UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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MAY 0 5 2011

Christopher Koeppel
Environmental Team Leader
U.S. Army Corps of Engineers,
Vicksburg District
4155 East Clay Street
Vicksburg, MS 39183

Dear Mr. Koeppel:

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA), the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft Supplemental Environmental Impact Statement (DSEIS) prepared by the Vicksburg District, U.S. Army Corps of Engineers (USACE) for the New Orleans To Venice (NOV), Louisiana, Federal Hurricane Protection Levee Project, Plaquemines Parish, Louisiana. The USACE proposes restoring, armoring, and accelerating completion of the existing Federal levees to provide the authorized design grade for storm risk reduction on the east bank from Phoenix to Bohemia and on the west bank from St. Jude to Venice.

EPA rates the DEIS as "**EC-2**" i.e., EPA has "Environmental Concerns and Requests Additional Information in the Final EIS (FEIS)". Detailed comments are enclosed with this letter which more clearly identify our concerns and the informational needs requested for incorporation into the Final Supplemental EIS (FSEIS).

EPA appreciates the opportunity to review the DSEIS. Please send our office two copies of the FSEIS when it is sent to the Office of Federal Activities, EPA (Mail Code 2252A), Ariel Rios Federal Building, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20004. Our classification will be published on the EPA website, www.epa.gov, according to our responsibility under Section 309 of the CAA to inform the public of our views on the proposed Federal action. If you have any questions or concerns, please contact Michael Jansky of my staff at jansky.michael@epa.gov or 214-665-7451 for assistance.

Sincerely,

Rhonda Smith
Chief, Office of Planning
and Coordination

Enclosure

DETAILED COMMENTS ON THE U.S. ARMY CORPS OF ENGINEERS VICKSBURG DISTRICT DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT FOR THE NEW ORLEANS TO VENICE, LOUISIANA FEDERAL HURRICANE RISK REDUCTION PROJECT

Background

The U.S. Army Corps of Engineers (USACE), Vicksburg District, proposes restoring, armoring , and accelerating the completion of the existing New Orleans to Venice (NOV) hurricane risk reduction levee project located along the Mississippi River corridor in Plaquemines Parish, Louisiana on the east bank from Phoenix to Bohemia and on the west bank from St. Jude to Venice. The USACE has prepared a DSEIS to satisfy the Federal requirements established by the National Environmental Policy Act (NEPA). The following comments are offered for your agency's consideration in completing the Final SEIS (FSEIS):

General Comments

EPA fully supports the efforts of the Corps to provide storm damage risk reduction measures for the residents and businesses of south Louisiana. While EPA has no conceptual concerns regarding this segment of the post-Katrina storm surge protection upgrades, we do have some concerns regarding the adequacy of the documentation, and in some cases, the adequacy of the environmental analyses presented in the DSEIS the New Orleans to Venice Federal Hurricane Protection Levee, Plaquemines Parish, Louisiana.

With regard to the first concern, the DSEIS for the New Orleans to Venice (NOV) Federal levee work often presents data with very little or no interpretation. It is the interpretation which should allow the public to weigh the costs, benefits, and impacts of the proposed project. This weighing of impacts and the evaluation of alternatives is a fundamental principle of the National Environmental Policy Act (NEPA).

The DSEIS does not provide clear documentation as to whether sufficient funding is available to complete the project, which could have serious ramifications for funding and implementing the mitigation and monitoring features. There is a similar lack of specificity regarding the local availability of construction borrow material. If the work is not planned to proceed immediately, it would seem that additional time would be available for developing the necessary specificity to provide a clear understanding of the borrow material issues and for developing a thorough wetland mitigation plan.

The concern about the environmental analyses is exemplified by the lack of a specific wetland mitigation plan. With respect to compensatory mitigation for wetland impacts, the DSEIS should include enough specificity to support a determination of compliance with the

Clean Water Act Section 404(b)(1) Guidelines, Section 2036 of the Water Resources Development Act of 2007, and with the 2008 joint Environmental Protection Agency (EPA)/Department of the Army final rule on compensatory mitigation for losses of aquatic resources. The DSEIS (Appendix G) contains a draft "conceptual" plan, which incorporates the recommendations from the January 19, 2011, U.S. Fish and Wildlife Service's *Fish and Wildlife Coordination Act Report* and the results of the December 2010 Wetland Value Assessment. This is an excellent starting point. However, no specific wetland mitigation projects are identified to compensate for any unavoidable adverse impacts to wetlands from the project construction and from the removal of construction borrow material. The FSEIS should ensure that adequate mitigation has been planned and that it will be funded and implemented in a timely manner such that all lost wetland functions are offset concurrent with project implementation. These details should be made available in the FSEIS for public and agency review prior to issuing the Corps' Record of Decision and prior to the initiation of construction.

