ADMINISTRATIVE APPEAL DECISION
CLEAN WATER ACT
WASHINGTON PARISH RESERVOIR AND DAM
WASHINGTON PARISH, LOUISIANA
VICKSBURG DISTRICT
FILE NUMBER MVK-2012-01240

DATE: July 15, 2016

Appellants:
Hugh Pierce and Bill Jenkins, Washington Parish Reservoir Commission (Appellants)

District Representative:
Jennifer Mallard, Regulatory Branch Chief,
U.S. Army Corps of Engineers, Vicksburg District (District)

Authority: Clean Water Act (33 U.S.C. 1344)

Receipt of Request for Appeal: August 17, 2015

Appeal Meeting and Site Visit Date: December 16, 2015

Summary of Decision: The District Engineer's decision is remanded for reconsideration and additional documentation. The administrative record (AR) does not provide an adequate and reasonable basis to support the District Engineer's decision.

Background Information: The proposed reservoir project is generally located within the Bogue Lusa Creek watershed, near the City of Bogalusa, within the Lower Pearl River watershed (HUC 0318004), in Washington Parish, Louisiana. More specifically, the location of the work for the proposed reservoir falls within Sections 29-33, 37 & 38, T2S-R12E; Section 1, T3S-R11E; Sections 3-10, 14-20, 37-40, 44 & 45, T3S-R12E; and Sections 15 & 16, T3S-R12E.

On July 10, 2013, the Appellants submitted a permit application for the proposed reservoir. The District published a public notice on November 26, 2014. Following the consideration of comments received, the District completed its evaluation and subsequently denied the permit for the reasons described in a June 18, 2015, denial letter to the Appellants. The Appellants, through their attorney, submitted an RFA on August 17, 2015, asserting, among other things, that the District's AR does not support its decision to deny the permit application.

The Administrative Appeal Review: On appeal, the AR is limited to information contained in the record as of the date contained in the Notification of Administrative Appeal Options and Process Form that was sent to the Appellants by the District. Pursuant to 33 CFR 331.2, no new information may be submitted on appeal. The administrative appeal was evaluated based on the District's AR, the Appellant's RFA, and clarifying discussions at the appeal meeting with the Appellant and the District.

Finding: The District Engineer's decision is not supported by substantial evidence in the AR. For example: the AR must include substantial documentation to support the District Engineer's determination that the Washington Parish Reservoir Commission has not shown a need for additional water sources in Washington Parish; the AR must include substantial documentation regarding whether an Environmental Impact Statement is required; the AR must include substantial documentation to support the District's determination regarding the sufficiency of biological information; the AR must include substantial documentation regarding the sufficiency of the mitigation plan; and, the AR must include substantial documentation to support the determination as to whether the proposed project is contrary to the public interest. It is noted that the AR provided by the District for this appeal lacks several key documents, including the permit application. The District Engineer's final decision on the permit application must be clearly articulated and the AR must contain substantial documentation to support the District Engineer's final decision on the permit application.

Decision: For the reasons stated above, I find that the appeal has merit. Therefore the permit denial is being remanded to the Vicksburg District Engineer for reconsideration of the decision and additional documentation in accordance with 33 CFR 331.10(b). Authority to make the final Corps decision on the permit application resides with the Vicksburg District Engineer pursuant to this remand. This concludes the Administrative Appeals Process.

Michael C. Wehr
Major General, U.S. Army
Division Commander