

Dear Dr. Movassaghi:

During the public meetings of the Mississippi River Commission held in Lake Providence and Houma, Louisiana, on August 21 and 23, 2002, respectively, Messrs. Clyde Martin and Edmond Preau presented comments on areas of concern to your office. Also submitted for the record was a formal report that expresses the views of your office and recommends improvements and continuing work on the Mississippi River and Tributaries (MR&T) flood control project. The responses below follow the order of topics in the submitted formal report with a few additional topics in the statements addressed at the end of this letter.

SOUTHEAST ARKANSAS LEVEE DISTRICT

(1) The Mississippi River Commission recognizes the importance of the south bank Arkansas River levee system.

Arkansas River

(2) The Vicksburg District will continue to make periodic inspections of this area. Should conditions develop that threaten the levee, necessary measures will be taken to protect the levee. In addition, field staff routinely conduct pre- and post-flood inspections to look for slides, scour, or other problems.

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Levee Enlargement and Berms, Mississippi River

(3) As part of the recently completed Supplemental Environmental Impact Statement, the Vicksburg District determined that approximately 20 miles of levee was deficient in Arkansas. These deficiencies are only 1 to 2 feet. The Vicksburg District is committed to correcting these deficiencies; however, priority at this time is being given to those areas with the greatest need. Once these deficiencies are corrected, the Corps will start design and construction on the deficiencies in Arkansas.

FIFTH LOUISIANA LEVEE DISTRICT

Levee Enlargement and Berms, Mississippi River

(4) The Vicksburg District is continuing to work on the most deficient areas in Louisiana. The District is nearing completion on those items of work underway in East Carroll Parish and recently awarded one item of work in Madison Parish. Plans are to award another item in Madison Parish within the next few months. Design is continuing on several items south of Interstate 20 in Madison Parish, and design has been initiated on several items at Vidalia, Louisiana. The funding received by the Vicksburg District has been sufficient in recent years to complete those projects on which rights-of-way and design have been completed.

Borrow areas are being located to minimize environmental damage. This was the alternative recommended by the U.S. Army Corps of Engineers in the 1998 Mississippi River Levees Enlargement and Seepage Control project and Supplemental Environmental Impact Statement. According to records, a copy of the draft report was furnished to your office, but the Vicksburg District received no comments about the recommended plan. The recommended plan was challenged in Federal Court by nine environmental groups, but the court ruled in favor of the Corps. We will continue to work with the Fifth Louisiana Levee District in the location of borrow areas. However, these locations must be such that they minimize environmental damage and are consistent with the Supplemental Environmental Impact Statement.

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Tensas River Basin, LA Study

(5) The Corps recognizes your desire to provide additional flood protection, water supply, and environmental restoration to the Tensas Basin area. Many areas are experiencing water supply and environmental needs similar to those present in the Fifth Louisiana Levee District. While there is authority to conduct a study of the multiple needs of the area, \$100,000 was added in Fiscal Year 2002 to initiate the study. If additional funding is not added, consideration will be given for including a request for funds to complete this study; however, approval of funding, as well as completion of this study, will be based upon national funding priorities.

Red River Backwater Area

(6) The Corps stands ready to construct the remaining 6,500 feet of levee enlargement once the Fifth Louisiana Levee District makes the rights-of-way available.

Mississippi River Above Old River, Channel Improvement

(7) Thank you for your comments regarding the importance of the Mississippi River channel stabilization work. The Corps closely monitors and stabilizes the river channel as required to achieve the maximum flood control and navigation benefits. To ensure project success, maintaining existing channel improvement structures is just as important as their construction. The Corps will continue to give the maintenance portion of the MR&T project high priority during the annual budgeting process.

Lake Providence Harbor

(8) The Lake Providence Port was funded in Fiscal Year 2002 for maintenance dredging. Dredging was completed on September 27, 2002. Unfortunately, funding for Fiscal Year 2003 includes only funding for surveys of the port. The Administration views commercial navigation as a core mission because of the widespread benefits provided to the nation. The Administration places a funding priority on those ports and harbors that have high commercial cargo volumes or low costs per ton-mile of commercial cargo. The Lake Providence Port has been

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identified as a "low-use commercial channel or harbor" and does not meet an assessment of national priorities.

