UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Ref: 8EPR-N

Elliot Stefanik, Section Chief
Regional Planning and
Environment Division North
St. Paul District
U.S. Army Corps of Engineers
180 Fifth St. E., Suite 700
St. Paul, Minnesota 55101-1678

Re: Draft Environmental Impact Statement, Mouse River Enhanced Flood Protection Project, CEQ # 20160206

Dear Mr. Stefanik:

The U.S. Environmental Protection Agency Region 8 has reviewed the U.S. Army Corps of Engineers' (USACE) *Draft Environmental Impact Statement (EIS) for the Mouse River Enhanced Flood Protection Project* located on the Souris River in Minot, North Dakota. Our comments are provided for your consideration pursuant to our responsibilities and authority under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act (CAA).

Project Background

There has been a history of flooding along the Souris River, also referred to as the Mouse River. In 2011, a record flood occurred in the Souris River basin, causing hundreds of millions of dollars in damages to communities along the Souris River, including Minot and Burlington, ND. The project proponent or requester is the Souris River Joint Water Resources Board (SRJB). Communities in this area plan to construct a series of new levees, floodwalls, diversion channels and other flood risk reduction projects in a number of stages over the next 25 years, depending on available funding.

The environmental review is a combination of a construction project specific document for the first several phases referred to collectively as "Construction Stage 1.5" and a planning or programmatic document for later construction stages. The document identified around 18 additional project phases that are planned to be constructed after Construction Stage 1.5.

Overall Programmatic Project referred to as the "Requester's Preferred Alternative"

- 18.9 miles of new levees,
- 2.7 miles of new floodwalls,
- 2 channel realignments totaling 1.6 miles,
- 2 high-flow bypass diversions,
- 21 transportation closure structures, reconstruction or modification of 6 bridges,

- 121 acres of overbank excavation.
- 7,500+ linear feet of riprap placement

Construction Stage 1.5 (CS 1.5)

- Phase 1 – 4th Avenue: floodwall, overbank excavation and riprap bank stabilization.
- Phase 2 – Napa Valley: new levees, floodwalls, bank armoring
  Phase 3 – Forest Road: new levees, overbank excavation bank armoring, utility improvements
- Other Phases in CS 1.5
  - Maple Avenue High Flow Diversion: new channel
  - Tierracita Vallejo: levee on north side of the Souris River, new ponding areas and overbank excavation.
  - Tieback levee connecting to Phase 1: levee on the north side of river, and road modifications

Comments and Recommendations

Wetlands

Compensatory Mitigation Plans – The Draft EIS did not include a mitigation plan for impacts to jurisdictional wetlands and other waters of the U.S. (WOTUS). Instead, the document defers to the 404 permitting process and mentions the possibility of a Ducks Unlimited in-lieu-fee wetlands mitigation program in the cumulative effects assessment (page 250). We recommend that the Final EIS include a summary of the compensatory mitigation plan for impacts to jurisdictional wetlands/WOTUS for the overall (programmatic) project. The Final EIS should also include a more detailed compensatory mitigation plan for impact to WOTUS for project phases included in Construction Stage 1.5.

The plans should discuss whether the project proponents are planning to mitigate some of the impacts by creating new wetlands and riparian resources within the new floodplain or creating a project wide mitigation bank. If the proponents plan to pursue in-lieu-fee mitigation, the Final EIS should identify what actions have been taken to develop the site(s) and whether there are sites that would be suitable for mitigating riverine wetlands, forested riverine wetlands and river banks. The mitigation plan should also discuss the availability of mitigation sites within the watershed for in-kind mitigation; anticipated mitigation ratios; and the agency or entity responsible for maintaining and monitoring the mitigation.

We also recommend that the Final EIS develop mitigation measures for impacts to non-jurisdictional wetlands. As discussed below, the Draft EIS is unclear regarding the types of wetland impacts.

Least Environmentally Damaging Practicable Alternative (LEDPA) – As mentioned in the Draft EIS, this analysis is also being developed to meet NEPA requirements for the 404 permit. The selected alternative (or phases) must be the "least environmentally damaging practicable alternative" (LEDPA). Impacts to WOTUS must be avoided, minimized and for those impacts that cannot be avoided compensatory mitigation must be developed and implemented. The Draft EIS on page 51 states the LEDPA alternatives analysis will be deferred until the 404 permit process for project phases after Construction Stage 1.5. We recommend that the LEPDA analysis be conducted for the entire project in this programmatic EIS document, to reduce potential construction delays. If that is not possible, we recommend discussing how additional alternatives analysis and NEPA reviews such as a supplemental EIS or environmental assessment will be used to evaluate the alternatives for the 404 permitting process for post Construction Stage 1.5 project phases.

