

ARKANSAS RIVER CORRIDOR

Appendix H: Real Estate

August 2016

ARKANSAS RIVER CORRIDOR, TULSA COUNTY, OKLAHOMA

Introduction

The Arkansas River is a water resource serving numerous nationally significant purposes. The river has historically served as a nationally significant resource for aquatic and terrestrial habitat of the nation's wildlife that live, breed, and migrate through the Arkansas River ecosystem. This includes federally endangered Interior Least Tern (Least Tern, *Sterna antillarum*), a nationally significant resource, and two federally threatened bird species, the Piping Plover (*Charadrius melodus*) and the Red Knot (*Calidris canutus rufa*) as well as a plethora of native species and migratory waterfowl that support a healthy and functional riverine ecosystem. Keystone Lake and its dam located along the Arkansas River also play vital roles in supporting the continued provision of many of those multi-purposes. In particular, the lake and dam provide flood risk management benefits, contribute to the eleven reservoir system operation of the McClellan-Kerr Arkansas River Navigation System, provide clean and efficient power through the associated hydropower plant, and provide a source of water for municipal and industrial uses. However, construction, operation, and maintenance of the Keystone Dam, lake, associated hydropower operations and other multi-purposes have significantly degraded the riverine ecosystem structure, function, and dynamic processes below Keystone Dam on the Arkansas River within Tulsa County, Oklahoma.

Stage of Planning Process

This is a feasibility study. A planning Charette was conducted in October 2013, and an Alternatives Milestone Meeting was completed in September 2015. The study is in the Alternative Formulation and Analysis Phase. Utilizing a reasonable level of detail, the PDT has analyzed, compared, and evaluated the array of alternatives to identify a Tentatively Selected Plan for consideration by the Vertical Team.

Study Authority

The Arkansas River Corridor study is authorized in the Water Resources Development Act (WRDA) of 2007, Section 3132.

Section 3132. Arkansas River Corridor.

- (a) IN GENERAL. – The Secretary is authorized to participate in the ecosystem restoration, recreation, and flood damage reduction components of the Arkansas River Corridor Master Plan dated October 2005. The Secretary shall coordinate with appropriate representatives in the vicinity of Tulsa, Oklahoma, including representatives of Tulsa County and surrounding communities and the Indian Nations Council of Governments.
- (b) AUTHORIZATION OF APPROPRIATIONS. – There is authorized to be appropriated \$50,000,000 to carry out this section.

Non-Federal Sponsor

Tulsa County is the non-federal sponsor for the Arkansas River Corridor feasibility study. An amended feasibility cost-sharing agreement was executed in May 2015.

Purpose

This study is in response to the Section 3132 authorization of the 2007 WRDA. The purpose of this study is to evaluate the aquatic ecosystem restoration components of the October 2005 Arkansas River Corridor Master Plan (ARC Master Plan) and determine if there is a Federal Interest that aligns with the Corps of Engineers ecosystem restoration mission.

DRAFT REAL ESTATE PLAN
ARKANSAS RIVER CORRIDOR DRAFT FEASIBILITY INVESTIGATION
WATER RESOURCES DEVELOPMENT ACT (WRDA) OF 2007,
SECTION 3132

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1.0 THE REAL ESTATE REPORT

1.1 Statement of Purpose

The purpose of this Real Estate Plan (REP) is to present the real estate requirements for the Arkansas River Corridor Feasibility Investigation, Tulsa County, Oklahoma, in accordance with the Arkansas River Corridor Feasibility Phase Project Management Plan, dated April 28, 2015. The Non-Federal Cost-Sharing Partner is the Tulsa County Board of County Commissioners. This feasibility study report documents the planning process and information used to identify the Tentatively Selected Plan associated with ecosystem restoration, water quality, and recreation along the 42 mile Arkansas River Corridor within Tulsa County, Oklahoma. The Arkansas River Corridor is an ecosystem that consists of the stream channel, floodplain, and transitional riparian fringe. The Real Estate Plan is tentative in nature; it is for planning purposes only and both the final real property acquisition lines and the real estate cost estimates provided are subject to change after approval of this report.