TENSAS BASIN LEVEE DISTRICT

(9) Construction of the Boeuf River and Tributaries project was underway when all work was halted as a result of the 1977 Presidential review of Corps projects. Channel work was completed on 51.5 miles of the Lower Boeuf River and Big Colewa Creek to provide additional flood protection before construction was stopped. As a result, the project had to be reevaluated before construction could be resumed. A draft reevaluation report was prepared and three public meetings were held in December 1984. The tentatively selected plan included

completion of the authorized channel enlargement on Big and Colewa Creeks to mile 71.5 and on Bayou LaFourche from mile 0 to mile 28.2, in combination with flowage easements along the lower 27 miles of Boeuf River to compensate for the effects of the channel work upstream. Support for this plan was strong in the upper reaches, and opposition was intense in the lower reaches.

The study was terminated in May 1985 following the decision of the sponsor, the Tensas Basin Levee District, to withdraw sponsorship and has remained inactive since that time. Before the Corps of Engineers could resume any construction on this project, significant studies would have to be performed due to the numerous changes in laws and policies, particularly in the environmental arena, since the original reevaluation study was performed. Additionally, a project sponsor would have to be identified and would be required to cost share any resulting feasibility studies and construction. The Corps currently has no indication of a willingness on the part of any governing body to serve as the project sponsor, and therefore there are no plans to conduct further studies or construction at this time.

The Tensas Basin Levee District is the project sponsor for the Boeuf River-Point Jefferson Study. This study concerns restoration of minimum flows to Boeuf River by diverting flow from Bayou LaFourche for the purpose of environmental restoration. The study is scheduled for completion in December 2003.

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Sicily Island

(10) We are pleased to report that construction of the Sicily Island project is complete. The final two construction items, to include levee Items 1-C and 1-D and Billys and Falcon Bayous plugs, were completed in September 2002.

Ouachita River Levees

(11) After many years of working with your agency and the Tensas Basin Levee District, the Corps appreciates the need for completion of the Ouachita River Levees, Louisiana, project. The remaining unfunded items of work include levee enlargement

of Items 2 and 3 in the Bastrop to Monroe reach of the east bank levee and resurfacing of the Monroe to Sandy Bayou reach of the east bank levee. Levee Item 2 in the Bastrop to Monroe reach is currently being advertised for construction. This item will be ready for award in the November-December timeframe. Additional work for levee surfacing in the Monroe to Sandy Bayou reach will commence as funds become available.

Ouachita-Black Rivers Bank Stabilization

(12) The Corps recognizes that bank stability continues to be a problem along the Ouachita River. We are currently conducting a bank caving study on the Ouachita and Black Rivers in Louisiana to identify bank caving areas, estimate costs, and prioritize affected areas. The initial site visits have been completed. A report will be completed by June 2003; however, at this time we do not have authority to construct any bank stabilization projects.

RED RIVER, ATCHAFALAYA AND BAYOU BOEUF LEVEE DISTRICT

Lower Red River, South Bank Levees

(13) Work on the replacement of the Bayou Rapides Pumping Plant, a \$7.7 million contract, is underway. The scheduled completion date is April 2003.

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Alexandria to the Gulf of Mexico Study

(14) The New Orleans District is ready to execute the Feasibility Cost-Sharing Agreement for the feasibility study as soon as non-Federal funds are available. The first phase of the study will address flooding problems in the Alexandria area.

ATCHAFALAYA BASIN LEVEE DISTRICT

Lower Atchafalaya Basin Reevaluation Study

(15) Recommendations for riverfront businesses are included in the preliminary draft report for the Lower Atchafalaya Basin Reevaluation (LABR) study, which is scheduled

for submission to the Commission in November 2002. These recommendations will be evaluated with respect to all appropriate laws, policies, and guidance. The technical appendices to the LABR report are currently being developed and will be forwarded to all interested parties as soon as they become available.

The LABR report recommends that the barrier levee be constructed to the 100-year hurricane elevation. However, this is outside the MR&T authority and may require a non-Federal sponsor to cost share the difference between MR&T responsibility and the 100-year hurricane protection. The LABR report recommends extending the forecast year of the project flowline from the year 2030 to 2058 in order to accommodate anticipated future flood stages. An intense monitoring program is ongoing that will improve the management capabilities of the basin. The Corps looks forward to a continued partnership in this effort.