WOTUS and Wetland Impact Information –There is a lot of information in the Draft EIS regarding impacts to WOTUS and wetland impacts. For the benefit of the reader, we recommend that information be summarized in a more concise and understandable format in the Final EIS. This information will also be useful in developing the compensatory mitigation plans as mentioned above.

We recommend that the WOTUS and wetlands impact analysis, especially for CS 1.5, be expanded to more clearly disclose estimated wetland impacts. Typically, EIS documents summarize the acres of wetlands impacts for jurisdictional wetlands, non-jurisdictional wetlands, and total wetlands. Similarly the wetlands analyses typically identify whether the impacts are permanent (footprint) temporary impacts and indirect impacts (changes which occur later in time, such as changes in water flow or land use). Similarly, riparian or stream bank impacts can be summarized by total acres or linear feet (or miles) above and below the ordinary high water mark.

There are also some inconsistencies between Chapter 3 (page 103) and Chapter 4 (page 180-182) regarding impacts to WOTUS and wetlands. Some of the inconsistencies could be explained by differences between jurisdictional and non-jurisdictional water resources, but it is not clear from the document. We have listed below several areas that appear to be inconsistent or poorly described.

Wetlands Impacts Construction Stage (CS) 1.5

37 acres – Wetlands in CS Stage 1.5 in project footprint or adjacent to construction (Chap. 3)
26 acres – Permanently impacted wetlands CS 1.5 (Chap. 4)
41 acres – Temporarily affected wetlands, predominantly riverine wetlands (Chap. 4)

Questions: Is the total wetlands impacted additive for CS 1.5? – For example, are wetland impacts estimated to total 67 acres? Are there additional wetland impacts that will happen later in time to wetlands adjacent to the construction footprint? Are there additional impacts to non-jurisdictional wetlands?

Wetlands in 1.5 tallied by Phase from Chapter 3 information

0 acres – Phase 1 construction footprint
2.6 acres – Phase 2 construction footprint (Chap. 3)
0 acres – Phase 3 construction footprint (Chap. 3)
11.8 acres – Other phases of CS 1.5 (Chapter 3)
14.4 acres – Total wetland impacts for Construction Stage 1.5

Issue: Inconsistencies between summary of wetland impacts for CS 1.5 and individual phases in CS 1.5.

Chapter 4 WOTUS Impacts

0 acres – Phase 1 wetland impact
2.2 acres – Phase 1, permanent impacts below OHWM from bank armoring
1.74 acres – Phase 2 wetland impacts (0.4+0.3+0.1+0.7+0.24)
3.0 acres – Phase 2, permanent impacts below OHWM from bank armoring
0 acres – Phase 3 wetland impacts
2.2 acres – Phase 3, permanent impacts below OHWM from bank armoring & utility
2.7 acres – Other Phases CS 1.5 wetland impacts (0.35 0.45+1.9)
2.2 acres – Other Phases CS 1.5, excavation below the OHWM (1.2+ 1.0)

Question: Are the additional acres of wetland resources identified in Chapter 3 non-jurisdictional or jurisdictional wetlands affected by the proposed project by reducing water flow or changing drainage patterns?

Environmental Justice

We recommend the analysis on environmental justice (EJ) in the EIS be revised to better connect potential impacts from the project with potentially affected EJ communities. It is unclear from the Draft EIS, whether there are potential for EJ communities to be adversely affected by the project.

When conducting an environmental justice analysis, we recommend starting the analysis by identifying the kinds of impacts to people; the location (spatial extent), magnitude and duration of impacts. For linear projects such as levees, floodwalls and diversion channels anticipated impacts to the community can include:

- Loss of housing, especially affordable housing;
- Property acquisition locations and processes (e.g. comparable affordable housing available);
- Loss of community/neighborhood cohesion;
- Increased flooding or flood elevation;
- Job loss due to business closures or relocation;
- Reduced transportation conductivity for cars, public transit and pedestrians; and
- Construction impacts such as dust, noise, hazardous material disturbances.

Once the areas of higher impacts (or burdens) have been determined, then the demographics of those areas should be examined to identify whether there are potential EJ communities.

These types of adverse impacts will be focused on the footprint of project and construction. The intensity of most of these impacts reduce within several blocks of the construction area to levels similar to the community as a whole. This means that an EJ analyses based solely on census block information may overlook smaller EJ communities immediately next to the project as noted in page 154 of the Draft EIS.

