The SCS studies can be covered by one group reference early in the document.

§508.43 Appendices.

(a) Appendix A - Letters and oral comments received on draft plan-EIS. (This item will be included in both the draft and final plan-EIS's) However, add the following on the draft: "To be included in final environmental impact statement." Letters are not required to be included when an EIS is not prepared unless they include significant comments.

(b) Appendix B - Support maps (as appropriate).

(1) Recreational Development Map - When one or more recreational developments are planned as a project purpose, a map or sketch will be included to show the general layout of each development. It should show such pertinent features as (a) the boundaries of the development, (b) purchase area boundaries, (c) the dam and emergency spillway, (d) the surface area of the recreational

pool, (e) the high water line of the reservoir, and (f) the location and kind of principal use areas (picnicking, camping, bathing, parking, boat ramps, etc.) and the access roads. An example map is shown in §508.52 of this Part.

(2) Urban Flood Plain Map - Where existing or likely future urban or built-up areas are affected by the project measures, maps will be included to show those areas that will be flooded by a 100-year event and 500-year event with and without the recommended plan. Other flood lines may be included as appropriate. A recent aerial photograph is preferred as the base. The map should be referenced in the discussion of effects. Examples of this map are shown in §508.50 and §508.51 of this part.

(3) Breach Inundation Map - These maps are required for all SCS inventory dams and levees. For class "C" dams and class "I" dikes, detailed maps should be similar to the urban flood plain maps. When other dams and dikes are involved, they should be clearly described by the use of maps and/or narrative description. Information shown on the map should be the same as specified in the Emergency Action Plan outlined in the Operation and Maintenance Manual. An example map is shown in §508.53 of this Part.

(c) Appendix C - Investigation and Analyses Report

(1) The purpose of the Investigation and Analyses Report is to present information that supports the formulation, evaluation and conclusions of the watershed plan. The report should also contain information required by the Principles and Guidelines, but not contained in other sections of the plan. The report is required for all plans and is to be included as an appendix.

(2) The report should be organized under appropriate headings, such as project formulation, cost allocation, engineering, biology, hydrology, geology, land use, water quality, economics, etc.

For each subject, the procedures/techniques, assumptions, and the scope and intensity of the investigations should be described in sufficient detail that a reader not familiar with the watershed or its problems can form an opinion on the adequacy of the plan. The information should supplement and not replace or duplicate information contained in the plan. Information of a routine nature, such as how surveys are made, kind of maps used, etc., are not necessary unless there is something unusual about the study that requires their inclusion to support decisions made. Likewise, methods, procedures or criteria should be identified, but need not be discussed if they are covered in National Correspondence, Handbooks, Manuals, Technical Releases, etc. A discussion of the intensity of study is desirable when it reflects the reliability of results or the extent that studies have been completed and will not have to be expanded upon during the operation stage.

At times, state agencies, consultants employed by a sponsor or agencies from departments other than those of the Department of Agriculture conduct certain investigations, submit reports and make recommendations. When this is done, the agency or consultant should be identified with the study. This is usually associated with the investigations for recreation, water quality, fish and wildlife, municipal and industrial water supply or any other category.

(d) Appendix D & E - Supporting Information

This section should be used rather than the body of the document if tabular or other supporting data are needed to make a point. However, extensive lists in any part of the plan-EIS are to be avoided whenever possible. They should be confined to the supporting documentation.

(e) Appendix - Project Map (last appendix)

(1) A colored project map will be prepared to show the location of important project measures and the location and extent of important watershed conditions that will be affected by the works of improvement to be installed. The map should show the location and kind of measures, watershed areas above structures with floodwater retarding capacity, and benefited areas. An example map is shown in §508.53 of this Part.

(2) The project map should include, where appropriate, the boundaries of urban areas and public lands such as state or national forests, grazing districts, or military reservations. Additional information may be included on the project maps such as archeological and historic sites, important farmlands, stream reaches, and other information. Care should be taken, however, so that the project map does not become cluttered and unclear. Additional maps may be used to show these or other features.

(3) The project map should be large enough to show benefitted areas and project features. Colors will be standard for all project maps. The cartographic unit has the facilities to prepare project maps and has been provided color specifications. The project map should be prepared so that it can be extended for easy reference while the plan-EIS is being reviewed.

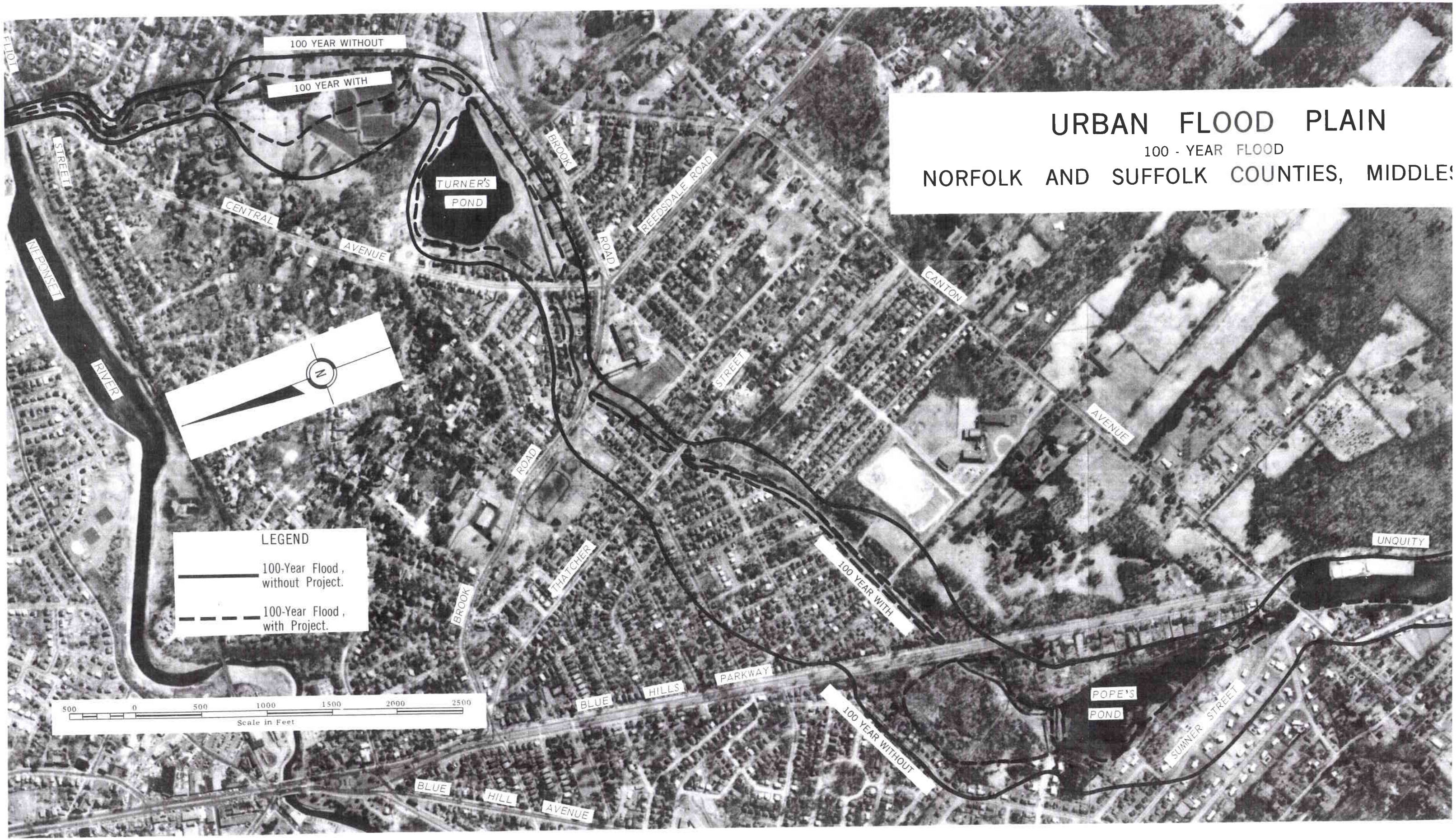
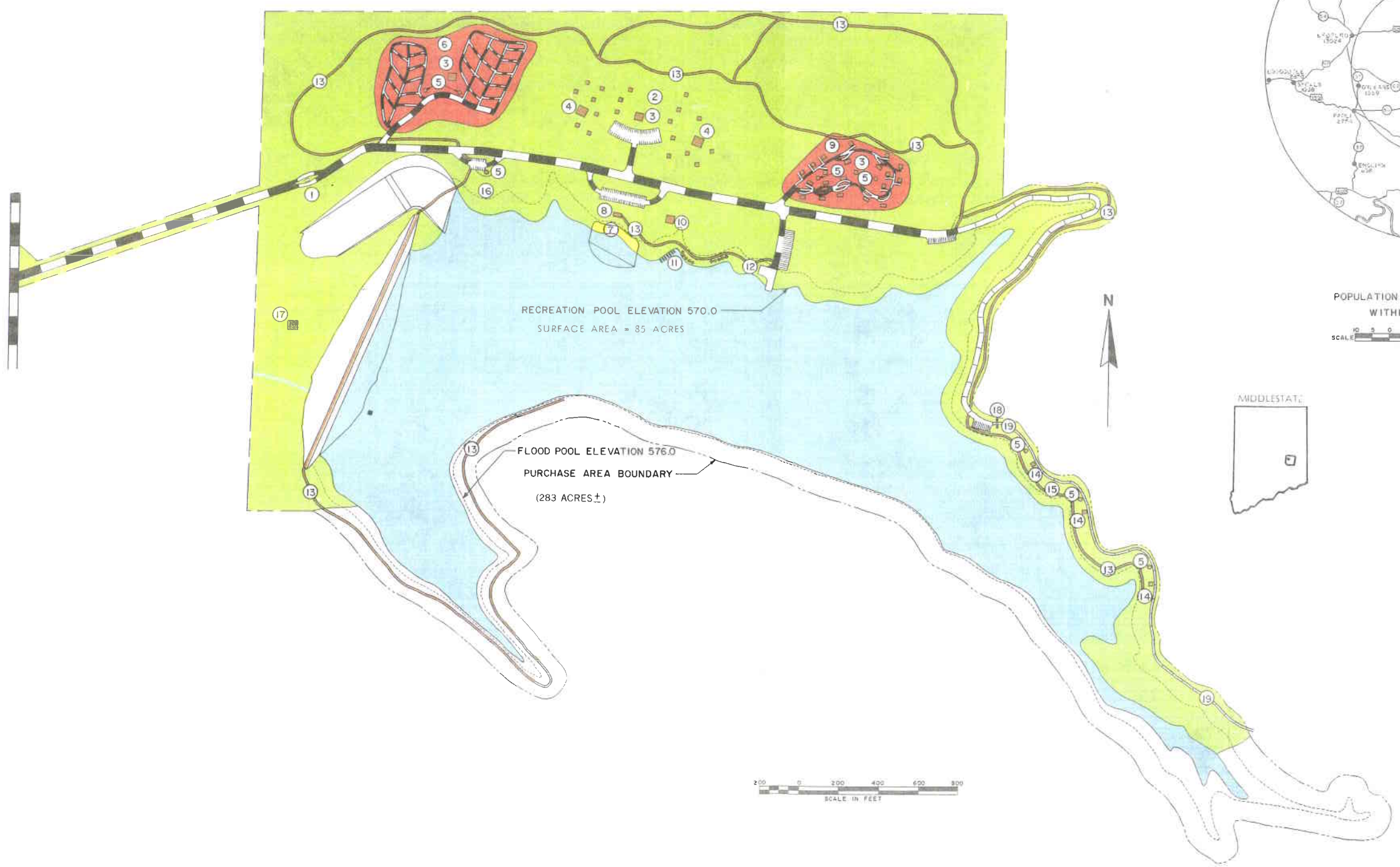

URBAN FLOOD PLAIN
100 - YEAR FLOOD
NORFOLK AND SUFFOLK COUNTIES, MIDDLES
100 YEAR WITHOUT
100 YEAR WITH
TURNER'S POND
CENTRAL AVENUE
BROOK ROAD
REEDSDALE ROAD
CANTON AVENUE
STREET
NEPONSET RIVER
N
LEGEND
100-Year Flood, without Project.
100-Year Flood, with Project.
BROOK ROAD
THATCHER
100 YEAR WITH
100 YEAR WITHOUT
UNQUITY
POPE'S POND
SUMNER STREET
BLUE HILLS PARKWAY
BLUE HILL AVENUE
500 0 500 1000 1500 2000 2500
Scale in Feet

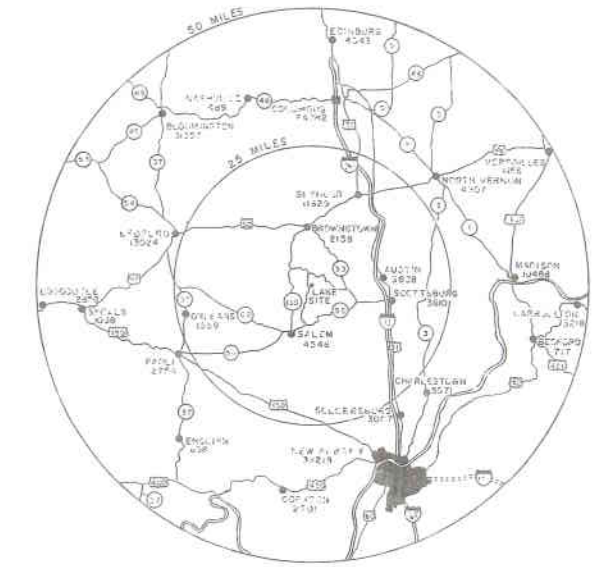
FIGURE __

DELANEY CREEK WATERSHED

WASHINGTON COUNTY, MIDDLESTATE

STRUCTURE NO. 5
PUBLIC RECREATION DEVELOPMENT





POPULATION CENTERS AND HIGHWAYS WITHIN 50 MILE RADIUS

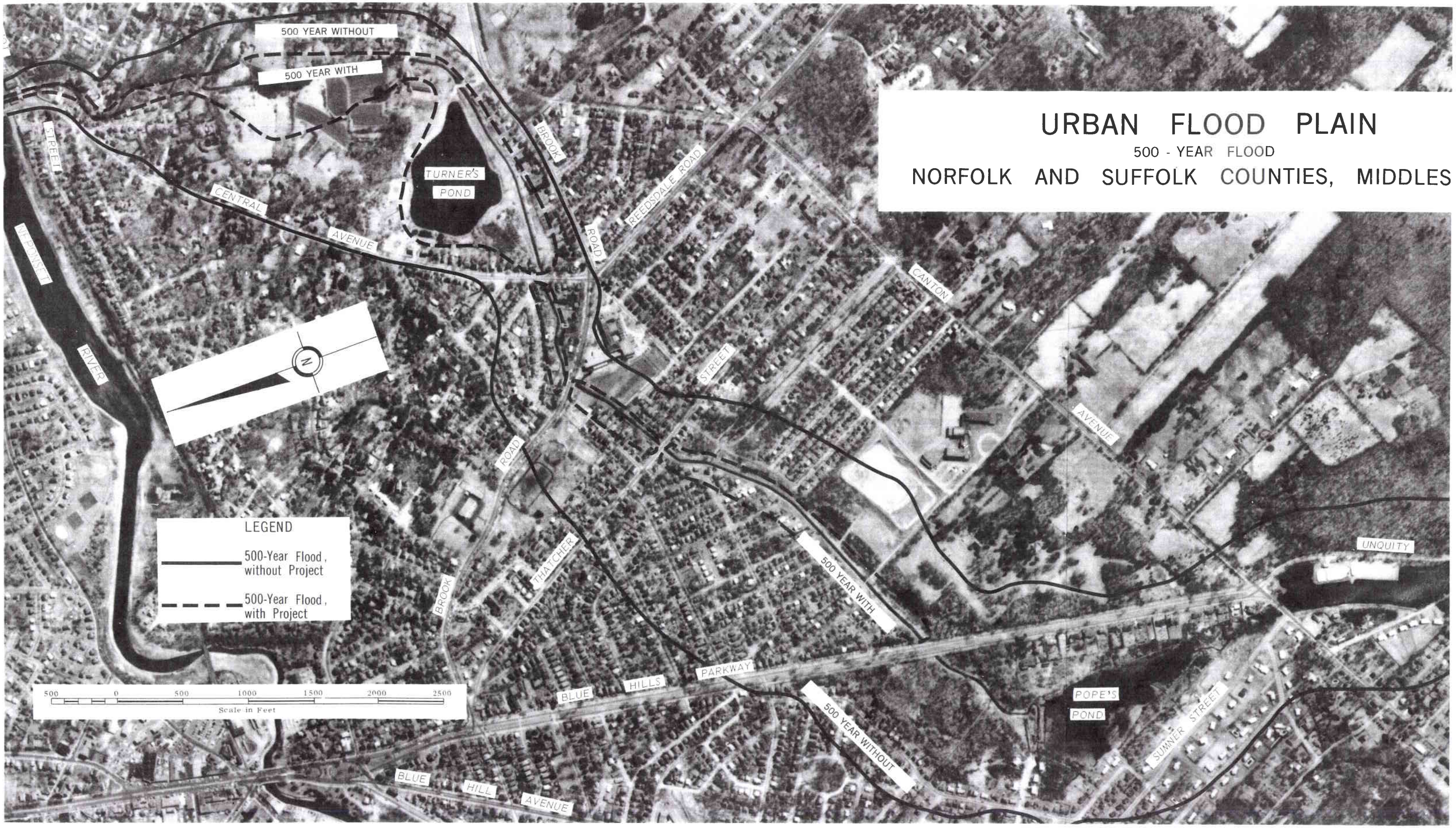
SCALE 10 5 0 10 20 30 40 MILES

LEGEND

1. GATEHOUSE
2. PICNIC AREA
3. COMFORT STATION
4. SHELTER HOUSE
5. WATER STATION
6. TRAILER CAMPING
7. SAND BEACH
8. BEACH HOUSE
9. TENT CAMPING
10. PARK SUPERINTENDENT'S RESIDENCE
11. BOAT MOORING AND DOCKING
12. BOAT RAMP
13. NATURE AND HIKING TRAIL
14. TOILETS
15. PRIMITIVE CAMPING AREA
16. OVERLOOK
17. SEWAGE TREATMENT PLANT
18. BARRICADE
19. FIRE TRAIL

SOURCE
MAPS SUBMITTED BY
SCS FIELD TECHNICIANS

COLORING — OPTIONAL


URBAN FLOOD PLAIN
500 - YEAR FLOOD
NORFOLK AND SUFFOLK COUNTIES, MIDDLES
500 YEAR WITHOUT
500 YEAR WITH
TURNER'S POND
CENTRAL AVENUE
BROOK ROAD
REEDSDALE ROAD
CANTON AVENUE
STREET
RIVER
THATCHER ROAD
BROOK
BLUE HILLS PARKWAY
BLUE HILL AVENUE
500 YEAR WITH
500 YEAR WITHOUT
POPE'S POND
SUMNER STREET
UNQUITY
N
LEGEND
500-Year Flood, without Project
500-Year Flood, with Project
500 0 500 1000 1500 2000 2500
Scale in Feet

§520.27 Emergency action plans--class (c) dams.