1.2 Authorization

The authority for this Project is the Water Resources Development Act (WRDA) of 2007, Section 3132, which authorizes the Secretary to participate in the ecosystem restoration, recreation, and flood risk management components of the Arkansas River Corridor Master Plan, dated October 2005. The Secretary shall coordinate with appropriate representatives in the vicinity of Tulsa, Oklahoma, including representatives of Tulsa County and surrounding communities and the Indian Nations Council of Governments.

1.3 Project Location

The project is located in Tulsa County, Oklahoma. Four sites are currently under consideration for this Project, The locations of these sites are marked on maps below as Exhibits A through E, currently being considered. Tulsa County has a population of approximately 603,403, people (2015 Suburbanstats.org). The Tulsa Metropolitan Statistical Area (MSA) has an estimated population of 981,005 (Tulsa Regional Chamber 2015). Zoning is Tulsa County and/or appropriate local municipalities.

1.4 Project Description

The purpose of the Project is to implement an ecosystem restoration, water quality, and recreation project to restore fish and wildlife habitat in the Arkansas River Corridor downstream of Keystone Dam consistent with the concepts identified in the Master Plan.

The Project is designed to provide benefits to sites along up to 42 miles of the Arkansas River, restoring flow regimes and associated aquatic ecosystem habitats, in a manner that more closely mimics natural conditions. Other considerations designed to help

rebuild the overall riverine ecosystem, include management measures at specific sites designed to restore fish and wildlife habitats.

1.5 Real Estate Requirements

The Project is cost-shared between the US Army Corps of Engineers (USACE) and Tulsa County. Proposed construction areas will be located on Federal, county, local municipality, and private lands. A combination of real estate interests, including fee, easements, rights-of-way, utility/facility relocations, and disposal areas estates may be required for this project. Ingress and egress will require access for Project construction through the acquisition of permanent or temporary easements across private lands or across existing public county or local municipal roads. Technical reference will come from the U.S. Army Corps of Engineers, December 1998, *Real Estate Handbook*, ER 405-1-12.

1.6 Utility/Facility Relocation

The term “relocation” shall mean providing a functionally equivalent facility or town when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided by Federal statute or any project or House or Senate document referenced therein. Providing a functionally equivalent facility may take the form of adjusting, altering, lowering, rising, or replacement and attendant removal of the affected facility or part thereof. It is important to note that relocation assistance under Public Law 91-646, as amended.

Limited information is currently available regarding the existence or location of pipelines, utilities, or other improvements or facilities within the proposed project sites or potentially impacted areas. Where such structures are identified, the nature of the ownership will require our Office of Counsel to make a determination of compensable interest for the appropriate relocation action required.

1.7 Existing Federal Projects

Several Federal projects are located within the Keystone Lake Re-regulation Dam, Arkansas River Tulsa County Levee System, Joe Creek Project, Fry Creek Project, US Department of Transportation funded I-44, I-64, and I-51 highways. In addition, restricted Indian lands, consisting of the Creek Nation Hotel, Margaritaville-River Spirit casino and restaurant complex and lands on the left descending bank of the river north of the City of Bixby are contained within the Project reach of the Arkansas River.

1.8 Environmental Impacts

The environmental impacts of this project are addressed in the National Environmental Policy Act and Section 404 of the Clean Water Act compliance documents prepared by our environmental and regulatory staff.

1.9 Project Sponsor Responsibilities and Capabilities

The sponsor has the capability to acquire by negotiation or condemnation, and to hold land titles and will be responsible for all Project real estate acquisitions subject to the guidance and supervision of the Real Estate Contracting Officer and applicable Federal legal requirements. USACE will verify that the appropriate real estate laws and policies are followed, as well as the appropriate lands and estates are acquired.

1.10 Government-Owned Property

This project may involve Federal fee and channel improvement easements acquired for a re-regulating dam which was constructed below Keystone Dam. This dam was removed, but the real estate interests are still administered by the Corps of Engineers. In addition, restricted Indian lands are contained within the Project reach of the Arkansas River.

