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**STATEMENT OF PETER NIMROD
LOW WATER INSPECTION TRIP
MISSISSIPPI RIVER COMMISSION
AUGUST 16, 2016, AT A HEARING
AT HELENA, AR**

GENERAL WEHR AND MEMBERS OF THE MISSISSIPPI RIVER COMMISSION:

I am Peter Nimrod, Chief Engineer for the Board of Mississippi Levee Commissioners, and I have the privilege of presenting this statement on their behalf. The Board of Mississippi Levee Commissioners was established in 1865 and is comprised of 7 elected commissioners representing the counties of Washington, Bolivar, Sharkey, Issaquena, and parts of Humphreys and Warren counties. The Mississippi Levee Board is responsible for 212 miles of levees and 350 miles of interior streams.

MAINLINE LEVEE - CONSTRUCTION

Construction on the Levee Enlargement & Berm Project along our levee system continues to slowly proceed due to a lack of serious congressional funding. Of the original 69 miles of deficient levee in the Mississippi Levee District, we have now completed 35.4 miles and currently have another 17.4 miles under contract. Item 468L, a 4.7 mile levee enlargement project, was awarded to Kenneth R. Thompson, Jr. Builder, Inc. and is currently 98% complete. Item 463L, a 2.7 mile levee enlargement project, was awarded to Circle Construction, LLC and is currently 88% complete. Item 509L, a 3.9 mile levee enlargement project, was awarded to Affolter and is currently 98% complete. Item 511L, a 3.4 mile levee enlargement project, was awarded to My Company, Inc. and is currently 37% complete. Item 465L, a 2.7 mile levee enlargement and berm project, was awarded to Carter's Contracting Services, Inc. and is currently 10% complete.

The Levee Enlargement & Berms Project needs to move towards completion because at this point our Mainline Mississippi River Levee will overtop during a Project Design Flood (PDF).

STEELE BAYOU SEDIMENTATION REDUCTION PROJECT

The Steele Bayou Sedimentation Reduction Project installs drop pipe structures at medium to large headcut locations throughout the length of Steele Bayou. Phases I through VI included 65 sites and are complete. Of the original 100+ headcut sites on Steele Bayou, the Corps has installed structures at 54 sites and Delta FARM has installed structures at 37 small headcut sites. The Corps awarded Phase VII to Quinn Contracting, LLC which includes 12 more sites on Steele Bayou. Phase VII is currently 51% complete. The Mississippi Levee Board is very pleased with this project because it will not only help flood control by keeping the sediment out of the channel, but it will enhance water

quality as well. The Vicksburg District is beginning to evaluate 30 headcut sites up in the northern part of the Mississippi Delta for the Big Sunflower River Sedimentation Reduction Project.

LEVEE SLIDES

There were 42 levee slides within the Mississippi Levee District. On June 1, 2016 the Vicksburg District Hired Labor Crew started working on our slides. Two crews have been working in the Mississippi Levee District and to date 16 slides have been repaired and 3 more slides are under construction. All of these slides are being properly repaired using lime treatment. The Board appreciates the Vicksburg District and the Hired Labor Crew for performing these slide repair activities.

MAINLINE LEVEE - MAINTENANCE GRAVEL

We have been informed that there is money available for a 2016 Gravel Job which will provide limestone road surfacing material. These annual contracts provide great benefits to the Mississippi Levee Board for upkeep of the maintenance roadway that can be relied upon during highwater. On behalf of the Board, we would like to express our appreciation to the Vicksburg District for pushing our needs so that we continue to receive maintenance gravel.

THE GREAT 2011 FLOOD

The Epic 2011 Flood was a record flood on the Mississippi River. We had (11) major problem areas discovered during the 2011 Flood that needed our attention and remedial work: Buck Chute, the predicted overtopping of the Yazoo Backwater Levee, Francis, the Albemarle levee slide, Winterville, Above Greenville, Greenville, Avon, Leota, Lake Jackson, Ben Lomand, and Tara Wildlife.