(a) Applicability. An emergency action plan is to be prepared for each class (c) dam for which SCS provides technical or financial assistance. The state conservationist is to determine that an emergency action plan is prepared prior to the initiation of construction.

(b) Inundation maps. SCS is to provide appropriate inundation maps. These maps define areas that would be affected in an emergency situation and provide other appropriate information. The inundation areas to be delineated on the maps are to show the following two conditions:

(1) Outflow from routing the emergency spillway hydrograph (or larger hydrograph) through the spillways and downstream; and

(2) Discharge due to sudden breach of dam. Unless otherwise determined by the state conservation engineer, the conditions at the time of breach may be water level in the reservoir at or above the crest elevation of the lowest open channel emergency spillway and "nonstorm" conditions downstream of the dam.

(i) For dams in series, an evaluation should be made to determine if breach of an upstream dam would endanger a downstream dam. If the downstream dam is endangered, the breach inundation map should be based on multiple failure.

(ii) For dams not in series but which would affect a common downstream area, it is usually adequate to consider the failure of each dam individually unless special circumstances would warrant multiple failures.

§520.28 Potential impact area--class (a) dams of inventory size and all class (b) dams.

(a) Applicability. For each class (a) dam of inventory size and for each class (b) dam, the area that could be inundated in event of a breach is to be determined. This is done as part of the classification (§520.21(e)) and its documentation (§520.23(b)).

(b) Requirements. (1) The potential impact area may be determined by performing breach routings or by other methods.

(2) The potential impact area is to be clearly described by the use of maps and/or narrative description. In addition to the description of the area, precautions as to future development within the area are to be included. These precautions may be specific (e.g., if based on breach inundation studies) or may point out the need for breach routings in the future if development is ever considered. The landowner or sponsor should be made aware of the potential impact area as early as practicable and before expending significant resources in design.

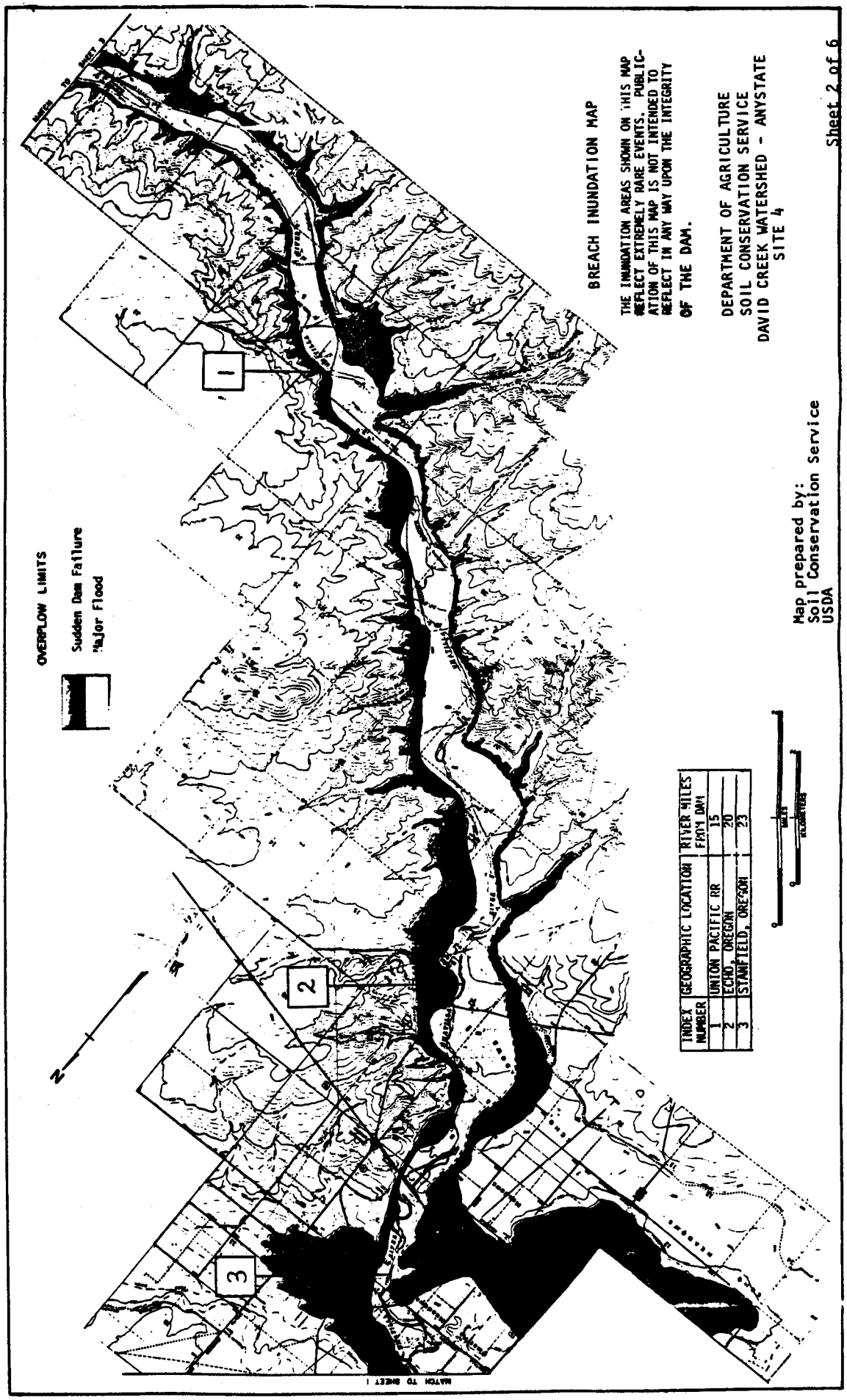
(c) Distribution. (1) As early as practicable but no later than initiation of construction, the state conservationist is to officially transmit the description of the potential impact area and precautions on development to the owner or sponsor. It is the responsibilty of the owner or sponsor to transmit the description of the potential impact area and precautions on development to:

(i) The local land use control agency or county,

(ii) The State agency reponsible for dam safety, and

(iii) The conservation districts and others as appropriate.

(2) If requested by the owner or sponsor or if the owner or sponsor fail to act, the state conservationist is to make the specified notifications.


BREACH INUNDATION MAP
THE INUNDATION AREAS SHOWN ON THIS MAP REFLECT EXTREMELY RARE EVENTS. PUBLICATION OF THIS MAP IS NOT INTENDED TO REFLECT IN ANY WAY UPON THE INTEGRITY OF THE DAM.
DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE
DAVID CREEK WATERSHED - ANYSTATE
SITE 4
Sheet 2 of 6
Map prepared by:
Soil Conservation Service
USDA
OVERFLOW LIMITS
Sudden Dam Failure
Major Flood
INDEX NUMBER
GEOGRAPHIC LOCATION
RIVER MILES FROM DAM
1
UNION PACIFIC RR
15
2
ECHO, OREGON
20
3
STANFIELD, OREGON
23
MILES
KILOMETERS
MATCH TO SHEET 3
MATCH TO SHEET 1

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PART 509 - REVIEWS AND APPROVALS

SUBPART A - INTRODUCTION

§509.00 General.

(a) The watershed program uses an interdisciplinary approach that includes consultation and review with agencies, groups, and individuals having expertise or interest in the particular project. Consultation and review must be conducted with sincerity, impartiality, and the conviction that such actions are necessary to develop the best plan possible. Procedures shown in this Part may be supplemented, as necessary, in each state and NTC.

(b) For these procedures to be successful, the state conservationist must assume the responsibility for preparing the best plan possible. There should be no reliance on the next higher level of review to correct errors and improve quality.

(c) The state conservationist is responsible for seeing that each watershed plan-Environmental Impact Statement (plan-EIS) is prepared in accordance with an approved plan of work, is technically adequate, adheres to SCS policy, and is well written. The state conservationist is to ensure that plans developed within the state reflect the expertise of all applicable program staff (including the Forest Service) by incorporating their inputs early in the planning process and by their review of working copies. Before approving or forwarding any plan-EIS to the next higher level, the state conservationist should make sure the content and quality of the document accurately reflects the conditions and impacts.

(d) It is essential to provide for full public and appropriate governmental agency participation in the planning and review process for successful planning. Assistance from the NTC should be requested as needed in the development of data and to familiarize the NTC with the project. Working with the sponsors, the state conservationist is to prepare the technical review plan-EIS giving full consideration to views expressed by federal, state, and local agencies as well as those of the general public.

509.00(e)

(e) It is essential that agreement be reached with representatives of state and federal agencies relative to carrying out features of the project on lands under their jurisdiction. This agreement should be reached at a local level prior to the technical review of the plan-EIS.

(f) The state conservationist may initiate interagency review once technical concurrence has been received on the technical review draft plan-EIS. If issues arise that cannot be resolved by the state conservationist and the NTC director, the Deputy Chief for Programs and the Deputy Chief for Technology will be advised and provided with an explanation of the problem and jointly resolve the issue.

(g) Each step or action in the following sections has a specific purpose. The flow chart (exhibit 509.80) is provided to aid in understanding the following written procedures. Additional steps involved in special designated areas are not included in the flow charts or the narrative. Refer to Subpart I of this Part when such areas are involved.

(h) When an EIS is not needed for a project, a Finding of No Significant Impact (FONSI) should be filed during the interagency review. Omit those steps which are obviously designed for an EIS review. The document that will be reviewed in those cases is the watershed plan-Environmental Assessment (plan-EA). NTC assistance for review of environmental assessments and FONSI's is available, if desired by the state conservationist.

§509.01 Reviews

The state conservationist or the director of the NTC for those plans where technical authority has not been delegated must be assured that the technical review plan-EIS has met the following criteria:

(a) Appropriate project planning and evaluation procedures have been followed, and a plan has been formulated that addresses the sponsors' concerns and the national objectives with consideration of economic, environmental, and social impacts.

(b) Surveys, investigations, and analyses have been made in sufficient scope and intensity to adequately support the project.

(c) Public and interagency participation has been appropriate and is properly discussed and documented in the plan-EIS.

(e) The plan-EIS clearly and correctly reflects watershed conditions and problems with and without the project; the kind, nature, and estimated cost of measures to be installed; their anticipated effect on the environment and on solving the problems, including the evaluation of benefits; and the manner of financing, installing, operating, and maintaining the project.

(f) The project, as formulated, meets the requirements of P. L. 83-566, SCS policy, Congressional criteria, executive orders, National Environmental Policy Act, Principles and Guidelines (P&G) (for water resource projects), and other applicable laws and regulations.

(g) The plan-EIS conforms with the established standards and SCS requirements for technical quality.

(h) The state conservationist has prepared or is planning to prepare a notice of intent to prepare an EIS or file a notice of availability of a FONSI once the determination is made that an EIS is not required.

§509.02 Approval and authorization authorities.

(a) Plan approval.

(1) Plan approval consists of technical concurrence and final approval of the plan-EIS; it does not include approval of a planning authorization or fund authorization. Planning starts and funding can only be authorized by the Chief.

(2) Congress has reserved approval authority for all plan-EIS's with over $5.0 million federal financial assistance costs or which have more than 2,500 acre-feet total storage capacity in a structure. The Chief has approval authority for all plan-EIS's with P. L. 83-566 financial assistance costs less than $5.0 million and with less than 2,500 acre-feet total storage capacity in a structure. State conservationists whose staff meet the criteria listed in §509.02(b) may be delegated approval authority for any plan that does not:

(i) Exceed $5 million in financial assistance provided that plans with more than $2 million of financial assistance receive the technical concurrence of the NTC director.

(ii) Contain any structure having more than 2,500 acre feet of storage; and

(iii) Require a Secretarial exception.

509.02(a)(3)

(3) If there is a need to obtain a Secretarial exception to the National Economic Development (NED) plan requirement, the plan-EIS approval authority is retained by the Chief and not delegated for those plans which can be administratively approved. Technical concurrence must be obtained from the NTC for these plan-EIS's.

(4) State conservationists should obtain any technical approvals needed such as an engineering approval authority before approving a plan.

(b) Approval Criteria. Criteria that will be used to determine if a state conservationist is to be granted plan-EIS approval authority are as follows:

(1) Availability of technical specialists needed to formulate and evaluate watershed protection and water resources projects.

(2) Demonstrated ability of the technical staff to meet technical requirements in the formulation and evaluation of a project.

(3) Past performance as measured by the quality of previously written plan-EIS's as compared with the standards set forth in Part 508 of the NWSM and P&G.

(c) Delegation of Authority. Delegation of authority for STC's to approve plans up to $2 million will be based on recommendations from the Deputy Chief for Technology obtained from the NTC director and in consultation with the Deputy Chief for Programs and the appropriate Assistant Chief. Delegations may be considered at anytime upon appeal by the state conservationists for those states without delegated authority. The Chief may also withdraw the authority from a state at any time by notifying that office by letter.

(d) Fund Authorization. Authorization to fund a project can only be made by the Chief. This is a separate step from plan approval. Funds may not be expended on any project until authorized for funding by a letter from the Chief.

§509.03 Post reviews.

(a) A detailed post review will be performed by the NTC on one-third of the plan-EIS's approved by the STC's within 90 days of receiving the approved plan-EIS. The review will focus on the technical adequacy and adherence to policy. Any major shortcomings will be brought to the attention of the appropriate state conservationist by the NTC director. A copy of the post review

comments will be provided to the Director of Project Development and Maintenance Division (PDMD). Future plans from that state are expected not to include items found inadequate in previous post reviews and will not be approved if the same problems recur. If flagrant violations of policy or the law are found, the Deputy Chief for Programs will advise the state conservationist to terminate assistance until the discrepancies are corrected.

(b) All of the remaining plan-EIS's will receive a cursory review within 30 days of receiving the plan-EA. The results of the detailed post reviews and the cursory reviews will be used to develop recommendations for the delegations.

§509.04 Review and approval of flood prevention (P.L. 78-534) Projects.

Review and approval for these projects will be carried out in the same manner as P.L. 83-566 watershed projects.

§509.05 Local reviews.

(a) The state conservationist and the sponsors will arrange for a local review of all plan-EIS's. This step may be carried out concurrently with the technical review or during interagency review depending upon the desires of the state conservationist. This review should be initiated by sending a meeting notice and summary of the plan-EIS to local groups or individuals who have indicated interest in the project and to owners and occupants of nearby and affected properties. Substate planning and development organizations, Councils of Government, and USDA rural development committees (where they exist) should be included.

(b) The meeting will be called by the sponsors jointly with SCS or according to established state procedure. Those who may have an interest in the watershed should be invited to participate. The plan-EIS will be reviewed. The notice should request written suggestions for improving the plan-EIS and should also invite attendance at the public meeting. It should specify that individuals and groups should be given the opportunity to prepare and submit written and oral comments concerning the project. All comments must be received within 14 days after the public meeting. Generally, at this stage, agreement will already have been reached with each participating agency. Federal agencies need not be included in this review stage, since they will participate and comment during interagency review.

509.05(c)

(c) Public notice of the informational meeting is to be mailed directly to owners and occupants of adjacent and affected properties at least 15 days in advance of the meeting. Notice also will be published in appropriate statewide or local newspapers, or both, on at least three different days beginning at least 15 days prior to the meeting. Announcements should briefly describe the proposed project and include the date, time, and location of the meeting and where copies of the plan-EIS may be obtained. Other publicity methods also may be used. Copies of this plan-EIS should be made available at the meeting to satisfy a reasonable number of requests (40 CFR 1506.6).

(d) A verbatim record of the informational meeting is not required by SCS if a summary reflecting the substance of the meeting and an attendance list is kept with the reviewable record. All written statements received should be made a part of the record of the meeting. Before the meeting is adjourned, it should be determined if additional meetings are warranted. Emphasize that written comments will be received for 14 days after the meeting is held.

(e) After consideration of all comments, the state conservationist and sponsors shall make any necessary changes on the documents. If any significant changes are made in the drafts as a result of local reviews, after the NTC technical review, the state conservationist should contact the NTC director to discuss the changes and to determine if any further NTC review is needed.

SUBPART B - PLAN-EIS's $0 - $2.0 MILLION

509.12(a)(5)

§509.10 General.

(a) State conservationists may be delegated the authority for review, concurrence, and approval of watershed plan-EIS's not requiring Congressional approval or a Secretarial Exception, with P.L. 83-566 financial assistance costs in any amount up to $2.0 million.

(b) If the state conservationist has not been delegated approval authority, the plan-EIS will be reviewed by the NTC as outlined in Subpart C of this manual.

§509.11 Technical review.