Specific Comments

1) Abstract, page EIS-2, and Section 3.1, page EIS-23: These sections discuss related work to complete deficiencies in two miles of levees from River Mile 46.5 to River Mile 44, which need to be raised prior to the commencement of work on this project. It is noted, however, that the schedule for the initial work is subject to congressional appropriation and will be analyzed in a separate National Environmental Policy Act (NEPA) document. This document should explain why a separate NEPA analyses will be necessary and why this NEPA analysis is proceeding in light of the unknown schedule for the initial work.

Also, this NEPA analysis should explain why the NOV federal project and the NOV non-federal project, both funded by post-Katrina emergency supplemental appropriations bills, are being analyzed in separate NEPA documents. There are many data gaps in the DSEIS for the non-federal levee project and questions about the availability of funding. Accordingly, it would not seem that any of these related projects are scheduled to proceed in the immediate future. Therefore, the public could be well-served by using the intervening time to present a comprehensive analysis in a consolidated NEPA document.

This document should also provide an explanation as to why the environmental analyses for the work described therein were not conducted in the same fashion as the rest of the post-Katrina work funded under the same emergency supplemental appropriations bills. The NEPA analyses for the Greater New Orleans Hurricane and Storm Damage Risk Reduction System (GNOHSDRRS) Project have been prepared according to alternative NEPA procedures, under guidance from the White House Counsel on Environmental Quality (CEQ), in an effort to fast track that work. The standard EIS approach was used for this project, implying that it not being fast tracked. Therefore, it would seem possible to take the time to tie together the environmental analyses for all the work proposed for the mainline Mississippi River Levees from New Orleans to Venice and to present a thorough analysis for public review.

The funding identified for this project is the same funding source as that for the rest of the major post-Katrina levee upgrade work, i.e. the work being conducted by the New Orleans District of the Corps for the GNOHSDRRS Project and for the NOV non-federal levee sections.

In fact, the two NOV projects will tie into the GNOHDRRS work and will comprise a portion of the overall risk reduction system. The recently released DEIS for the NOV non-federal levee portion provides contradictory information as to whether the required federal funding is available. This leads to questions as to the current availability of funding for the federal portion of that work, described in this DSEIS. This should be clarified in the FSEIS.

2) Section 1.10, page EIS-6, and Section 1.12, page EIS-7: This DSEIS should include a detailed wetlands mitigation plan. The DSEIS includes only a draft "conceptual" plan. No explanation was provided as to the necessity for postponing the development of a detailed mitigation plan. No information is provided as to when the plan will be prepared and presented for public review. The environmental acceptability of the proposed project will largely rest upon the decisions with regard to the location of borrow material and the detailed wetland mitigation plan with specific commitments for implementation and adequate funding assurances. These issues should be clarified in the FSEIS.

3) Tables 1-1, pages EIS-9 to EIS-11: Due to the fact that the borrow areas have not yet been identified, it is unclear as to how a determination could be made that the borrow areas are "partially compliant" with any of the listed statutes. This concern should be clarified in the FSEIS.

A detailed wetland mitigation plan has not yet been developed. Therefore, it is unclear as to how Alternatives 2 and 3 could be evaluated to be "partially compliant" with Section 404 of the Clean Water Act. Mention is made as to where marsh mitigation sites might "ideally" be located and that some bottomland hardwood wetland mitigation sites "would likely" occur within the same watershed as the impacted area, "to the extent practicable." These vague intentions do not meet the test of adequate public disclosure or adequate planning documentation. Nor do they support a finding of full or partial compliance with the Clean Water Act Section 404 and the related guidance, rules, and Executive Orders.

Also, if there are no requirements for USACE projects authorized by Congress to be in compliance with the River and Harbors Act and if no navigable waters will be obstructed by the project, as stated in the document, the entries under the heading for that Act should more appropriately read "not applicable."