To date the Vicksburg District has contracted and completed resetting the Yazoo Backwater Levee, Buck Chute and Albemarle. Items 616L/543L - Francis/Above Greenville - Relief Well Project was officially accepted by the Vicksburg District last Fall. Item 456L - Tara Seepage Control Project was awarded to Harding Enterprises and includes 32 relief wells and an 11,500' long landside seepage berm. This project is currently 92% complete. East Bank Seepage Control includes 5 Reset Items - Greenville, Avon, Leota, Lake Jackson and Ben Lomand. Magruder Construction was awarded the contract and the project is currently 97% complete. All 186 relief wells that were designed as part of correcting the 11 problem areas have been installed by December, 2015. All of our problem areas now have a permanent solution in place.

The 2011 Flood is the new benchmark highwater event that will be used from this point forward. The safe passage of this multi-hundred year event is a testament to the daily maintenance activities of the Levee Boards, Congress's yearly wise appropriations for construction and maintenance for the MR&T Project, and the Corps of Engineers vision, foresight, engineering and construction.

RECORD JANUARY HIGHWATER EVENT

The January 2016 Highwater proved to be the 6th highest crest since the 1927 Flood. This flood was 8.2' above flood stage but 8' below the Epic 2011 Crest. The good news was that all 11 problem

areas fought during the 2011 Epic Flood all had permanent solutions in place. No sandbagging or barreling were required at any of these locations. We did have a few issues that required temporary measures to be put in place. An earthen weir had to be once again built in Black Bayou Cut-off just north of Greenville in the vicinity of Sta. 3675. The Levee Board had to block off several culverts because many large sandboils were discovered in the bottom of Valewood Ditch in the vicinity of Sta. 6193-6350. Sandbagging and barrels were again needed down in the ATCO Woods just north of the Ben Lomand Relief Wells in the vicinity of Sta. 7092-7124. The Ben Lomand Relief Wells at Sta. 7150-7175 were completely submerged underwater. Once again heavy seepage near the banks of Eagle Lake at Buck Chute was discovered as well as some sandboils in Eagle Lake in the vicinity of Sta. 142-150 BEL. Access to our new relief wells became an issue. Gravel access roads need to be built to each of these relief well locations.

The Mississippi Levee Board requests that the Vicksburg District inspect these problem areas and look to implement a permanent solution at each location. The Mississippi Valley Flood Control Association went to Washington DC on March 1st and requested not only an annual \$500M appropriation for the MR&T Project, but also a \$2B supplemental appropriation to reset the MR&T Project following this record January highwater event. If we don't fix these deficiencies and damages throughout the MR&T system we will be facing a future catastrophe.

WATERS OF THE UNITED STATES (WOTUS)

As we discussed in the past the Environmental Protection Agency (EPA) has introduced its Proposed Rule and it is a significant expansion of the Clean Water Act (CWA) that will affect every American. The definitions provided in the Proposed Rule are very broad and do not provide clarity to which waters could be considered "waters of the United States" under CWA jurisdiction. Under current CWA section 404(a), any person engaging in activities that result in the "discharge of dredged or fill material into navigable waters" must obtain a permit from the Corps of Engineers (Corps). The term "navigable waters" is defined broadly by statute to mean "waters of the United States." The Proposed Rule uses terms such as "adjacent", "neighboring", and "tributary" to expand the CWA reach to ditches, ephemeral ditches, ponds and other waters that are too small, too far removed, with too speculative and insubstantial an effect on traditionally navigable waters, to allow any meaningful connection to navigability. The Proposed Rule would make the very drainage ditches considered in *Rapanos vs. United States* jurisdictional when the U.S. Supreme Court ruled that they were not! Furthermore, the majority of the U.S. House of Representatives and the U.S. Senate object to the Proposed Rule which would expand CWA jurisdiction. On May 1, 2014 a bipartisan group of 231 Members of Congress wrote EPA and the Corps a request "that this rule be withdrawn." On May 14, 2014 52 Senators voted in favor of an amendment to prohibit the EPA and Corps from implementing the Proposed Rule's guidance and from using it. On September 9, 2014 the House passed (262-152) H.R. 5078, the Waters of the United States Regulatory Overreach Protection Act of 2014, a bipartisan bill to prohibit the EPA and Corps from finalizing the Proposed Rule. **Despite all this opposition the Administration released the Final Rule on June 29, 2015. The American Farm Bureau Federation states that this Final Rule is worse for the farmers than the Proposed Rule! EPA and the Corps should withdraw its Final Rule and keep "navigable" as the defining term for "waters of the U.S." under CWA jurisdiction.**