States should develop procedures for technical review of plan-EIS's to ensure that they adequately describe the problems, alternatives considered, the selected plan, and effects and that it has been developed in accordance with the NWSM. If the Forest Service is involved in the plan, provisions should be made for their review and concurrence. Before approving the plan, the state conservationist will assure that it has met the criteria outlined in §509.01.

§509.12 Interagency review.

(a) Plan-EA.

Upon completion of the state review, the state conservationist will transmit the plan for interagency review to the following agencies and groups for a 45-day review and comment period. The FONSI may be signed at this time and the Notice of Availability transmitted to the Federal Register as stated in §503.10(c)(2) so that the 30 day administrative period can run concurrently with the interagency review. The draft plan-EA serves as the environmental assessment as required by CEQ rules. A copy of the transmittal letter should be sent to the Director of PDMD and NTC director.

(1) Governor or designated state agency,
(2) State Single Point of Contact for Federal Assistance,
(3) Environmental Protection Agency - Regional office,
(4) Fish and Wildlife Service - National and Regional offices,
(5) Army Corps of Engineers - District Engineer's Office, (except for watershed protection plans),

509.12(a)(6)

(6) Agricultural Stabilization and Conservation Service - state office, *

(7) Forest Service - Regional (or area) office, and

(8) Other agencies, groups, and individuals as determined by the state conservationist

(b) Plan-EIS.

(1) The state conservationist will send copies of the draft plan-EIS to the Environmental Protection Agency (EPA) (five copies to the Office of Federal Activities and five copies to the regional office) and other agencies, groups, and individuals (one copy each). EPA will publish the Notice of Availability in the Federal Register. Agencies and groups receiving the drafts should be listed in the Consultation and Public Participation section of the plan-EIS. A suggested list of recipients is found in §509.81 and sample letters for requesting comments in §509.82 through §509.84 of this Part.

(2) One information copy should be sent to the area (or regional) and field office of the Forest Service.

(3) At least 45 days will be allowed for review, beginning on the date that the notice of availability of the draft is published in the Federal Register by EPA. It is important to be sure that all concerned people receive a notice.

(4) Information copies (so indicated) should be sent to the sponsors, Director of PDMD, NTC director, Farmers Home Administration (FmHA) State Director, regional office of the Fish and Wildlife Service, and other participating agencies.

(5) The state conservationist should publicize the availability of and invite public comments on the draft plan-EIS. This can be done by appropriate public notices in state and local newspapers and other media.

§509.13 Resolution of comments.

(a) The state conservationist should discuss the significant comments on the draft with sponsors and consider resolution of issues raised. If comments are not received from the Departments of the Interior or Army, EPA, or the Governor by the end of the review period, or extension period if granted, the state conservationist should attempt to obtain these comments. If the comments still do not appear to be forthcoming, the state conservationist may proceed without delay.

(b) All substantive comments should be responded to either in the consultation section of the plan-EIS or in letters to the individual commenter from the state conservationist if an EIS is not prepared.

(c) The state conservationist should obtain the EPA rating on the draft EIS. If the rating includes either an EC, EO, EU, or a 3 and substantive comments are attached, efforts should be made to resolve the issues raised and to obtain a letter of concurrence or comment on the proposed final plan-EIS from the EPA Regional Director. Issues raised should be discussed in the Consultation and Public Participation section of the plan-EIS. The concurrence letter on the proposed final plan-EIS should be included in the appendix with EPA's letter of comments on the draft.

(d) The state conservationist (STC) and the sponsors should jointly consider having a public meeting to discuss comments received on the draft plan-EIS. The final plan-EIS should be prepared after appropriate consideration is given to all comments.

§509.14 Final approval.

(a) Plan-EA.

(1) Once the state conservationist is satisfied that all comments have been addressed and the plan is technically and administratively acceptable, the sponsors and the STC should sign the plan. The STC will notify the sponsors of this approval of the plan by transmitting a manually signed copy to each sponsor.

(2) The state conservationist should send one manually signed copy of the plan-EA and, if desired, a request for authorization for funding to the Chief; six conformed copies to the Director of PDMD; and six conformed copies to the NTC director.

(b) Plan-EIS.

(1) After the 30-day administrative action period initiated by EPA's publication of the Notice of Availability of the final plan-EIS in the Federal Register, a Record of Decision (ROD) (§509.88) shall be prepared by the state conservationist, and notice of its availability sent to the Federal Register (§503.21). Copies of the notice should be sent to the PDMD and NTC director.

509.14(b)(1)

This Notice of Availability must clearly indicate what the decision is, such as, "notification that a Record of Decision to proceed with the installation of the David Creek Watershed Project is available." The state conservationist should sign the Record of Decision. A copy of the ROD should be sent to all who provided comments on the draft plan-EIS.

(2) The sponsors and the state conservationist then sign the plan. One manually signed copy of the plan-EIS and, if desired, a request for fund authorization should be sent to the Chief; six conformed copies to the Director of the PDMD; and six conformed copies to the NTC director.

§509.15 Fund authorization.

Upon receipt of the state conservationist's request for funding, the Chief will authorize funding as budget limitations allow. No charges are to be made to the project until the funding authorization letter has been received.

§509.16 Notifications.

(a) State responsibilities. Upon receiving funding approval from the Chief, the state conservationist notifies the Governor, sponsors, State Single Point of Contact for Federal Assistance, the NTC, area (or regional) and field offices of the Forest Service, Agricultural Stabilization and Conservation Service, and appropriate local offices of federal and state agencies. (An example transmittal letter is given in §509.89.) If the state conservationist determines that it is appropriate, a press release may be issued.

(b) National Headquarters responsibilities. The Chief notifies the Congressional delegations, Office of Management and Budget, Office of the General Counsel, Forest Service, Agricultural Stabilization and Conservation Service, Farmers Home Administration, Economic Research Service, and SCS Administrative Services by copies of the letter to the state conservationist authorizing funding. For P.L. 534 projects, only the Forest Service and SCS Administrative Services Division will be notified.

SUBPART C - PLAN-EIS'S $2 - $5.0 MILLION

509.21(a)(3)

§509.20 General.

(a) State Conservationist are delegated the authority for the approval of watershed plan-EIS's with P.L. 83-566 financial assistance costs less than $5.0 million that do not require Congressional approval or a Secretarial Exception that have received the review and concurrence of the NTC director.

(b) If the state conservationist has not been delegated technical concurrence authority for projects less than $2.0 million, the plan-EIS will be reviewed and approved as outlined in this subpart.

§509.21 Technical Review.

(a) State responsibilities.

(1) The state conservationist should send 12 copies of the technical review plan-EIS and Investigation and Analysis (I&A) Report, plus the supporting documentation, to the NTC director; two copies to the Forest Service's regional or area offices; and an information copy to the Director of the PDMD. Forest Service field comments should be sent directly to the state conservationist with a copy to the Forest Service National Office.

(2) A copy of the document for informal review should be sent by the state conservationist to the offices of federal, state, and local agencies and others who have participated in plan development. This review should be prior to or concurrent with the technical review, but may be during interagency review. The review period should be limited to 30 days (except if held during interagency review when the time must be 45 days) and comments are not required. The purpose of this review is an attempt to resolve problems and avoid surprises in the subsequent reviews.

(3) After receiving comments from the NTC director, the state conservationist and the sponsors should review the comments received and make appropriate revisions. Any assistance needed in making revisions is available from the NTC. Since it is not always clear how

comments were resolved, the state conservationist shall prepare a letter to the NTC director showing the disposition of each comment with reference to the appropriate paragraph in the revised document. A copy of the revised document with the changes highlighted should accompany the letter to the NTC director.

(b) NTC responsibilities.

(1) NTC review will be completed within 45 days. This review will be coordinated by the NTC water resource planning specialist.

(2) The NTC water resource planning specialist will distribute copies of the technical review draft plan-EIS to appropriate NTC staff members for review and comment. Each is to review the plan-EIS to determine if it presents a reasonable, rational approach that meets current policy and technical criteria.

(3) Thirty days will be permitted for the initial review by all concerned. An additional 15 days will be allotted to the NTC water resource planning specialist to consolidate the comments and prepare a letter to the state conservationist from the NTC director.

(4) Comments will include appropriate recommendations for resolving policy, administrative, or technical deficiencies. Comments forwarded to the states will be limited to those of a positive nature and will meet the following criteria: 1) identify a specific error or omission of required data, 2) identify why it is an error, and 3) provide a specific recommendation for correction. Recommendations for improving the document also may be included, if labeled as not being required for technical concurrence.

(5) The NTC director will provide a letter of technical concurrence and authorization to proceed with interagency review when the plan-EIS is acceptable or when only minimal revisions need to be made. An informational copy will be sent to the Director, PDMD. Where major problems exist, concurrence will not be granted. The letter should outline the comments and inform the state conservationist that the plan-EIS should be revised and submitted again for technical review.

§509.22 Interagency review.

(a) Plan-EIS.

(1) The state conservationist will send copies of the draft plan-EIS to the Environmental Protection Agency (five copies to the

§509.22 Interagency review.

(a) Plan-EIS.

(1) The state conservationist will send copies of the draft plan-EIS to the Environmental Protection Agency (five copies to the Office of Federal Activities and five copies to the regional office) and other agencies, groups, and individuals (one copy each). EPA will publish the notice of availability in the Federal Register. Agencies and groups receiving the drafts should be listed in the Consultation and Public Participation section of the plan-EIS. A required list of recipients is found in §509.81 and sample letters for requesting comments in §509.82 through §509.84 of this Part.

(2) One information copy should be sent to the area (or regional) and field office of the Forest Service.

(3) At least 45 days will be allowed for review, beginning on the date that the notice of availability of the draft is published in the Federal Register by EPA. It is important to be sure that all concerned people receive a notice.

(4) Information copies (so indicated) should be sent to the sponsors, Director of PDMD, NTC director, FmHA State Director, regional office of the Fish and Wildlife Service, and other participating agencies.

(5) The state conservationist should publicize the availability of and invite public comments on the draft plan-EIS. This can be done by appropriate public notices in state and local newspapers and other media.

(b) Plan-EA.

If an EIS is not required, a draft FONSI will be prepared. The state conservationist will then transmit the plan-EA for interagency review to the following agencies and groups for a 45-day review and comment period. A copy of the transmittal letter should be sent to the Director of PDMD. The FONSI may be signed at this time and the Notice of Availability transmitted to the Federal Register as stated in §503.10(c)(2) so the 30 day administrative period can run concurrently with the interagency review. The draft plan-EA serves as the environmental assessment as required by CEQ rules.

509.22(b)(1)

(1) Governor or designated state agency,
(2) State Single Point of Contact for Federal Assistance,
(3) Environmental Protection Agency - Regional office,
(4) Army Corps of Engineers - District Engineers' office,
(5) Agricultural Stabilization and Conservation Service - state office,
(6) Forest Service - Regional (or Area) office,
* (7) Fish and Wildlife Service - Regional office, and *
(8) Other agencies, groups, and individuals as determined by the state conservationist.

§509.23 Resolution of comments.

(a) The state conservationist should discuss the significant comments on the draft with sponsors and consider resolution of issues raised. If comments are not received from the Departments of the Interior or Army, EPA, or the Governor by the end of the review period, or extension period if granted, the state conservationist should attempt to obtain these comments. If the comments still do not appear to be forthcoming, the state conservationist may proceed without delay.

(b) All substantive comments should be responded to either in the consultation section of the plan-EIS or in letters to the individual commentator from the state conservationist if an EIS is not prepared.

(c) The state conservationist should obtain the EPA rating on the draft EIS. If the rating includes either an EC, EO, EU, or a 3 and substantive comments are attached, efforts should be made to resolve the issues raised and to obtain a letter of concurrence or comment on the proposed final plan-EIS from the EPA Regional Director. Issues raised should be discussed in the Consultation and Public Participation section of the plan-EIS. The concurrence letter on the proposed final plan-EIS should be included in the appendix with EPA's letter of comments on the draft.

(d) The state conservationist and the sponsors should jointly consider having a public meeting to discuss comments received on the draft plan-EIS. The final plan-EIS should be prepared after appropriate consideration is given to all comments.

§509.24 Final approvals.

(a) State responsibilities.

(1) If substantive changes have been made in the plan-EIS as a result of the interagency review, the state conservationist should consult with the NTC director to verify that technical concurrence is still granted.

(2) The state conservationist will then print the final document and transmit (i) five copies of the final plan-EIS to the Office of Federal Activities of the Environmental Protection Agency (§509.86); (ii) a copy to sponsors, area (or regional) and field offices of the Forest Service, and appropriate local offices of other participating agencies, and (iii) each agency, group, or individual providing substantive comments on the drafts.

(3) After the 30-day administrative action period initiated by EPA's publication of the Notice of Availability of the final plan-EIS in the Federal Register, a Record of Decision (ROD) (§509.88) shall be prepared by the state conservationist, and notice of its availability sent to the Federal Register (§503.21). Copies of the notice should be sent to PDMD and NTC director. This Notice of Availability must clearly indicate what the decision is, such as, "notification that a Record of Decision to proceed with the installation of the David Creek Watershed Project is available." The state conservationist should sign the Record of Decision. A copy of the ROD should be sent to all who provided comments on the draft plan-EIS.

(4) The sponsors and the state conservationist then sign the plan. One manually signed copy of the plan-EIS should be sent to the Chief and, if funding is desired, a request for authorization; six conformed copies to the Director of PDMD; and six conformed copies to the NTC director.

(5) For Public Law 534, subwatershed plan-EIS's that provide for federal assistance for purposes other than flood prevention, the Chief transmits one copy to the Office of Management and Budget for concurrence. The state conservationist should forward a copy of the plan-EIS and letter to the Director of PDMD for transmittal to OMB.

(6) For all administratively approved plans without an EIS, parts of steps 2 (dealing with EPA), and all of step 3, do not apply. However, if the state conservationist desires to provide assistance, a request shall be made to the Chief for funding.

509.24(b)

(b) NTC responsibilities.

The NTC director should verify that technical concurrence is still granted when notified by the state conservationist that substantive changes were made as a result of the interagency review. The NTC director should also provide guidance for regaining technical concurrence should it have been affected.

§509.25 Fund authorization.

Upon receipt of the request for funding, the Chief will authorize funding as budget limitations allow. No charges are to be made to the project until the funding authorization letter has been received.

§509.26 Notifications.

(a) State responsibilities.

The state conservationist notifies the Governor, State Single Point of Contact for Federal Assistance, the NTC, area (or regional) office of the Forest Service and the forest supervisor of the concerned National Forest, and appropriate local offices of federal and state agencies. (An example transmittal letter is given in §509.89.) If the state conservationist determines it appropriate, a press release may be issued.

(b) National Headquarters responsibilities.

The Chief will authorize funding for the project in a letter to the state conservationist. The Chief notifies the Congressional delegations, Office of Management and Budget, Office of the General Counsel, Forest Service, Agricultural Stabilization and Conservation Service, Farmers Home Administration, Economic Research Service, and SCS's Administrative Services Division. For Public Law 534 projects, only the Forest Service and SCS Administrative Services Division will be notified.

SUBPART D - TECHNICAL REVIEW PLAN-EIS (PROJECTS OVER $5.0 MILLION)

509.31(c)

§509.30 General.

The NTC director has been assigned the responsibility for technical review and concurrence for all watershed plan-EIS's with P.L. 83-566 financial assistance costs greater than $5.0 million of with features requiring congressional approval and for those that require a Secretarial exception to the NED Plan requirements as well as for those projects not delegated to the state conservationists (STC's). Congress has the approval authority for those projects that require congressional approval. The Chief, SCS, has retained approval authority for those plans that require a Secretarial exception.

§509.31 State responsibilities.

(a) The state conservationist should send 3 copies of the technical review plan-EIS and Investigation and Analysis (I&A) Report to the Director of Project Development and Maintenance (PDMD); 12 copies of the plan-EIS, I&A Report, and a copy of all the supporting documentation to the NTC director; and two copies to the Forest Service's regional or area offices for review. Forest Service field comments should be sent directly to the STC's with a copy to the Forest Service National Office.

(b) A copy for local review should be sent to the offices of federal, state, and local agencies and others who have participated in plan development. This review may be prior to or concurrent with the technical review, or may be during interagency review. The review period should be limited to 30 days (except if held during interagency review when the time must be 45 days) and comments are not required. The purpose of this review is an attempt to resolve problems and avoid surprises in the subsequent reviews.

(c) The state conservationist should review the comments received and make appropriate revisions. Any assistance needed in making revisions is available from the NTC. Since it is not always clear how comments were resolved, the STC shall prepare a letter to the NTC director, showing the disposition of each comment with reference to the appropriate paragraph in the revised document. A copy of the revised document with the changes highlighted should accompany the letter to the Director of the NTC.

§509.32 National Technical Center responsibilities.

(a) The technical review will be completed within 45 days of receiving the documents in the NTC. This review will be coordinated by the Head of the NTC water resource planning specialist.

(b) The NTC water resource planning specialist will distribute copies of the NTC technical review draft plan-EIS to appropriate NTC staff members for review, comment and concurrence on the technical adequacy of the document and support data. Each is to review the plan-EIS to determine if it presents a reasemble, rational approach that meets current policy and technical criteria.

(d) Thirty days will be permitted for the initial review by the NTC reviewers. Letters of comment will be forwarded to the NTC water resource planning specialist for consolidation within the 30-day period. An additional, 15 days will be allotted to the NTC Program Staff Head to consolidate the comments and prepare a letter to the state conservationist from the NTC director.

(e) Comments will include appropriate recommendations for resolving policy, administrative, or technical deficiencies. Comments forwarded to the states will be limited to those of a positive nature and will meet the following criteria: 1) identify a specific error or omission of required data, 2) identify why it is an error, and 3) provide a specific recommendation for correction. Recommendations for improving the document may also be included, if labeled as not being required for technical concurrence.