4) Section 3: This Federal project, as well as the related non-Federal NOV project, is being designed to tie into the GNOHSDRRS project, which is being built to provide risk reduction for a one percent storm surge. This project is being built to the two percent level of risk reduction. An explanation should be provided in the FSEIS as to whether there are any engineering vulnerabilities associated with a transition between one percent and two percent flood protection at the tie-in points.

5) Section 3.13, page EIS-27; Section 4.21, page EIS-39; and Section 4.22, page EIS-39: The DSEIS mentions new sector gates as features included in segments NOV 13 and NOV 14 yet no details are provided. Considering the high price tag for such features, the FSEIS should clarify whether the current project funding is sufficient to support the selected alternatives for these reaches. Also, projections for the amount of dredged material that might be generated

during installation of the sector gates should be provided. A disposal plan for the dredged material should be included in the FSEIS, highlighting any potential for beneficially using that material to restore or create coastal wetland habitat.

6) Section 4.6, page EIS-36: This presentation provides no explanation of whether a risk reduction alternative was evaluated which would comprise a mix of relocations, raising in place, and flood proofing. The document should also clarify the level of analysis that any of these nonstructural options alone or in combination were given. It would seem that they fell out of the screening because the Corps determined that the cost of these measures exceeded the amount allocated to the project and/or are measures not within the authority of the Vicksburg District of the Corps. If this determination was decisive at the outset, a clear presentation should be provided of the Corps position regarding how this meets the CEQ guidance on alternatives development and analysis. According to CEQ (http://ceq.hss.doe.gov/nepa/regs/40/40p2.htm), alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies.

7) Section 4.25, page EIS-40: The information presented does not allow the public to evaluate and compare the costs and benefits of Alternatives 2 and 3. The documentation of the risks and reliability of Alternative 3 is insubstantial. The only information that is given is that Alternative 3 would reduce the risk of hurricane surge and wave-driven flooding in any given year "to various levels above or below the 2% elevation." This should be clarified.

8) Table 4-1, page EIS-42: This table indicates that significant impacts will be expected from the Tentatively Selected Plan on wetland resources, including permanent, direct, and long-term impacts on approximately 367 acres of jurisdictional wetlands. The comparative impacts of alternatives with regard to wetland resources simply cannot be properly evaluated in the absence of a proposed wetland mitigation plan. This should be rectified in the FSEIS.

9) Section 4.41, page EIS-48; Tables 4-3 through 4-5, pages EIS-50 to EIS-51; Section 6.3, page EIS-155; and Section 6.202, page EIS-202: The environmental and cost/benefit evaluations of the potential sites from which the borrow material may be acquired do not clarify whether the sites already evaluated for the GNOHSDRRS project are likely to be available for use in this project. Considering the high demands for the GNOHSDRRS project, the NOV non-Federal levee project, and this project, a discussion is warranted as to the projected borrow material demands vs. projected borrow material availability. This FSEIS should be clear as to the availability of local or other borrow material required for this piece of the south Louisiana levee upgrades.

The availability of the Government-approved borrow sites will also have ramifications for the borrow material transportation estimates of over 150 million miles of road traveled to deliver an estimated 1.5 million truck loads of borrow material (see Sections 6.57 - 6.71). Based on this tremendous demand, it would also seem that the borrow material purchase price might be expected to escalate significantly for this portion of the south Louisiana storm surge risk reduction projects, which would have later construction start dates. This should be clarified in the FSEIS.

10) Section 6.111, page EIS-182: Since the borrow material areas are unidentified, the impacts associated with staging and transporting the projected 1.5 million loads of borrow material (over 150 million miles of roads) are not presented in any sort of site-specific context. The impacts on local roads could be tremendous but it is hard to get that impression from the DSEIS. This should be clarified in the FSEIS.

11) Section 6.154, page EIS-193: The FSEIS should include an analysis of the projected impacts to publically funded facilities, such as coastal wetland restoration projects in the immediate vicinity of the project. Examples include, at a minimum, the West Point a la Hache Siphon Diversion, Outfall Management, and Marsh Creation Project and the Naomi Siphon Diversion and Outfall Management Project. Maps should be provided showing all of the related projects in relationship to the proposed NOV non-federal project and to the NOV federal project.

12) Section 6.176, page EIS-196: The FSEIS should summarize the wetland mitigation plan, in addition to referring the reader to Appendix F. Wetlands impacts and wetlands mitigation should be a key element of the EIS. It is unclear as to why the wetlands mitigation plan is still only at the draft conceptual phase in the DSEIS and an explanation should be provided. Also, a specific commitment should be included in the body of the DSEIS that the Corps will adhere to the mitigation priority areas established in the Draft Fish and Wildlife Coordination Report (Appendix G). Please address in the FSEIS.

