



**MEMORANDUM OF AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS,
THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND
THE U.S. FISH AND WILDLIFE SERVICE CONCERNING
THE YAZOO BACKWATER WATER MANAGEMENT PLAN
PUMP AND WATER CONTROL STRUCTURE OPERATION PLANS**

November 25, 2024

I. Introduction

a. Authority and Purpose

The Yazoo Basin, Yazoo Backwater, Mississippi Project was authorized by Section 3 of the *Flood Control Act* of 1941 and subsequently amended by the *Flood Control Acts* of 1944 and 1965 to provide flood protection to five subareas of the Yazoo Backwater Area. The authorized work includes levees, water control structures, a connecting channel, and pump stations. Much of this work was completed in the 1970s. The remaining authorized, yet unconstructed features have been incorporated into the Yazoo Backwater Area Water Management Project.

The U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service enter into this Memorandum of Agreement to establish procedures regarding efficient and effective coordination on any changes to or deviations from the pump operation plan and water control structure operation plan for the Project.¹

The agencies have entered this MOA in light of the nationally significant natural resources and species anticipated to be impacted by the proposed Project and the complexity of the water management associated with the Project's pump operation plan and water control structure operation plan.

b. Applicable Laws and Regulations

This MOA is established consistent with the following statutes, regulations and policies.

1. Section 3 of the *Flood Control Act* of 1941, as amended by the *Flood Control Acts* of 1944 and 1965.
2. *Clean Water Act* Section 404 (33 U.S.C. 1344).
3. Environmental Protection Agency, *Clean Water Act* Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 C.F.R. Part 230).

¹ This MOA assumes that USACE will issue a Record of Decision compliant with the *Endangered Species Act*, the *Clean Water Act* and the *National Environmental Policy Act*.

4. Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency Concerning the Determination of Mitigation under the *Clean Water Act* Section 404(b)(1) Guidelines (February 6, 1990).
5. *National Environmental Policy Act* (42 U.S.C. 4321 et seq.).
6. Council on Environmental Quality, Regulations for Implementing the Procedural Provisions of the *National Environmental Policy Act* (40 C.F.R. Parts 1500-1508).
7. *Fish and Wildlife Coordination Act* (16 U.S.C. 661 et seq.).
8. *Endangered Species Act* of 1973, as amended, (16 U.S.C. 1531 et seq.).
9. Section 906 of the *Water Resources Development Act* of 1986, as amended (33 U.S.C. 2283).
10. Section 2036(c) of the *Water Resources Development Act* of 2007, as amended (33 U.S.C. 2317b).
11. Department of the Army, Implementation Guidance for Section 1163 of the *Water Resources Development Act* of 2016, Wetlands Mitigation (March 8, 2019).
12. Department of the Army, Implementation Guidance for Section 1162 of the *Water Resources Development Act* of 2016 and Section 1040 of the *Water Resources Reform and Development Act* of 2014, Fish and Wildlife Mitigation (Section 906 of the *Water Resources Development Act* of 1986, as Amended (33 U.S.C. 2283)) (March 25, 2019).
13. Engineering Regulation 1105-2-100, Planning Guidance Notebook, Appendix C.
14. Fish and Wildlife Service Mitigation Policy (88 Fed. Reg. 31000, 2023).
15. *Endangered Species Act* Compensatory Mitigation Policy (88 Fed. Reg. 31000, 2023).

c. Limitations

This MOA is not legally binding, does not create any contractual obligations and is not enforceable by any party. Nothing in this MOA diminishes or in any way affects the authorities of the USACE, the EPA or the USFWS under these statutes and their implementing regulations. This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity against any signatory or any of its officers, employees or other representatives or any person. Nothing in this document obligates the agencies to expend appropriations or enter into any contract, assistance agreement, interagency agreement or incur financial obligations. Further, it is understood that any agency actions must be in accordance with applicable laws and regulations. This MOA does not apply to any person outside of the USACE, the EPA and the USFWS.

II. Background

a. Pump Operation Plan

To reduce flood stages across all frequency flood events within the Yazoo Backwater Study Area, or YSA, the Project's pump operation plan includes a 25,000 cubic feet per second pump station located adjacent to the Steele Bayou Water Control Structure. To avoid and minimize adverse impacts on the environment and still meet Project purposes, the pump operation plan manages water levels at 90.0 feet National Geodetic Vertical Datum of 1929 (NGVD29) at the Steele Bayou gauge during crop season (25 March – 15 October) and up to 93.0 feet NGVD29 at the Steele Bayou gauge during non-crop season (16 October - 24 March).

b. Water Control Structure Operation Plan

In its current state, the YSA is an altered system due to the Mississippi Mainline levee and Yazoo Backwater levee and outlet structures limiting inflow of water from the Yazoo-Mississippi Rivers. During potential flood-prone periods with rising Mississippi and Yazoo rivers, the 1985 Water Control Manual for the operation of Steele Bayou WCS allows free movement of water into and out of the lower Yazoo Basin up to an elevation of 75.0 feet NGVD29 before closing the gate. However, in the absence of a pumping station, the practice has been to close the gate at lower elevations. Implementation of the Project and its pumping station will allow full utilization of the 1985 Water Control Manual and will promote fish passage. During low-water periods, consistent with the water control structure operation plan, the Steele Bayou WCS is operated to maintain water elevations between 68.5 and 70.0 feet NGVD29, and this will be continued.