(f) The NTC director will provide a letter of technical concurrence and authorization to proceed with interagency review when the plan-EIS is acceptable or when only minimal revisions need to be made. An informational copy will be sent to the director, PDMD. Where major problems exist, concurrence will not be granted. The letter should outline the comments and inform the STC's that the plan-EIS should be revised and submitted again for technical review.

SUBPART E - INTERAGENCY REVIEW DRAFT (PROJECTS OVER $5.0 MILLION)

509.41

§509.40 State responsibilities.

(a) Upon notification of technical concurrence by the NTC director, the state conservationist should prepare the interagency review draft and send copies of the draft plan-EIS to the Director of the Project Development and Maintenance Division (PDMD) (1 copy, plus one copy of the Investigation and Analysis Report), to the NTC director (2 copies with I&A report), Environmental Protection Agency (EPA) (five copies to the Office of Federal Activities and five copies to the regional office), and other agencies, groups, and individuals (one copy each). EPA will publish the Notice of Availability in the Federal Register. Agencies and groups receiving the drafts are to be listed in the Consultation and Public Participation section of the plan-EIS. A required list of recipients is found in §509.81 and sample letters for requesting comments in §509.82 through §509.84 of this Part.

(b) At least 45 days will be allowed for public review. The time will begin on the date that the notice of availability of the draft is published in the Federal Register by EPA. It is important to be sure that all concerned people receive a Notice of Availability of the draft plan-EIS.

(c) Information copies (so indicated) should be sent to the sponsors, area (or regional) office of the Forest Service, FmHA State Director, regional office of the Fish and Wildlife Service, and other participating agencies. If National Forest lands are involved, two copies should be sent to the area (or regional) office of the Forest Service and one copy to the Forest Supervisor of the concerned National Forest.

(d) The state conservationist is to publicize the existence of and invite public comments on the draft plan-EIS. This can be done by appropriate public notices in state and local newspapers and other media.

NOTE: For projects not required to go to Congress and for which a determination has made that an EIS is not needed, follow the process in §509.22 for the interagency review.

§509.41 Reserved.

SUBPART F - FINAL PLAN-EIS's (PROJECTS OVER $5.0 MILLION)

§509.50 Resolution of comments.

(a) State responsibilities.

(1) The state conservationist should discuss the significant comments with sponsors and begin consideration and resolution of comments on the drafts as they are received. If comments are not received from Interior, Army, EPA, or the Governor by the end of the review period, or extension period if granted, the state conservationist should attempt to obtain these comments. If the comments still do not appear to be forthcoming, the state conservationist may proceed without delay.

(2) All substantive comments should be responded to in the Consultation and Public Participation section of the document in a plan-EIS. Letters should be sent to the individual commenter from the state conservationist if an EIS is not prepared. Assistance from the NTC is available upon request.

(3) The state conservationist also should obtain the EPA rating on the draft EIS. If the rating includes either an EC, EO, EU, or a 3 and substantive comments are attached, efforts should be made to resolve the issues raised and to obtain a letter of concurrence or comment on the proposed final plan-EIS from the EPA Regional Director. Issues raised should be discussed in the Consultation and Public Participation section of the plan-EIS. The concurrence letter on the proposed final plan-EIS should be included in the appendix with EPA's letter of comments on the draft.

(4) The state conservationist and the sponsors should jointly consider having a public meeting to discuss comments received on the draft plan-EIS. Preparation of a final plan-EIS should be undertaken after appropriate consideration is given to all comments.

(5) If substantive changes had been made in the plan-EIS as a result of the interagency review, the state conservationist should consult with the NTC director to verify that technical concurrence is still granted. If a Secretarial Exception is needed for a plan that does not have to go to Congress, 2 copies of the plan-EIS and of the I&A report may be submitted to the Director, Project Development and Maintenance Division (PDMD) at this stage, so that the Secretarial Exception may be requested.

509.50(b)

(b) National Headquarters responsibilities.

Obtain any Secretary of Agriculture exceptions necessary for administratively approved plan-EIS's and advise state conservationist to proceed in processing the plan as in §509.24(a).

§509.51 Final USDA approvals.

(a) State responsibilities.

(1) The state conservationist will transmit (i) five copies of the final plan-EIS to the Office of Federal Activities of the Environmental Protection Agency (§509.86); (ii) a copy to sponsors, area (or regional) and field offices of the Forest Service, appropriate local offices of other participating agencies, and (iii) a copy to each agency, group, or individual providing substantive comments on the drafts. Example transmittal letters are found in sections §509.85 and §509.86 of this Part.

(2) After the 30-day administrative action period initiated by the EPA's publication of the Notice of Availability of the final plan-EIS in the Federal Register, a Record of Decision (ROD) (§509.88) shall be prepared (40 CFR 1505.2) by the state conservationist. Notice of the availability of the ROD (§509.87) is to be sent to the Federal Register (§503.21) with a copy to Director of PDMD and the NTC director. This Notice of Availability must clearly indicate what the decision is, such as: "Notification that a Record of Decision to proceed with installation of the David Creek Watershed Project is available." The state conservationist should then sign the Record of Decision. A copy of the ROD should be sent to all who provided comments on the draft plan-EIS.

(3) The state conservationist should have the sponsors sign the agreement in the plan-EIS and then follow with his signature. This step confirms agreement by all parties involved and requests Congressional authorization of the project.

(4) Send three manually signed and three conformed plan-EIS's to the Director of PDMD, for transmittal to the Office of Management and Budget, USDA's Office of Budget and Program Analysis and for National Headquarters records. Two copies of the I&A Report, OMB Fact Sheet (§509.90), Record of Decision, and any letters of comment on the final plan-EIS received during the 30-day comment period should be included in the transmittal. One conformed copy should be sent to the NTC director.

(b) National Headquarters responsibilities.

Obtain any Secretary of Agriculture exceptions necessary and forward the plan-EIS to OMB through the Department.

§509.52 Office of Management and Budget Fact Sheet.

(a) The Office of Management and Budget (OMB) has requested that a fact sheet (§509.90) be submitted along with any plan-EIS which it reviews. Along with the fact sheet, they have requested that the plan-EIS's be accompanied by a copy of the ROD, any letters of comment received on the final plan-EIS and a copy of the Secretarial Exception if one was obtained. The information is of value to them in their review process. The following information will provide guidance in filling out the form.

(1) Economic and Financial Data -- These figures should be listed in dollars rounded off to an appropriate level of significance.

(i) Traditional Cost Share -- These dollars are based on the standard cost-share rates--flood prevention, 100 percent; recreation, 50 percent; irrigation, 50 percent; M&I, 0 percent; etc.

(ii) Enhanced Cost Share -- This is determined through negotiation with the sponsors. The dollars listed are what the sponsors are willing to pay. (They may be willing to pay more than would be the case using traditional cost sharing.) Flood prevention is the one exception since P.L. 83-566 must pay 100 percent.

(2) Benefit-Cost Ratios -- These should be entered at each interest rate listed.

(i) Authorized Rate (B:C ratio) -- This interest rate is established when the plan-EIS is approved. On new plan-EIS's, it will be the same as the current rate. On old plan-EIS's, which OMB will be reviewing for construction starts, the rate will be less than the current rate.

(ii) Current Rate (B:C ratio) -- The prevailing interest rate at the time the fact sheet is prepared.

(3) Certification (last question) -- Always check the "yes" block.

(b) Fact sheets will be prepared after a new plan-EIS is signed by the sponsors and SCS and any exceptions needed have been obtained. In the case of authorized plan-EIS's which may need OMB approval for a construction start, the Director, PDMD, will notify the state conservationist when the information is required.

SUBPART G - SUBMISSION OF FINAL PLAN-EIS's TO CONGRESS

§509.60 State responsibilities.

(a) The state conservationist should have the following material ready to transmit to the Director of the Project Development and Maintenance Division, upon request, for use by the Congressional committees:

(1) For plans to be considered by agricultural committees - 20 conformed copies of the watershed plan-EIS's and 50 project maps (folded to 8 1/2" x 11").

(2) For plans to be considered by public works committees - 35 conformed copies of the watershed plan-EIS's, and 110 project maps (folded to 8-1/2" x 11").

(3) In either case, enough additional copies should be included for each Senator and Representative in whose district the project is located.

(b) After Congressional approval, the state conservationist notifies sponsors, Governors, area (or regional) offices of the Forest Service, other appropriate field offices of federal agencies, state agencies, State Single Point of Contact for Federal Assistance, and others who have indicated an interest. (An example transmittal letter is given in §509.89.)

§509.61 National Headquarters responsibilities.

(a) The Chief will transmit two conformed plan-EIS's through the Secretary of Agriculture to the Office of Management and Budget for forwarding to the appropriate Congressional committees.

(b) The Chief, after project approval by Congressional committees, makes the appropriate notification that the Congressional committees have approved the plan-EIS and that installation is authorized. This notification should be sent to the concerned Senators and Congressmen, the involved state conservationists, assistant chief's, and NTC's; Office of Management and Budget; Secretary of the Interior; U.S. Army Corps of Engineers; Environmental Protection Agency; Office of the General Counsel, Forest Service, Farmers Home Administration, Agricultural Stabilization and Conservation Service, Economic Research Service; and Administrative Services. Copies of the plan should accompany letters to FS and Administrative Services staffs.

509.61(c)

(c) If Congress does not approve the plan-EIS, the Chief will inform the state conservationist of the reasons and what needs to be done to make the document acceptable.

SUBPART H - REVIEW AND APPROVAL PROCEDURES FOR SPECIAL DESIGNATED AREAS

509.72

§509.70 General.

Instructions contained in this subpart apply in specific areas where special commissions have been established with statutory authority to coordinate resource planning and development activities. Having been established, the instructions contained in this subpart relating to the review and approval of watershed plans are to supplement the previous sections in this Part.

§509.71 Appalachia.

(a) The state conservationist will transmit the draft plan-EIS to the Appalachian Regional Commission with a request for review and comment in accordance with interagency review procedure.

(b) The concerned state conservationist will—

(1) Invite the Office of Appalachian Studies, U.S. Army Corps of Engineers, Cincinnati, Ohio, to participate in the local review of each watershed plan.

(2) Send the Office of Appalachian Studies three information copies of the draft plan-EIS at the same time that copies are distributed for interagency review. The Office of Appalachian Studies should be requested to submit any comments it might have through the Office of the Chief of Engineers or the District Engineer as appropriate.

(3) Furnish the Governor with an additional copy of the draft plan for the state member of the Water Development Coordinating Committee for Appalachia.

§509.72 Delaware River Basin.

The procedures for the coordination and review of watershed plans in the Delaware River Basin are set forth in an Administrative Agreement executed between the Delaware River Basin Commission and the Soil Conservation Service, December 23, 1966. The address of the Commission is: 25 State Police Drive, P.O. Box 7360, West Trenton, New Jersey 08628 (Telephone: 609-883-9500).

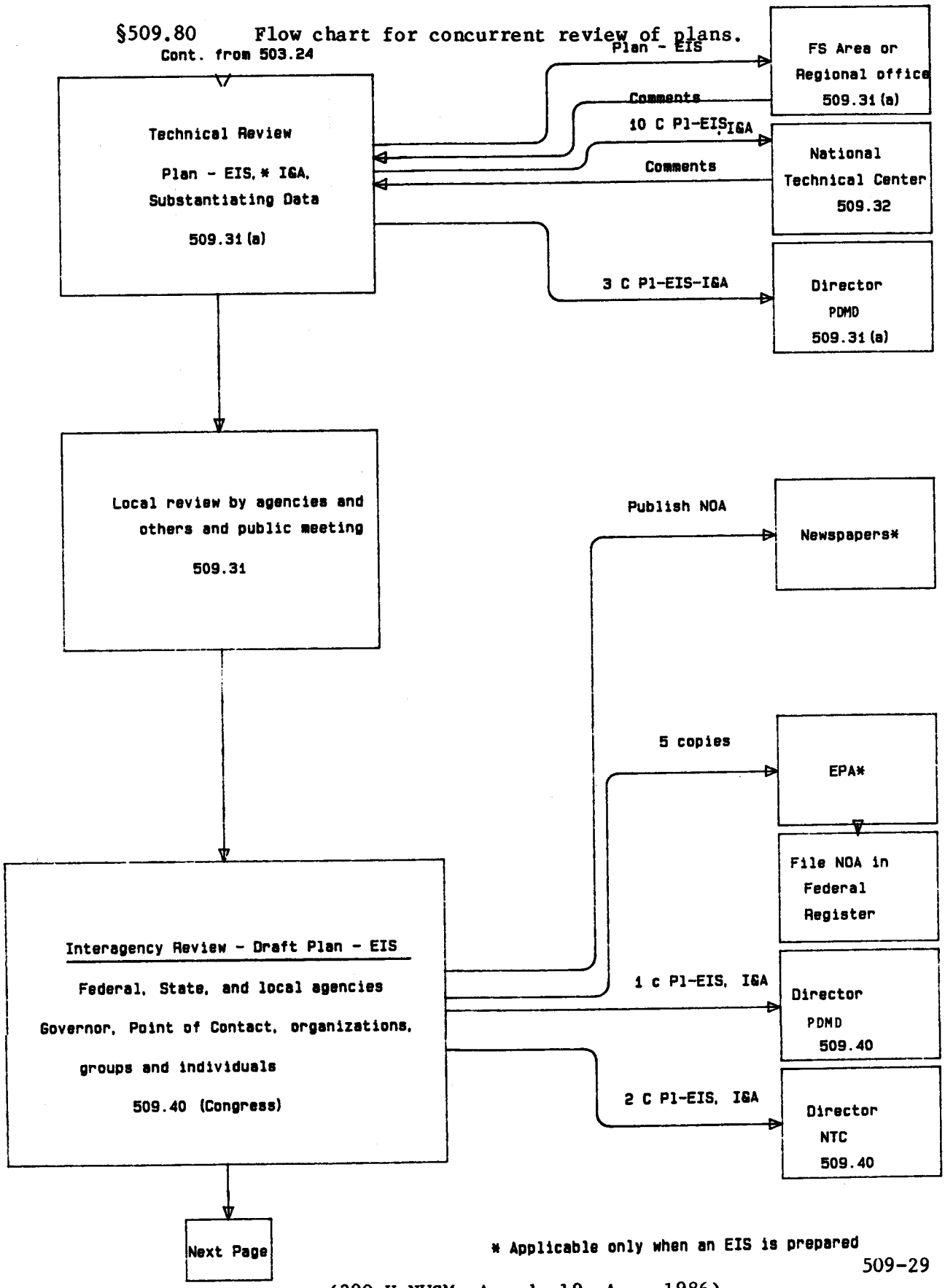
§509.73 Susquehanna River Basin.

Watersheds located within the Susquehanna River Basin should follow the additional regulations and procedures for review as contained in 18 CFR 803.

§509.74 Tennessee Valley Authority.

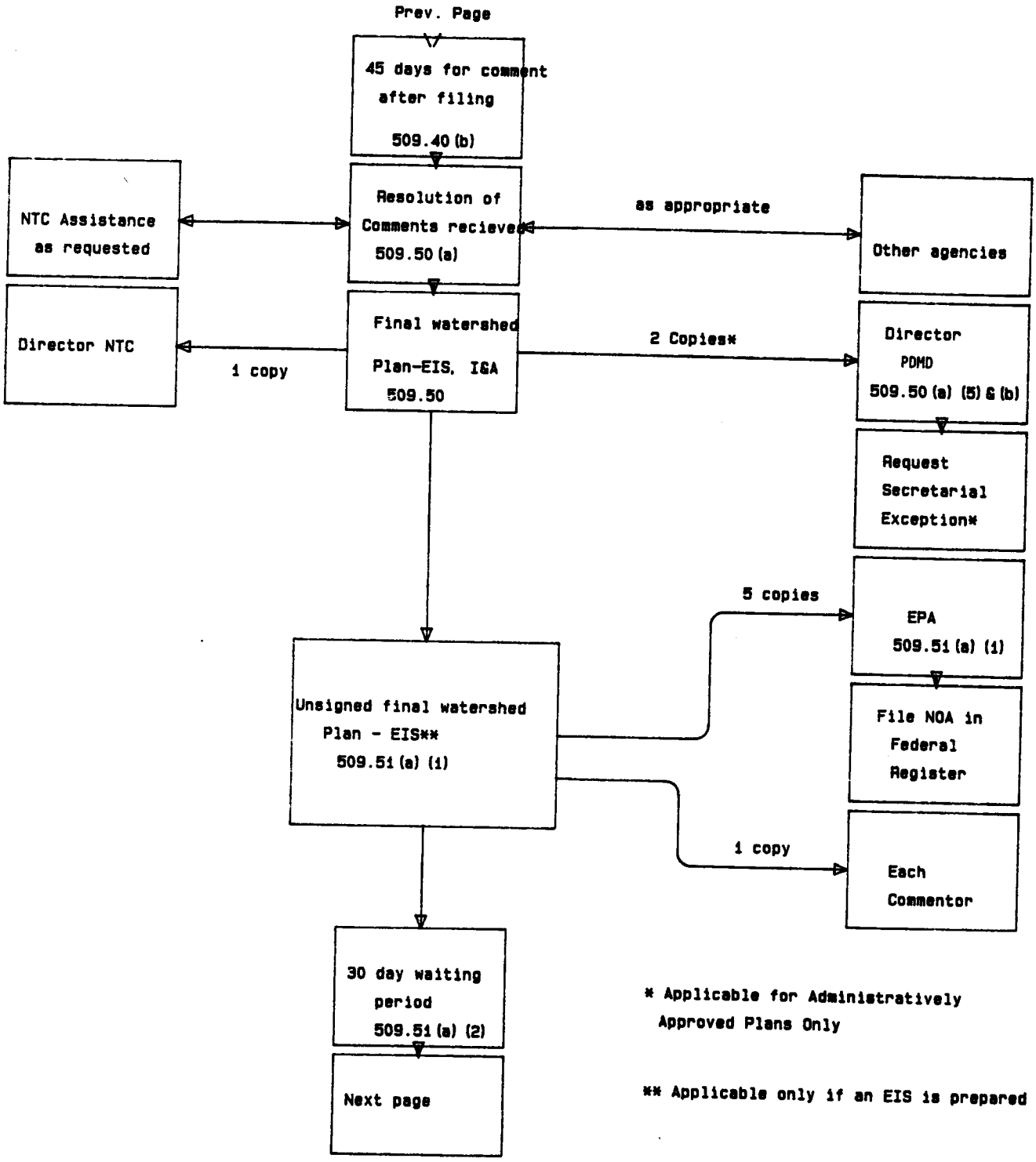
Procedures for coordinating activities with the Tennessee Valley Authority are contained in a Memorandum of Understanding executed between the two agencies, dated November 6, 1958.