1.11 Mineral Rights

The mineral rights relevant to this project consist of sand and oil and gas. Our tentative determination is that acquisition of fee and mineral interests will be required for the dam site and sand mineral rights will be required for the Tern Island.

1.12 Hazardous, Toxic, and Radioactive Waste (HTRW)

Two refineries and multiple industrial sites are located within the Project area. The presence of hazardous or toxic waste sites will be determined in the above referenced NEPA and Clean Water Act documents. Testing may be required in the specific construction sites. No acquisition of sites contaminated with EPA listed contaminants will be acquired for this Project.

1.13 Public Law 91-646, Relocation Assistance Benefits

Public Law 91-646, as amended, the Uniform Relocation Assistance Act, provides entitlement for various payments associated with Federal participation in acquisition of real property related specifically to displaced persons, businesses and farms. There may be a potential for such 91-646 involvement along specific reaches of the River, especially in the area of the Tern islands, an area with commercial sand-mining activity near the Tulsa/Wagner County line. Where such regulated displacements are potentially involved, separate relocations assistance must be offered, pursuant to this law, to the parties.

1.14 Attitude of Property Owners

There are no known issues.

1.15 Navigation Servitude

Navigation Servitude is not applicable to this Project, the bed of the Arkansas River is owned by the contiguous landowners to the centerline or thread of the river, subject to judicially determined accretions and evulsions thereto.

1.16 Zoning Ordinances

No zoning ordinance issues have been identified by the City or County of Tulsa in meetings involving this Project. If identified in the future, it will be the sponsor's responsibility to resolve them.

1.17 Induced Flooding

A final determination on this issue will be required from Office of Counsel to determine whether the backwater effects of the dam, tern islands, or other structures induces impacts which rise to the frequency and duration which would require additional acquisition of flowage easements.

1.18 Acquisition Schedule

Not determined at this time.

1.19 Estate for Proposed Project

FEE.

The fee simple title to (the and described in _____ Schedule A) (Tracts Nos. _____, _____ and _____), Subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

FLOWAGE EASEMENT (Portions of Land to be subjected to Permanent Inundation and Portions to be subjected to Occasional Flooding).

The perpetual right, power, privilege and easement in, upon, over and across (the land described in Schedule "A") (Tracts Nos._____, ____ and ____ for the purposes set forth below:

a. Permanently to overflow, flood and submerge the land lying below elevation _____ (and to maintain mosquito control,) in connection with the operation and maintenance of the project for the purposes as authorized by the Act of Congress approved _____, together with all right, title and interest in and to the timber and the continuing right to clear and remove any brush, debris and natural obstructions which, in the opinion of the representative of the United States in charge of the project may be detrimental to the project.

b. Occasionally to overflow, flood and submerge the land lying above elevation _____ (and to maintain mosquito control,) in connection with the operation and maintenance of said project.

Together with all right, title and interest in and to the structures and improvements now situate on the land, except fencing above elevation _____ (and also excepting _____, (here identify those structures not designed for human habitation which the District Engineer determines may remain on the land)) provided that no structures for human habitation shall be constructed or maintained on the land, that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, and that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method of excavation and/or placement of landfill; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution.

CHANNEL IMPROVEMENT EASEMENT.

A perpetual and assignable right and easement to construct, operate, and maintain channel improvement works on, over and across (the land described in Schedule A) (Tracts Nos. _____, _____ and _____) for the purposes as authorized by the Act of Congress approved _____, including the right to clear, cut, fell, remove and dispose of any and all timber, trees, underbrush, buildings, improvements and/or other obstructions therefrom; to excavate: dredge, cut away, and remove any or all of said land and to place thereon dredge or spoil material; and for such other purposes as may be required in connection with said work of improvement; reserving, however, to the owners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

ROAD EASEMENT.

A (perpetual [exclusive] [non-exclusive and assignable) (temporary) easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. _____, _____ and _____) for the location, construction, operation, maintenance, alteration replacement of (a) road(s) and appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; (reserving, however, to the owners, their heirs and assigns, the right to cross over or under the right-of-way as access to their adjoining land at the locations indicated in Schedule B); subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

BANK PROTECTION EASEMENT.