Reviewing the demographic information online through EPA's EJScreen[1], it appears there are there is at least one census block that may include EJ communities as well as the four pockets of potential low income populations identified in Figure 3-11, Low-Income Populations in Project Area. We compared EJ analysis in the document to the demographic mapping layers found in EJ Screen [Source: US Census Bureau, American Community Survey (ACS) 2010-2014.]. In particular, downtown Minot census block 381010101001 identified 34% of households with incomes less than $15,000 and 63% of households earning less than $25,000. This compares to Ward County with only 9% of household with incomes less than $15,000 and 17% of household incomes below $25,000. If the EJ analysis is revised in the Final EIS, we recommend incorporating the recommendations for identifying potential EJ communities found in "Promising Practices for EJ Methodologies in NEPA Reviews"[2]

We also recommend the NEPA analysis more clearly differentiate between impacts to potential EJ populations and whether there are "disproportionally high and adverse impacts" to an EJ community. Most large construction projects through existing communities impact at least one EJ community. The challenge is to use the NEPA and project planning processes to conduct public outreach to potential EJ communities, seek EJ community input on proposed alternatives and mitigation measures, and develop a project which does not have "disproportionally high and adverse impacts" to an EJ community. We note

[1] https://www.epa.gov/ejscreen

[2] https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf

that Minot is a recipient a Rockefeller Resiliency Foundation/HUD funding, which allows community unique and directed opportunities to increase the benefits to potential EJ communities.

The EJ impact analysis is further complicated by the 2011 flood. A number of affordable housing units that would need to be acquired for the proposed project were already damaged by the 2011 flood and have since been acquired through flood recovery efforts. Section 3.6.3 Housing Characteristics of the Draft EIS discusses maintaining affordable housing, relocation and buyout programs. We recommend covering these topics in the EJ analysis or incorporating EJ into this section of the Final EIS.

In responding to our comments on environmental justice there are two directions. One option is to focus on updating and expanding the demographic information to pin point potential EJ communities with higher levels of adverse impacts from the proposed project. However, we think it would be more expedient to focus on identifying pockets of low income populations based on local information, conducting public outreach in those areas (if not already completed), and evaluating if the mitigation measures are sufficient reduce impacts or increase benefits to affected EJ communities. We also recommend incorporating the EJ analysis into other sections of the document, such as affordable housing, property acquisition, increased flood elevation/inundation and demolition of facilities with lead paint or asbestos, and excavation of unanticipated hazardous materials.

Other Comments and Recommendations

Sustainable floodplain: Please identify any t mitigation measures that have been developed to protect and maintain the capacity of the floodplain. We anticipate that many of these mitigation measures are already in place; developed by municipalities, counties and the SRJB. We recommend that these mitigation measures be summarized in the EIS to inform decision-making.

NEPA Tiering from Programmatic EIS: We recommend that the Final EIS describe more fully how construction stages after CS 1 .5 will tier from the Programmatic EIS. For example, do you anticipate supplemental EISs for larger future construction phases or environmental assessments?

Programmatic Mitigation Measures: Several of the resource area impact analyses in Chapter 4 discuss mitigation measures that will apply throughout the entire project. We recommend examining the resources without programmatic mitigation measures and determining whether there are applicable measures that should be implemented to reduce impacts throughout the project. For example, a noxious weed control plan would be applicable to almost every phase of the project.

Consistent with Section 309 of the CAA, it is the EPA's responsibility to provide an independent review and evaluation of the potential environmental impacts of this project. Based on the procedures the EPA uses to evaluate the adequacy of the information and the potential environmental impacts of the proposed project, the EPA is rating the Draft EIS as Environmental Concerns – Insufficient Information (EC-2). The "EC" rating indicates that the EPA review has identified environmental impacts that need to be avoided in order to fully protect the environment. The "2" rating indicates that the EPA has identified additional information, data, analyses, or discussion that we recommend for inclusion in the Final EIS. A description of the EPA's rating system can be found at: http://www2.epa.gov/nepa/environmental-impact-statement-rating-system-criteria.

We appreciate the opportunity to participate in the review of this project. If we may provide further explanation of our comments, please contact me at 303-312-6704, or your staff may contact Dana Allen, at 303-312-6870 or allen.dana@epa.gov.

Sincerely,

Philip S. Strobel
Director, NEPA Compliance and Review Program
Office of Ecosystems Protection and Remediation