§509.80 Flow chart for concurrent review of plans.

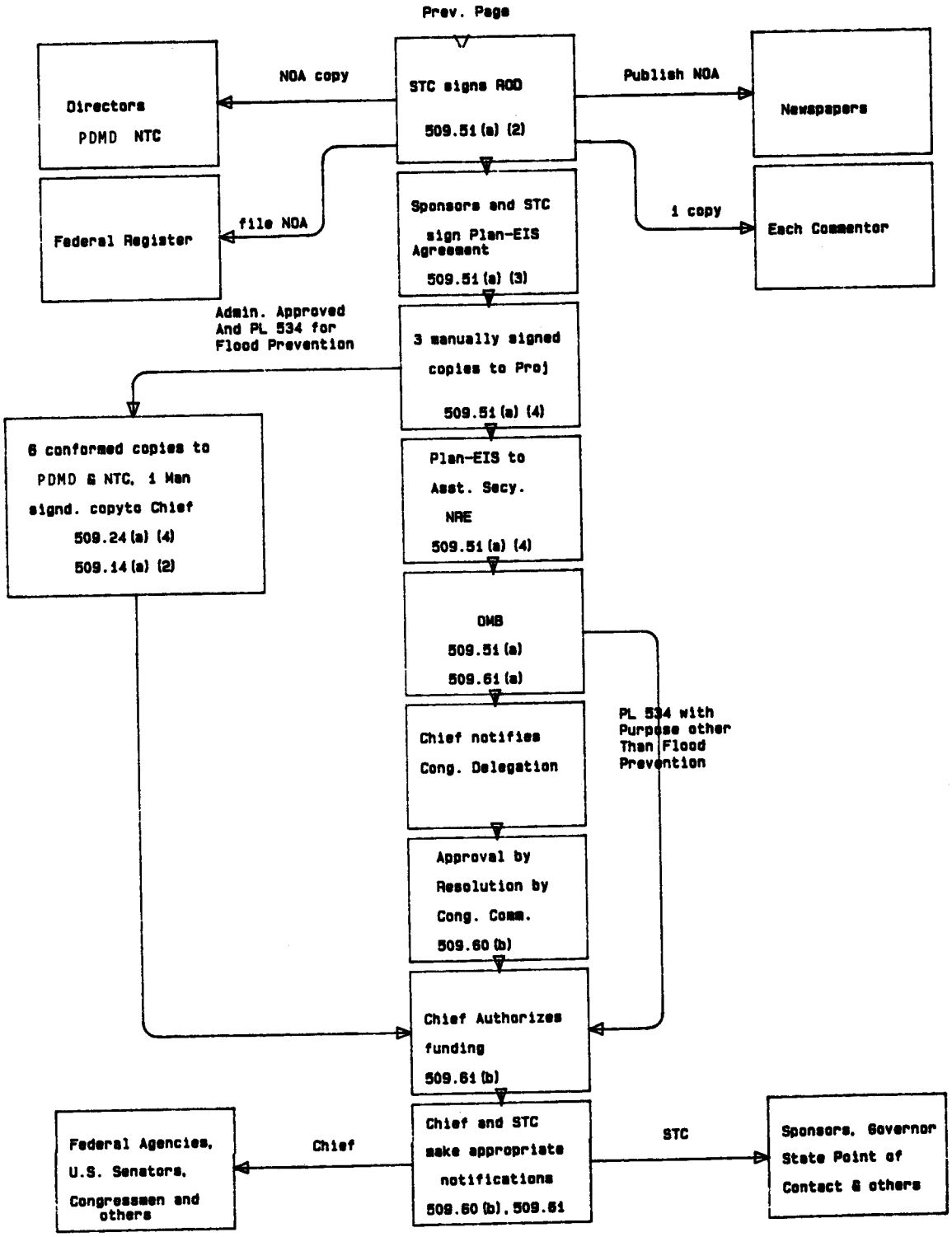


* Applicable only when an EIS is prepared

§509.80 Flow chart for concurrent review of plans.



§509.80 Flow chart for concurrent review of plans.



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§509.81 Distribution list for draft plan-EIS

Agency	Number of Copies
Environmental Protection Agency	
- Appropriate Regional Administrator	5
- Office of Federal Activities - A104 Environmental Protection Agency 401 M Street, S.W. Washington, D.C. 20460	5
Corps of Engineers	
- Appropriate district	2
- Chief of Engineers, Corps of Engineers U.S. Department of the Army Washington, D.C. 20314 Attn: DAEN-CWZ-P	2
U.S. Department of the Interior	
- Secretary of the Interior U.S. Department of the Interior Washington, D.C. 20240	1
- Director Office of Environmental Project Review U.S. Department of the Interior (East of Miss. R.) Room 4241 Washington, D.C. 20240	12
(West of Miss. R.)	18
U.S. Department of Commerce Ecology and Conservation Division National Oceanic and Atmospheric Administration Washington, D.C. 20230	4
Department of Energy	
- Department of Energy Washington, D.C. 20585 (only when project has major energy-related consequences)	1

* 509.81

U.S. Department of Housing and Urban Development	
- Appropriate Regional Office Environmental officer	2
U.S. Department of Transportation	
- Coordinator, Water Resources U.S. Coast Guard G-WS/11 U.S. Department of Transportation 2100 Second Street, S.W. Washington, D.C. 20590	4
Others	
- Director Office of Equal Opportunity Room 102-W U.S. Department of Agriculture Washington, D.C. 20250	1
- Executive Secretary Advisory Council on Historic Preservation 1522 "K" Street, N.W. Washington, D.C. 20005 (only if significant cultural values are affected)	1
- Governor of State (or state agency designated by governor)	1
- State Single Point of Contact for Federal Assistance	1
- Special Designated Area (only if involved)	1
- Natural Resources Defense Council, Inc. 1350 New York Ave., N.W., Suite 300 Washington, D.C. 20005	1

- National Wildlife Federation 1
  1412 16th Street, N.W.
  Washington, D.C. 20036
  Attn: Legislative Representative

- Sierra Club 1
  330 Pennsylvania Avenue, S.E.
  Washington, D.C. 20003
  (also send copy to local chapter)

- National Audubon Society 1
  (send to appropriate local office)

- Other groups who have shown interest 1
  in the project

If BLM land included (10/6/86)
R. Barati - Salton
U.S. Dept. of Interior
Bureau of Land Mgmt.
200 NW. 5th St., Room 5[illegible]
Oklahoma City, OK 73102

509.82

§509.82 Example transmittal letter to EPA for draft Plan-EIS.

January 15, 198_

Director
Office of Federal Activities
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Sir:

Enclosed are five copies of the draft Watershed Plan-Environmental Impact Statement (plan-EIS) for the Any Creek Watershed, Any State, prepared under authority of the Watershed Protection and Flood Prevention Act (Public Law 83-566) and in accordance with Section 102.(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91-190). Copies have also been sent for review and comment to other departments of the federal government, Governor of Any State, and other interested parties.

Comments have been requested on or before March 22, 198_, and should be sent to this office.

Sincerely,

JOHN Q. DOE
State Conservationist

Enclosures

§509.83 Example transmittal letter to Governor. 1/

January 21, 198_

Honorable ----------
Governor of Any State
Any Town, Any State 00000

Dear Governor ----------:

In accordance with Section 2 of Executive Order 10913, and our responsibility as assigned by the Secretary of Agriculture, we are transmitting for your review and comment the draft Watershed Plan-Environmental Impact Statement (plan-EIS) for the Any Creek Watershed, Any State. This plan-EIS was prepared by the Valley Soil and Water Conservation District and the Dale Soil and Water Conservation District, with assistance by the Soil Conservation Service under authority of the Watershed Protection and Flood Prevention Act, (Public Law 83-566) and in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91-190). The application for assistance in the preparation of the plan-EIS was approved by the State Soil Conservation Committee on June 29, 1964.

It is requested that comments be received by this office on or before March 22, 198_.

Sincerely,

JOHN Q. DOE
State Conservationist

Enclosures

1/ Make appropriate changes if the governor has designated a state agency to act for him on watershed matters.

§509.84 Example transmittal letter for interagency review.

Date

Address

(Omit Salutation)

Enclosed is a copy of the draft Watershed Plan-Environmental Impact Statement (plan-EIS) for the Any Creek Watershed, Any State, prepared under authority of the Watershed Protection and Flood Prevention Act (Public Law 83-566) and in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91-190). The plan-EIS will require final approval by the appropriate committees of the Senate and House of Representatives before federal assistance is authorized. 1/

We are requesting that comments be received by this office on or before March 22, 198_, or such later date as may be needed to total 45 days after the Environmental Protection Agency (EPA) publishes its notice of availability in the Federal Register. If your comments are not received by the due date, we will assume you do not wish to comment.

JOHN Q. DOE
State Conservationist

Enclosure

1/ For administratively approved plans, change this sentence to read, "The final plan-EIS may be approved administratively."

§509.85 Example transmittal letter for final plan-EIS.

Date

Address

(Omit Salutation)

Enclosed is a copy of the final Watershed Plan-Environmental Impact Statement (plan-EIS) for the Any Creek Watershed, Any State, prepared under authority of the Watershed Protection and Flood Prevention Act (Public Law 83-566) and in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91-190).

This plan-EIS reflects comments received on the draft sent out for comments on January 15, 198_. This plan-EIS will require final approval by the appropriate committees of the Senate and House of Representatives before federal assistance is authorized. 1/

JOHN Q. DOE
State Conservationist

Enclosure

1/ For administratively approved plans, change this sentence to read, "The final plan-EIS may be approved administratively."

§509.86 Example transmittal letter to EPA for final plan-EIS.

August 15, 198_

Director
Office of Federal Activities
401 M Street, S.W.
Environmental Protection Agency
Washington, D.C. 20460

Dear Sir:

Enclosed are five copies of the final Watershed Plan-Environmental Impact Statement (plan-EIS) for the Any Creek Watershed, Any State. This plan-EIS reflects comments received on the draft sent out for comments on January 15, 198_.

Sincerely,

JOHN Q. DOE
State Conservationist

Enclosures

cc:
Director, Project Development and Maintenance Division, SCS, Washington, D.C.
Director, National Technical Center, SCS

§509.87 Example of Notice of Availability of Record of Decision.

BILLING CODE: 3410-16

DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

_____(Name)_____ Watershed, ___(State)___

AGENCY: Soil Conservation Service

ACTION: Notice of Availability of a Record of Decision

SUMMARY: (State Conservationist's Name), responsible Federal official for projects administered under the provisions of Public Law 83-566, 16 U.S.C. 1001-1008, in the State of ____(Name)____, is hereby providing notification that a record of decision to proceed (or not to) with the installation of the _____(Name)_____ Watershed project is available. Single copies of this record of decision may be obtained from (State Conservationist's Name) at the address shown below.

FOR FURTHER INFORMATION CONTACT: _____(Name)_____ State Conservationist, Soil Conservation Service, ___(Street Address)___ _____, ____(City)____, _____(State) (Zip Code)_____, telephone (Area Code and Number).

(Signature)
(Type name and title of signee)

(Date:)

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904 - Watershed Protection and Flood Prevention - and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

§509.88 Example Record of Decision.

RECORD OF DECISION
LAKE CREEK WATERSHED
Oak and Day Counties, Anystate

1. Purpose: As State Conservationist for the Soil Conservation Service, I am the Responsible Federal Official (RFO) for all Soil Conservation Service projects in Anystate.

The recommended plan for the Lake Creek Watershed involves works of improvement to be installed under authorities administered by the Soil Conservation Service. This project includes the installation of six single-purpose flood prevention structures, one multiple-purpose flood prevention recreation structure, recreation facilities, and accelerated land treatment.

The Lake Creek Watershed plan was prepared under the authority of the Watershed Protection and Flood Prevention Act (Public Law 566, 83rd Congress, 68 Stat. 666, as amended) by the Oak and Day Soil and Water Conservation Districts and the City of Blackwell. The scoping meeting, held during November of 1974, established the Soil Conservation Service (SCS), U.S. Department of Agriculture, as lead agency, and the Forest Service-USDA and the Fish and Wildlife Service-USDI as cooperating agencies.

2. Measures Taken to Comply with National Environmental Policies: The Lake Creek Watershed project has been planned in accordance with existing Federal legislation concerned with the preservation of environmental values. The following actions were taken to ensure that the Lake Creek Watershed plan is consistent with national goals and policies.

The environmental evaluation was completed by an interdisciplinary team under the direction of SCS in 1974 prior to the scoping meeting, and it concluded that significant impacts on the human environment may occur because of the complexity and public interest of the proposed action. As RFO, I directed that a draft environmental impact statement (EIS) be prepared.

The interdisciplinary environmental evaluation of the Lake Creek Watershed project was conducted by the sponsors, cooperating agencies, and the Soil Conservation Service. Information was obtained from many groups and agencies. An inventory and evaluation of environmental and socioeconomic conditions was prepared by Mobley-Andrews Consultants under a contract with SCS. Reviews were held with the Environmental Protection Agency, Fish and Wildlife Service, Anystate Department of Natural Resources, State Historic Preservation Officer, and the State Archaeologist. Inputs from these reviews were included in the EIS.

Record of Decision - 2
Lake Creek Watershed

Public meetings were held on April 5, 1976 and December 16, 1976 to solicit public participation in the environmental evaluation, to assure that all interested parties had sufficient information to understand how their concerns are affected by water resource problems, to afford local interests the opportunity to express their views regarding the plans which can best solve these problems, and to provide all interests an opportunity to participate in the plan selection. More than 600 parties were notified by mail of the joint public meetings. A transcript of the minutes was developed and is on file.

Testimony and recommendations were received relative to the following subjects:

a. Public ownership and management of natural areas surrounding Structure 1 should be accomplished to offset the losses of wildlife habitat caused by the structure and adjacent activities.

b. The adequacy of water quality of Site 1 for recreational use should be determined.

c. Impacts to Lake Otto should be evaluated.

d. A thorough consideration of nonstructural alternatives should be undertaken.

e. Thermal impacts of the reservoirs should be evaluated.

A draft environmental impact statement was prepared in October 1977 and made available for public review. The recommendations and comments obtained from public meetings held during project planning and assessment were considered in the preparation of the statement. Projects of other agencies were included only when they related to the Public Law 566 project, and they were not evaluated with regard to their individual merit.

More than 250 copies of the draft environmental impact statement were distributed to agencies, conservation groups, organizations, and individuals for comment. Copies were also placed in several libraries in the watershed. The draft environmental impact statement was filed with the Environmental Protection Agency on December 27, 1977.

All existing data and information pertaining to the project's probable environmental consequences were obtained with assistance from other scientists and engineers. Documentary information as well as the views of interested Federal, State, and local agencies

and concerned individuals and organizations having special knowledge of, competence over, or interest in the project's environmental impact were sought. This process continued until it was felt that all the information necessary for a comprehensive, reliable assessment had been gathered.

A complete picture of the project's current and probable future environmental setting was assembled to determine the proposed project's impact and identify unavoidable adverse environmental impacts that might be produced. During these phases of evaluation it became apparent that there are legitimate conflicts of scientific theory and conclusions leading to differing views of the project's environmental impact. In such cases, after consulting with persons qualified in the appropriate disciplines, those theories and conclusions appearing to be the most reasonable and having scientific acceptance were adopted.

The consequences of a full range of reasonable and viable alternatives to specific project features were considered, studied, and analyzed. In reviewing these alternatives, all courses of action that could reasonably accomplish the project purposes were considered. Attempts were made to identify the economic, social, and environmental values affected by each alternative. In accordance with existing policy and procedures, the possibilities of structural and nonstructural alternatives for the project were considered.

Three alternatives considered reasonable alternatives to accomplish the project's objectives were: (1) a floodway and land treatment and (2) the NED plan - structural measures only (the selected plan minus the environmental quality elements), (3) the EO plan - 2 structures, flood plain acquisition for habitat preservation, upland habitat improvement, and land treatment measures, and 4) the selected plan. Ten other alternatives were suggested and evaluated that would accomplish part of the objectives of the planned project. The full range of effects was set forth in the alternatives section of the EIS. Individual flood plain management strategies, actions, and programs that would meet some of the project's goals were considered.