Protection Levees, Atchafalaya Basin

(16) The Corps continues to pursue levee construction as a high-priority item in the overall MR&T funding appropriations. Major levee deficiencies exist in the area west of Berwick. In the recent past, significant construction progress has been made in this area, and there are currently three ongoing contracts.

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Where sufficient borrow material is not available, uncapped sheetpile floodwalls are being constructed to achieve the desired design grade. The overall design effort is to continue in earnest into Fiscal Year 2003. If the Corps receives additional funds to award additional contracts in Fiscal Year 2003, the work will be advertised at the earliest possible date.

(17) The preliminary LABR draft report indicates that the levees near Morgan City will need to be raised an additional 2 feet; however, the 2-foot rise is not required for 50 years. The Corps will continue to develop solutions to improve the situation.

Main Channel, Atchafalaya River

(18) The preliminary LABR draft report recommends that the feasibility study for the jetty be included in the Louisiana Coastal Area Ecosystem Restoration project. The purpose of the feasibility study is to assess the potential for implementing this feature as an ecosystem restoration measure. Currently, the Louisiana Department of Natural Resources is participating with the New Orleans District as the non-Federal cost-sharing sponsor to pursue this study.

(19) In May 2002, the New Orleans District signed a Feasibility Cost-Sharing Agreement with the Morgan City Harbor and Terminal District for a 3-year feasibility study of the deepening of the Atchafalaya River and Bayous Chene, Boeuf, and Black navigation channels. Justification of a deeper channel is a major challenge, given the high cost and our limited success in maintaining the currently authorized 20-foot Atchafalaya River bar channel. We are hopeful that our ongoing efforts to reduce the maintenance requirements of the 20-foot channel will also help reduce the incremental maintenance requirements for a deeper channel. In the study, we will address navigation benefits and environmental benefits that would result from the beneficial use of dredged material from the construction and maintenance of a deeper channel. On August 8, 2002, a scoping meeting was held in Morgan City to initiate the preparation of

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the Environmental Impact Statement for the channel-deepening project.

Revetments, Atchafalaya River

(20) During high water each year, the Corps routinely surveys approximately 50 miles of revetted banks on the Atchafalaya River. The annual surveys indicate that the revetted banks are in good condition. While we will complete the revetment construction program on the Atchafalaya in 3 years, the revetment maintenance program remains a fully funded program and a high priority.

Morganza to the Gulf of Mexico

(21) The Morganza to the Gulf of Mexico Feasibility Study is complete. The Chief of Engineers' report was signed on August 23, 2002. The National Economic Development plan providing a 100-year level of protection has been selected as the recommended plan. The Pre-construction Engineering and Design (PED) phase for levees and floodgates is underway. The first construction contract is scheduled for award in Fiscal Year 2005, pending Congressional authorization, appropriation of funds for construction, and execution of a Project Cooperation Agreement.

Houma Navigation Lock Study

(22) The PED phase for the Houma Navigation Canal Lock is underway and is scheduled for completion by June 2004. A determination will be made by November 2002 as to the design and type of structure for the project. The Corps is also studying the feasibility of deepening the Houma Navigation Canal to 20 feet (nominal depth) in response to the Terrebonne Port Commission's request. A draft feasibility report for this project is scheduled for March 2003.

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PONTCHARTAIN, LAFOURCHE BASIN, ORLEANS, WEST JEFFERSON, EAST JEFFERSON, LAKE BORGNE, GRAND PRAIRIE, BURAS, PLAQUEMINES WEST BANK, SOUTH LAFOURCHE, AND ATCHAFALAYA BASIN LEVEE DISTRICTS

(23) The Commission shares your beliefs regarding the importance of levees and revetment projects to protect these very important metropolitan and commercial areas. The Corps routinely monitors 275 miles of revetted banks on the Mississippi River. Annual revetment surveys indicate that the banks are in good condition. Bank monitoring will continue to prevent levee setbacks and economic disruption in this vital area of the state. The revetment maintenance program remains a high priority and a fully funded program.

Mississippi River Below Old River, Below Grade Mississippi River Mainline Levees

(24) Work on levees has progressed at a significant pace to ensure that over 97 percent of the Mississippi River levees are to grade and section. The remaining deficiencies as to freeboard and cross section will be corrected in the near future.

