

# Levees in the USA and the Vital Role of Local Sponsors

*This paper is prepared in partnership with the Mississippi Valley Flood Control Association (MVFCA), the Upper Mississippi, Illinois, Missouri, Rivers Association (UMIMRA) and the Mississippi River Commission (MRC)*

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The role of Local Sponsors and their professional relationship to the U.S. Army Corps of Engineers (Corps) is vital, multifaceted and often misunderstood. This paper is designed to provide insight into the Local Sponsors' role in Public Safety and to emphasize their obligations, and authorities.

The Corps depends on its partners, the Local Sponsors. The invaluable partnership between the local sponsor and the Corps has served our country for more than a century. Approximately 22% of U.S. counties across the United States, representing almost half of the U.S. population, contain levees. The United States government through the Corps constructed approximately 15,000 miles of these levees. Almost 13,000 miles of these life safety infrastructures are operated and maintained by Local Sponsors. (1) (*Congressional Research Service 2011*)

The nations', the Corps', and the general populaces' dependence on the Local Sponsors' work and active long-term engagement on the ground is vividly documented in the dramatic real time account of the 2011 flood on the lower Mississippi River in the book, "Divine Providence" by Charles A. Camillo (May 2012)(19).

A Local Sponsor is "...a legally constituted public body with full authority and capability to perform the terms of its agreements, and to pay damages, if necessary, in the event of failure to perform." A Local Sponsor can be "a state, tribe, county, city, town or any other political subpart of a state or group of states." (2) (*Section 221 Flood Control Act 1970; (3) USACE, Jacksonville District 2009*) As part of the partnership and in accordance with 33 CFR 208.10, a Local Sponsor must operate and maintain the flood protection project to ensure its structural integrity as well ensure that it will function as designed when necessary to prevent or mitigate flood damages. (4) (*USACE Vicksburg Levee Safety Program January 2009, A. 2*) The Corps' role is advisory and is only one of the consultants Local Sponsors utilize for flood control matters. (6) (*33 CFR 208.10 a. (5); and (5) United States MTD pgs 4, 5 & 8, Case # 05-4020*)

*"We have discovered in our dialogue with the Lower Mekong River member countries (Thailand, Laos, Cambodia, and Vietnam), Brazil, Australia, India, Pakistan, China and others that regions of the world envy our system of local sponsor responsibility and engagement, and the role they serve to assure protection of people, property, and the local and federal interests."*  
Stephen Gambrell, Director  
Mississippi River Commission

The local sponsors are responsible for the condition as well as the operation and maintenance of the flood protection project (FPP). The sponsors have a long-term view of public interest and have signed perpetual assurances with the United States to continuously "maintain and operate flood control works in accordance with regulations prescribed by the Secretary of the Army, as required by law...." (6)(*33 CFR 208.10 a. (2)*) However, this does not restrict any Local Sponsor from requiring additional safety conditions or applying more rigorous standards than the Corps to avoid deficiencies in its operation, maintenance and condition of its FPP. (21) (*USACE, Forth Worth, TX 2003*)

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A federally constructed FPP, including its levee and appurtenances constructed with federal funds, "is the property and responsibility of its project sponsor." (7) (*DIVR 415-2-3, 5. b*) This is by virtue of deeds, easements, right-of-ways or other conveyances of sufficient real estate interests that have legally vested such ownership and control. The Local Sponsors retain, by virtue of their statutory and proprietary rights, any and all authority and control over levees and levee rights-of-way that are not in conflict with the rights of the United States to occupy and use the lands and levee thereon for flood control purposes. (8) (*MRC General Koisch 1976*) This is supported by the fact that prior to construction of the original FPP, a local cooperation agreement (LCA) is entered into between the United States of America and the Local Sponsor(s).

Each federal LCA requires the Local Sponsor(s) "provide without cost to the United States all lands, easements, and rights-of-ways necessary for construction of the project." (9) (*33 USC Section 701c; and (5) U.S. District Court Case #05-4020*) The Local Sponsor provides the Corps the right to "enter upon the land and proceed with the work as shown on the plans" for each particular work of the FPP. "No construction will be undertaken until satisfactory assurances of the required local cooperation have been received and ... have been provided in a manner satisfactory to the Department of the Army." (10) (*ER 1150-2-301, pg. 7*) Once the project is completed by the Corps, it is transferred and accepted by its owner(s), the Local Sponsor(s). "Responsibility for operation and maintenance of a project for which emergency work under Public Law 84-99 is undertaken will always remain with the non-Federal sponsors throughout the process, and thereafter." (11) (*33 CFR Section 203.86*) "Since the O&M [operation and maintenance] manuals and regulations are issued to the responsible project sponsor", our [the Corps'] transactions will be with that entity and not with third parties." (7) (*DIVR 415-2-3, 5. b.*)

These federal LCAs are letters of assurances conveyed to the Corps. These specify the authorized local sponsors (agencies) for each specific congressionally authorized FPP. No third party may enter or delete an authorized local sponsor from any such federal LCA without the expressed and written authorization of the original parties including the United States. Sufficient real estate interests and rights provided are an integral part of these assurances to the Corps. Any interests and rights proposed for extinguishment and/or taking possession of any part or whole of a federally constructed FPP transferred to and accepted by its Local Sponsor(s) are subject to 33 USC Section 408 and 411. (12)&(13)

Municipalities are not exempt from 33 USC Section 408. Any and all person or persons, corporations, state and local government entities, including Local Sponsors are subject to 33 USC Section 408. The Local Sponsors are responsible for controlling all construction activity that occurs within the critical area of the FPP. (14) (*Guidance for Work Proposed Near or Within a Federally Constructed Flood Control Projects*; (15) *USACE Omaha District 2012*; (22) *N. Kansas City LD 2013*) There is also no distance limitation for reviewing work that can adversely affect the federally constructed levees and structures. (4) (*USACE Vicksburg Levee Safety Program January 2009*; (20) *USACE, New Orleans District 2011*)