3. Conclusions:

The following conclusions were reached after carefully reviewing the proposed Lake Creek Watershed project in light of all national goals and policies, particularly those expressed in the National Environmental Policy Act, and after evaluating the overall merit of possible alternatives to the project:

Record of Decision - 4
Lake Creek Watershed

a. The Lake Creek Watershed project will employ a reasonable and practicable means that is consistent with the National Environmental Policy Act while permitting the application of other national policies and interests. These means include, but are not limited to, a project planned and designed to minimize adverse effects on the natural environment, while accomplishing an authorized project purpose. Project features designed to preserve existing environmental values for future generations include: (1) placement into public ownership a natural area containing forest, native prairie, and geological features; (2) establishment of a wildlife habitat area adjacent to floodwater-retarding structures; (3) establishment of a program to monitor water quality in reservoir No. 1 during the summer season; (4) installation of pool drains in all reservoirs, which provides opportunities for withdrawal of water during low streamflows; (5) fish and wildlife management plans for the reservoirs and natural area cooperatively developed by the sponsors and the Anystate Department of Natural Resources; (6) acceleration in the application of land treatment practices to prevent erosion and sediment damage to streams and ecosystems; (7) establishment of grasses and legumes on dams and offsite borrow areas to protect them from erosion and provide food for wildlife; and (8) placement of trees and shrubs in the proposed recreational facilities area.

b. The Lake Creek Watershed project was planned using a systematic interdisciplinary approach involving integrated uses of the natural and social sciences and environmental design arts. The results of this review constitutes the basis for the conclusions and recommendations. All conclusions concerning the environmental impact of the project and overall merit of existing plans were based on a review of data and information that would be reasonably expected to reveal significant environmental consequences of the proposed project. These data included additional studies prepared specifically for the project and comments and views of all interested Federal, State, and local agencies and individuals. The project will not affect any cultural resources eligible for inclusion in the National Register of Historic Places. Nor will the project affect any species of fish, wildlife, or plant or their habitats that have been designated as endangered or threatened.

c. In studying and evaluating the environmental impact of the Lake Creek Watershed project, every effort was made to express all environmental values quantitatively. Any failure to quantify particular environmental amenities and values is the

result of the absence of a methodology having general scientific acceptance. Nevertheless, every effort was made to identify and give appropriate weight and consideration of nonquantifiable environmental values.

d. Wherever legitimate conflicts of scientific theory and conclusions existed and conclusions led to different views, persons qualified in the appropriate environmental disciplines were consulted. Theories and conclusions appearing to be most reasonable scientifically acceptable, or both were adopted.

e. Every possible effort has been made to identify those adverse environmental effects which cannot be avoided if the project is constructed.

f. The long-term and short-term resource uses, long-term productivity, and the irreversible and irretrievable commitment of resources are accurately described in the final environmental impact statement.

g. All reasonable and viable alternatives to project features and to the project itself were studied and analyzed with reference to national policies and goals, especially those expressed in the National Environmental Policy Act and the Federal waters resource development legislation under which the project was planned. Each possible course of action was evaluated as to its possible economic, technical, social, and overall environmental consequences to determine the tradeoffs necessary to accommodate all national policies and interests. Some alternatives may tend to protect more of the present and tangible environmental amenities than the proposed project will preserve. However, no alternative or combination of alternatives will afford greater protection of the environmental values while accomplishing the other project goals and objectives.

h. I conclude, therefore, that the proposed project will be the most effective means of meeting national goals and serving the public interest.

4. Recommendations

Having concluded that the proposed Lake Creek Watershed project uses all practicable means, consistent with other essential considerations of the national policy, to meet the goals established in the National Environmental Policy Act, that the project will thus serve the overall public interest, that the final

Record of Decision - 6
Lake Creek Watershed

environmental impact statement has been prepared, reviewed, and accepted in accordance with the provisions of the National Environmental Policy Act as implemented by Departmental regulations for the preparation of environmental impact statements, and that the project meets the needs of the project sponsors, I propose to implement the Lake Creek Watershed project.

By: _____
State Conservationist
Soil Conservation Service
U.S. Department of Agriculture

Date: _____

§509.89 Example transmittal letter notifying of project authorization

Honorable Edward Zorinsky
United States Senate
Washington, D.C. 20510

Dear Senator Zorinsky:

We are pleased to notify you [and your Congressional colleagues] that on May 7, 1982, the Soil Conservation Service will authorize assistance for installation of works of improvement in the Balls Branch Watershed, Jefferson and Thayer Counties, Nebraska, under authority of the Watershed Protection and Flood Prevention Act, Public Law 83-566.

The watershed project is sponsored by the Little Blue Natural Resources District. The Balls Branch Watershed contains 18,366 acres. The purpose of the plan is to install conservation practices to reduce deterioration of the soil resource base through erosion, flooding, and sedimentation. If additional information is needed, contact Mr. Albert E. Sullivan, State Conservationist, Soil Conservation Service, Federal Building, 100 Centennial Mall North, Lincoln, Nebraska 68501, telephone 402-471-5302.

[We will not make a public announcement until 7 days after the date of this letter.]

Sincerely,

bc:
Eugene J. Pope, Director, Midwest NTC, SCS, Lincoln, Nebraska
Benny Martin, Assistant Chief, Midwest, SCS, Washington, D.C.
James H. Olson, Director, Legislative Affairs, SCS, Washington, D.C.

Identical letters sent to:

Honorable J. James Exon
United States Senate
Washington, D.C. 20510

Honorable Douglas K. Bereuter
House of Representatives
Washington, D.C. 20515

Note: When using this letter for other individuals omit the words in the brackets.

509.90

§509.90 Office of Management and Budget Fact Sheet.

PROJECT INFORMATION FACT SHEET

_____
(Project Name)
(Total $ in K)

LOCATION OF PROJECT: (Include state, counties, and Congressional district)

Authorization: Public Law 83-566, 68 Stat. 666 is amended (16 U.S.C., 1001 et. seq.) 1954

Background: (Purpose and description of project -- not more than 10 lines)

ECONOMIC AND FINANCIAL DATA:

Costs:	Total Traditional Cost Share		Total Enhanced Cost Share		Annual O&M	
Project Purposes	Non-Fed	Federal	Non-Fed	Federal	Non-Fed	Federal
						0

Total Costs

Benefits:

Project Purposes:	Average Annual Benefits	Number of Direct Beneficiaries

(when possible, differentiate between urban/rural flood control, existing/future)

Benefit-to-Cost Ratio:

_____@ _____ (authorized rate)

_____@ _____ (current rate)

Budget Data:

Funding Schedule (Budget year + 5)	1st	2nd	3rd	4th	5th	6th
Federal funds						
nonfederal funds						

PERIOD OF ANALYSIS AND PROJECT LIFE:

ENVIRONMENTAL PROBLEMS:
(Significant impacts)

OTHER SIGNIFICANT OR CONTROVERSIAL ISSUES (Brief Summary)

EVIDENCE OF UNUSUAL CONGRESSIONAL OR LOCAL INTEREST:

IS THIS REPORT IN COMPLIANCE WITH EXECUTIVE ORDER AND PUBLIC LAW AND OTHER STATUTES GOVERNING THE FORMULATION OF WATER RESOURCES PROJECTS?

_____Yes _____No (if "no" give brief explanation)

*U.S. GOVERNMENT PRINTING OFFICE : 1984 0-420-931/SCS-582

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PART 510 - PLAN MODIFICATIONS

SUBPART A - GENERAL

§510.00 Introduction.

(a) The approved watershed agreement and watershed plan-environmental impact statement (plan-EIS) is the official document for carrying out a watershed project. Whenever it becomes necessary to modify the terms, conditions, and stipulations of a watershed agreement, approval of such changes will be made and the agreements documented by (1) executing a revised watershed plan, or (2) executing a supplement to the watershed plan-EIS. Some modifications of the watershed plan-EIS may be documented by (1) executing a project agreement, or (2) supplementing the watershed agreement by an exchange of correspondence with the sponsoring local organization.

(b) When changes are needed, the state conservationist should review all parts of the plan-EIS to be sure that all needed changes are included in the proposed modification. Appropriate regional foresters and the area director of the Forest Service should be notified when forestry is involved and given the same opportunity for review of the modification as provided in the original plan-EIS.

(c) State developed procedures for coordination of proposed Federal financial assistance should be followed when a revised watershed plan or supplement is to be prepared that results in the addition of any structural measure or deletion of a multiple-purpose structure. In addition, the public must be kept informed of any major changes in the plan and invited to participate when planning takes place.

(d) Policies outlined in this manual will be the basis for the review of plan modifications.

§510.01 Methods of modifying plans.

(a) Revised watershed plan-EIS.

510.01(a)(1)

(1) A revised plan-EIS replaces the existing plan-EIS, as supplemented. It should include all information needed to install a project without reference to the original plan or previous supplemental plans.

(2) The six-step planning process should be followed in preparing the revised plan-EIS.

(b) Supplemental watershed plan-EIS.

(1) A supplemental plan-EIS is a document that changes part of an existing plan-EIS. The amount of detail included in a supplemental plan-EIS will depend on the nature of the modifications and their effect on the overall project.

(c) Project agreement.

An executed project agreement for the construction of works of improvement provides adequate documentation of agreement for changes in cost, such as changes in the estimated Public Law 83-566 contribution to construction cost as a result of site adaptation or changing cost levels that do not modify the cost-sharing rate of Public Law 83-566 assistance for construction.

(d) Exchange of correspondence.

Documentation of changes to the watershed agreement for modifications of the terms, conditions, and stipulations of approved plans, other than changes in purpose, scope, or major features, may be handled by an exchange of correspondence with each of the sponsoring local organizations. This method can be used to document a sponsor's or SCS's request for a change to the approved plan. An example of the format for an exchange of correspondence is shown in Exhibit §510.70 of this part. This method also may be used to closeout projects as described in §501.65 of the manual.

§510.02 Conditions requiring modification by revised watershed plan.

(a) Changes that require approval resolutions by Committees of Congress. See §510.30(a) and (b) for more specific details.

(b) When new problems are identified that require Federal assistance and numerous complex changes in the planned measures are required.

§510.03 Conditions requiring modification by supplemental watershed plan.

(a) Change in purpose.

A change in purpose is defined as the addition to or deletion from an approved watershed project of one or more purposes such as watershed protection, flood prevention, irrigation, drainage, fish and wildlife development, municipal or industrial water supply, or recreation.

(b) Change in scope.

A change in scope is defined as a planned increase or decrease in the degree or extent of project development specifically to benefit either (1) different beneficiaries, or (2) the same beneficiaries to a different degree.

(c) Change in major features.

A change in major features is defined as: (1) Using different ways to achieve agreed upon objectives without planned changes in purpose or scope, by such means as significantly changing the number, location, extent, or capacity of project measures, substituting one type of structural measure for another, or substituting nonstructural measures for structural measures; (2) adding provisions for Public Law 83-566 credit assistance; or (3) changing the cost-sharing arrangements set forth in the watershed agreement.

§510.04 Conditions requiring modification by project agreement or exchange of correspondence.

(a) Agreement to a change of the terms, conditions, and stipulations of the approved plan that does not require the execution of a supplemental watershed plan may be documented by a project agreement or exchange of correspondence.

(b) Change in sponsors.

A change in sponsors is defined as any change in the group of local organizations or their responsibilities. A change in sponsors may be documented by an exchange of correspondence. Where transfers of, or changes in responsibilities result, a new supplemental agreement will be executed and signed by all parties. See Exhibit §510.70 of this part.

510.05

(c) Any time an exchange of correspondence is executed, one conformed copy should be sent to the Director, PDMD, and the NTC Director.

§510.05 Fund charges.

All changes by revised plan or supplement should be charged to watershed operations funds WF-08. All changes to approved flood prevention (Public Law 78-534) subwatershed plans should be charged to WF-03 funds.

SUBPART B - PREPARATION OF SUPPLEMENTS, REVISED PLAN-EIS, AND SUPPLEMENTAL PLAN-EIS

§510.10 General.

(a) Modifications to authorized watershed plans-EIS requiring reevaluation and reformulation as defined in §510.11 of this subpart shall be developed using the standards and procedures in the "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies."

(b) Modifications to authorized plans that do not meet the conditions for reevaluation and reformulation as specified in §510.11 may be developed using the same procedures and discount rates used for the approved plan.

(c) Current engineering criteria will be used for (1) any new structural measures; (2) measures that, if installed according to original criteria, would endanger the new or modified measures; and (3) measures where the hazard classification has changed since orginally planned, (National Engineering Manual, §210-510.04).

(d) Technical and financial assistance for accelerated land treatment may be added to plans approved for operation. Approval will be based on:

(1) National Conservation Program priorities;
(2) seriousness of the problem;
(3) cost effectiveness; and
(4) local interest and financial support.

Supplements or revisions to all plans to add Federal cost sharing for land treatment should meet the requirements of Part 504 of this manual.

§510.11 Changes requiring reevaluation and reformulation.

(a) Unless the Chief determines otherwise, reevaluation and reformulation of the proposed changes to the approved plan-EIS will be required when any of the following conditions occur:

(1) The modifications result in a change in benefits or structural costs that indicate that the remaining measures no longer have net economic benefits as originally evaluated.

510.11(a)(2)

(2) There is a change in project purposes that significantly increases Federal costs.

(3) There is a significant change in the type, number, scope, or size of measures.

(4) An additional Federal cost-sharing purpose is to be included.

(b) Reformulation and reevaluation will be performed in accordance with Principle and Guidelines except for the discount rate for plans approved before January 3, 1969. The discount rate used in plans approved before January 3, 1969, will continue until installation is complete. Where a reformulated alternative plan cannot be developed that meets environmental requirements and results in net economic benefits, a decision should be made to either closeout and deauthorize the project or to proceed on the basis of obtaining a Secretarial exception.

§510.12 Environmental concerns.

Proposed changes in plan elements must be evaluated for environmental impacts using recognized environmental assessment procedures. If the proposed changes result in significant impacts, an EIS or revised plan-EIS should be prepared and circulated for the same reviews as the original plan-EIS. If major changes are proposed and the impacts are not significant, a writeup in the supplemental plan explaining the situation will suffice. In the latter case a FONSI should be filed and a supplemental plan-EA or revised plan-EA is the document that is prepared and reviewed.

§510.13 Content of supplements.

(a) Supplemental plans should begin with a section entitled "Need for the Supplement." This section should describe (1) why the plan is being supplemented, and (2) what changes are being made. This should be followed up by those sections from the original plan which are appropriate to document the changes proposed. The amount of detail given should be in keeping with the complexity of the proposed changes.

SEE next page

* (b) When revised tables are needed to document the changes, current cost estimates for works of improvement remaining to be installed are to be used. As-built costs should be used for measures already installed and contract costs for those measures under construction. These values are to be indexed to current dollar values or evaluated as a separate remaining increment. The as-built cost for installed measures will be shown in tables 1 and 2. The as built cost will be indexed to current values and will be included in tables 4 and 6. Any comparison of benefits and costs must have a consistent dollar value for benefits and costs. This adjustment may involve other changes that have developed since the approved plan was prepared.

August 3, 1992

WATER RESOURCES

TO: FILE

FROM: MIKE WOODSON, SNTC WATER RESOURCES SPECIALIST

SUBJECT: SUPPLEMENTAL WATERSHED PLANS - REQUIREMENTS FOR TABLES

REFERENCE: * FIRST EDITION, NATIONAL WATERSHEDS MANUAL, PARAGRAPH 510.13(b)

SECOND EDITION, (OCTOBER 1992), NATIONAL WATERSHEDS MANUAL, PARAGRAPH 506.13(b)

I requested a clarification of the sentence, "The as-built cost for installed measures will be shown in Table 1 and 2." Two interpretations have been given and/or used in the past:
1) The as-built values will be used in Tables 1 and 2;
2) The as-built values will be indexed prior to inclusion in Tables 1 and 2. According to Woodson, the values to be used in Tables 1 and 2 for installed measures is the as-built (without indexing) cost.

The tables should show which measures have been installed and that cost is the as-built cost.

Charles E. Thomas

Charles E. Thomas
WRPSC

cc:
Chickasha (12)
Bill R. Porter
Ronald D. Treat

510.15(a)

§510.14 Content of revised plan-EIS.

A revised plan will follow the same format and content as a new plan. (Part 508 of this manual).

510.15 Supplemental watershed agreements or revised watershed agreements.

(a) General.

Supplemental watershed agreements or revised agreements shall be used with all supplements or revised plans. Place the agreement at the front of the document in back of the cover sheet. The amount of detail needed in the agreement is governed by the nature and scope of the change and should be conditioned on the amount of new information in the plan that is attached to and made part of the plan. The agreement should, in all cases, specify the nature of the plan modification, give the provisions of the original agreement (as supplemented, if appropriate) that are being modified by the new agreement, make changes resulting from new laws or policy, and specify those provisions in the original agreement that are not changed by the new agreement.

Revised watershed agreements shall be used with all revised watershed plans and placed at the front of the document in back of the cover sheet. Since it is a revision, a special opening is needed. However, after the introductory paragraphs, normal items are used as given in §507.11 of this manual.

510.15(b)

(b) Format of supplemental watershed agreements.

SUPPLEMENTAL WATERSHED AGREEMENT NO. ____

between the

_____
Local Organization

_____
Local Organization

_____
Local Organization

(Referred to herein as sponsors)

State of _____

and the

Soil Conservation Service
United States Department of Agriculture

(Referred to herein as SCS)

Whereas, the watershed plan for _____ Watershed, State of _____, executed by the Sponsors named therein and SCS, became effective on the _____ day of_____, 19 _____; and

Note: The effective date of a watershed plan is the date that Federal assistance for installing the project measure was authorized.

Note: If another supplemental agreement has already been executed, this should be recognized by another "Whereas" statement similar to the following. Thereafter reference to the agreement should include the phrase, "as supplemented."

Whereas, a supplemental agreement(s) for said watershed, executed by the Sponsors named therein and the SCS became effective on the _____ day of _____, 19_____ and the _____ day of _____, 19_____; and

Whereas, in order to carry out the watershed plan for said watershed, it has become necessary to modify said watershed agreement; and

Whereas, the responsibility for administration of the Watershed Protection and Flood Prevention Act, as amended, has been assigned by the Secretary of Agriculture to the Soil Conservation Service (SCS); and

Note: Add "Whereas" clauses only if appropriate.

Whereas, a Supplemental Watershed Plan which modifies the watershed plan dated (date plan was authorized for operations) for said watershed has been developed through the cooperative efforts of the Sponsors and the SCS;

Now, therefore, the Secretary of Agriculture through the SCS and the Sponsors hereby agree upon the following modifications of the terms, conditions, and stipulations of said watershed agreement;

Note: Specify changes being made in the watershed agreement as follows:

(1) The _____ Watershed Conservancy District hereby agree to become one of the local organizations sponsoring said watershed project.