Mississippi River Below Old River, Channel Improvement

(25) Each year the revetted banks on the Mississippi River are surveyed, monitored, and inspected for bank scour and bank caving. Our annual surveys indicate that less than 1 percent of the protected banks require maintenance. The Corps will continue to repair foreshore dikes, upper bank stone paving, and the articulated concrete mat revetments in order to protect the flood control and navigation systems along the Mississippi River.

Donaldsonville to the Gulf of Mexico Study

(26) Work is progressing at a good pace. The depth-damage survey is ongoing. Sponsor architect-engineer firms are obtaining rights-of-entry for the hurricane levee alignment and hydraulic surveys. Surveys are expected to be completed in 3 to

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4 months. Design work will start when the surveys are available. We appreciate the cooperation that the Louisiana Department of Transportation and Development and Lafourche Basin Levee District have provided for the study.

LOUISIANA STATE PENITENTIARY LEVEE

(27) The Commission concurs with your comment that the Louisiana State Penitentiary Levee project has been a success story. The Corps received outstanding cooperation from all concerned agencies throughout the design and construction effort. Three construction contracts were awarded in September 1999, just 2 years after the design process was initiated. The project was prosecuted on a fast track, which could not have been accomplished without such outstanding cooperation. The

final construction contract was awarded in April 2001 for the levee enlargement downstream of Camp C. Project completion is scheduled in Fiscal Year 2003, only 6 years after approval to proceed. Sufficient Federal and non-Federal funds are budgeted to support the estimated contract earnings through project completion. The project is currently estimated to be completed ahead of the original schedule and at less than the original cost estimate.

OLD RIVER CONTROL STRUCTURE

(28) Public Law 101-646 provides authority for the Corps of Engineers to investigate the distribution of flow as regulated by the Old River Control Complex. At this time, however, the Corps has not been provided funding. Should any studies be directed and funded, the Corps, through its long involvement in multi-use project analysis, is cognizant of the need to examine and evaluate the effects on all water resources activities that would result from modification to the established flow distribution. However, any such study must determine the feasibility of operating the system with various alternative flow distributions and evaluate the long-term impacts on the Mississippi and Atchafalaya River systems. Should a different distribution be deemed advisable, review and approval by Headquarters of the Corps of Engineers and the Congress would be required.

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MISSISSIPPI RIVER SHIP CHANNEL - BATON ROUGE TO GULF

(29) The New Orleans District is continuing coordination efforts with the Department of Transportation and Development and Plaquemines Parish to complete the mitigation requirements of this project. The contract to complete the expansion of the Belle Chasse Water Treatment Plant is nearly finished. Work on the Phase III study is continuing. However, because of the proposed change in cost sharing outlined in the "National Dredging Needs Survey of Ports and Harbors" draft report of May 2000, the District will not finalize work on the Phase III study. The District staff has discussed this matter with representatives of the Department of Transportation and Development and they concur.

ENCROACHMENTS WITHIN FLOODWAYS

(30) The Commission concurs with the levee boards and the Louisiana Department of Transportation and Development that encroachments on the floodplain are a major concern. With respect to fill on the batture, it has been the New Orleans District's policy to generally limit the amount of fill to 1 foot above the existing batture elevation whenever possible. This excludes sand stockpiling operations which are considered temporary operations and are subject to be degraded at the direction of the District Engineer if it is determined during a flood event that the operation is detrimental to the integrity of the flood protection system.

When a copy of a permit request for fill on the batture is received for review, the New Orleans District generally includes a stipulation in its letter of no objection that states the amount of fill placed on the batture must be limited to 1 foot. However, the District evaluates each permit request on a case-by-case basis. On certain occasions the New Orleans District has made exceptions to allow an applicant to install fill above the 1-foot limitation when it has been determined that the additional fill will not adversely impact the integrity of the flood protection system.

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HURRICANE PROTECTION PROJECTS

(31) The Reconnaissance Report recommends proceeding into detailed feasibility studies. The Headquarters of the Corps of Engineers has determined that there is a Federal interest in proceeding with the feasibility phase studies and certified the report on August 16, 2002. The New Orleans District will be working closely with the Louisiana Department of Transportation and Development and local interests to complete a project management plan for the next study phase.

(32) There are several locations where foreshore protection has been provided to protect hurricane protection levees. If additional protection is needed, New Orleans

District will evaluate each location based on the authorization of each project.