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Title 33 CFR 208.10 a. (2), the Local Sponsors have the on-going responsibilities for the effective and "efficient operation and maintenance of all structures" all without cost to the United States. The Local Sponsors are the ones who must thereafter operate and maintain the entire FPP including any proposed modifications. The Local Sponsors assure "no encroachment or trespass which will adversely affect the efficient operation or maintenance of the project works shall be permitted upon rights-of-way for the protective facilities." (6) (33 CFR 208.10 a. (4)) The Local Sponsors are also responsible for seeking and maintaining FEMA's levee accreditation. (16) (USACE Fact Sheet 10-2-2006) Therefore, a local sponsor has economic and regulatory liability interests in the manner in which the FPP is maintained which interests are not necessarily shared by the Corps. These interests could make a proposal unacceptable to a local sponsor even though that same proposal might be acceptable to the Corps. (5) (U.S. MTD, pg 9, par.1)

The Secretary of Army delegated to the Chief of Engineers through the Army's chain of command the responsibility to review and make recommendations on any modification a Local Sponsor determines it may desire to sponsor for its specific FPP. This is regardless of its scope and prior to any construction work commencing.

The authorized Local Sponsor(s) bookend the general review sequence for a proposed modification and or alteration to its completed FPP as follows:

1. The authorized Local Sponsor(s) are the permitting authority. Submittals regarding proposed modifications or alterations of a FPP must be coordinated and processed through its authorized Local Sponsor(s); (15) (USACE, Omaha District 2012; (20) (USACE, New Orleans District 2011) (7) (DIVR 415-2-3, 7. Procedures a.)
2. The Local Sponsor should review the submittal for sufficiency and determine if it desires to sponsor the application to the Corps prior to forwarding it onto the Corps for further review and technical evaluation. No reviews by the Corps will proceed without the written permission of the Local Sponsor(s) or over the objections of the Local Sponsor(s); (15) (USACE, Omaha District 2012)
3. The Corps does not speak for the Local Sponsor(s) in regard to what or how much information they, the Local Sponsor(s), require for their review of any proposed alteration or modification of a Federally constructed FPP; (17) (USACE, Rock Island District 2013)
4. The Corps reviews a proposed modification with a limited view toward whether the FPP will be adversely affected. The Corps will provide its response and recommendation (advice) of the application to the Local Sponsor(s). (6) (33 CFR 208.10 a.(5))

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5. Upon receipt of the Corps and any other applicable permitting agencies response and recommendations, the final determination of project modifications determined by the United States not to adversely impact the project is the responsibility of the Local Sponsor(s). (5) (*U.S. District Court Case #05-4020, Answer Items#36, 39, 45, 49, MTD pg 5 -6, inc. attached letter from RIDCOE dated 4/9/2004*) Local Sponsors may deny or approve a request. Only proposed modifications as may be found ultimately "desirable and permissible" by the Local Sponsors with the concurrence of the Corps may be constructed with the reserved right of oversight by the Local Sponsors and the Corps. (6) (*33 CFR 208.10 a.(5); (5) U.S. District Court 2005*)

Public safety was the driver for the United States to fund and construct these FPPs. Public safety and the protection of public (and private) property remain as the primary concerns for the Local Sponsor. It is the federal LCA governing their relationship with the Corps that assures that the FPP's value as a whole is treated consistently in the face of local governmental challenges. Business interests and development come and go. In the end, when protection is needed, people want to know there is a nonpartisan, honest broker involved with the public protection and its interests. That is the role of the Local Sponsor. Many local sponsors have maintained efforts against the threat of flood continuously for more than a century (St. Francis Levee District, Arkansas (1893); Little River Drainage District, Missouri (1907); Mississippi Levee Board (1865); Sny Island Levee & Drainage District, Illinois (1880).

*Our hope is that this paper helps facilitate a better understanding of the role of the Local Sponsors and their partnership with the Federal Government for the protection of lives, properties and the economic viability of the communities they serve.*

### Contacts for assistance in understanding the role of Local Sponsors:

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6. **33 CFR 208.10** - Local Flood Protection Works; Maintenance and Operation of Structures and Facilities, a. General (2-5).
7. **Regulation No. 415-2-3 ( DIVR 415-2-3) (1998)**, Department of the Army, Mississippi Valley Division , Corps of Engineers, Vicksburg, Mississippi, dated 2 March 1998, item 5. Background b. & 7. Procedures a.
8. **Mississippi River Commission (MRC) (1976)**, Major General F.P. Koisch Letter to St. Francis Levee District of Arkansas.
9. **33 USC Section 701c- Rights-of-way, easements, etc.**; acquisition by local authorities; maintenance and operation; protection of United States from liability for damages; requisites to run-off and water-flow retardation and soil erosion prevention assistance.
10. **ER 1150-2-301- Local Cooperation, Policies and Procedures (1967)**, Department of the Army, Office of the Chief of Engineers, WA, D.C. Regulation No. 1150-2-301, dated 1 September 1967, pg. 7, item #7. Availability of Rights-of-Way Prior to advertising or Award of Contracts.
11. **33 CFR Section 203.86** - Transfer of completed work to local interests.
12. **33 USC Section 408** - Taking possession of, use of, or injury to harbor or river improvements
13. **33 USC Section 411**- Penalty for Wrongful Deposit of Refuse; Use of or Injury to Harbor Improvements, and Obstruction of Navigable Waters Generally

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*Below is the evolution of a typical Mississippi River and Tributaries levee revealing the long term investment and involvement of local levee Sponsors.*