FEDERAL FLOOD RISK MANAGEMENT STANDARD (FFRMS)

FFRMS originated in 2011 with President Barack Obama's March 30, 2011 issuance of Presidential Policy Directive - PPD-8 - National Preparedness. FFRMS seeks to improve flood risk management by directing agencies to "update" their flood-risk reduction standards for all federally-funded projects. In April, 2013 the Hurricane Sandy Rebuilding Task Force called for minimum flood risk reduction standard and announced that all federally funded buildings projects needed to be 1' above the base flood elevation (BFE)(the 100-year flood). President Obama's Climate Action Plan - released in June, 2013 - directs agencies to incorporate the most recent science on expected rates of sea-level rise. FFRMS is looking at 3 options to establish revised Elevation and Flood Hazard Areas: (1) Climate-informed science approach (the "preferred" option); (2) Freeboard: BFE + 2' or BFE + 3' for critical infrastructure; or (3) the 500-year elevation. This process included no public involvement. They did not perform a benefit-cost analysis for "significant action". We believe FFRMS will affect PL84-99 (federal assistance to repair levees after being damaged) and will eventually affect Flood Insurance (FIRM). FEMA is trying to expand the floodplain vertically and horizontally. This will affect millions of Americans by forcing them to purchase flood insurance and it will discourage industry and businesses from locating to the Mississippi Delta. On December 16, 2014 President Obama signed into law the Consolidated and Further Continuing Appropriations Act, 2015 funding the federal agencies through the fiscal year. It included a provision to prohibit the use of funds to implement a new Federal Flood Risk Management Standard (FFRMS). Despite this provision on January 30, 2015 President Obama signed EO 13690! He is making laws without due process or the consent of Congress! **We need Congress to stop FFRMS!**

SECTION 408 PERMITS

As we discussed in the past when someone plans an activity close to the levee we review the plans and submit them to the Corps for their evaluation and no objection. Once we get a no objection letter from the Corps we issue the applicant a Levee Board Permit. If there is an activity located off the r.o.w. but might affect the integrity of the levee we review the plans and give them to the Corps for their review. If this activity might impact the levee we have the right to stop any activity that might jeopardize a flood control project under: The Rivers and Harbors Act of 1899 Section 14 states "that it shall not be lawful for any person to ... impair the usefulness of any ... levee." Also in the Vicksburg District Regulations (DR1130-2-530) FAQ (Appendix G) and CFR33 Part 208.10 (Appendix H) covers the permit process. In CFR33 Part 208.10 - "This authority extends beyond the project rights-of-way to the extent that any activity which might endanger the project integrity is subject to review by and control of the Corps of Engineers." This authority exists in Section 9 of the Flood Control Act of 15 May 1928 (33 U.S.C.A. 702i) and Sections 14 and 16 of the River and Harbor Act of 3 March 1899 (33 U.S.C.A. 404 and 411). Corps Headquarters issued guidance in July, 2014 that the Corps District Engineer shall start issuing Permits for work on the levee right-of-way (r.o.w.). This guidance also said that the Corps has no authority to regulate activities off the r.o.w. The Levee Board owns the levee r.o.w. and we issue the permits. If the Corps starts issuing permits for activities on our levee there will be two permits for the same proposed work. I appreciate the MRC's written response on May 26, 2015 to my March, 2015 statement that 408 Permitting business will remain like it always has been. **However we need Corps Headquarters to wake up and stop this non-sense about issuing Permits on Levees owned and operated by Levee Boards and keep the permitting process in the hands of the levee owners and that the Corps continue to stand behind their authority to regulate activities off the r.o.w.**