(33) Crown surfacing has generally not been included in hurricane protection projects. The addition of foreshore protection and crown surfacing could require revision to the authorization of the individual projects.

MISSISSIPPI RIVER GULF OUTLET

(34) The Corps is conducting a reevaluation study of the possible modification of the Mississippi River Gulf Outlet project. The study includes navigation, hurricane protection, and ecosystem restoration features. Alternatives being investigated include navigation channel depths of 12, 16, and 20 feet, in lieu of the currently authorized 36 feet; relocations of facilities; hurricane protection; and wetland restoration. The study is 100 percent Federally funded. A salinity model and a regional economic analysis were completed during this fiscal year. The original completion date for the study was September 2002; however, the completion date has been revised to incorporate ecosystem features in the study. The revised study completion date is September 2003.

FRESHWATER DIVERSION AND COASTAL STUDIES

(35) The current operational plan for the Caernarvon Freshwater Diversion structure has produced excellent results.

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Monitoring of the project since 1988 by the Louisiana Department of Natural Resources, Coastal Restoration Division, has shown that the project has enhanced emergent marsh vegetation, reduced marsh loss, and significantly increased commercial and recreational fisheries and wildlife productivity. Monitoring data show that freshwater marsh plants increased over seven times, brackish marsh plants increased by almost 50 percent since operation of the structure began, and the amount of salt marsh vegetation has decreased by more than half. Caernarvon has helped to reduce marsh loss as well. Results show a net increase in marshland of about 5.9 percent per year.

(36) The Davis Pond project was dedicated on March 26, 2002. Diversions began July 17, 2002, once all oyster leases

were relocated or purchased. Positive results similar to those for the Caernarvon project are expected.

(37) Until Louisiana, Mississippi, and the Corps of Engineers reach a consensus on a mutually acceptable operational plan, the proposed Bonnet Carre Freshwater Diversion project will remain in an inactive status.

(38) Public Law 101-646 provides authority for the Corps of Engineers to investigate the distribution of flow as regulated by the Old River Control Complex. At this time, however, the Corps has not been provided funding. Should any studies be directed and funded, the Corps, through its long involvement in multi-use project analysis, is cognizant of the need to examine and evaluate the effects on all water resources activities that would result from modification to the established flow distribution. However, any such study must determine the feasibility of operating the system with various alternative flow distributions and evaluate the long-term impacts on the Mississippi and Atchafalaya River systems. Should a different distribution be deemed advisable, review and approval by Headquarters of the Corps of Engineers and the Congress would be required.

(39) The New Orleans District, in conjunction with the Louisiana Department of Natural Resources as the sponsor, is currently completing feasibility studies for two component

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projects of the Louisiana Coastal Area Comprehensive Plan. Draft feasibility reports for the Barataria Basin Wetland Creation and Restoration Study and the Barataria Basin Barrier Shoreline Restoration Study are nearing completion, and the final reports will be finished on a schedule that will allow these projects to be considered for authorization in a potential 2004 Water Resources Development Act (WRDA).

ABILITY TO PAY

(40) The Commission will continue to support the Ability to Pay provisions and guidelines that are promulgated by the Administration.

POLICY ISSUES

(41) Much of the language contained in Project Cooperation Agreements (PCA) and other cost-sharing agreements is dictated by the statutory authorization of the project and by other Federal laws and regulations. When a provision is required by Federal law or regulation, the Corps is not authorized to agree to proposed changes offered by a non-Federal sponsor. Those changes can be implemented only as a result of Congressional action as witnessed when Congress enacted Section 371 of the 1999 WRDA, altering the cost-sharing responsibility for highway relocations for the Comite River Diversion project, Amite River and Tributaries, Louisiana. Some provisions in the PCA are a matter of Corps policy and may be the subject of negotiation. Negotiability of the provision often depends on determinations regarding applicability to other projects and whether that is an appropriate precedent.

Citing PCAs, Feasibility Cost-Sharing Agreements (FCSA), and Preliminary Engineering and Design Cost-Sharing Agreements (Design Agreements), your office asserts that although "project life" is limited to 50 years, the agreements are for eternity and are very open-ended.