(2) The name of the _____ Department is hereby changed to _____ State Environmental Protection Agency.

(3) Multiple-purpose structure No. 12 is hereby deleted from the planned works of improvement.

(4) Municipal Water Supply is hereby deleted as a project purpose.

510.16(b)(4)

Note: The necessary paragraphs in the original agreement should be changed. Cost-sharing paragraphs should not be included unless a change in cost-sharing percentages is made.

(5) Paragraph number _____ is modified to read as follows:

The percentages of construction costs of the structural works of improvement to be paid by the Sponsors and by SCS are as follows:

Works of Improvement	Sponsors (or Name of Sponsor) (percent)	SCS (percent)	Estimated Construction Costs (dollars)
Floodwater-retarding structures, channel work, and floodways	None	100%	

Note: The statement "paragraph numbered _____ is modified to read as follows:" completely cancels the paragraph in the original agreement. Therefore, the entire paragraph must be reproduced in its new form.

(6) Paragraph numbered _____ is hereby added as follows:

(7) Paragraphs numbered _____, _____, and _____ are hereby deleted from the agreement.

Note: After all changes, deletions and additions are complete, the following statement should be included as an unnumbered item prior to the signature page:

The Sponsors and SCS further agree to all other terms, conditions, and stipulations of said watershed agreement not modified herein.

Note: Provisions for signatures should be provided as in standard agreement format.

§510.16(c)

(b) Format of revised watershed agreement.

REVISED WATERSHED AGREEMENT

between the

_____
Local Organization

_____
Local Organization

(referred to herein as sponsors)

State of _____

and the

Soil Conservation Service
United States Department of Agriculture
(referred to as the SCS)

Whereas, the Watershed Plan for _____ Watershed, State of _____, executed by the sponsors named therein and the SCS, became effective on the _____ day of _____, 19 _____; and

Note: If a supplemental agreement has been executed, this should be recognized by another "Whereas" statement similar to the foregoing. Thereafter, reference to the agreement should include the phrase, "as supplemented."

510.16(b)

Whereas, the responsibility for administration of the Watershed Protection and Flood Prevention Act, as amended, has been assigned by the Secretary of Agriculture to the SCS; and

Note: For Public Law 78-534 projects change the name of the Act in the above clause to Flood Control Act.

Whereas, in order to carry out the watershed plan for said watershed, it has become necessary to revise and supersede said watershed agreement; and

Whereas, a revised plan-EIS which modifies the watershed plan dated _____ for said watershed has been developed though the cooperative efforts of the Sponsors and the SCS;

Now, therefore, the Secretary of Agriculture, through the SCS and the Sponsors, hereby agrees on the revised watershed plan-EIS.

Note: Use standard paragraphs found in §507.11 of this manual.

SUBPART C - REVIEW AND APPROVAL OF SUPPLEMENTS, REVISED PLAN-EIS AND SUPPLEMENTAL PLAN-EIS

510.21(b)(2)

§510.20 General

It is important that all reviews be made with the same care as for an original plan-EIS. Reviews will be made for quality, technical adequacy, and conformance with state and National policies. Policies outlined in this manual will provide the basis for the review.

§510.21 Review procedures.

(a) State responsibilities.

(1) The state conservationist will conduct a multidisciplinary review of each supplement or revised plan commensurate with the magnitude of the changes being proposed. It is the state conservationist's responsibility to ensure that the document is ready for further review.

(2) Transmit 10 copies of the draft documents plus the supporting data to the NTC director, 1 copy to the Director, Project Development and Maintenance Division (PDMD), and 2 copies to the Forest Service regional or area offices for review and comment. Supplements without an EIS not requiring interagency review need not be sent to the Forest Service. In these cases, the state should request review comments and/or approval of the supplement document in its letter of transmittal.

(b) National Technical Center responsibilities.

(1) The NTC will conduct a technical review of the draft documents and supporting data. The NTC water resource planning specialist will coordinate the review among those concerned disciplines. During the review process, he will provide additional information as needed to the reviewers and help resolve issues so that review comments can be limited to those essential for a quality product.

(2) The NTC water resource planning specialist will consolidate all NTC comments in a draft letter of technical concurrence to the state conservationist. Comments will include appropriate recommendations for resolving policy, administrative, or technical deficiencies and/or approval where supplements without an EIS are involved.

§510.22 Local reviews, revised plan-EIS, or supplemental plan-EIS.

(a) The state conservationist and the sponsors will arrange for a local review of the revised plan-EIS or supplemental-plan EIS. This step may be carried out concurrently with the technical review or during interagency review.

(b) The state conservationist, after considering local review comments, shall make any necessary changes in the documents. Significant changes should be reviewed with the NTC director to determine if further NTC review is needed.

§510.23 Interagency review - Review draft revised plan-EIS or supplemental plan-EIS.

(a) State responsibilities.

(1) The state conservationist will send five copies of the draft documents (revised plan-EIS or supplemental plan-EIS) to the Environmental Protection Agency's (EPA) Office of Federal Activities, and five copies to the EPA regional office, plus one copy to other interested agencies, groups, and individuals. EPA will publish the notice of availability in the Federal Register. Agencies and groups receiving the draft documents should be listed in the Consultations and Public Participation Section of the EIS. A suggested list of participants is found in §509.101 of this manual.

(2) Send one information copy (so indicated) to the sponsors, the area (or regional) and field office of the Forest Service, Director, PDMD, NTC director, Farmers Home Administration State Director, regional office of the Fish and Wildlife Service, and other participating agencies.

(3) Allow at least 45 days for review. The review period begins on the date the notice of availability of the draft is published in the Federal Register.

§510.24 Final review and approval, revised plan-EIS, or supplemental plan-EIS.

(a) Resolution of comments.

(1) The state conservationist should discuss the comments on the draft documents with the sponsors and resolve all major issues. All substantive comments should be responded to in the consultation section of the EIS.

(2) The state conservationist should obtain the EPA rating on the draft EIS. If the rating includes either an EC, EO, EU, or a 3, efforts should be made to resolve the issues raised. A letter of concurrence or comments on the proposed final documents, should be obtained from the EPA Regional Director. Issues raised also should be discussed in the consultation section of the EIS. EPA's concurrence letter on the proposed final documents should be entered in the appendix with EPA's letter of comments.

(3) The final revised plan-EIS or supplemental plan-EIS should be prepared after appropriate consideration is given to all comments.

(b) Final approvals.

(1) State responsibilities.

* *

(i) The state conservationist will transmit five copies of the final documents to the Office of Federal Activities of the EPA (exhibit §509.106). If any changes were made in the documents also send one copy each to the NTC, sponsors, area (or regional) and field office of the Forest Service, appropriate local offices of other participating agencies, and each agency group or individual providing substantive comment on the draft.

(ii) Prepare a Record of Decision (ROD) after the end of the 30-day no administrative action period initiated by EPA's publication of the Notice of Availability of the final EIS in the Federal Register. Send the Notice of Availability of the ROD to the Federal Register. The state conservationist should sign the ROD. Copies also should be sent to all who commented on the draft documents.

(iii) The sponsors and the state conservationist sign the revised or supplemental watershed agreement. Transmit one manually signed and one conformed copy to the Chief and one conformed copy to the NTC director.

(iv) The state conservationist will send one copy of the ROD to the Director, PDMD, with a request for approval by the Chief of the revised plan-EIS or supplemental plan-EIS.

510.24(b)(2)

(2) National Technical Center responsibilities.

The NTC director should verify that technical concurrence is still granted when notified by the state conservationist that substantive changes were made as a result of the interagency review and provide guidance for regaining technical concurrence should it have been affected.

SUBPART D - APPROVAL AUTHORITY FOR MODIFICATIONS

§510.30 Approval by Congress.

Approval resolutions by Committees of Congress are required for all significant changes to approved Public Law 83-566 projects. Changes are considered significant when any of the following conditions are met:

(a) Plans originally approved by Congress.

Cumulative change in scope is considered significant if it causes (1) an increase of more than $5.0 million in the estimated Public Law 83-566 contribution to costs for items other than technical assistance, engineering services, and project administration (increases are to be computed as the sum of all increases whether made at one time or at different times), or (2) an increase in the total capacity of a structure so as to require approval of the change by a congressional committee different from the one that approved the original plan.

(b) Plans originally approved administratively.

A change is considered significant if it causes (1) the estimated Public Law 83-566 contribution to costs other than technical assistance, engineering services, and project administration to exceed $5.0 million, or (2) the total capacity of any structure to exceed 2,500 acre-feet.

§510.31 Approval by the Chief.

(a) All revisions or supplements to plans previously approved by Congress, or the Chief, shall be approved by the Chief before signing by the state conservationist or sponsors except where delegated by the Chief to the state conservationist. *

(b) The changes would result in a plan that would require a Secretarial exception under Principles and Guidelines.

§510.32 Approval by the state conservationists.

(a) The state conservationists may approve all modifications by project agreement, or exchange of correspondence as defined by §510.01 of Subpart A, regardless of the level of approval or authority required for the original plan.

(b) Revised plans or supplements to plans previously approved by the state conservationist may be approved by the state conservationist if the change does not cause the total project Public Law 83-566 financial assistance cost to exceed $2.0 million.

§510.33 Delegated approval authority.

State conservationists who have, or have with NTC technical concurrence, delegated approval authority to approve plans for operations can also approve modifications to plans:

(a) Where the modification proposed will not increase financial assistance cost of the project by 10 percent or more after adjustment for inflation; or

(b) Where no additional cost shared purposes are added to the project.

The state conservationists will request authorization for funding from the Director, PDMD, for plan modifications that increase the cost of the project by 10 percent or more after adjustments for inflation or that add a cost shared purpose.

§510.40 Authorization.

(a) Upon completion of the review by the National Headquarters and if the proposed changes are satisfactory, the Chief will issue written approval to the state conservationist to execute the revised or supplemental watershed agreement plan-EIS. When the state conservationist and the sponsors sign the agreement installation of the modified plan may proceed.

(b) For revised watershed plans approved by Congress, the Chief will authorize Federal assistance for installation of the revised project by letter to the state conservationist in the same manner as for new plans (Part 509).

§510.41 Notification.

(a) Congressionally approved revised plan-EIS.

Procedures to be followed are the same as those set forth in Subpart E, Part 509 for new plan-EIS's.

(b) All others.

The state conservationist will transmit one manually signed copy and two conformed copies of the supplement or plan-EIS to the Chief. Sponsoring local organizations, the National Technical Center, and field offices of all participating agencies and groups will be advised of the approval of a supplement and furnished with such copies of the material as is necessary for their participation in the modified project. Where portions of the local share of the costs are being financed with a watershed loan, the FmHA State Director will be furnished copies of all supplements.

SUBPART F - PUBLIC LAW 78-534 PROJECTS

510.50

§510.50 General.

Preparation, review, and approval of Public Law 78-534 projects are the same as for Public Law 83-566 projects, with one exception. When revisions and supplements to a subwatershed plan involve Federal financial or credit assistance from flood prevention funds for purposes other than flood prevention, the Chief will transmit one copy of the supplemental subwatershed plan to the Office of Management and Budget and will allow not less than 45 days for review. At the end of the 45-day period, the Chief may authorize the state conservationist to execute the revised or supplemental plan.

SUBPART G - CONGRESSIONALLY APPROVED PROJECTS

510.62

510.60 General.

(a) Since 1977, Congress has been approving projects "... substantially in accordance with the report (watershed plan) ... with the conditions that (1) the approval of appropriations for the project be limited to $_____, the estimated Federal cost of the project as shown in the work (watershed) plan for such project updated to current price levels, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuation in the cost of construction as indicated by engineering cost indexes applicable to the type of construction involved, and (2) the purposes served by the project shall be those set forth in the watershed work plan submitted for the project, and the scope of the project purposes and of the project shall be substantially as set forth in such work (watershed) plan."

(b) Each year costs are updated according to §501.75 and feasibility of the project rechecked. As soon as it becomes evident that one of the two conditions imposed by a committee of Congress will be violated, the state conservationist should contact PDMD for instructions. Procedures of this subpart will then be followed.

510.61 Basic situations.

Once it is determined that the project costs will exceed the amount approved by Congressional Committee, steps must be taken to request additional approval from the appropriate committee of Congress. This will be done for simple cases (normally watersheds with a single structure) by writing a letter to the appropriate committee which will: (1) state the situation which caused the need for the request, (2) explain why the situation exists, (3) explain that there has been no reformulation and benefits still exceed costs, (4) review the sponsor's commitments to date, and (5) request committee approval. This letter should be prepared by the state conservationist for the Chief's signature and sent to the Director, PDMD, (with a copy to the NTC Director) for review and processing.

510.62 Complex situations.

In more complicated projects, contact the Director, PDMD, for guidance.

SUBPART H - EXHIBITS

§510.70 Sample exchange of correspondence.

SUPPLEMENTAL WATERSHED AGREEMENT NO. _____

FOR _____WATERSHED, __(State)_____

by

EXCHANGE OF CORRESPONDENCE

Since the original Watershed Agreement was signed on _____, it has become necessary to modify that agreement in order to carry out the installation of the plan. As a result of the environmental evaluation, some mitigation is found to be needed.

Structure No. 6 will inundate 25 acres of type 7 wetland and convert it to a type 5 wetland, resulting in a net loss of 200 habitat units. Through the construction of a small dike across a 15-acre draw, 1.2 miles upstream from structure No. 6, a type 3 wetland can be created.

This dike will result in an increase of 190 habitat units, thus limiting the adverse effects to a loss of 10 units, which is not considered significant. There was no way that habitat-in-kind could be developed, and an agreement was reached with fish and wildlife agencies that this tradeoff would be acceptable. Construction costs are estimated to be $9,200 and all are paid by SCS since Site 6 is a single-purpose flood control structure. The sponsors will obtain the landrights needed in connection with the mitigation measure.

§510.70 Sample Exchange of Correspondence. (page 2)

Paragraph 3 of the watershed agreement is changed to read:

Works of Improvement	Sponsors (percent)	SCS (percent)	Estimated Construction Cost (dollars)
Multiple-purpose structure 3	50	50	723,000
Floodwater-retarding structures 1, 2, 6, 10, 12, & 15	0	100	3,256,700
Mitigation Measure	0	100	9,200

All other terms, conditions and stipulations of the watershed agreement not modified here remain the same and are agreed to:

Signed: _____ Chairman	Green County SWCD Sponsor	_____ Date
_____ Chairman	Green County Commissioners Sponsor	_____ Date
_____ Executive Director	Whitlow Drainage District Sponsor	_____ Date
_____ State Conservationist	Soil Conservation Service USDA	_____ Date

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PART 512 - EMERGENCY WATERSHED PROTECTION

SUBPART A - GENERAL

§512.00 Purpose.

This part sets forth the requirements and procedures for Federal assistance administered by the Soil Conservation Service (SCS) under Section 216, Public Law 81-516 and Section 403 of Title IV of the Agricultural Credit Act of 1978, Public Law 95-334. Codified rules for administration of the Emergency Watershed Protection (EWP) Program are set forth in 7 CFR 624.

§512.01 Objective.

The objective of the EWP Program is to assist in relieving imminent hazards to life and property from floods and the products of erosion created by natural disasters that are causing a sudden impairment of a watershed.

§512.02 Scope.

Authorized EWP technical and financial assistance may be made available when an emergency exists. Emergency watershed protection consists of emergency measures for runoff retardation and soil erosion prevention as needed to reduce hazards to life and property from floods, drought, and the products of erosion on any watershed impaired by a natural occurrence.

§512.03 Administration.

(a) Administration of the EWP has been delegated to SCS who shall provide overall administrative direction and guidance for the program. SCS will transfer funds to the Forest Service (FS) at the National level for work to be installed by FS or its cooperators. Under general program criteria and procedures established by SCS, FS is responsible for administering EWP measures on National Forests and

512.03(a)

National Grasslands. FS is also responsible for emergency measures on all forested lands or rangelands within the National Forests, on adjacent rangelands that are administered under formal agreement with FS, and on other forest lands. On these lands, emergency work is done by either SCS or FS as mutually agreed. In carrying out their responsibilities, FS and SCS work cooperatively with other Federal, State, and local government agencies. Details on FS operations are contained in FS Manual 3540.

(b) State conservationists (STC's) are to administer the program within their respective states. This includes all coordination with other agencies.

§512.04 Definitions.

(a) Watershed Emergency. A watershed emergency exists when a natural occurrence causes a sudden impairment of a watershed that creates an imminent threat to life or property. For the watershed to be eligible for assistance, the imminent threat to life or property must significantly exceed that which existed before the impairment.

(b) Natural occurrence includes but is not limited to floods, fires, windstorms, earthquakes, volcanic actions, slides, tornados and drought.

(c) A watershed impairment exists when the ability of a watershed to carry out its natural functions is reduced to the extent of creating an imminent threat to life or property.

(d) A sudden watershed impairment results from a single natural concurrence or a short-term combination of occurrences. Watershed impairments resulting from long-term combinations or series of natural or other occurrences are not considered sudden watershed impairments.

(e) An exigency exists when the near-term probability (immediate threat) of damage to life or property is high enough to demand immediate federal action. An exigency continues to exist as long as the probability of damage continues at such a high level.

(f) A nonexigency situation exists when the near-term probability of damage to life or property is high enough to constitute an emergency but not sufficiently high to be considered an exigency (potential threat). A nonexigency situation continues to exist as long as the probability of damage remains high enough to be considered an emergency.

(g) Emergency measures for exigency and nonexigency situations are those undertaken to remove or reduce hazards created by the disaster to safeguard life and property from flooding or the products of erosion.

