

CECW-PC (CELMK-PD-F/28 Oct 94) (1105-2-10c) 2nd End
 PARKER/hek/202-761-1974
 SUBJECT: Pearl River in the Vicinity of Walkiah Bluff,
 Mississippi and Louisiana, Section 1135 Initial Appraisal Report

MFC
INFO CB
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Tom Hill
Mike Harden

HQ, U.S. Army Corps of Engineers, Washington, DC 20314-1000

FOR Commander, Lower Mississippi Valley Division

17 APR 1995

1. The development of this project should be pursued under the authority of Section 307(d) (enclosed) of the Water Resources Development Act of 1990 and accomplished taking into consideration the factors listed in subsection 307(d) (3).
2. A detailed project report or a report similar in scope should be prepared for this project and submitted to this office for approval. The legislation provides authority for Federal and State land-owning agencies and private parties to contribute to section 307 demonstration areas. Non-Federal participation should be on the same basis as similar projects for ecosystem restoration and environmental improvements, i.e., 25 percent of the total project cost, and all lands, easements, rights-of-way, relocations, and dredged material disposal areas (LERRD), with credit for the cost of LERRD against the 25 percent non-Federal cost share. All operation, maintenance, repair, replacement, and rehabilitation responsibilities are non-Federal, if the project is not located on Corps lands.
3. As with all cost shared projects, a Project Cooperation Agreement (PCA) is necessary. The draft PCA must be submitted to this office for approval by the Acting Assistant Secretary of the Army (Civil Works).
4. Enclosed for your information are two letters by the Acting Assistant Secretary of the Army (Civil Works) addressing this project.

Encls
 Added 3 encls

Stanley G. Genega
 STANLEY G. GENEGA
 Major General, USA
 Director of Civil Works

control, and for other purposes", approved August 18, 1941 (33 U.S.C. 701n(a)(1)), is amended—

(1) in the first sentence by striking "flood emergency preparation," and inserting "preparation for emergency response to any natural disaster,"; and

(2) by inserting after the first sentence the following: "The emergency fund may also be expended for emergency dredging for restoration of authorized project depths for Federal navigable channels and waterways made necessary by flood, drought, earthquake, or other natural disasters."

SEC. 303. CONSTRUCTION OF NAVIGATION PROJECTS BY NON-FEDERAL INTERESTS.

(a) TRANSMISSION OF HARBOR IMPROVEMENT STUDIES TO NON-FEDERAL INTERESTS.—Section 204(c) of the Water Resources Development Act of 1986 (33 U.S.C. 2232(c)) is amended by inserting after the first sentence the following new sentence: "The Secretary is further authorized to complete and transmit to the appropriate non-Federal interest any study for improvement to harbors or inland harbors of the United States that is initiated pursuant to section 107 of the River and Harbor Act of 1960 or, upon request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest."

(b) REIMBURSEMENT.—Section 204 of such Act is amended—

(1) by redesignating the second subsection (e) and subsection (f), and any reference thereto, as subsections (f) and (g), respectively;

(2) in paragraph (1) of the first subsection (e) by inserting "including any small navigation project approved pursuant to section 107 of the River and Harbor Act of 1960," after "or separable element thereof,"; and

(3) in paragraph (1)(A) of the first subsection (e) by inserting "(or, in the case of a small navigation project, after completion of a favorable project report by the Corps of Engineers)" after "authorization of the project".

Reports.

USC: 230000.

SEC. 304. PROJECT MODIFICATIONS FOR IMPROVEMENT OF ENVIRONMENT.

(a) REVIEW OF PROJECT OPERATIONS.—Section 1135(a) of the Water Resources Development Act of 1986 (33 U.S.C. 2294 note), is amended by striking "before the date of enactment of this Act".

(b) MODIFICATION PROGRAM.—Section 1135(b) of such Act is amended—

(1) by striking "demonstration program in the 5-year period beginning on the date of enactment of this Act" and inserting "program"; and

(2) by striking "before the date of enactment of this Act".

(c) REPORT.—Section 1135(d) of such Act as amended to read as follows:

"(d) BIENNIAL REPORT.—Beginning in 1992 and every 2 years thereafter, the Secretary shall transmit to Congress a report on the results of reviews conducted under subsection (a) and on the program conducted under subsection (b)."

(d) FUNDING.—Section 1135(e) of such Act is amended by striking "\$25,000,000 to carry out this section," and inserting "\$15,000,000 annually to carry out this section."

SEC. 305. ABILITY TO PAY.

(a) GENERAL RULE.—Section 103(m) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(m)) is amended to read as follows:

"(m) ABILITY TO PAY.—

"(1) GENERAL RULE.—Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay.

"(2) PROCEDURES.—

"(A) IN GENERAL.—The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.