You are reminded that the model agreements contain provisions as to termination of the agreement. Due to the Federal investment

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in the project, the termination provisions operate to protect the Federal investment in the project. For example, the model FCSA does not constitute an open-ended agreement, nor is it intended to be a long-term agreement. The model FCSA presents many opportunities for the non-Federal sponsor to terminate the agreement. Article X of the model FCSA provides that the FCSA automatically terminates at the end of the "study period," which is defined in Model Article I.D. as being the point in time that the Assistant Secretary of the Army for Civil Works presents the feasibility report to the Office of Management and Budget. The model agreement further provides two additional opportunities to end the FCSA agreement. Model Article II.E. allows the sponsor to establish a cost cap that can result in termination of the agreement when contract award or in-house work would cause the

cumulative obligations of the Government and sponsor to exceed the cost cap, resulting in excess study costs. Finally, and most importantly, Model Article X permits either party to terminate the agreement upon 30-day written notice.

Another example is the "Single Purpose Structural Flood Control (SFC) Model PCA" dated March 2001. Both this agreement and the Model Design Agreement may include a provision which allows the sponsor to establish a voluntary cost cap that could result in termination of the PCA or Design Agreement by the non-Federal sponsor when a contract award would cause the cumulative obligations of the Government and non-Federal sponsor to exceed the cost cap. The Model Design Agreement's voluntary cost cap provision (Model Article II.A.3.) is also triggered if continuation of the design using the Government's own forces would result in cumulative financial obligations for design that exceed the designated voluntary cost cap. Both models provide that when conditions occur that trigger the voluntary cost cap provision, the Government and non-Federal sponsor agree to defer award of that contract and all subsequent contracts until such time as the Government and the non-Federal sponsor agree to proceed with further contract awards. (In the case of the Model Design Agreement, both parties must also agree to proceed with further design utilizing Government hired labor.) Both model agreements limit the deferral period to 3 years; however, the Assistant Secretary of the Army (Civil Works) may make a written

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determination that contract(s) award (and/or continuation of design with Government hired labor) must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

With all agreements there is a standard model provision that allows for termination of the agreement in the event hazardous substances are discovered. Additionally, either the non-Federal sponsor or the Government may elect to terminate the agreement or to suspend future performance on or after 60 days from the date it receives notice that the Government has failed to receive its annual appropriation from Congress.

The WRDA of 1986, Public Law 99-662, Section 103, established the cost-sharing obligations for the construction, operation, maintenance, repair, replacement, and rehabilitation of a project for flood control and other purposes, and the requirement for entering into an agreement with a non-Federal governmental entity. Unless the original Congressional authorization limits the duration of a project, project activities and the Federal and non-Federal responsibilities under the Project Cooperation Agreement are required by Federal law to continue until such time as Congress formally deauthorizes the project or amends the statutory authority therefore. The "project life" concept is utilized by the Government in its decision documents as a part of the benefit/cost analysis that is performed to determine the economic feasibility of the project. It is not determinative of the duration of the public's need for the project, nor does it create any legal obligations or responsibilities to the extent and duration of the non-Federal sponsor's statutory cost-sharing obligation on behalf of the project.

The primary purpose for the Corps' review of the real estate agreements acquired by non-Federal sponsors is to give the United States adequate guarantee in its significant investment. The situation is not dissimilar from that of a lending institution. If one were obtaining funding for a construction project, the lending institution would want to review all title instruments to verify sufficient rights in the borrower before authorizing the funding. Given the substantial investment by the United States, the Corps has an obligation to the taxpayers to substantiate that the investment is safe.

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If the non-Federal sponsor does not acquire sufficient right-of-way, quite often the solution is not just remedying the acquisition. Frequently, the imminent threat of suit and of substantial project delay requires the project to come up with costly reengineering and reconstruction solutions. Not only are there substantial cost increases under these circumstances, but also delays to the project that are not borne solely by the non-Federal sponsor also arise.

In short, the review by the United States of the non-Federal sponsor's right-of-way acquisition is consistent with professional real estate practice. It is the way real estate activity is practiced in the private sector, and the reason is that it makes

sense, saves money, and saves time. If the non-Federal sponsor has performed the real estate acquisition process correctly, the Government's review is cursory, and it adds little or nothing to the cost or schedule of the project.