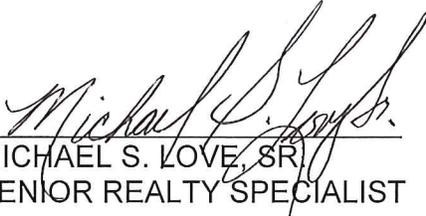
A perpetual and assignable easement and right-of-way in, on, over and across the land hereinafter described for the location, construction, operation, maintenance, alteration, repair, rehabilitation and replacement of a bank protection works, and for the placement of stone, riprap and other materials for the protection of the bank against erosion; together with the continuing right to trim, cut, fell, remove and dispose therefrom all trees, underbrush, obstructions, and other vegetation; and to remove and dispose of structures or obstructions within the limits of the right-of-way; and to place thereon dredged, excavated or other fill material, to shape and grade said land to desired slopes and contour, and to prevent erosion by structural and vegetative methods and to do any other work necessary and incident to the project; together with the right of ingress and egress for such work; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however to existing easements for public roads and highways, public utilities, railroads and pipelines.

1.20 Real Estate Estimate

		ESTIMATED ACRES (Rd)	ESTIMATED COST	CONTINGENCIES (20%)	ESTIMATED TOTAL COST
Pool Control Structure west <i>(Old Rereg Dam Site)</i>	Alternative 1A	1,740	\$9,338,000	\$1,868,000	\$11,206,000
Pool Control Structure East <i>(Approx. 200 ac. Additional)</i>	Alternative 1C	1,940	\$11,277,000	\$2,256,000	\$13,533,000
Prattville Creek	Alternative 4	20	\$835,000	\$167,000	\$1,002,000
I-44/Riverside	Alternative 8	16	\$2,629,000	\$526,000	\$3,155,000
Tern Island	Alternative 2	10	\$280,000	\$56,000	\$336,000
Totals	Alternative 1A		\$13,082,000	\$2,617,000	\$15,699,000
	Alternative 1C <i>(Includes areas 4, 8 & 2 in each calculation)</i>		\$15,021,000	\$3,005,000	\$18,026,000

(NOTE: Access roads are included in the acres identified in the chart above)

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 Date

REVIEWED BY:


 BERNARD R. GARDNER
 CHIEF, ACQUISITION
 BRANCH


 Date

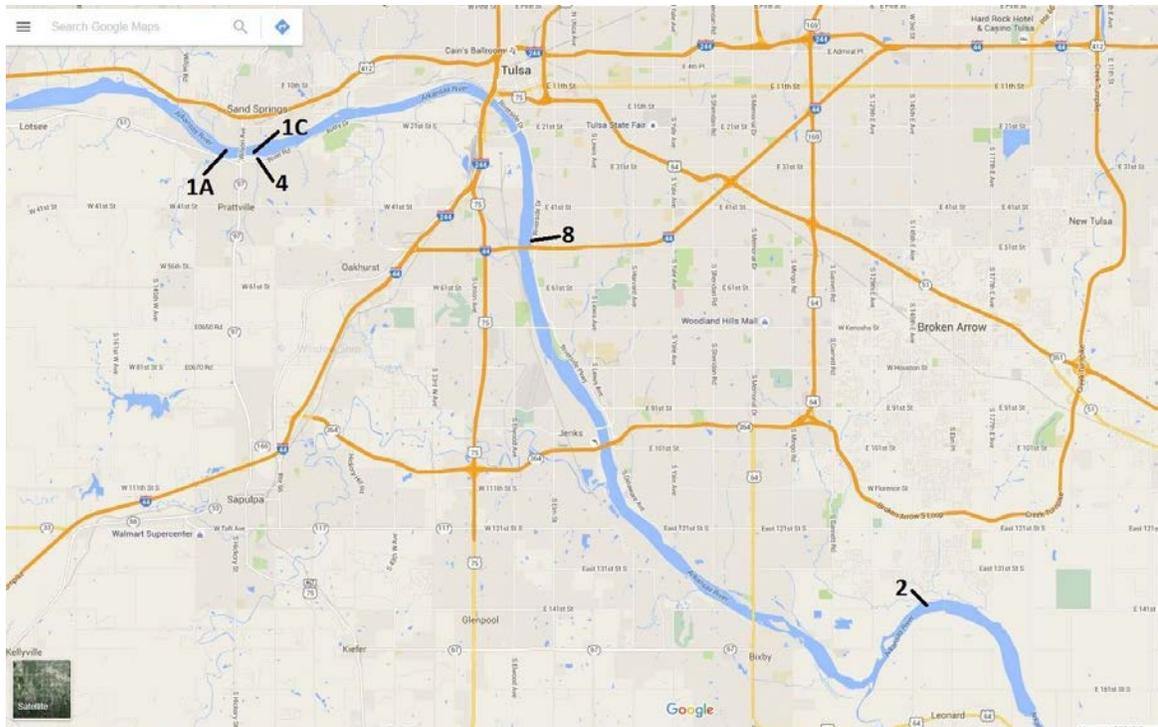


EXHIBIT A (Overall Corridor)

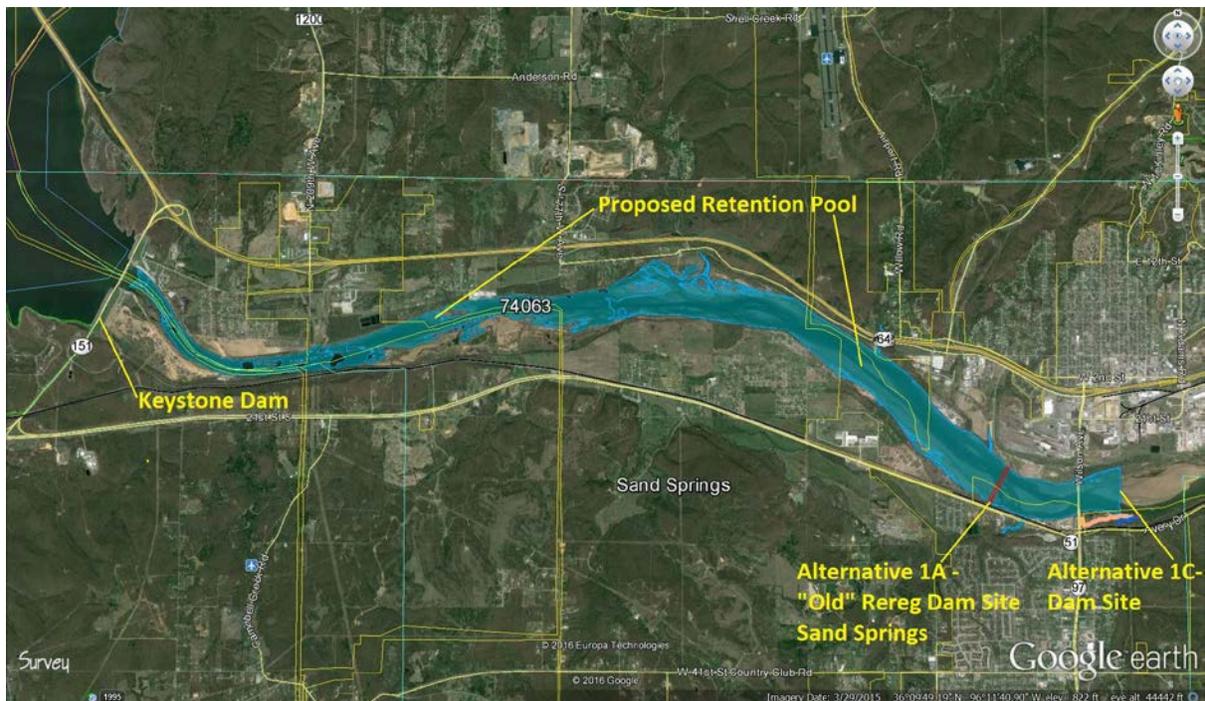


EXHIBIT B (Area 1A & 1C)

Potential Pool Structure Locations



EXHIBIT B-1 (Area 1A & 1C)



EXHIBIT C



EXHIBIT D



EXHIBIT E