13) Section 6.183, page EIS-198: This section explains that the effort to identify bottomland hardwood mitigation sites for the as yet unspecified government-furnished borrow sites is occurring concurrently with the project planning process in an effort to construct mitigation projects expeditiously. However, the document should explain why the mitigation work could not be completed prior to publishing this NEPA document and there is no commitment to complete the mitigation work concurrently with the project implementation. Funding assurances for the jurisdictional and non-jurisdictional wetland mitigation work should be provided in the FSEIS. Since this NEPA documentation is not being prepared under the fast-tracked procedures approved by CEQ for the GNOHSDRRS project, it would seem that there would be sufficient time to allow public review of the mitigation plans.

14) Section 6.203, page EIS-202, and Section 6.178, pages EIS-196 to EIS-197: These two sections appear to present significantly inconsistent policies regarding the selection of borrow sites that would incur impacts to jurisdictional wetlands. Section 6.178 says that government-sponsored borrow sites which would entail impacts to jurisdictional wetlands will be avoided. Section 6.203 implies that the standards for contractor-furnished borrow sites would be different, allowing for the use of sites that would involve wetland impacts subject to regulation under the Clean Water Act Section 404. This should be clarified in the FSEIS.

15) Section 6.231, page EIS-211: In addition to providing a list of coastal restoration projects within the area of influence of this project, the cumulative impacts section of the FSEIS should provide information as to whether there will be any impacts to those projects from this proposed action and how such impacts might be avoided or mitigated. In other words, not only is the geographic proximity of other projects of interest but any relationships between the projects should be explored with regard to engineering design, project maintenance and

operation, environmental and social impacts, etc. In addition, a web link could be provided for information on each of those deemed to have environmental consequences with regard to the proposed action in this DSEIS.

16) Section 6.235, page EIS-212: The qualified wording that it is "anticipated" that all Federal actions, "like the NOV levee project," would be required to provide compensatory mitigation to ensure that no net loss of wetlands would occur does not rise to the level of assurance necessary regarding the requirements for avoiding, minimizing, and mitigating unavoidable wetland impacts.

17) Appendix F: The wetlands mitigation plan should be more than conceptual at this point in the supplementary NEPA process. The mitigation plan should provide assurances that all feasible efforts have been employed to avoid and minimize impacts to wetlands. The plan should provide assurances that the project will not proceed to the construction stage in the absence of adequate funding for the mitigation features. Assurances should also be provided that mitigation features will be completed concurrent with the rest of the project. The body of the FSEIS should summarize the wetland mitigation plan, in addition to referring the reader to Appendix F. A specific commitment should be included in the body of the FSEIS that the Corps will adhere to the mitigation priority areas established in the *Draft Fish and Wildlife Coordination Act Report.*

Air Quality

Any demolition, construction, rehabilitation, repair, dredging, or filling activities have the potential to emit air pollutants and EPA Region 6 recommends best management practices be implemented to minimize the impact of any air pollutants. Furthermore, construction and waste disposal activities should be conducted in accordance with applicable local, state and Federal statutes and regulations. Please address in the FSEIS.

Greenhouse Gas Emissions and Climate Change

By statutes, Executive Orders, and agency policies, the Federal government is committed to the goals of energy conservation, reducing energy use, and eliminating or reducing greenhouse gas (GHG) emissions. Although the proposed project's annual GHG emissions are projected to be less than 25,000 metric tons per year, EPA recommends the FSEIS include a discussion of GHG emissions and climate change. Please see CEQ's "Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions" for guidance.

Executive Order (EO) 13045-Protection of Children from Environmental Health Risks and Safety Risks

EPA recommends the FSEIS consider the April 1997 Executive Order (EO) 13045 - Protection of Children from Environmental Health Risks and Safety Risks when evaluating project impacts. This EO requires that all Federal agencies "(a) shall make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect

children, and (b) shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks."

Environmental Justice

Benefits of the Project

The most important and crucial benefit of this project is that it will help safeguard human safety and property as mentioned above. The levee restoration and repair also will encourage and enhance new economic opportunities for Plaquemines Parish through tourism, growth of industry, improved transportation systems, job growth, and increased agricultural opportunities. These positive impacts will benefit all the Plaquemines Parish residents.