(42) You are correct that the SFC Model PCA was amended after passage of WRDA 2000 to include a new provision regarding floodplain management. Based on information obtained from the New Orleans District, our understanding is that Article II.K. of the SFC Model PCA is the addition that is of concern to your office. The language contained in Article II.K. is virtually a direct quote of the statutory requirements applicable to all non-Federal sponsors of a Federal project for local flood protection or for hurricane or storm damage reduction. These requirements originated in Section 402 of WRDA 1986, Public Law 99-662. As codified in 33 USC 701b-12, the statutory requirement, in pertinent part, is as follows:

"Section 701b-12. Floodplain management requirements

"(a) Compliance with floodplain management and insurance programs

"Before construction of any project for local flood protection, or any project for hurricane or storm damage reduction, that involves Federal assistance from the Secretary, the non-Federal interest shall agree to participate in and comply with

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applicable Federal floodplain management and flood insurance programs.

"(b) Floodplain management plans

"Within 1 year after the date of signing a project cooperation agreement for construction of a project to which subsection (a) of this section applies, the non-Federal interest shall prepare a floodplain management plan designed to reduce the impacts of future flood events in the project area. Such plan shall be implemented by the non-Federal interest no later than 1 year after completion of construction of the project...."

Since Federal statute requires that the non-Federal sponsor must agree to participate in and comply with applicable Federal floodplain management and flood insurance programs and to prepare and implement a floodplain management plan, the Corps lacks authority to waive these requirements in the PCA. Although the recent amendment contains a more express and clear statement of the non-Federal responsibility, past generations of the SFC Model PCA have stipulated in Article XI that the non-Federal sponsor shall comply with all of the requirements of Section 402 of WRDA 1986, Public Law 99-662, as amended. Therefore, the requirement applies with equal force to non-Federal sponsors who executed previous generations of the SFC Model PCA. In the absence of Congressional action, the non-Federal sponsors for Federal flood protection and hurricane or storm damage reduction projects will continue to be responsible for the floodplain management requirements of Section 402 of WRDA 1986, as amended.

This issue was initially raised in the New Orleans District by representatives of the Louisiana Department of Transportation and Development in the negotiation of the Comite River Diversion project, Amite River and Tributaries, Louisiana. The issue, as to authority for floodplain management responsibilities, was resolved in June 2001 by acceptance by Headquarters, U.S. Army Corps of Engineers, of a legal opinion prepared by the General Counsel for the Amite River Basin Commission (ARBC), the sponsor for floodplain management for the project. It is our understanding that ARBC has obtained Cooperative Endeavor Agreements from a number of

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local governments within the project benefit area who have the necessary implementation and enforcement authority. All parties executed the PCA in October 2001.

The following paragraphs contain the Commission's responses to additional comments given during the oral statements at both public meetings on behalf of your office and were not included in the formal report.

Status of the Mississippi River and Tributaries Project

The MR&T project is 87 percent complete. However, levee work still remains to be done in the Memphis, New Orleans, and Vicksburg Districts. While the majority of the levee raising is in the Vicksburg District, substantial progress is being made. In Louisiana, approximately 114 miles of levee remain to be raised. Maximum deficiencies have been reduced from the 7- to 8-foot range to the 4- to 5-foot range with the most deficient areas being raised first. Also, approximately 24 miles of levee in Arkansas need to be raised about 2 feet. We anticipate that the levee raise in Arkansas will not commence until some of the more deficient sections in Louisiana and Mississippi are complete.

As you are aware, the completion date of 2031 for the MR&T project was based on anticipated Congressional funding; however, the Corps of Engineers and the levee boards have indicated the capability to complete the levee enlargement program by 2020. In the last several years, the levee program has been funded to its capability. The Congress recognizes that the Corps must complete the levee enlargement as quickly as possible.

Fiscal Year 2003 Budget

The Commission shares your concerns about the need to fund the Mississippi River and Tributaries project to its full capability. The President's budget submission for Fiscal Year 2003 is \$280 million, and the House and Senate have approved \$342 million and \$338 million, respectively. The Commission has

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expressed capability to support additional funds if appropriated by the Conference Committee.

The Commission appreciates receiving the views of the Louisiana Department of Transportation and Development and looks forward to hearing from you or your representatives at our future public meetings.

Sincerely,

Don T. Riley
Brigadier General, U.S. Army
President Designee, Mississippi
River Commission