YAZOO BACKWATER LEVEE - "UNACCEPTABLE" RATING

Up until 2006 the Yazoo Backwater Levee got an "Outstanding" levee rating from the Vicksburg District. In 2007 the rating system changed and from 2007-2010 the YBW Levee got an "Acceptable" levee rating. During the Epic 2011 Flood, the YBW Levee was put to the ultimate test. Water came within 4" of overtopping the levee. The YBW Levee held out 16.33' of water. There was not one sandboil or underseepage issue under this levee. The Steele Bayou and Little Sunflower Drainage Structures had no issues during this historic flood event. Yet in 2011 the Vicksburg District demoted the levee rating to "minimally acceptable". This rating continued for the next few years. In 2014 the Vicksburg District demoted the rating for the YBW Levee to "unacceptable" because the gates of the Steele Bayou Structure & the Little Sunflower Structure are in need of rehabilitation. The gates on the structures are under the direct responsibility of the Corps of Engineers. I think this "unacceptable" rating is unjust and unfair to the Mississippi Levee Board. U.S. Representative Bennie Thompson sent us a letter dated August 1, 2016 stating "the Corps of Engineers citing certain failure in your levee board district." **We think the Vicksburg District should reconsider this rating and based on proven performance in 2011 change this rating for the YBW Levee back to "acceptable".**

CORPS PRINCIPLES & GUIDELINES

The Council of Environmental Quality (CEQ) draft proposal of changes to the Principles and Guidelines (P&G) for Federal Agencies failed to establish a clear, concise, and workable framework to guide development of water resources projects. It is incoherent and inconsistent - and thus not implementable in a practical sense. It substantially fails to comply with the explicit directions in Section 2031 of WRDA 2007 as well as the large body of previous law and policy related to water resources. It is written so as to not require or even encourage use of proven analytical tools to distinguish among alternatives. It elevates environment considerations over economic benefits, social well-being and public safety. Because of these critical and extensive failings, we recommended that this effort be put aside and restarted from the beginning.

Unfortunately the Administration reconvened the Water Resources Council on March 18, 2013 without notice, to approve the final Principles, Guidelines & Requirements. Congress has been adding language in the appropriations that directs the Corps to utilize the previous P&G for project development criteria. We bring this to the attention of the Mississippi River Commission so that Corps Headquarters will continue using the old P&G as mandated by Congress and not start using these poorly written Principles & Guidelines developed by the Administration which elevate environmental concerns over economic benefits, social well-being and public safety.

GROUNDWATER AQUIFER DEPLETION

According to Yazoo-Mississippi Delta Joint Water Management District records, we are depleting our groundwater aquifer every year. If it continues irrigation wells will dry up, they might start pumping salt, regulation will start, and irrigation will be reduced or eliminated. We must find a solution by getting more water in the aquifer and reducing the water we are pumping out of the aquifer without reducing acres or production yields. There are 3 tools that farmers are adopting to better conserve groundwater: (1) PHAUCET - a computer program that designs the hole size of the

irrigation poly pipe - this can save 22% water. (2) Surge Valve - alternates or pulses water through a field. Eliminates wasting water below the root zone and in the tailwater ditch. Water gets across the field faster. It saves 35% in energy costs. This is 75% efficient vs. 50% efficient using the current method. (3) Soil Moisture Sensors - placed at 6", 12", 24" & 36" deep. You have to check it twice a week and if the moisture is good you don't have to pump. These sensors uses 40-55% less water. If you use all 3 tools you only have to pump half as much. This 45% reduction in pumping will translate into less water coming out of the aquifer allowing it to naturally recharge and stop the depletion. Other methods are out there to help recharge the aquifer. Induced Recharge pumps water from one aquifer directly into another aquifer. Surface Water Supply enhancement projects include well fields along the Mississippi River. Interbasin Transfer projects physically connect one basin to another basin. These are huge public works projects and we need the Corps of Engineers to add Water Supply as one of its missions.