Plaquemines Parish is not considered particularly low income (at 18%, below the poverty level), however, 22 of the 39 census tracts in the project area do fall below the State's 19.6% poverty rate, as of 2000 (Census Bureau estimate). These figures have probably worsened due to Hurricane Katrina and the British Petroleum oil spill. Regarding minority status, 20 census tracts had minority percentages greater than those of the minority population Plaquemines Parish in 2000. The entire Parish had a 32% minority population. Louisiana's minority percentage in 2000 was 38.9%, and 16 census tracts had higher minority percentages. Eleven census tracts had higher than both the State's minority percentage and the State's percentage of residents below the poverty level. Under the Executive Order on Environmental Justice, it is necessary to determine if there are "disproportionately high and adverse impacts" affecting these low-income and minority communities as a result this project.

Negative Impacts

Some of the negative impacts of the project will be temporary and short-lived (such as increased traffic and traffic delays, increased noise and dust as each section is being repaired). These negative impacts will be experienced by all the residents equally, but for a short duration. There are potentially negative aspects of the project, however, that could impact low-income and minority residents disproportionately regarding fishing and oyster gathering in the inlets, marshes and bays along the Mississippi. The DSEIS provides great detail regarding the probable destruction or damage of many wetlands areas. This can affect the fishing in these areas. While some fishermen engaging in this occupation are not low-income, many are, including many Cajuns, Vietnamese, and Indian (particularly the Houma) fishermen and they are more vulnerable and less resilient than their more prosperous counterparts are. They fish, gather oysters, and trap animals as part of their traditional way of life and as an essential part of their livelihood. The DSEIS explains that mitigation for the destroyed wetlands will be carried out by creating new wetlands in other places. It does not explain about compensation for the potential losses that may be experienced by low-income and minority fishermen.

Tribal Concerns

Currently in Plaquemines Parish 2.5% of the population is Indian. Most of the Indians who live in the Parish are of Houma Tribe ancestry, and they are dispersed along the marshes,

bays and inlets, and make their living primarily by fishing, trapping and hunting in the traditional manner. Many different Tribal groups lived there temporarily in the early days of Spanish and French exploration/colonization. The DSEIS clearly details the correct protocols followed with regard to archeological/anthropological findings. There are three traditional sites near the project area (Buras Mounds, Adams's Bay Site, Pointe a la Hache) but none in the project area and these will not be affected by any of the activities. No ruins related to Tribal groups are expected to be found under the existing levees that will be excavated. In the event that any relics, etc. are found, the appropriate authorities and Tribes will be notified. The following Tribes are being consulted: Jena Band of Choctaws, Mississippi Band of Choctaws, Chitimacha Tribe of Louisiana, Coushatta Tribe of Louisiana, Tunica-Biloxi Indians of Louisiana, Caddo Tribe in Texas, United Houma Nation, Alabama Coushatta, Caddo Adala Tribe and several Tribes in Oklahoma. The Alabama Coushatta have replied that they have no concerns about the project. Because this project will not affect any traditional fishing rights that the Tribes may have, Tribes also will not be disproportionately and adversely affected by this project. Only the Alabama Coushatta Tribal Government has responded that they have no concerns about this project.

Negative Impacts

The negative impacts that will potentially be experienced by Native Americans are described above under Negative Impacts. They relate to possible impacts on the traditional fishing grounds of the Indians, who are mostly of Houma Tribal ancestry. The Indians may also be negatively impacted because of the medicinal plants they harvest in the marshes and wetlands. Coastal erosion is devastating to the United Houma Tribe in Terrebonne Parish, but this problem also is affecting the Indian population in Plaquemines Parish. How these problems will be addressed is not clear in the DSEIS, but this concern should be addressed in the FSEIS.

Conclusion

The project detailed in this DSEIS, raises no environmental justice or Tribal concerns except for the fact that wetlands areas and fishing grounds may be negatively impacted. The FSEIS should explain how the mitigation plans for destroyed wetlands will also benefit the low-income, minority fishermen. Otherwise, their culture and way of life may be irreparably harmed. The other negative impacts will affect ALL residents, but they will be minor, temporary and short-term in nature. The DSEIS makes it clear that the positive benefits of this levee restoration/replacement/repair project will be enjoyed equally by ALL residents, as well. Therefore, there appear to be no disproportionately high or adverse impacts that will be caused by this project except for impacts on fishing.