"(B) LIMITATIONS.—The procedures established pursuant to this subsection shall provide for a reduction in any non-Federal cash contribution required under subsection (a)(2) of this section. In addition, such procedures shall provide for determination of the eligibility of the non-Federal interest for a reduction in the required cash contribution on the basis of local, not statewide, economic and financial data.

"(C) REGULATIONS.—Not later than 1 year after the date of the enactment of this subparagraph, the Secretary shall issue regulations establishing the procedures required by this paragraph."

(b) CONTINUATION OF EXISTING REGULATIONS.—Regulations issued to carry out section 103(m) of the Water Resources Development Act of 1986 before the date of the enactment of this Act and in effect on such date shall continue in effect until regulations are issued pursuant to paragraph (2)(C) of such section, as added by subsection (a) of this section.

33 USC 2213 note.

SEC. 306. ENVIRONMENTAL PROTECTION MISSION.

33 USC 2316.

(a) GENERAL RULE.—The Secretary shall include environmental protection as one of the primary missions of the Corps of Engineers in planning, designing, constructing, operating, and maintaining water resources projects.

(b) LIMITATION.—Nothing in this section affects—

(1) existing Corps of Engineers' authorities, including its authorities with respect to navigation and flood control;

(2) pending Corps of Engineers permit applications or pending lawsuits involving permits or water resources projects; or

(3) the application of public interest review procedures for Corps of Engineers permits.

SEC. 307. WETLANDS.

33 USC 2317.

(a) GOALS AND ACTION PLAN.—

(1) GOALS.—There is established, as part of the Corps of Engineers water resources development program, an interim goal of no overall net loss of the Nation's remaining wetlands base, as defined by acreage and function, and a long-term goal to increase the quality and quantity of the Nation's wetlands, as defined by acreage and function.

(2) USE OF AUTHORITIES.—The Secretary shall utilize all appropriate authorities, including those to restore and create wetlands, in meeting the interim and long-term goals.

(3) ACTION PLAN.—

(A) DEVELOPMENT.—The Secretary shall develop, in consultation with the Environmental Protection Agency, the

Fish and Wildlife Service, and other appropriate Federal agencies, a wetlands action plan to achieve the goals established by this subsection as soon as possible.

(B) **CONTENTS.**—The plan shall include and identify actions to be taken by the Secretary in achieving the goals and any new authorities which may be necessary to accelerate attainment of the goals.

(C) **COMPLETION DEADLINE.**—The Secretary shall complete the plan not later than 1 year after the date of enactment of this Act.

(b) **CONSTRUCTED WETLANDS FOR MUD CREEK, ARKANSAS.**—Notwithstanding any other provision of law, the Secretary is authorized and directed to establish and carry out a research and pilot project to evaluate and demonstrate—

(1) the use of constructed wetlands for wastewater treatment, and

(2) methods by which such projects contribute—

(A) to meeting the objective of the Federal Water Pollution Control Act to restore and maintain the physical, chemical, and biological integrity of the Nation's waters, and

(B) to attaining the goals established by subsection (a). The project under this subsection shall be carried out to improve the quality of effluent discharged from publicly owned treatment works operated by the city of Fayetteville, Arkansas, into Mud Creek or its tributaries.

(c) **NON-FEDERAL RESPONSIBILITIES.**—For the project conducted under subsection (b), the non-Federal interest shall agree—

(1) to provide, without cost to the United States, all lands, easements, rights-of-way, relocations, and dredged material disposal areas necessary for construction and subsequent research and demonstration work;

(2) to hold and save the United States free from damages due to construction, operation, and maintenance of the project, except damages due to the fault or negligence of the United States or its contractors; and

(3) to operate and maintain the restored or constructed wetlands in accordance with good management practices; except that nothing in this paragraph shall be construed as precluding a Federal agency from agreeing to operate and maintain the restored or reconstructed wetlands.

The value of the non-Federal lands, easements, rights-of-way, relocations, and dredged material disposal areas provided by the non-Federal interest shall be credited toward the non-Federal share of project design and construction costs. The non-Federal share of project design and construction costs shall be 25 percent.

(d) **WETLANDS RESTORATION AND ENHANCEMENT DEMONSTRATION PROGRAM.**—

(1) **ESTABLISHMENT AND IMPLEMENTATION.**—The Secretary, in consultation with the Administrator, is authorized to establish and implement a demonstration program for the purpose of determining the feasibility of wetlands restoration, enhancement, and creation, as a means of contributing to the goals established by subsection (a).

(2) **GOAL.**—The goal of the program under this subsection shall be to establish a limited number of demonstration wetlands restoration, enhancement, and creation areas in districts

of the Corps of Engineers for the purpose of evaluating the technical and scientific long-term feasibility of such areas as a means of contributing to the attainment of the goals established by subsection (a). Federal and State land-owning agencies and private parties may contribute to such areas.