(h) Federal-aid highway is any public highway, roadway, or other road eligible for the Emergency Relief Program administered by the Federal Highway Administration of the Department of Transportation. The Emergency Relief Program will aid state and local highway agencies to pay unusually heavy expenses of repairing serious damage to the federal-aid system resulting from natural disasters or catastrophic failure.

SUBPART B - PROGRAM ADMINISTRATION

512.11(b)(1)

§512.10 General.

(a) Emergency watershed protection assistance is made available when a watershed emergency is determined to exist by the STC. Procedures for providing assistance vary according to whether the watershed emergency is classified as an exigency or a nonexigency. Guidance for managing the program and providing assistance is given in the National Emergency Watershed Handbook.

(b) The classification of an emergency may be changed if the situation changes. If the near-term probability that the threat to life or property is reduced because of emergency assistance or other factors, an exigency may be reclassified as a nonexigency. Similarly, as occurrences increase the probability of threats to life or property, previous nonexigencies will be appropriately reclassified as exigencies. If warranted, situations previously considered nonemergencies will be appropriately reclassified as nonexigencies or exigencies.

§512.11 Criteria for assistance.

(a) Eligible persons.

(1) Include those public or private landowners, land managers, land users, or others who (i) have a legal interest in or responsibility for the values threatened by a watershed emergency and (ii) have exhausted or have insufficient funds or other resources available to provide adequate relief from the applicable hazards.

(2) Interested persons other than Federal agencies must be represented by a project sponsor. Project sponsors must: (i) be a legal subdivision of a State government or a State itself or a local unit of government or qualified Indian tribe or tribal organization; (ii) have legal authority and agree to use such authority to obtain needed landrights, water rights, and permits; and (iii) agree to provide for the operation and maintenance of completed emergency measures.

(b) Eligible measures.

(1) To be eligible for assistance, a measure must retard runoff to prevent flooding or prevent soil erosion, reduce threats to life or property (permanent improvements, etc.) resulting from a watershed emergency, and yield beneficial effects to more than one individual, except in an exigency situation where single beneficiaries are permitted.

512.11(b)(2)

(2) All measures must be economically and environmentally defensible and technically sound, and be limited to what is necessary to reduce applicable threats to a level not to exceed that which existed before the watershed was impaired. All work is to be carried out in accordance with NEM-210-501.24(c).

(3) The work must conform to rules and regulations published by SCS for complying with Executive Order 11990, Protection of Wetlands, and Executive Order 11988, Flood Plain Management.

(4) Measures used must be the least expensive ones which will provide immediate, adequate, and safe relief from the hazard causing the emergency.

§512.12 Cost sharing.

(a) Federal funds may bear up to 100 percent of the construction costs of emergency measures in an exigency situation and 80 percent in a nonexigency situation. Sponsors are responsible for obtaining any needed landrights.

(b) Cost sharing is waived for measures to be installed on Forest Service land.

(c) Cost sharing for emergencies of $200,000 or less are waived for measures to be installed in American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands (48 U.S.C. 1469(d)).

(d) Sponsors may provide their share of construction costs in the form of cash, in-kind services such as labor or equipment, etc, or a combination of cash and in-kind services.

§512.13 Funding.

(a) The Chief allots funds to state conservationists to carry out emergency assistance within their respective states. National Technical Center (NTC) directors are allotted funds to coordinate emergency assistance activities and to ensure consistent and efficient operations for the states served. STC's are to establish procedures for charging time to EWP work as required by the SCS Time and Progress Reporting System.

(b) Funds for work to be carried out on National Forest lands by FS or by their cooperators are to be transferred to FS at the national level. If additional funds are needed for FS work, the FS is to notify Project Development and Maintenance (PDMD) and arrange for appropriate transfer of funds at the national level.

§512.14 Time limits.

(a) In an exigency situation, funds must be obligated within 10 days after (1) the receipt of emergency funds, or (2) 2 days after the date of the disaster event, or (3) when conditions permit beginning construction activities, whichever is later. All work must be completed within 30 days after the funds are obligated. A 10-day extension may be granted by the Director, PDMD, with justification based on unusual circumstances.

(b) In a nonexigency situation, funds must be obligated and construction completed within 220 consecutive calendar days after the date of receipt of funds. The Director, PDMD, may grant extensions if unforeseen or uncontrollable events cause delays. Requests must be adequately supported by documentation.

§512.15 Limitations.

(a) Emergency funds are not to be used to perform normal operation or maintenance or to solve watershed problems that existed before the disaster-causing event. These funds are not to be used to repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.

(b) Emergency funds are not to be used for installing rock riprap, gabions, or similar measures to provide protection to land, crops, pastures, etc.; constructing a new channel or doing work that increases predisaster capacity of a channel; removing floating debris and sediment from reservoirs or debris basins (this is Operation and Maintenance regardless of ownership); or repairing beaches, dunes, and shorelines damaged by erosion as a result of wave action.

(c) Work may not be done on any measures installed under an SCS project agreement or on measures installed by other Federal agencies unless an exception is granted by the Chief.

(d) Permanent or long-life measures such as floodwater-retarding dams, channel modification, sediment basins, and grade-stabilization structures with associated vegetative measures may not be installed as emergency measures unless they are the most expeditious way to safely obtain emergency protection.

(e) Emergency funds are not to be used to remove threats to federal-aid highways except where the federal-aid highway protection would be incidental to other eligible protection.

☆U.S. Government Printing Office : 1986 -490-918/40557

SUBPART C - ASSISTANCE

§512.20 Application.

Sponsors may apply to any SCS office for EWP assistance. SCS shall help sponsors prepare their applications. Information supplied should include the nature, location, and scope of the problems and the assistance needed.

§512.21 Investigations.

(a) Upon receipt of an application for EWP, the STC and regional forester or area director, as appropriate, shall immediately investigate the emergency situation to determine if EWP is applicable. The FS will coordinate investigations with SCS. When carrying out the investigation, STC's must classify the degree of emergency. This determination takes into consideration two broad types or degrees of emergency situations: (1) an imminent situation of unusual urgency--an exigency--and (2) an emergency requiring action but of less urgency than an imminent situation--a nonexigency.

(b) When an exigency exists, prompt remedial action to eliminate an imminent threat to loss of life is to be provided.

(c) If an exigency does not exist but the impairment justifies emergency assistance, the STC shall submit a request for funds to the Director, Watershed Projects Division, within 60 days after the disaster event. Neither SCS nor FS may commit funds until notified by the National Headquarters of the availability of funds.

§512.22 Request for funding.

(a) Exigencies.

The STC shall notify WPD and indicate the nature of the emergency and the estimate of funds needed. If funds are made available, the STC shall confirm the situation in a memorandum to the Director of the Watershed Projects Division, that explains the nature of the emergency, the location of the emergency, the kind of remedial work and funds needed, who the sponsors are, a description of potential damage, etc. Where an exigency exists, the memorandum from the STC constitutes the request for funds.

512.22(b)

(b) Nonexigencies.

Requests for nonexigency projects shall be in writing to the Director of the Watershed Projects Division, and a report must accompany the request. This report is to be concise but adequate to support the need for and eligibility of emergency assistance. The scope and detail of the report should correspond with the scope of the emergency. The request for funds is to include at least the following information:

(1) Total amount of funds needed for SCS and FS.

(2) Endorsement by regional forester or area director if there is to be any input for forest lands.

(3) Event date and cause of watershed impairment. When applicable, use event date designated by Federal Emergency management Agency (FEMA).

(4) Date of funding request.

(5) Members of the investigation team.

(6) Location (county, parish, other) of watershed impairment.

(7) Description of impairment and of potential damages from flooding and the products of erosion including:

(i) Environmental impact.

(ii) Types of health hazards anticipated and number of people concerned.

(iii) Land use of property endangered.

(8) Map showing:

(i) Land ownership or management of endangered area (national forest, private, other).

(ii) Location of potential damage that would be prevented or alleviated by emergency treatment.

(iii) Area to receive emergency treatment.

(9) Estimated kind, quantity, and cost of emergency measures recommended.

(10) Economic defensibility of the proposed measures.

(11) Description of the environmental impact expected from installation of the recommended measures. Include a summary of substantive comments from other agencies.

(12) Identification of sponsors requesting assistance.

(13) List of other Federal, State, and local organizations that are involved. Show type and extent of involvement of each.

(14) A statement that (1) FEMA has been consulted if the disaster is major, (2) the assistance recommended is being coordinated with other emergency assistance programs, (3) other sources of funds are committed, and (4) an environmental evaluation will be made before measures are installed.

(15) Additional maps, tables, charts, or photographs as determined necessary.

SUBPART D - PLANNING AND IMPLEMENTATION

§512.30 Coordination.

(a) STC's are to notify the State and regional clearing houses, FEMA, regional offices of the United States Fish and Wildlife Service, the Environmental Protection Agency, the State Fish and Game agency and other appropriate agencies of the expected emergency assistance and invite their assistance in planning and implementing the emergency work. Need for early action is to be stressed. Telephone contacts are acceptable but are to be confirmed by a written notification and request for assistance.

(b) As appropriate, an entity or entities of State government such as conservation districts and county governments, are to be asked to assist the STC in setting priorities for installation of measures.

(c) The STC's are to coordinate work with other agencies administering emergency programs, including those administered by the Agricultural Stabilization and Conservation Service, Farmers Home Administration, U.S. Army Corps of Engineers, Small Business Administration, FEMA, and other appropriate agencies. Such coordination may include specific agreements about the tasks each agency is to perform.

(d) If the area is declared a "major disaster area" by the President under Public Law 93-288, the emergency assistance is to be coordinated through FEMA. If FEMA transfers this responsibility to the Federal Regional Council during the recovery period, SCS is to be responsive to the council.

§512.31 Planning considerations.

(a) When planning emergency measures, emphasis should be placed on measures that are the least expensive and most environmentally sound. The measures are to be accomplished by using the least damaging construction techniques and equipment to preserve as much of the existing wildlife habitat as possible. Emergency construction practices may include but are not limited to such measures as seasonal construction, minimum clearing, reshaping spoil, limiting excavation to one bank (on alternate sides where appropriate), and prompt revegetation of disturbed areas. Concurrent

installation of measures needed to offset adverse impacts of the emergency measures should be planned. If this is not practicable, plans should be included to ensure installation within 30 days of the other measures.

(b) Eligibility of all permanent, enduring, or long-life measures or practices proposed for construction shall be determined by a team consisting of SCS personnel from the National Headquarters and the NTC. The team shall determine the need for funds before any commitments are made. This team is also available for assistance in determining eligibility under adverse or questionable circumstances.

(c) If lands under FS jurisdiction are involved, the team will be assisted by FS representatives of the National Headquarters and area or regional offices. The team shall also be available, at the request of the STC's, regional foresters, and area directors, to help determine the eligibility of other EWP measures or practices and to assist with administrative details.

§512.32 Environmental considerations.

(a) Environmental aspects of emergency work are to be considered as carefully as possible under the given emergency situation. A program environmental impact statement for EWP work has been developed in compliance with Section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91-190, 83 Stat. 852 (42 U.S.C. 4321 et seq.)).

(b) An environmental evaluation is to be prepared for all nonexigency situations. Archeological, historical, or other special expertise needed is to be solicited from appropriate agencies and groups. Environmental and other considerations are to be integrated into emergency work by using an interagency and interdisciplinary planning approach.

§512.33 Methods of accomplishing work.

(a) SCS usually does emergency work by construction contract, equipment rental contract, supply contract, purchase order (small purchases), and/or employed labor. However, emergency work may be done by the sponsors. Procurement for emergency work, even in an

exigency, is to be consistent with the National Contracts, Grants, and Cooperative Agreements Manual (120-V-510), Federal Procurement Regulations, and USDA and SCS supplements.

(b) Landrights must be acquired, reviewed, and certified as provided in Parts 511 and 512 of the National Contracts, Grants, and Cooperative Agreement Manual.

(c) Landrights should be obtained in writing. Oral permits should be documented as soon as possible by the person making contact with the landowner.

(d) An agreement is required for all emergency watershed protection work. Agreements are to be prepared in accordance with instructions in the National Contracts, Grants, and Cooperative Agreements Manual (120-V-514). These agreements will include requirements for needed operation and maintenance which is the sponsor's responsibility.

(e) The agreement can be used to record a disclaimer if the remedial work does not meet SCS standards. This disclaimer may be used only if the sponsor agrees to bring the measure up to reasonable standards by other means and/or authorities after the elimination of the threat.

§512.34 Post installation review.

Post installation reviews should be made to determine if the measures installed are in accordance with policy and are effective. Reviews are to include spot checking of individual measures by the appropriate state office staff members.

*U.S. GOVERNMENT PRINTING OFFICE : 1984 O-460-939/SCS-1003

SUBPART E - REPORTS

§512.40 Project code numbers.

Records of obligations, expenditures and unobligated balances shall be recorded by project number. WPD will assign the number at the time funds are authorized for EWP. Each project will be numbered consecutively in each state (example 5001, 5002, etc.). Projects authorized prior to October 1, 1987, with respective state.

§512.41 Final reports.

A final report describing measures installed and the benefits achieved shall be prepared within 60 days after all work is completed. The report is to summarize the emergency operations of SCS and Forest Service separately. The report is to contain:

(a) The assigned project code number, and completion date.

(b) A brief description of the disaster and affected area.

(c) A description of any unusual situation or problems.

(d) A description of beneficial effects accrued, such as sediment reduction, property protected, or threat to loss of life reduced. Estimate dollar values where possible.

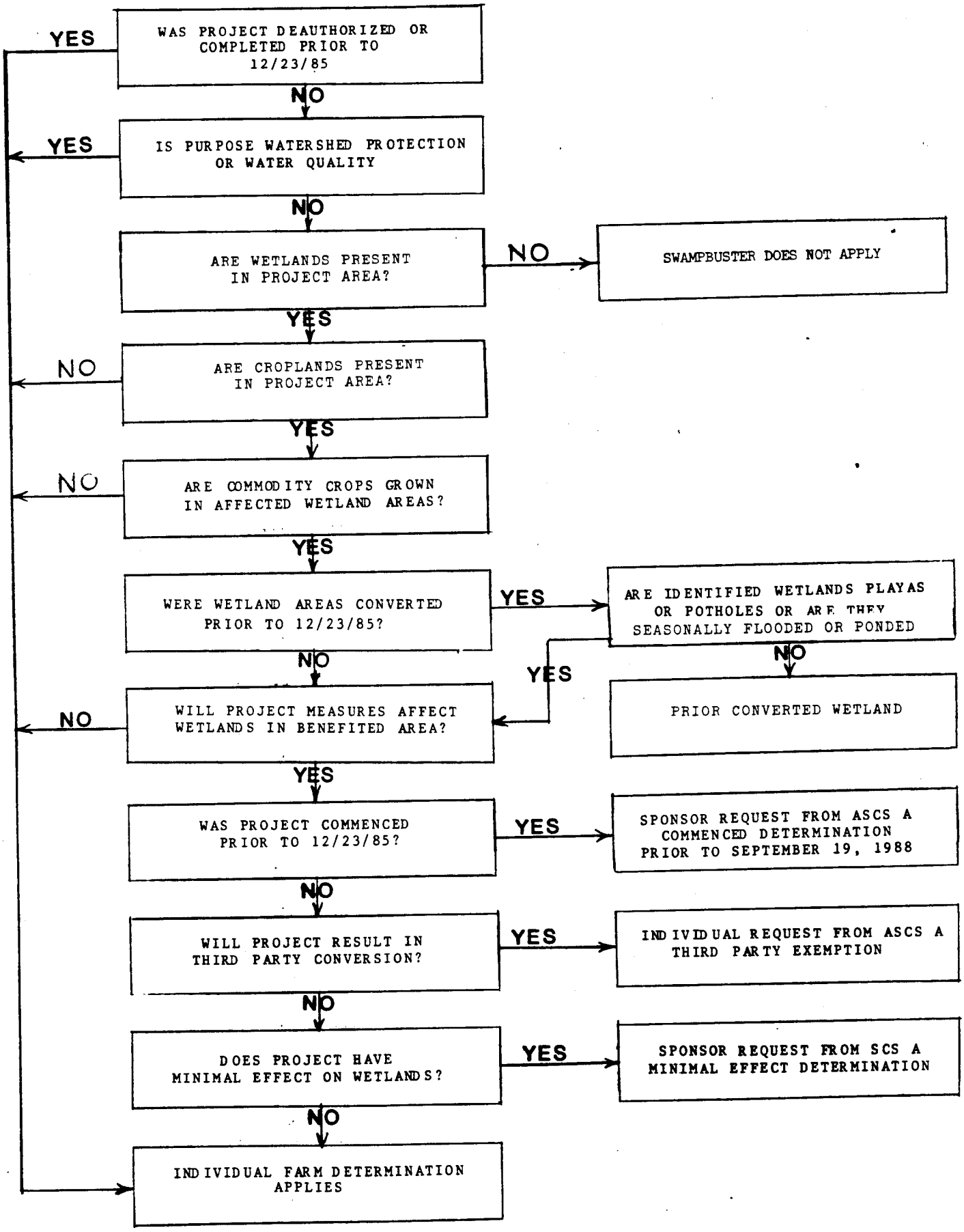
(e) A summary of measures installed and their cost. Show local and federal cost. Federal cost shall include both TA and FA. If final accounts are not available within 60 days, use best estimate of cost.

(f) A statement as to whether set aside or small business contractors were employed for SCS activities and the dollar amount of such contracts or procurements.

(g) A statement that emergency work is completed and that EWP is terminated. At this time, all remaining EWP funds are to be released.

The final report is to be sent to the SCS chief with copies to WPD and the NTC.

GUIDE FOR IDENTIFYING PROJECT AFFECTED BY SWAMPBUSTER PROVISIONS OF FOOD SECURITY ACT



Wetland is defined as area which meet hydric soil and vegetation criteria of FSA

EXHIBIT A