III. Roles and Responsibilities

a. Project Implementation

The USACE, Vicksburg District is the USACE entity responsible for implementing the Project's pump operation plan and water control structure operation plan. These Water Control Plans may be revised, as necessary, to conform with changing requirements resulting from development in the project area and downstream, improvements in technology, new legislation, the results of monitoring and adaptive management, and other relevant factors, provided such provisions comply with existing federal regulations and established USACE policy and are done in concert with the EPA and the USFWS, as described below.

b. Changes and Non-Emergency Deviations

Should any change to or deviation from the Project's standard Water Control Plans described in Section II be necessary, the District will provide written notification to the designated representative of the EPA and the USFWS of the proposed change or deviation (see Section III.e), except in the case of an emergency deviation (see Section III.c). The written change or deviation notification is to contain the same documentation provided to the public and as identified below. Close coordination will be maintained with the EPA and the USFWS in the execution of any changes or deviations to the Water Control Plans. This supplements the processes required to comply with environmental laws applicable to the action, including the *National Environmental Policy Act*. To ensure that impacts to significant resources, both terrestrial and aquatic, have been avoided and minimized to the extent practicable, and any remaining unavoidable impacts have been compensated to the extent possible, the District will obtain concurrence from the EPA that the adverse environmental effects of those changes or deviations have been adequately mitigated prior to implementing any changes or non-emergency deviations to these plans. The EPA's determination as to whether to concur will be based, in part, on the USFWS analysis and input.

In accordance with applicable regulations, the District shall seek public involvement, including comment and meetings, in the development of a new Water Control Plan, a revision or update of a Water Control Plan in a way that impacts the public or changes the documented impact of the Project, or a deviation from the Water Control Plan. For those circumstances requiring public comment, the District shall prepare documentation that does the following:

1. Explains the recommended pump operation plan and/or water control structure operation plan, or the change or the deviation.
2. Explains the basis for the recommendation or reason(s) for the proposed change or deviation.
3. Describes the plan's impacts (both monetary and nonmonetary) on project purposes and compares the plan to alternative plans or changes and their effects, if applicable.
4. Describes the expected aquatic and environmental resource impacts.

5. Includes a plan for addressing all impacts associated with the change or deviation.

In accordance with USACE regulations, the District shall provide this information to the public concerning the proposed water control plan change or deviation at least 30 days in advance of the initial public meeting.

For all changes and non-emergency deviations, the EPA and the USFWS should respond within 30 days of the close of the public involvement process for that decision. If no public involvement process was undertaken by the District, the EPA and the USFWS should respond within 30 days of receipt of written notification from the District providing the information described in 1-5 above. If threatened or endangered species may be affected or their critical habitat adversely modified as a result of such changes and/or deviations, consultation under the *Endangered Species Act* is required and additional time may be necessary to complete this consultation. Arrangements may be made for in-person meetings or teleconferences to discuss a proposed change or deviation, when deemed appropriate by the agencies.

c. Emergency Deviations

Emergencies may require deviation from the approved water control plan to mitigate an imminent threat to public health and safety, property or the environment not otherwise contemplated for the Project's standard pump operation and water control structure operation. Examples include drowning and other accidents, failure of operation facilities, oil or chemical spills and drainage, bacterial contamination and harmful algal blooms. Such situations require a rapid response which does not allow sufficient time for a full analysis of the deviation. The District will notify the designated representative of the EPA and the USFWS (see Section III.e) within 24 hours of an emergency deviation occurring. Once the emergency situation has passed, the District will immediately resume the Project's standard pump operation and water control structure operation.

d. Mitigation to Offset Impacts of a Change or Deviation

The District will coordinate any mitigation plans to address impacts associated with changes and deviations with the EPA and the USFWS. Except for emergency deviations to the pump operation plan or water control structure operation plan, implementation of any approved change or deviation will not begin until the District has obtained concurrence from the EPA that the adverse effects of those changes or deviations have been adequately mitigated, such mitigation complied with any relevant laws and policies, and all in-lieu fee program/mitigation bank credits have been purchased and/or compensatory mitigation sites have been secured (e.g., acquired via fee title acquisition or protected via conservation easement). The EPA's determination as to whether to concur will be based, in part, on the USFWS analysis and input.

e. Points of Contact Lists

The District, the EPA and the USFWS will establish, share and keep current a Project Points of Contact list to facilitate effective communications. At a minimum, lists should include the title and contact information for each agency contact. Within 30 days of the effective date of this MOA, these lists are to be exchanged between the District, the EPA and the USFWS. At a minimum, the lists will be updated annually.

f. Dispute Resolution

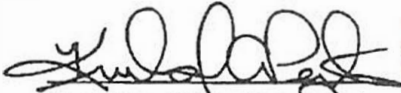
In the event of a dispute, the agencies shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication. In the event such measures fail to resolve the dispute, the agencies shall elevate the issue through their respective chains of command, as appropriate.

g. Information Sharing

Draft documents prepared or exchanged pursuant to this agreement may contain information subject to the Deliberative Process Privilege, the Attorney-Client Privilege, the Confidential Commercial Information Privilege or other privileges. The agencies intend to assert privileges where appropriate and subject to the limitations of the *Freedom of Information Act*, 5 U.S.C. 552 et seq or other legal authorities. Should an agency receive a *Freedom of Information Act* or other request for information prepared or exchanged pursuant to this agreement, that agency will timely consult with the other agencies as appropriate to determine the applicability of privileges or exemptions where other agencies have equities in the requested information.

IV. Effective Date and Review

This MOA shall become effective upon the date of the last signature of the agencies. This MOA will be reviewed by the agencies 10 years from the date of award of the first construction contract for the Project.



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