(3) **FACTORS TO CONSIDER.**—In establishing the demonstration program under this subsection, the Secretary shall consider—

(A) past experience with wetlands restoration, enhancement, and creation;

(B) the appropriate means of measuring benefits of compensatory mitigation activities, including enhancement or restoration of existing wetlands or creation of wetlands;

(C) the appropriate geographic scope for which wetlands loss may be offset by restoration, enhancement, and creation efforts;

(D) the technical feasibility and scientific likelihood that wetlands can be successfully restored, enhanced, and created;

(E) means of establishing liability for, and long-term ownership of, wetlands restoration, enhancement, and creation areas; and

(F) responsibilities for short- and long-term project monitoring.

(4) **REPORTING.**—

(A) **TO THE CHIEF OF ENGINEERS.**—The district engineer for each district of the Corps of Engineers in which a wetlands restoration, enhancement, and creation area is established under this subsection shall transmit annual reports to the Chief of Engineers describing the amount and value of wetlands restored, enhanced, and created for the area and a summary of whether the area is contributing to the goal established in paragraph (2).

(B) **TO CONGRESS.**—Not later than 3 years after the date of the enactment of this Act, the Secretary shall transmit to Congress a report evaluating the use of wetlands restoration, enhancement, and creation areas in fulfilling the goal established by paragraph (2), together with recommendations on whether or not to continue use of such areas as a means of meeting the goals established by subsection (a).

(5) **EFFECT ON OTHER LAWS.**—Nothing in this subsection affects any requirements under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 10 of the Act of March 3, 1899 (33 U.S.C. 403).

(e) **TRAINING AND CERTIFICATION OF DELINEATORS.**—

(1) **IN GENERAL.**—The Secretary is authorized to establish a program for the training and certification of individuals as wetlands delineators. As part of such program, the Secretary shall carry out demonstration projects in districts of the Corps of Engineers. The program shall include training and certification of delineators and procedures for expediting consideration and acceptance of delineations performed by certified delineators.

(2) **REPORTS.**—The Secretary shall transmit to Congress periodic reports concerning the status of the program and any recommendations on improving the content and implementation of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
FOR CIVIL WORKS
306 ARMY PENTAGON
WASHINGTON DC 20310-0108



ADJUTANT GENERAL
ATTENTION OF

07 APR 1995

Honorable Robert Livingston
Chairman
Committee on Appropriations
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This follows up on our meeting yesterday afternoon concerning engineering, design and construction of the project for the East Pearl River in the vicinity of Walkiah Bluff, Mississippi.

As indicated in the enclosed copy of my letter to the Honorable John Myers, Chairman, House Subcommittee on Energy and Water Development Appropriations, the Army proposes to accomplish the project under authority of section 307(d) of Public Law 101-640, the Water Resources Development Act of 1990. Our proposal is to allocate \$2 million in available Construction, General appropriations to proceed with necessary engineering, design and construction.

Sincerely,

John H. Zirschky
Acting Assistant Secretary of the Army
(Civil Works)

Enclosure

CWA



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108



REPLY TO
ATTENTION OF

07 APR 1995

Honorable John Myers
Chairman
Subcommittee on Energy
and Water Development
Committee on Appropriations
United State House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

As you are aware, the Conference Report accompanying the Fiscal Year 1995 Energy and Water Development Appropriations Act (P.L. 103-316) contained language providing for "*Project Modifications for Improvement of the Environment (Section 1135)*" which included "... \$2,000,000 for the Corps of Engineers to begin engineering, design, and construction for the restoration of the East Pearl River in the Vicinity of Walkiah Bluff, Mississippi."

This is to inform you that the Corps proposes to accomplish the directed work using the authority contained in Section 307(d) of the Water Resources Development Act of 1990 (P.L. 101-640) and available Construction, General funds. The East Pearl River project involves construction of components on the right descending bank of the Pearl River generally below Bogalusa, Louisiana to resolve environmental concerns in the vicinity of Walkiah Bluff, Mississippi. The project involves design and construction of a closure and overflow structure in Wilson Slough; rock-protected earthen closures in Moore's Bayou, Icebox Bayou, Brier Patch Bayou and other smaller distributaries; limited removal of sediment to develop a pilot channel in the Pearl River at Walkiah Bluff; and other minor components as may be necessary.

An identical letter is being sent to the Honorable Pete V. Domenici, Chairman, Subcommittee on Energy and Water Development, Committee on Appropriation, United States Senate.

Sincerely,

John H. Zirschky
Acting Assistant Secretary of the Army
(Civil Works)