ANNUAL CORPS AWARDS TO LEVEE BOARDS RECOGNIZING PERFORMANCE

The Vicksburg District gave the Mississippi Levee Board Outstanding Performance Awards from 1959-2009. Since that time we have not received an award from the Corps even though we are all doing a better job in maintaining the levee system as evidenced by the successful passage of the Epic 2011 Flood. For several years we have been asking the Mississippi River Commission for help in re-establishing this award system. Former Mississippi River Commission President Gen. Peter DeLuca wrote a memo on February 5, 2014 that has opened the door for the Corps Districts to once again honor the Levee Boards who have performed their duties and obligations. Despite this, the Board has yet to receive a Performance Award.

MR&T PROJECT FUNDING

Following the historic January 2016 Flood, the Mississippi Valley Flood Control Association went to Washington D.C. and asked the Congressional Delegation for an annual \$500M appropriation for the MR&T Project and a \$2B Supplemental Appropriation for repairing the damages created by the flood and for jump-starting the completion of the MR&T Project. Efforts were in place to try and pass an \$850M Appropriation for FY 2017 for the MR&T Project. However Corps Headquarters sunk the effort when they said they couldn't spend \$850M for the MR&T Project. The last time I checked we need about \$7B more to complete the MR&T Project!

HISTORY OF CORPS OF ENGINEER/LEVEE BOARD PARTNERSHIPS

From 1879 until 1927 the Mississippi River Commission and the Corps of Engineers were the heroes of navigation. Following the 1927 Flood the Corps became the heroes of flood control. The Corps raised the Mainline Mississippi River Levee, built backwater levees, floodways, drainage structures and pumping plants. In 1959 the Corps started issuing Levee Board Outstanding Performance Awards. The 1973 Flood showed that we had deficient levees and the Corps started raising these levees. From 1879 until 2005 the Levee Board and Corps of Engineers had maintained a strong healthy partnership! The Corps of Engineers were designers and builders of large public works projects that created jobs, provided flood control, public recreational opportunities and provided jobs and economic stability!

However things changed in 2005 after Hurricane Katrina hit New Orleans and the MS Gulf Coast. The Corps got scared! The Corps stopped giving awards for levee performance. The levee ratings changed from "outstanding" to "acceptable" then "minimally acceptable" and now "unacceptable". The Corps stopped saying "flood control" and started using "flood risk management" and "floodplain management". Now new policies are introduced such as the National Levee Safety Program, Federal Flood Risk Management Standard, Waters of the United States, and Section 408 Reviews.

The Corps of Engineers has moved from being heroes - smart, capable engineers who were builders of large scale national infrastructure projects that created jobs, spent federal money, helped economies and helped people! Now the Corps of Engineers is now just another Federal Regulatory Agency - like EPA, FEMA, IRS, etc. - adding more red tape, developing & writing more regulations, policy & guidance - looking out more for the environment than people. The Levee Board & Corps partnerships are now strained. Corps HQ is killing us! Writing more & more ridiculous policy, getting in the bed with EPA & FEMA. I'm having a hard time defending the Corps of Engineers.

WELCOME COL. MICHAEL DEROSIER

The Board welcomes Col. Michael Derosier to the Vicksburg District. We look forward to working with him as he heads up the Vicksburg District.

CLOSING

I hope you can see what is going on. The 2011 Epic Flood, the January 2016 Flood, the severe rain event that just hit the Valley - in view of all of these, it is obvious that the Mississippi River is trying to remind us that the system is not complete and cannot pass the Project Design Flood. We need to act now to not only repair the damages to the system during the winter flood, but also to complete the remaining authorized components necessary to pass the Project Design Flood!

Again, on behalf of the Board, we continue to value our association with the Mississippi River Commission and the Vicksburg District and appreciate the opportunity to meet with you on these inspections.



Peter Nimrod, P.E., P.L.S.
Chief Engineer - MS Levee Board
August 16, 2016